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This Instrument was
Prepared by:

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111 West Monroe Street
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Eugene "Gene" Moore Fee: \$124.50
Cook County Recorder of Deeds
Date: 08/20/2004 12:28 PM Pg: 1 of 51

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ELSTON DEVELOPMENT L.L.C.,
a Delaware limited liability company
(Mortgagor)

to
CAPLEASE, LP
(Mortgagee)

MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

Dated as of: August 4, 2004

Location: 2100 North Elston Avenue
Chicago, IL 60614
Cook County

RECORD AND RETURN TO:

³⁰⁶²
AFTER RECORDING RETURN TO: 'e

Attn: Christine A. Renner
LandAmerica Nat'l Comm. Svcs.
10 S. LaSalle Street, Suite 2500
Chicago, IL 60603 CHI-33709D

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Elston Development L.L.C.

Mortgage, Security Agreement and
Assignment of Leases and Rents

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Mortgage"), made as of the 4th day of August, 2004, by ELSTON DEVELOPMENT L.L.C., a Delaware limited liability company, having its principal place of business at 2222 North Elston Avenue, Chicago, Illinois 60614 ("Mortgagor"), to CAPLEASE, LP, a Delaware limited partnership, having its principal place of business at 110 Maiden Lane, 36th Floor, New York, New York 10005 ("Mortgagee").

WITNESSETH:

This Mortgage is also a Security Agreement and financing statement under the Uniform Commercial Code of the State of Illinois and in compliance therewith the following information is set forth:

1. The names and addresses of the Debtor and Secured Party are:

Debtor:	Elston Development L.L.C. 2222 North Elston Avenue Chicago, Illinois 60614 Attention: Warren Baker
Secured Party:	Caplease, LP 110 Maiden Lane, 36th Floor New York, New York 10005 Attention: Michael J. Heneghan

2. The property covered by this Security Agreement and financing statement is described in the granting clauses hereof.

3. Some or all of the fixtures, equipment and other property described herein is or may become fixtures.

4. The Debtor is the record owner of the real estate described in Exhibit A attached hereto and made a part hereof.

To secure the payment of an indebtedness in the principal sum of up to SIXTEEN MILLION AND 00/100 DOLLARS (\$16,000,000), which amount includes the maximum amount that may be disbursed pursuant to the Second Disbursement (hereinafter defined) (the "Loan"), lawful money of the United States of America, to be paid with interest according to a certain Mortgage Note dated the date hereof made by Mortgagor to Mortgagee due March 15, 2025 (the note together with all replacements, including without limitation the Replacement Note (hereinafter defined), extensions, renewals or modifications thereof being hereinafter collectively called the "Note") and all other sums due hereunder, under the Note and any Other Security Documents (hereinafter defined) (said indebtedness and interest due under the Note and the Other Notes (hereinafter defined) and all other sums due hereunder and under the Note, the Other Mortgages

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(hereinafter defined) and the Other Security Documents being hereinafter collectively called the "Debt"), Mortgagor has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned, and hypothecated and by these presents does hereby mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate unto Mortgagee the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

In addition, Mortgagee and Mortgagor have agreed to certain terms and conditions upon which Mortgagee may, (i) in accordance with the Application for Mortgage Loan dated as of April 1, 2004 by and among Mortgagor, Mortgagee and Warren Baker (the "Application"), make additional loans to Mortgagor (the "Other Loans") relating to that certain Kohl's Department Stores lease (the "Kohl's Lease") and that certain Harris Trust and Savings Bank lease (the "Harris Lease"), such additional loans to be represented by separate notes (the "Other Notes") and to be secured by separate mortgages (the "Other Mortgages") on properties adjacent to the Mortgaged Property, (the "Other Mortgaged Properties") all as contemplated in the Application and (ii) in accordance with Section 62 of this Mortgage, disburse additional amounts on the Loan to be evidenced by the Note.

It is the intention of Mortgagor and Mortgagee that the Note and the Other Notes shall all be secured by this Mortgage and the Other Mortgages and that a default under this Mortgage shall constitute a default under the Other Mortgages and *vice versa*.

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter described are collectively referred to herein as the "Mortgaged Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights (including, without limitation, all right, title and interest of Mortgagor under any reciprocal easement agreement affecting or pertaining to the Mortgaged Property), and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the

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Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "Uniform Commercial Code") superior in lien to the lien of this Mortgage. In connection with Equipment which is leased to Mortgagor or which is subject to a lien or security interest which is superior to the lien of this Mortgage, this Mortgage shall also cover all right, title and interest of Mortgagor in and to all deposits, and the benefit of all payments now or hereafter made with respect to such Equipment;

(c) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain or condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(d) all right, title and interest of Mortgagor in and to the Ground Lease dated as of August 15, 2002, as amended by that certain First Amendment to Lease (including, without limitation, all guarantees thereof) (as it may be amended from time to time, the "Lease") between Mortgagor, as lessor, and Best Buy Stores, L.P., a Delaware limited partnership, as lessee ("Lessee") and all other leases and subleases (including, without limitation, all guarantees thereof) and other agreements affecting the use, enjoyment or occupancy of the Premises and the Improvements heretofore or hereafter entered into (the "Other Leases") (including any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code (the "Bankruptcy Code") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Premises and the Improvements) and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements (the "Rents") (including any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Premises and the Improvements and all claims as a creditor in connection with any of the foregoing) and all proceeds from the sale, cancellation, surrender or other disposition of the Lease and the Other Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) Mortgagor's interest in any insurance policies covering the Premises and the Improvements, including, without limitation, that certain lease enhancement insurance policy dated on or about the date hereof and issued by Lexington Insurance Company in connection with this

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Loan (the "Lease Enhancement Policy"), all proceeds thereof and any unearned premiums on any insurance policies covering the Mortgaged Property (including, without limitation, the Lease Enhancement Policy), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property or any part thereof;

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property or any part thereof;

(g) all franchises, trade names, trademarks, symbols, service marks, books, records, plans and specifications, contracts, licenses, approvals, consents, subcontracts, service contracts, management contracts, permits and other agreements of any nature whatsoever now or hereafter obtained or entered into by Mortgagor, or any managing agent of the Mortgaged Property on behalf of Mortgagor, with respect to the use, occupation, development, construction and/or operation of the Mortgaged Property or any part thereof or the activities conducted thereon or therein, or otherwise pertaining to the Mortgaged Property or any part thereof;

(h) all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Mortgaged Property or any part thereof, and all reserve accounts, accounts for the deposit, collection and/or disbursement of Rents and other accounts now or hereafter in existence with respect to the Loan, including, without limitation, that certain account for the payment of Rents to Mortgagee described in Paragraph 14(a) of the Assignment of Lease and Rents delivered to Mortgagee by Mortgagor on the date hereof and all interest reserve accounts, borrower reserve accounts and replacement reserve accounts provided for under any documentation entered into or delivered by Mortgagor in connection with the Loan; and

(i) all rights which Mortgagor now has or may hereafter acquire, to be indemnified and/or held harmless from any liability, loss, damage, cost or expense (including, without limitation, attorneys' fees and disbursements) relating to the Mortgaged Property or any part thereof.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note, the Other Notes, this Mortgage and the Other Mortgages and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note and the Other Notes in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void.

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AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

Part I

General Provisions

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Mortgagor will pay the Debt at the time and in the manner provided in the Note and the Other Notes and in this Mortgage and the Other Mortgages. All the covenants, conditions and agreements contained in (a) the Note (b) all and any of the documents other than the Note or this Mortgage now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, which evidences, secures or guarantees all or any portion of the payments due under the Note or otherwise is executed and/or delivered in connection with the Note and Mortgage (the "Other Security Documents"), are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

2. Warranty of Title. Mortgagor warrants that Mortgagor has good and marketable title to the Mortgaged Property and has the right to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, lease, assign and hypothecate the same and that Mortgagor possesses an indefeasible fee estate in the Premises and the Improvements subject to the Lease and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for the Lease and those exceptions shown in the title insurance policy insuring the lien of this Mortgage. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Insurance. (a) The Mortgaged Property shall at all times during the entire term of this Mortgage be insured for the mutual benefit of Mortgagor and Mortgagee against loss or damage by any peril covered by a standard "all risk of physical loss" insurance policy, or, where Lessee is required to maintain insurance, with such insurance as is required to be maintained by Lessee pursuant to the terms of the Lease (provided, if the Lease permits Lessee to self-insure, Mortgagee may require no insurance during the period that Lessee shall be self-insuring the Mortgaged Property so long as the Lessee maintains a net worth of at least \$100,000,000 and a long-term debt rating of "BBB" or better, as rated by Standard & Poor's Rating Services, a division of McGraw-Hill Companies, or "Baa" or better, as rated by Moody's Investor Service, Inc.), or in the event that the Lease is no longer in effect, as otherwise required by Mortgagee. Unless Mortgagee shall have otherwise agreed, such insurance, whether provided by Mortgagor or Lessee, shall be in an amount (i) equal to at least the then full replacement cost of the Improvements and Equipment, without deduction for physical depreciation (and contain an appropriate "Replacement Cost Endorsement" with waiver of depreciation) and with a deductible no greater than \$5,000.00, and (ii) such that the insurer would not deem Mortgagor a co-insurer under said policies. The policies of insurance carried in accordance with this Paragraph 3 (the "Policies") shall be paid annually in advance.

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(a) Unless the Policies described in this Paragraph 3(b) are being provided by Lessee in accordance with the provisions of Paragraph 3(a) herein, Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall also obtain and maintain during the entire term of this Mortgage the following Policies:

(i) Flood insurance if any part of the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount at least equal to the outstanding principal amount of the Note or the maximum limit of coverage available with respect to the Improvements and Equipment under said Act, whichever is less.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages.

(iii) Rental loss insurance in an amount equal to the aggregate annual amount of all rents and additional rents payable under the Lease, such rental loss insurance to cover rental losses for a period of at least two years after the date of the fire or casualty in question, irrespective of whether the Lease has been terminated during that two-year period, or, in the event the Lease is no longer in effect, as required by Mortgagee. Mortgagor shall not, without the prior written consent of Mortgagee, amend the Lease to reduce the amounts and/or types of insurance required to be maintained under the Lease or waive any provision of the Lease to reduce such amounts and/or types of insurance.

(iv) Insurance against loss or damage from explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements.

(v) Comprehensive public liability insurance for personal injury, bodily injury or death, and damage to property of third persons occurring on or about the Common Areas (as defined in the Lease), having limits of liability of not less than One Million no/100 Dollars (\$1,000,000.00) combined single limit, with an excess umbrella liability policy of not less than \$10,000,000, naming Tenant and Mortgagee as additional Insureds and as otherwise required under the Lease.

(vi) "All risk" property insurance insuring ninety-five percent (95%) of the full insurable replacement cost of the Common Areas and as otherwise required under the Lease.

(vii) Such other insurance as may from time to time be reasonably required by Mortgagee in order to protect its interests.

(b) All Policies if and to the extent required by Mortgagee (i) shall be issued by an insurer rated at least "A" by the Rating Agencies that is satisfactory to Mortgagee, (ii) shall contain the standard New York mortgagee or equivalent non-contribution clause naming Mortgagee

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as the person to which all payments made by such insurance company shall be paid, (iii) shall be maintained throughout the term of this Mortgage without cost to Mortgagee, (iv) shall be delivered to Mortgagee, (v) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under said Policies and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification or cancellation, and (vi) shall be satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee as to amounts, form, risk coverage, deductibles, loss payees and insureds. The premiums for such Policies (the "Insurance Premiums") shall be paid as the same become due and payable. Not later than thirty (30) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Mortgagee satisfactory evidence of the renewal of each Policy.

(c) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Mortgagee. Mortgagor shall not settle or adjust or permit the settlement or adjustment of any insurance claim without Mortgagee's prior written consent. All insurance proceeds required to be applied to restoration and repair of the Mortgaged Property under the Lease shall be disbursed in accordance with the provisions of the Lease for such restoration and repair upon such conditions as Mortgagee may reasonably require and which are otherwise customary in the locality where the Mortgaged Property is situated, which conditions shall include, without limitation, the following: (i) no Event of Default, or event which with notice and/or the passage of time, or both, would constitute an Event of Default has occurred and remains uncured at the time of such disbursement; (ii) the insurer does not deny liability to any named insured; (iii) the remaining Mortgaged Property continues at all times to comply with all applicable building, zoning and other land use laws and regulations; (iv) in Mortgagee's reasonable judgment, the restoration or repair is practicable and can be completed within a reasonable period of time following such damage or destruction, but in no event later than the date by which completion is required under the Lease; (v) Mortgagor proceeds promptly after the insurance claims are settled with the restoration or repair; and (vi) the restoration or repair is performed in compliance with all applicable laws, rules and regulations. All insurance proceeds not required to be disbursed for repair and restoration of the Mortgaged Property pursuant to the provisions of the Lease shall be delivered to Mortgagee and may be retained and applied by Mortgagee, after deduction of Mortgagee's reasonable costs and expenses of collection, toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper (such application to be without any prepayment consideration, except that if an Event of Default, or an event with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the Default Prepayment Consideration (as such term is defined in the Note) computed in accordance with the Note).

(d) Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of the Lease Enhancement Policy, including, without limitation, the terms of the paragraph entitled "Maintenance of Certain Insurance Coverage" under any such Lease Enhancement Policy. Mortgagor acknowledges Mortgagee's right under and pursuant to Paragraph 23 hereof to obtain (either itself or by its agents, servicers, nominees or attorneys) any insurance required of Mortgagor hereunder should Mortgagor fail to do so as required hereunder.

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4. Payment of Taxes, etc. (a) All taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") shall be paid on or prior to the date the same become due and payable. Mortgagor will deliver to Mortgagee, promptly upon Mortgagee's request, evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property. Mortgagor shall furnish to Mortgagee or its designee receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) After prior written notice to Mortgagee, Mortgagor, at its own expense, may contest, or permit to be contested, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes or Other Charges, provided that (i) Mortgagor is not in default under the Note or this Mortgage, (ii) Mortgagor is permitted to do so under the provisions of any mortgage or deed of trust junior in lien to this Mortgage, (iii) such proceeding shall suspend the collection of the Taxes or Other Charges from Mortgagor and from the Mortgaged Property, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder, (v) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) adequate reserves for the payment of the Taxes or Other Charges, together with all interest and penalties thereon, shall have been set aside, and (vii) Mortgagor shall have furnished to Mortgagee, or caused to be furnished to Mortgagee, such security as may be required in the proceeding, or as may be requested by Mortgagee, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon.

5. Escrow Fund. Mortgagor shall, after an Event of Default (unless the tenant under the Lease is paying such sums directly) or during any period that the Lease is not in effect, at the option of Mortgagee or its designee, pay to Mortgagee on the fifteenth day of each calendar month after notice from Mortgagee (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable, during the next ensuing twelve (12) months, and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (said amounts in (a) and (b) above hereinafter called the "Escrow Fund"). The Escrow Fund, if any, and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Paragraphs 3 and 4 hereof, Mortgagee shall, in its discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to

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be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Mortgagor shall promptly pay to Mortgagee, upon demand, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Escrow Fund to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note and the Other Notes;
- (iv) Amortization of the unpaid principal balance of the Note and the Other Notes;
- (v) All other sums payable pursuant to the Note, this Mortgage, the Other Mortgages and the Other Security Documents, including, without limitation, advances made by Mortgagee pursuant to the terms of this Mortgage or the Other Mortgages; or
- (vi) Any excess of Mortgagor pursuant to the terms of the Borrower Reserve Agreement dated as of the date hereof between Mortgagor and Mortgagee.

Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. No earnings or interest on the Escrow Fund shall be payable to Mortgagor.

6. Condemnation. (a) Mortgagor shall promptly give Mortgagee written notice of the actual or threatened (of which Mortgagor has actual knowledge) commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, in this Mortgage and the Other Security Documents and the Debt shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Mortgagee to the discharge of the Debt. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein and in the Note. Mortgagor shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Mortgagor, to be paid directly to Mortgagee.

(b) All condemnation awards or payments required to be applied to restoration and repair of the Mortgaged Property under the Lease shall be disbursed in accordance with the provisions of the Lease. All condemnation awards or payments not required to be disbursed for

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repair and restoration of the Mortgaged Property pursuant to the provisions of the Lease shall be delivered to Mortgagee and applied to the reduction or discharge of the Debt whether or not then due and payable (such application to be without any prepayment consideration, except that if an Event of Default, or an event with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the Default Prepayment Consideration computed in accordance with the Note). If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt. Mortgagor shall file and prosecute or cause to be filed and prosecuted its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Mortgagor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims, and although it is hereby expressly agreed that the same shall not be necessary in any event, Mortgagor shall, upon demand of Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Mortgagee, free and clear of any encumbrances of any kind or nature whatsoever.

7. The Lease. (a) Mortgagor, by this Mortgage and the Assignment of Lease and Rents of even date herewith, has absolutely and unconditionally assigned to Mortgagee, all of Mortgagor's right, title and interest in the Lease, the Other Leases and the Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment. Mortgagor represents to Mortgagee that (i) the Lease is in full force and effect, (ii) a true and correct copy of the Lease as amended to the date hereof has been delivered to Mortgagee, (iii) neither Mortgagor nor Lessee is in default under any of the terms, covenants or conditions of the Lease, (iv) Mortgagor has not delivered to, or received from the Lessee any notice of default under the Lease and (v) all rents payable under the Lease, including all additional rent, have been paid in full.

(a) Mortgagor agrees with Mortgagee that Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Lease and shall not do or permit to be done anything to impair the value of the Lease as security for the Debt; (ii) shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall enforce all of the material terms, covenants and conditions contained in the Lease upon the part of the Lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not execute any other assignment of lessor's interest in the Lease; (v) shall not alter, modify or change the terms of the Lease without the prior consent of Mortgagee, or cancel or terminate the Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by the Lease or of any interest therein so as to effect a merger of the estates and rights of, or termination or diminution of the obligations of Lessee thereunder; (vi) shall not alter, modify or change the terms of any guaranty of the Lease or cancel or terminate any such guaranty without the prior consent of Mortgagee; (vii) shall not consent to any assignment of or subletting under the Lease not in accordance with the Lease terms, without the prior written consent of Mortgagee; (viii) upon request of Mortgagee, shall request and use reasonable efforts to obtain, an estoppel certificate from the Lessee in substantially the form required by the Lease or if not so required, in form and substance reasonably satisfactory to Mortgagee; and (ix) shall execute

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and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require.

8. Maintenance of Mortgaged Property. The Mortgaged Property shall be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment or as otherwise permitted under the Lease) without the consent of Mortgagee. Mortgagor shall cause the Mortgaged Property to be in compliance with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Mortgagor shall cause any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Paragraph 6 hereof to be promptly repaired, replaced or rebuilt, unless the Lease is then in effect, in which case such repair, replacement or rebuilding shall be made to the extent required under the Lease. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee.

9. Transfer or Encumbrance of the Mortgaged Property. (a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor in owning and operating properties such as the Mortgaged Property and Other Mortgaged Properties in agreeing to make the Loan and Other Loans, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property and Other Mortgaged Properties as a means of maintaining the value of the Mortgaged Property and the Other Mortgaged Properties as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property and the Other Mortgaged Properties so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover all or a portion of the Debt by a sale of the Mortgaged Property and the Other Mortgaged Properties. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any Other Mortgaged Property or any part thereof or any interest therein or any direct or indirect interest in Mortgagor, or permit the Mortgaged Property or any Other Mortgaged Property or any part thereof or any interest therein or any direct or indirect interest in Mortgagor to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(a) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Paragraph 9 shall be deemed to include, without limitation, (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any Other Mortgaged Properties or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property or any Other Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to the Lease, the Kohl's Lease or the Harris Lease or any Rents; (iii) any divestiture of Mortgagor's title or any interest therein in any manner or way, whether voluntary or involuntary, or any merger,

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consolidation, dissolution or syndication affecting Mortgagor; (iv) if Mortgagor, any person or entity guaranteeing payment of the Debt or any portion thereof or performance by Mortgagor of any of the terms of this Mortgage (a "Guarantor"), or any general partner or managing member of Mortgagor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of any of such corporation's stock (or any stock or other interests of any corporation or entity directly or indirectly controlling such corporation, by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation directly or indirectly; and (v) if Mortgagor, any Guarantor or any general partner or managing member of Mortgagor or any Guarantor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of any partnership interests of any general partner, managing partner or limited partner or the transfer of any interests of any joint venturer or member (or any interests of any entity directly or indirectly controlling such partner, joint venturer or member, by operation of law or otherwise).

(b) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any Other Mortgaged Property without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any other Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any Other Mortgaged Property.

(c) Mortgagee's consent to a sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property and the Other Mortgaged Properties shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property and the Other Mortgaged Properties made in contravention of this Paragraph 9 shall be null and void and of no force and effect.

(d) Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

(e) Mortgagee's consent to the sale or transfer of the Mortgaged Property and the Other Mortgaged Properties will not be unreasonably withheld after consideration of all relevant factors, provided that:

(i) no Event of Default or event which with the giving of notice or the passage of time would constitute an Event of Default shall have occurred and remain uncured;

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(ii) the proposed transferee ("Transferee") shall be a reputable entity or person of good character, creditworthy, with sufficient financial worth considering the obligations assumed and undertaken, as evidenced by financial statements and other information reasonably requested by Mortgagee and shall comply in all respects with the provisions set forth in Paragraph 20 of this Mortgage and all other applicable criteria of the Rating Agencies after a Secondary Market Transaction (as hereinafter defined);

(iii) Mortgagee shall have received evidence satisfactory to Mortgagee that all required approvals, if any, to such sale or transfer shall have been obtained, including, without limitation, approvals required under the Lease, the Harris Lease, the Kohl's Lease or the Lease Enhancement Policy;

(iv) After a Secondary Market Transaction, Mortgagee shall have received evidence in writing from the Rating Agencies to the effect that such transfer will not result in a re-qualification, reduction or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction (as hereinafter defined). The term "Rating Agencies" as used herein shall mean any of Standard & Poor's Ratings Group, Moody's Investors Service, Inc. and Fitch, Inc. or any other nationally-recognized statistical rating agency which has been approved by Mortgagee and which is then rating the securities or certificates issued in connection with the Secondary Market Transaction;

(v) Mortgagee shall have received such legal opinions as may be requested by Mortgagee or any Rating Agency after a Secondary Market Transaction in connection with such sale or transfer;

(vi) the Transferee shall have executed and delivered to Mortgagee an assumption agreement in form and substance acceptable to Mortgagee, evidencing such Transferee's agreement to abide and be bound by the terms of the Note, the Other Notes, this Mortgage, the Other Mortgages and the Other Security Documents, together with such title insurance endorsements as may be reasonably requested by Mortgagee; and

(vii) Mortgagee shall have received an assumption fee equal to one percent (1%) of the then unpaid principal balance of the Note and the Other Notes in addition to the payment of all costs and expenses incurred by Mortgagee in connection with such assumption (including reasonable attorneys' fees and costs).

(f) Notwithstanding anything to the contrary herein, in the event of any transfer by Mortgagor of all or any portion of the Mortgaged Property or any Other Mortgaged Properties or any interest therein (whether or not such transfer shall have been approved by Mortgagee), such transferee shall be automatically deemed to have assumed all the obligations of the Insured Owner (as such term is defined in the Lease Enhancement Policy) under the Lease Enhancement Policy, including any application submitted in connection therewith, without the need for any further agreement or documentation.

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(g) After any transfer, the Borrower and any guarantor of Borrower's obligations hereunder shall be released from their respective obligations under the Loan Documents that accrue after the effective date of such transfer.

(h) Notwithstanding anything to the contrary set forth herein, transfers of direct or indirect ownership interests in the Mortgagor shall be permitted without restriction so long as, after giving effect to such transfer, Warren Baker (or the then wife of Warren Baker) or any estate planning entity created for estate planning purposes of Warren Baker owns directly or indirectly 51% or more of the ownership interests in the Mortgagor and in the manager of the Mortgagor.

10. Estoppel Certificates. After request by Mortgagee, Mortgagor shall within ten (10) business days furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note and this Mortgage are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

11. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable and such pre-payment of the Debt shall be without fee, premium or penalty.

12. No Credits on Account of the Debt. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

13. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

14. Usury Laws. This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the Debt at a rate which could subject Mortgagee to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by law to contract or agree to pay. If by

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the terms of this Mortgage or the Note, Mortgagor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all previous payments in excess of such maximum rate shall be deemed to have been payments in reduction of the principal and not on account of the interest due hereunder.

15. Books and Records. Mortgagor and Guarantors, if any, shall keep adequate books and records of account in accordance with generally accepted accounting principles consistently applied and furnish to Mortgagee: (a) an annual operating statement of the Mortgaged Property; (b) an annual balance sheet and profit and loss statement of Mortgagor, and of any Guarantor, prepared by or, if required by Mortgagee, audited and certified by, a certified public accountant acceptable to Mortgagee within one hundred twenty (120) days after the close of each fiscal year; and (c) such annual balance sheets and profit and loss statements and other financial statements as may, from time to time, be required by Mortgagee. Mortgagor shall provide Mortgagee with such additional financial or management information as Mortgagee may request, provided that any such additional information with respect to the Lessee or the Mortgaged Property is available to Mortgagor pursuant to the terms and provisions of the Lease.

16. Performance and Enforcement of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor and shall enforce each and every term required to be observed or performed by any other party pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property, including, without limitation, any reciprocal easement, operating or similar agreement, and if Mortgagor shall fail to so observe, perform and enforce any such terms, Mortgagee and Servicer and their agents, employees, contractors, engineers, architects and other representatives shall have the right to so observe, perform and enforce such terms.

17. Further Acts, etc. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time in its reasonable discretion, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of, after the occurrence and during the continuance of an Event of Default, exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this Paragraph 17.

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18. Recording of Mortgage, etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

19. Prepayment. The Debt may or shall, as the case may be, be prepaid in accordance with the terms of Sections 25, 26 and 27 hereof and, if permitted by the Note, the Debt may be prepaid in accordance with the terms thereof.

20. Single Purpose Entity/Separateness. Mortgagor hereby represents and warrants to, and covenants with, Mortgagee that as of the date hereof and until such time as the Debt shall be paid in full:

(a) The purpose for which Mortgagor is organized shall be limited solely to (i) owning, holding, selling, leasing, transferring, exchanging, operating and managing the Mortgaged Property and the other properties related to the Kohl's Lease and the Harris Lease (the "Other Mortgaged Properties"), (ii) entering into the Loan and the Other Loans with Mortgagee, (iii) refinancing the Mortgaged Property and the Other Mortgaged Properties in connection with a permitted repayment of the Loan or the Other Loans and (iv) transacting any and all lawful business for which Mortgagor may be organized under its constitutive law that is incident, necessary and appropriate to accomplish the foregoing.

Mortgagor does not own and will not own any asset or property other than (i) the Mortgaged Property and the Other Mortgaged Properties, and (ii) incidental personal property necessary for the ownership or operation of the Mortgaged Property and the Other Mortgaged Properties.

(b) Mortgagor will not engage in any business other than the ownership, management and operation of the Mortgaged Property and the Other Mortgaged Properties and Mortgagor will conduct and operate its business as presently conducted and operated. Mortgagor shall not pledge its assets for the benefit of any other person or entity, other than with respect to the Loan and the Other Loans.

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(c) Mortgagor will not enter into any contract or agreement with any affiliate of Mortgagor, any constituent party of Mortgagor, any Guarantor or any affiliate or constituent party of Guarantor, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with unaffiliated third parties. Mortgagor will allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate.

(d) Mortgagor will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation) other than (i) the Debt or (ii) unsecured trade and operational debt customarily payable within 60 days incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the Loan and the Other Loans may be secured (subordinate or pari passu) by the Mortgaged Property.

(e) Mortgagor has not made and will not make any loans or advances to any third party (including any affiliate or constituent party of Mortgagor, any Guarantor or any affiliate or constituent party of Guarantor), and shall not acquire obligations or securities of its affiliates or any constituent party and shall not hold evidence of indebtedness issued by any other person or entity (other than cash and investment grade securities).

(f) Mortgagor is and will remain solvent and Mortgagor will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due and payable.

(g) Mortgagor has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Mortgagor will not, nor will Mortgagor permit any constituent party or Guarantor to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Mortgagor or such constituent party or Guarantor in any manner that would affect the single purpose or bankruptcy remoteness of Borrower without the prior written consent of Mortgagee.

(h) Mortgagor will maintain books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Mortgagor's assets will not be listed as assets on the financial statement of any other entity. Mortgagor will file its own tax returns and will not file a consolidated federal income tax return with any other corporation.

(i) Mortgagor will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Mortgagor, any constituent party of Mortgagor, any Guarantor or any affiliate or constituent party of Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

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(j) Mortgagor will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(k) Neither Mortgagor nor any constituent party will seek or effect the dissolution, winding up, sale of assets, liquidation, consolidation or merger, in whole or in part, or the sale of any material assets, of Mortgagor.

(l) Mortgagor will hold all of its assets in its own name and will not commingle the funds and other assets of Mortgagor with those of any affiliate or constituent party of Mortgagor, any Guarantor, any affiliate or constituent party of Guarantor or any other person or entity and will not participate in any cash management system with any such party.

(m) Mortgagor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party or Guarantor, or any other person.

(n) Mortgagor does not and will not hold itself out to be responsible for the debts or obligations of any other person or entity and does not and will not guarantee the debts or obligations of any other person or entity.

(o) Mortgagor shall not hold out its credit as being available to satisfy the obligations of any other person or entity.

(p) Mortgagor shall maintain a sufficient number of employees in light of its contemplated business operations and shall pay the salaries of its own employees from its own funds.

(q) Mortgagor shall not form, hold or acquire any subsidiaries.

(r) If Mortgagor is a limited partnership or a multiple member limited liability company and its general partner or managing member, respectively, is (i) a corporation whose sole asset is its interest in Mortgagor or (ii) another limited partnership or multiple member limited liability company with a general partner or managing member, respectively, that is a corporation whose sole asset is its interest in such general partner or managing member of Mortgagor (each such corporation an "SPC Party"), each such SPC Party will at all times comply, and will cause Mortgagor to comply, with each of the representations, warranties, and covenants contained in this Paragraph 20 as if such representation, warranty or covenant was made directly by such SPC Party.

(s) Mortgagor shall at all times cause there to be at least one duly appointed member of the board of directors (an "Independent Director") of Mortgagor (if the Mortgagor is a corporation) or each SPC Party, (if the SPC is a corporation), reasonably satisfactory to Mortgagee who is not at the time of such individual's initial appointment, or at any time while serving as a director of Mortgagor or each SPC Party, as applicable, and has not been at any time during the preceding five (5) years (i) a shareholder of, or an officer, director (with the exception of serving as

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the Independent Director of Mortgagor or each SPC Party, as applicable), partner or employee of, Mortgagor or any of its shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, Mortgagor or any of its shareholders, subsidiaries or affiliates, (iii) a person or other entity controlling or under common control with any such shareholder, partner, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, employee, supplier or customer. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

(t) Mortgagor, if a single member limited liability company or multiple member limited liability company, shall be organized in Delaware and shall at all times cause there to be at least one duly appointed independent manager (an "Independent Manager") of Mortgagor reasonably satisfactory to Mortgagor who is not at the time of such individual's initial appointment, or at any time while serving as a manager of Mortgagor, and has not been at any time during the preceding five (5) years: (i) a shareholder of, or an officer, director, partner or employee of, Mortgagor or any of its shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, Mortgagor or any of its shareholders, subsidiaries or affiliates, (iii) a person or other entity controlling or under common control with any such shareholder, partner, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, employee, supplier or customer. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

(u) Mortgagor shall not cause or permit the board of directors/board of managers of Mortgagor or the SPC Party, as applicable, to take any action which, under the terms of any certificate of incorporation, by-laws, operating agreement or any voting trust agreement with respect to any common stock, requires the vote of the board of directors/board of managers of Mortgagor or the SPC Party, as applicable, unless at the time of such action there shall be at least one member who is an Independent Director or Independent Manager, as applicable.

(v) Mortgagor and each SPC Party shall conduct its business so that the assumptions made with respect to Mortgagor and each SPC Party in that certain opinion letter (the "Non-Consolidation Opinion") dated on or about the closing date of the Loan delivered by Piper Rudnick LLP in connection with this Mortgage shall be true and correct in all respects.

21. Events of Default. The Debt shall become immediately due and payable at the option of Mortgagee, without notice or demand, upon any one or more of the followings events ("Events of Default"):

- (a) if any portion of the Debt is not paid when due;
- (b) if any of the Taxes or Other Charges is not paid when the same is due and payable and remain unpaid 5 days after the earlier of (i) the date Mortgagor has received written notice thereof from Mortgagee or its Servicer, or (ii) the date that any manager, officer or owner of the Mortgagor obtains actual knowledge of such non-payment, subject to the provisions of Paragraph 4;

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(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Mortgagee within 15 days after written request or if the Lease Enhancement Policy is not kept in full force and effect;

(d) if Mortgagor violates or does not comply with any of the provisions of Paragraphs 7, 9, 20, 36 or 37;

(e) if a default or an event which with notice or lapse of time or both would become a default has occurred and is continuing under the Lease and has not been cured as provided therein within a period of time allowed for such cure under the Lease or if the Lease is canceled, terminated, modified or surrendered;

(f) if any representation or warranty of Mortgagor, or of any Guarantor, made herein or in any such guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made, or if any of the assumptions in the Non-Consolidation Opinion shall be or become inaccurate;

(g) if Mortgagor, any Guarantor or Lessee shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;

(h) if a receiver, liquidator or trustee of Mortgagor or Lessee (or any guarantor of Lessee) or of any Guarantor shall be appointed or if Mortgagor or Lessee (or any guarantor of Lessee) or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or Lessee (or any guarantor of Lessee) or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or Lessee (or any guarantor of Lessee) or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or Lessee (or any guarantor of Lessee) or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(i) if Mortgagor shall be in default under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage after expiration of the notice and cure periods provided therein;

(j) if an Event of Default shall occur under any Other Mortgage;

(k) if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) calendar days;

(l) if Mortgagor fails to cure or cause Lessee to cure promptly any violations of laws or ordinances affecting the Mortgaged Property within the cure period set forth therefor in the Lease; or

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(m) if for more than thirty (30) days after notice from Mortgagee, Mortgagor shall continue to be in default under any other term, covenant or condition of the Note, this Mortgage or any of the Other Security Documents, provided that the notice and grace period set forth in this subparagraph (l) shall not apply to any other Event of Default expressly set forth in this Paragraph 21 or to any other Event of Default defined as such in the Note or any Other Security Document or to any other covenant or condition with respect to which a grace period is expressly provided elsewhere.

22. Default Interest. Upon the occurrence of any Event of Default, Mortgagor shall pay interest on the unpaid principal balance of the Note at a rate equal to the greater of four percent (4%) per annum above the Applicable Interest Rate (as defined in the Note) or four percent (4%) per annum above the Prime Rate (as defined in the Note) (the "Default Rate"). Such Default Rate interest shall be compounded monthly. The Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Debt. This charge shall be added to the Debt, and shall be deemed secured by this Mortgage. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Mortgagee by reason of the occurrence of any Event of Default. If the Default Rate is above the maximum rate permitted by applicable law, the Default Rate shall be the maximum rate permitted by applicable law.

23. Right to Cure Defaults. (a) Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided (including, without limitation, any failure to observe, perform and/or enforce the terms of any reciprocal easement agreement affecting or pertaining to the Mortgaged Property, or any failure to make any payment or to do any act with respect to property other than the Mortgaged Property, as may be provided for in the Lease), Mortgagee and/or Servicer may (themselves or by their agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder or curing or being deemed to have cured any default hereunder, make or do the same in such manner and to such extent as Mortgagee and/or Servicer may deem necessary to protect the security hereof. Mortgagee and Servicer (and their agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Mortgaged Property for such purposes and Mortgagee and/or Servicer are authorized to appear in, defend, or bring any action or proceeding to protect Mortgagee's interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, including, without limitation, the remedies provided for in subparagraph (c) below. All costs and expenses (the "Advances") incurred by Mortgagee and/or Servicer in remedying such Event of Default or other such failure by Mortgagor (including, without limitation, any such failure with respect to property other than the Mortgaged Property, as may be provided for in the Lease) or in appearing in, defending, or bringing any such action or proceeding (including, without limitation, reasonable attorneys' fees and disbursements to the extent permitted by law and any fees of any special servicer of Mortgagee) shall bear interest at the Default Rate (the "Advance Interest"), for the period after notice from Mortgagee and/or Servicer that such cost or expense was incurred to the date of payment to Mortgagee and/or Servicer. All such Advances incurred by Mortgagee or Servicer, as applicable (the "Advancing Party"), together with all such Advance Interest thereon, shall be deemed to be protective advances hereunder and shall constitute a portion of the Debt and be secured by this

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Mortgage and the Other Security Documents and shall be immediately due and payable upon demand by Mortgagee or Servicer therefor.

(b) Notwithstanding anything to the contrary in this Paragraph 23(a) or in the Note, if, within thirty (30) days after Mortgagor has received written demand from the Advancing Party, Mortgagor has failed to reimburse the Advancing Party for all Advances incurred by the Advancing Party, together with Advance Interest thereon, then, unless the Advancing Party specifies in such written demand that the failure of Mortgagor to make such reimbursement shall constitute an Event of Default hereunder, (i) the failure of Mortgagor to reimburse the Advancing Party for such Advances and Advance Interest pursuant to such written demand shall not, in and of itself, be deemed to be an Event of Default hereunder; (ii) such Advances and Advance Interest shall automatically be deemed to be due and payable on the earlier of the Maturity Date (as defined in the Note) or fifteen (15) days after Mortgagor has received subsequent written demand therefor from the Advancing Party, and the failure of Mortgagor to pay such Advances and Advance Interest on the earlier of the Maturity Date or the expiration of such 15-day period shall be deemed to be an automatic Event of Default hereunder; and (iii) from and after the expiration of such 30-day period until the date such Advances and Advance Interest have been paid in full by Mortgagor, the Applicable Interest Rate (as defined in the Note) shall be equal to the Default Rate, and the outstanding principal balance of the Note shall bear interest at such Applicable Interest Rate. Notwithstanding that such Advances and Advance Interest may be due and payable on the earlier of the Maturity Date or the expiration of such 15-day period as provided in clause (ii) above, Mortgagor shall nevertheless have the right at any time to pay to the Advancing Party all or any portion of such Advances, together with the Advance Interest which is accrued thereon through the date of such payment. If the Advances and Advance Interest have been paid in full by Mortgagor in accordance with the preceding sentence, then from and after the date of such payment (and provided that no Event of Default (or event which is not curable with the payment of money and which, with the lapse of time or the giving of notice, or both, would become an Event of Default) has occurred and is continuing), the Applicable Interest Rate on the Note shall be the rate per annum as originally set forth in the Note prior to the failure of Mortgagor to reimburse the Advancing Party prior to the expiration of such 30-day period. Except with respect to the payment of Advances and Advance Interest by Mortgagor, the foregoing provisions of this Paragraph 23 shall not in any way affect the provisions of the Note regarding prepayment of the principal balance of the Note or the provisions of Paragraph 60 hereof.

(c) In order to facilitate Mortgagee's and/or Servicer's rights under subparagraph (a) above, Mortgagor hereby further grants to Mortgagee and Servicer and any agents, employees, contractors, engineers, architects, nominees, attorneys and other representatives of Mortgagee and/or Servicer, an easement on, over, through and under the Mortgaged Property in order to exercise any such rights. Such easement is self-effectuating and runs with the land, and shall be binding upon Mortgagor and all successors and assigns of Mortgagor until repayment of the Loan in full and payment of all amounts owed under any of the Other Security Documents. Mortgagor shall cause the foregoing rights of Mortgagee and easement to be agreed to by and binding upon all tenants of the Mortgaged Property and all successors and assigns of such tenants. Mortgagor shall promptly execute, and cause to be executed, any other documents required by Mortgagee in order to further confirm the foregoing rights of Mortgagee and easement. For the foregoing purposes, Mortgagor constitutes and appoints each of Mortgagee and Servicer its true

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and lawful attorney-in-fact with full power of substitution to exercise any such rights in the name of Mortgagor. Mortgagor empowers each of said attorneys-in-fact to do any and every act which Mortgagor might do in its own behalf to fulfill the terms of the Note, this Mortgage, the Other Security Documents and/or the Lease. It is further understood and agreed that the foregoing powers of attorney, which shall be deemed to be powers coupled with an interest, cannot be revoked. Mortgagor specifically agrees that all powers granted to Mortgagee and Servicer under this Mortgage may be assigned by Mortgagee to its successors or assigns as holder of the Note and by Servicer to its successors or assigns as servicer of the Loan.

(d) Mortgagor specifically admits and acknowledges that a prima facie showing of any threatened breach, anticipatory breach or breach of any term, provision or condition of this Mortgage by Mortgagor also constitutes a showing (i) of irreparable injury to Mortgagee, for which Mortgagee may have no adequate remedy at law, and (ii) that the balance of hardships weighs in favor of Mortgagee. Immediately upon learning of any such threatened breach, anticipatory breach or breach by Mortgagor, in addition to any other rights or remedies available under this Mortgage or at law or in equity, Mortgagee and/or Servicer shall have the right to, but shall not be obligated to, (A) institute an action, suit or proceeding in equity for the specific performance of any such term, provision or condition; (B) institute an action, suit or proceeding against Mortgagor for damages resulting from such threatened breach, anticipatory breach or breach and/or (C) commence an action against Mortgagor for injunctive relief, and may move, ex parte and without notice to Mortgagor, for a temporary restraining order or preliminary injunction, prohibitory and/or mandatory as the circumstances require, restraining and prohibiting any such threatened breach, anticipatory breach or breach. Mortgagor expressly waives any requirement that Mortgagee and/or Servicer post a bond or undertaking for any such temporary restraining order or preliminary injunction described in clause (C) above.

24. Late Payment Charge. Except for payments to be made hereunder or under the Note in the case of any acceleration of the Debt in which case the amounts set forth in the last sentence of Section 2 and in Section 5 of the Note shall be due and payable, if any portion of the Debt is not paid on or before the date on which it is due, Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum amount permitted by applicable law, to defray the expense incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Mortgage and the Other Security Documents.

25. Prepayment After Event of Default. Except as otherwise expressly provided in connection with a casualty or condemnation under Paragraphs 3(d) and 6(b) hereof or as provided in Paragraphs 11, 26 and 27 hereof, the principal balance of the Note may not be prepaid in whole or in part, whether voluntarily or involuntarily, prior to the Maturity Date; provided, however, that Mortgagor shall have the right and option to defease the Loan and obtain a release of the Mortgaged Property from the lien of this Mortgage in accordance with and subject to the terms and provisions set forth in Paragraph 60 of this Mortgage (the "Defeasance Option"). If following the occurrence of any Event of Default, Mortgagor or any purchaser at foreclosure or any other person shall tender payment of all or any portion of the Debt, whether such payment is voluntary or involuntary, or occurs as a result of a foreclosure or the exercise of any other remedies

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available to Mortgagee under the Note, this Mortgage and the Other Security Documents, or otherwise, such tender shall be deemed to be an attempt to circumvent the prohibition against prepayment set forth in this Paragraph 25 and Mortgagor shall pay to Mortgagee, in addition to the Debt, the Default Prepayment Consideration.

26. Prepayment to Fully Amortize the Note. If, upon any Adjustment Date (as defined in the Lease), the Tenant's Proportionate Share (as defined in the Lease) is decreased pursuant to Section 5(c) of the Lease (or if the Tenant's Site Work Costs are otherwise less than as contemplated on the closing date of the Loan) and the Fixed Rent and Tenant's Site Work Costs are not sufficient to, by the Maturity Date, fully amortize the principal amount of the Note and pay interest thereon at the Applicable Interest Rate pursuant to the schedule attached to the Note plus the monthly payments due under the Borrower Reserve Agreement and otherwise to service the Loan (such full amortization plus the monthly payments is herein referred to as "Fully Amortize the Note"), then Mortgagor will be required to, no later than the next then scheduled debt service payment on the Note, prepay an amount of principal on the Note, from the Best Buy Loan Account (as defined in the Borrower Reserve Agreement), or, if amounts in the Best Buy Loan Account are not sufficient for such purpose, from some other source (and no more than such amount), such that, after giving effect to such prepayment, the Fixed Rent and Tenant's Site Work Costs shall be sufficient to Fully Amortize the Note. If a prepayment as described in the immediately preceding sentence occurs, Mortgagee shall prepare a revised amortization schedule reflecting such prepayment.

27. Prepayment for Loan Terms Adjustment. If, on or before March 1, 2005, Lender does not make the Other Loans to Mortgagor that relates to the Kohl's Lease, Mortgagor agrees to adjust the terms of the Loan (including, without limitation, the Applicable Interest Rate) and Mortgagee shall require Mortgagor to prepay, no later than the next then scheduled debt service payment on the Note, an amount of principal on the Note (and no more than such amount) such that the amount of rent available for debt service is sufficient to Fully Amortize the Note at 6.90% per annum. If a prepayment as described in the immediately preceding sentence occurs, (i) Mortgagee shall release funds from the Best Buy Loan Account (as defined in the Borrower Reserve Agreement dated as of the date hereof) to the extent available therefor for such prepayment and (ii) Mortgagee shall prepare a revised amortization schedule reflecting such prepayment and adjustment of the terms of the Loan.

28. Right of Entry. Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

29. Remedies. (a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;

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(ii) institute proceedings for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;

(iv) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale (if then permitted by law), judicial sale or otherwise as then permitted by law, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note;

(vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;

(viii) enter into or upon the Mortgaged Property, either personally or by its agents, servicers, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to cancel, enforce or modify the Lease and, if the Lease shall no longer be in effect, the right to make, cancel, enforce or modify new leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof; and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, assessments, insurance and Other Charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees; or

(ix) pursue such other rights and remedies as may be available at law and in equity.

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In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this Paragraph 29, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Paragraph 29 or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its discretion shall deem proper.

(c) To the extent permitted by applicable law, Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Paragraph 29, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Paragraph 29 shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this Paragraph 29, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) If Tenant has not paid the rents to Mortgagee (or Mortgagee's servicer) by the sixth (6th) day of the month in which such rents are due under the Lease, Mortgagee (or Mortgagee's servicer) shall endeavor to provide Mortgagor one (1) business day thereafter with

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oral notice of Tenant's failure to pay the rents via telephone call to Mortgagor at (773) 755-0600 x20. If Tenant has not paid the rents to Mortgagee (or Mortgagee's servicer) by the eleventh (11th) day of the month in which such rents are due under the Lease, Mortgagee (or Mortgagee's servicer) shall endeavor to provide Mortgagor one (1) business day thereafter with written notice (the "Servicer Notice") of Tenant's failure to pay the rents via facsimile transmission to Mortgagor at (773) 755-0700. The Servicer Notice shall be deemed delivered on confirmation of the transmission. Failure of Mortgagee (or Mortgagee's servicer) to give the aforementioned oral notice and/or to send the Servicer Notice shall have no effect on the rights and remedies of Mortgagee under this Mortgage, the Note or Other Security Documents and shall not be deemed to extend the time for the payment of the Debt or any portion thereof then due and payable.

30. Reasonable Use and Occupancy. In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor or may require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagee may be evicted by summary proceedings or otherwise.

31. Security Agreement. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this Paragraph 31 the "Collateral"). If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the

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Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral.

32. Actions and Proceedings. After an Event of Default has occurred and is continuing, Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

33. Waiver of Counterclaim. All amounts due under this Mortgage, the Other Mortgages, the Note, the Other Notes and the Other Security Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Mortgagor hereby waives the right to assert a setoff, counterclaim (other than a mandatory or compulsory counterclaim) or deduction in any action or proceeding brought against it by Mortgagee, and, to the extent permitted by law, waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Mortgagee against Mortgagor, or in any matters whatsoever arising out of or in any way connected with this Mortgage, the Other Mortgages, the Note, the Other Notes and the Other Security Documents or the Debt.

34. Recovery of Sums Required to Be Paid. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

35. Marshalling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

36. Hazardous Substances. (a) Mortgagor hereby represents and warrants to Mortgagee that, to the best of Mortgagor's knowledge, after due inquiry and investigation, except as may have been disclosed in those certain environmental reports prepared by and dated as follows:

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2076 N. Elston – Pioneer Environmental and dated May 29, 2001; 2062 N. Elston – Pioneer Environmental Remedial Action Completion Report dated July 12, 2002 w/NFR letter recorded January 16, 2003; 1630 W. Armitage – American Environmental Consultants and dated July 24, 2000; 2040 N. Holly – American Environmental Consultants and dated April 28, 2000; 2019 N. Holly – American Environmental Consultants and dated April 28, 2000; IVI International, Inc. and dated May 17, 2004; 2100 N. Elston (vacant land) – International Technology Corp. dated October, 1998; 2100 N. Elston (building) – International Technology Corp. dated October, 1998, and IVI International Inc. dated July 29, 2004 (collectively, the “Environmental Reports”): (i) the Mortgaged Property is not in violation of any federal, state, or local law, ordinance or regulation or any court judgment or order of any federal, state or local agency or regulatory body applicable to Mortgagor or to the Mortgaged Property relating to industrial hygiene or to environmental or unsafe conditions including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Substances (hereinafter defined), those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations, or processes relating to the Mortgaged Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Mortgaged Property or, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act and Occupational Safety and Health Act, and all regulations adopted in respect to the foregoing laws (collectively, “Environmental Laws”); (ii) other than that certain application for a No Further Remediation Letter to be issued by the Illinois Environmental Protection Agency, the Mortgaged Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, pollutants or contaminants, petroleum and petroleum products, tremolite, anthrophyli or actinolite or polychlorinated biphenyls (including, without limitation, any raw materials which include hazardous constituents) and any other substances or materials which are included under or regulated by Environmental Laws (collectively, “Hazardous Substances”); (iii) no Hazardous Substances are or have been, prior to Mortgagor’s acquisition of the Mortgaged Property, discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Mortgaged Property otherwise than in compliance with all Environmental Laws; (iv) no property adjoining the Mortgaged Property is being used or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances; and (v) no underground storage tanks exist on any of the Mortgaged Property except as those disclosed in writing to Mortgagee and which comply with applicable Environmental Laws.

(b) So long as Mortgagor owns or is in possession of the Mortgaged Property, Mortgagor shall (i) keep or cause the Mortgaged Property to be kept free from Hazardous Substances violating Environmental Laws and otherwise in compliance with all Environmental Laws; (ii) promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Substances on the Mortgaged Property in violation of Environmental laws and/or if Mortgagor shall become aware that the Mortgaged Property is in violation of any Environmental Laws; and (iii) conduct and complete or cause to be conducted and completed all remedial action necessary to clean up such Hazardous Substances and remove such Hazardous Substances and/or cure such

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violations, as applicable, as required by law, promptly after Mortgagor becomes aware of same. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure.

(c) Upon Mortgagee's request, at any time and from time to time while this Mortgage is in effect, Mortgagor shall provide an inspection or audit of the Mortgaged Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous Substances on the Mortgaged Property. If Mortgagor fails to provide such inspection or audit within 60 days after such request Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and a license to undertake such inspection or audit. In the event such inspection discloses a condition in violation hereof (and only in such case), the cost of such inspection or audit shall be borne by the Mortgagor and added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate. The obligations and liabilities of Mortgagor under this Paragraph 36 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

37. Asbestos. Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, after due inquiry and investigation, no asbestos or any substance containing asbestos ("Asbestos") is located on the Mortgaged Property except as may have been disclosed in the Environmental Reports. Mortgagor shall not install in the Mortgaged Property, nor permit to be installed in the Mortgaged Property, Asbestos and shall remove or cause to be removed any Asbestos promptly upon discovery to the satisfaction of Mortgagee, or take all action necessary to ensure that such Asbestos is abated or managed in a manner which complies with all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos. Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. Upon Mortgagee's reasonable request, at any time and from time to time while this Mortgage is in effect when Mortgagee has a reasonable basis to believe there may be asbestos on the Property, Mortgagor shall provide, at Mortgagor's sole expense, an inspection or audit of the Mortgaged Property prepared by an engineering or consulting firm approved by Mortgagee, indicating the presence or absence of Asbestos on the Mortgaged Property. If Mortgagor fails to provide such inspection or audit within 60 days after such request, Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and a license to undertake such inspection or audit. The cost of such inspection or audit shall be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate. The obligations and liabilities of Mortgagor under this Paragraph 37 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including but not limited

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to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure for a period of three years after the termination or satisfaction of this Mortgage.

38. Environmental Monitoring. In the event that any investigation, site monitoring, containment cleanup, removal, restoration or other work of any kind is reasonably necessary or desirable under an applicable Environmental Law (the "Remedial Work"), Mortgagor shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days (or within such longer time period as may be necessary so long as Mortgagor is diligently pursuing such completion) after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law). All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's reasonable attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Debt and shall bear interest thereafter until paid at the Default Rate.

39. Handicapped Access. (a) Mortgagor agrees that the Mortgaged Property shall at all times strictly comply, to the extent applicable, with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Mortgaged Property, Mortgagor shall not alter or permit the Mortgaged Property to be altered in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Mortgagee.

(c) Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

(d) Indemnification. In addition to any other indemnifications provided herein or in the Other Security Documents, Mortgagor covenants and agrees at its sole cost and expense to protect, defend, indemnify and save harmless Mortgagee and Servicer from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee or Servicer by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas,

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streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Mortgaged Property or any other property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; and (j) any failure of the Mortgaged Property to comply with any Access Laws; *provided, however*, Mortgagor shall have no such obligation to indemnify Lender against matters caused by the gross negligence or intentional misconduct of Mortgagee or for losses arising from events occurring after Mortgagor no longer owns the Mortgaged Property. Any amounts payable to Mortgagee or Servicer by reason of the application of this Paragraph 39 shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee or Servicer until paid. The obligations and liabilities of Mortgagor under this Paragraph 39 shall survive any termination, satisfaction or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure for a period of three years after the termination or satisfaction of this Mortgage.

40. Notices. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Mortgage, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, or by facsimile, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

To Mortgagee:

Caplease, LP
110 Maiden Lane, 36th Floor
New York, New York 10005
Attention: Michael J. Heneghan
Phone: (212) 217-6300
Fax: (212) 217-6301

with a copy concurrently to:

Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603-4080
Attention: Daniel J. Favero, Esquire

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Phone: (312) 845-3000

Fax: (312) 701-2361

and with a copy concurrently to:

Wachovia Bank, National Association
 8739 Research Drive – URP4
 Charlotte, North Carolina 28288-1075
 Attention: Carolyn Johnson
 Phone: (704) 593-7784
 Fax: (704) 593-7480

To Mortgagor:

Elston Development L.L.C.
 2222 North Elston Avenue
 Chicago, Illinois 60614
 Attention: Warren Baker
 Phone: (773) 755-0600 x20
 Fax: (773) 755-0700

and with a copy concurrently to:

Piper Rudnick LLP
 203 North LaSalle Street
 Chicago, Illinois 60601
 Attention: Jeffrey Owen
 Phone: (312) 368-2118
 Fax: (312) 236-7516

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the day such material is sent, (iii) if sent by certified mail, three (3) days after such notice has been sent by Mortgagor or Mortgagee, or (iv) if sent by facsimile, upon sending party's receipt of confirmation that the fax has been received.

41. Authority; Compliance with ERISA and State Statutes on Governmental Plans. (a) Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

(b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

(c) Mortgagor represents and warrants that, as of the date of this Mortgage and throughout the term of this Mortgage, (i) Mortgagor is not an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"),

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which is subject to Title I of ERISA, and (ii) the assets of such Mortgagor do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

(d) Mortgagor represents and warrants to Mortgagee that, as of the date of this Mortgage and throughout the term of this Mortgage (i) Mortgagor is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and (ii) transactions by or with Mortgagor or any Mortgagor are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

(e) Mortgagor covenants and agrees to deliver to Mortgagee such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Mortgagee in its sole discretion, that (i) Mortgagor is not an "employee benefit plan" or a "governmental plan"; (ii) Mortgagor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

1. Equity interests in Mortgagor are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);
2. Less than 25 percent of all equity interests in such Mortgagor are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2), or
3. Mortgagor qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

(f) Any of the following shall constitute an Event of Default under this Mortgage, entitling Mortgagee to exercise any and all remedies to which it may be entitled under this Mortgage, and any Other Security Documents: (i) the failure of any representation or warranty made by any Mortgagor under this Paragraph 41 to be true and correct in all respects, (ii) the failure of any Mortgagor to provide Mortgagee with the written certifications and evidence referred to in this Paragraph 41, or (iii) the consummation by Mortgagor or any one Mortgagor of a transaction which would cause this Mortgage or any exercise of Mortgagee's rights under this Mortgage, or the Other Security Documents to constitute a non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, or otherwise subjecting Mortgagee to liability for violation of ERISA or such state statute.

(g) Mortgagor shall indemnify Mortgagee and defend and hold Mortgagee harmless from and against all civil penalties, excise taxes, or other loss, cost, damage and expense (including, without limitation, attorneys' fees and disbursements and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Mortgagee's sole discretion) that Mortgagee may incur, directly or indirectly, as a result of a default under this Paragraph 41. This indemnity shall

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survive any termination, satisfaction or foreclosure of this Mortgage for a period of three years after the termination or satisfaction of this Mortgage.

42. Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

43. Remedies of Mortgagor. In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the Other Security Documents, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment.

44. Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

45. Non-Waiver. The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage or the Other Mortgages. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantors to take any action to foreclose this Mortgage or the Other Mortgages or otherwise enforce any of the provisions hereof or of the Note, the Other Notes or the Other Security Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or Other Mortgaged Properties, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Other Notes, this Mortgage, the Other Mortgages or the Other Security Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage or the Other Mortgages. The rights and remedies of Mortgagee under this Mortgage and the Other Mortgages shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

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46. No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

47. Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

48. Inapplicable Provisions. If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

49. Headings, etc. The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

50. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

51. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

52. Homestead. Mortgagor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part hereof.

53. Assignments. Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

54. Cooperation. Mortgagor acknowledges that Mortgagee and its successors and assigns may (a) sell this Mortgage, the Other Mortgages, the Note, the Other Notes and Other Security Documents to one or more investors as a whole loan, (b) participate the Loan or the Other

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Loans to one or more investors, (c) deposit this Mortgage, the Other Mortgages, the Note, the Other Notes and Other Security Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary Market Transactions"). At Mortgagee's sole cost and expense, Mortgagor shall cooperate in good faith with Mortgagee in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by the Rating Agency involved in any Secondary Market Transaction including, without limitation, all structural or other changes to the Loan and the Other Loans, modifications to any documents evidencing or securing the Loan and Other Loans, delivery of opinions of counsel acceptable to the Rating Agency and addressing such matters as the Rating Agency may require; provided, however, except as otherwise specifically set forth herein, including, without limitation, Paragraph 26 herein, the Mortgagor shall not be required to modify any documents evidencing or securing the Loan or Other Loans which would modify (i) the interest rate payable under the Note or Other Notes, (ii) the stated maturity of the Note or Other Notes, (iii) the amortization of principal of the Note or Other Notes, (iv) any other material economic term of the Loan or Other Notes or (v) otherwise increase the obligations or liabilities of Mortgagor or decrease the rights of the Mortgagor under the Loan Documents. Provided Mortgagee pays for same, Mortgagor shall provide such information and documents relating to Mortgagor, Guarantor, if any, the Mortgaged Property, the Other Mortgaged Properties, the Lease, the Harris Lease, the Kohl's Lease, and the Lessee as Mortgagee or any Rating Agency may reasonably request in connection with a Secondary Market Transaction, including, without limitation, any further environmental requirements. Mortgagee shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Mortgagor, the Guarantor, if any, the Mortgaged Property and the Lessee. Mortgagor acknowledges that certain information regarding the Loan and the Other Loans and the parties thereto and the Mortgaged Property may be included in a private placement memorandum, prospectus or other disclosure documents.

55. Recourse Provisions. The terms and provisions set forth in Section 12 of the Note are incorporated herein in their entirety.

56. Governing Law; Submission to Jurisdiction. This Mortgage shall be governed by and construed in accordance with the law of the state in which the Mortgaged Property is located without regard to conflict of law provisions thereof. Each Mortgagor, and each endorser or guarantor hereby submits to personal jurisdiction in said state and the federal courts of the United States of America located in said state (and any appellate courts taking appeals therefrom) for the enforcement of such MORTGAGOR'S, ENDORSOR'S OR GUARANTOR'S obligations hereunder, under the Note, ANY Guaranty and the other SECURITY Documents, and waives any and all personal rights under the law of any other state to object to jurisdiction within such state for the purposes of SUCH ACTION, SUIT, PROCEEDING OR litigation to enforce such obligations of such MORTGAGOR, endorser or GUARANTOR. EACH MORTGAGOR AND EACH ENDORSOR AND GUARANTOR hereby waives and agrees not to assert, as a defense in any action, suit or proceeding arising out of or relating to this MORTGAGE, THE NOTE, ANY GUARANTY or any of the OTHER SECURITY Documents, (A) that it is not subject to such jurisdiction or that such action, suit or proceeding may not be brought or

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is not maintainable in those courts or that this MORTGAGE, THE NOTE, ANY GUARANTY AND/OR ANY OF THE OTHER SECURITY DOCUMENTS may not be enforced in or by those courts or that it is exempt or immune from execution, (B) that the action, suit or proceeding is brought in an inconvenient forum or (C) that the venue of the action, suit or proceeding is improper. In the event any SUCH action, suit, proceeding or litigation is commenced, Mortgagor, or ENDORSOR AND GUARANTOR agree that service of process may be made, and personal jurisdiction over such Mortgagor, ENDORSOR OR GUARANTOR obtained, by service of a copy of the summons, complaint and other pleadings required to commence such litigation upon such Mortgagor or endorsor or GUARANTOR at THE ADDRESS SET FORTH IN PARAGRAPH 40 HEREIN.

57. Waiver of Jury Trial. MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE, OR THE OTHER SECURITY DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH 56 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

58. Miscellaneous.

(a) Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date, and the failure of Mortgagee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, other than the party to whom such consent or approval was given or reasonably intended to benefit, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party.

(b) Mortgagor represents and warrants to Mortgagee that, as of the date hereof, there has not been committed by Mortgagor any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Mortgagor's obligations under the Note, this Mortgage or under any of the Other Security Documents. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of

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forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this Paragraph 58(b).

(c) Mortgagor represents and warrants to Mortgagee that all utilities necessary for the operation of the Improvements are or will be made available at the Mortgaged Property.

59. Servicer. Mortgagee may from time to time appoint one or more servicers and/or special servicers (collectively, the "Servicer") to administer the Loan or otherwise perform certain functions in connection with the Loan, which Servicer shall have the power and authority to exercise all of the rights and remedies of Mortgagee and to act as agent of Mortgagee hereunder.

60. Defeasance.

(a) Provided no Event of Default, or event which with notice and/or the passage of time would become an Event of Default, has occurred and is continuing, at any time (x) after the date which is three (3) years from the date hereof and (y) before the Maturity Date, Mortgagor may voluntarily defease the Loan and obtain the release of the Mortgaged Property from the lien of this Mortgage, upon the satisfaction of the following conditions precedent:

(i) not less than thirty (30) days prior written notice to Mortgagee specifying a regularly scheduled payment date (the "Release Date") on which the Defeasance Deposit (hereinafter defined) is to be made;

(ii) the payment to Mortgagee of interest accrued and unpaid on the principal balance of the Note to but not including the Release Date;

(iii) the payment to Mortgagee of all other sums, not including scheduled interest or principal payments due after the Release Date, due under the Note, this Mortgage and the Other Security Documents;

(iv) the payment to Mortgagee of the Defeasance Deposit; and

(v) the delivery to Mortgagee of:

(A) a security agreement, in form and substance that would be satisfactory to a prudent lender, creating a first priority lien on the Defeasance Deposit and the U.S. Obligations (hereinafter defined) purchased on behalf of Mortgagor with the Defeasance Deposit in accordance with this provision of this Paragraph 60 (the "Security Agreement");

(B) a release of the Mortgaged Property from the lien of this Mortgage (for execution by Mortgagee) in a form appropriate for the jurisdiction in which the Mortgaged

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Property is located and that in form and substance would otherwise be satisfactory to a prudent lender;

- (C) an officer's certificate of Mortgagor certifying that the requirements set forth in this Paragraph 60(a) have been satisfied;
- (D) an opinion of counsel for Mortgagor in form and substance that would be satisfactory to a prudent lender stating, among other things, that Mortgagee has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations purchased by Mortgagee on behalf of Mortgagor, and that Mortgagor has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Mortgagor (hereinafter defined);
- (E) evidence in writing from the applicable Rating Agencies to the effect that such release will not result in a re-qualification, reduction or withdrawal of any rating in effect immediately prior to such defeasance for any securities issued in connection with a Secondary Market Transaction involving the Loan which are then outstanding;
- (F) if required by the applicable Rating Agencies, Mortgagor should also deliver or cause to be delivered a non-consolidation opinion with respect to the Successor Mortgagor in form and substance that would be satisfactory to a prudent lender and in form and substance satisfactory to the applicable Rating Agencies;
- (G) a certificate of Mortgagor's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the required Scheduled Defeasance Payments; and
- (H) such other certificates, documents or instruments as Mortgagee may reasonably request.

In connection with the conditions set forth in subparagraph (a)(v) above, Mortgagor hereby appoints Mortgagee as its agent and attorney-in-fact for the purpose of using the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled payment dates after the Release Date upon which interest and principal payments are required under the Note (including the amounts due on the Maturity Date) and in amounts equal to the scheduled payments due on such dates under the Note (the "Scheduled

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Defeasance Payments”). Mortgagor, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to Mortgagee and applied to satisfy the obligations of Mortgagor under the Note and the Other Notes.

(b) Upon compliance with the requirements of this Paragraph 60, the the Mortgaged Property and the Other Mortgaged Properties shall be released from the lien of this Mortgage, Mortgagor and Guarantor shall be relieved from all obligations and liabilities under the Loan documents that accrue after the effective date of defeasance and the pledged U.S. Obligations shall be the sole source of collateral securing the Note. Provided no Event of Default has occurred and is continuing, any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by subparagraph (a) above and satisfy Mortgagor’s obligations under this Paragraph 60 shall be remitted to Mortgagor. In connection with such release, Mortgagor (or, at Mortgagee’s option, Mortgagee) shall establish or designate a successor entity (the “Successor Mortgagor”), which shall be a single purpose bankruptcy remote entity which is not directly or indirectly owned by Mortgagor and which shall be approved by Mortgagee, and Mortgagor shall transfer and assign all obligations, rights and duties under and to the Note together with the pledged U.S. Obligations to such Successor Mortgagor. Such Successor Mortgagor shall assume the obligations under the Note and the Security Agreement and Mortgagor shall be relieved of its obligations thereunder. Mortgagor shall pay \$1,000.00 to any such Successor Mortgagor as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Mortgage to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this Paragraph 60, but Mortgagor shall pay all costs and expenses incurred by Mortgagee, including, without limitation, Mortgagee’s attorneys’ fees and expenses, incurred in connection with this Paragraph 60.

(c) For purposes of this Paragraph 60, the following terms shall have the following meanings:

(i) The term “Code” shall mean the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

(ii) The term “Defeasance Deposit” shall mean an amount equal to the remaining principal amount of the Note, the Yield Maintenance Premium, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of this Paragraph 60;

(iii) The term “REMIC Trust” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds the Note;

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(iv) The term “U.S. Obligations” shall mean direct non-callable obligations of the United States of America; and

(v) The term “Yield Maintenance Premium” shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

61. OFAC Representations.

(a) Definitions.

(i) “IEEPA” shall mean the International Emergency Economic Power Act 50 U.S.C. §1701 et. seq.

(ii) “OFAC” shall mean the U.S. Department of Treasury’s Office of Foreign Asset Control.

(iii) “PATRIOT Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act).

(iv) “Prohibited Person” shall mean any Person:

1. listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the “Executive Order”);
2. that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of the Executive Order;
3. with whom Mortgagee is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering legal requirements, including the PATRIOT Act and the Executive Order;
4. that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order;
5. that is named as a “specifically designated national (SDN)” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www/treas.gov/ofac/t11/sdn.pdf> or at any replacement website or other replacement official publication of such list or is named on

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any other U.S. or foreign government or regulatory list issued post-09/11/01;

6. that is covered by IEEPA, OFAC or any other law, regulation or executive order relating to the imposition of economic sanctions against any country, region or individual pursuant to United States law or United Nations resolution; or
7. that is an affiliate (including any principal, officer, immediate family member or close associate) of a Person described in one or more of clauses (1) - (6) of this definition of Prohibited Person.

(b) Representatives/Warranties/Covenants.

(i) PATRIOT Act. Mortgagor hereby represents and warrants to, and covenants with, Mortgagee that as of the date hereof and until such time as the Debt shall be paid in full:

1. None of the Mortgagor, any Guarantor, any SPC Party, any of their respective direct or indirect constituents or affiliates, any of their respective officers or directors (including officers or directors of any such constituents or affiliates), and any of their respective brokers, investors or other agents acting or benefiting in any capacity in connection with the Loan, is a Prohibited Person.
2. None of Mortgage, any Guarantor, any SPC Party or any of their respective direct or indirect constituents or affiliates, any of their respective officers or directors (including officers or directors of any such constituents or affiliates) (a) to Mortgagor's knowledge after due inquiry, has conducted or will conduct any business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (b) to Mortgagor's knowledge after due inquiry, has dealt or will deal in, or otherwise has engaged or will engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (c) has engaged or will engage in or has conspired or will conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the requirements or prohibitions set forth in the Executive Order or the PATRIOT Act.
3. To Mortgagor's knowledge after due inquiry, none of Mortgagor's, any Guarantor's or any SPC Party's respective brokers, investors or other agents acting in any capacity in connection with the Loan (a) has conducted or will conduct any business or has engaged or will

engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (b) has dealt or will deal in, or otherwise has engaged or will engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (c) has engaged or will engage in or has conspired or will conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the requirements or prohibitions set forth in the Executive Order of the PATRIOT Act.

4. Mortgagor covenants and agrees to deliver to Mortgagee any certification or other evidence requested from time to time by Mortgagee no more often than once per calendar year (unless required by law), confirming Mortgagor's compliance with this Section 61.
5. Mortgagor represents and warrants that Mortgagor, any Guarantor, any SPC Party and all of their respective affiliates (including any officers and directors of any of the foregoing) are in full compliance with all applicable orders, rules, regulations issued by, and recommendations of, the U.S. Department of the Treasury and OFAC pursuant to IEEPA, the PATRIOT Act, other legal requirements relating to money laundering or terrorism and any executive orders related thereto.
6. At all times throughout the term of the Loan, Mortgagor, any Guarantor, any SPC Party and all of their respective affiliates (including any officers and directors of any of the foregoing) shall be in full compliance with all applicable orders, rules, regulations issued by, and recommendations of, the U.S. Department of the Treasury and OFAC pursuant to IEEPA, the PATRIOT Act, other legal requirements relating to money laundering or terrorism and any executive orders related thereto.
7. Mortgagor is advised that, by law, Mortgagee may be obligated to "freeze its account" or any account of its investors, either by prohibiting additional funds, declining any withdrawal, redemption, or transfer request(s) and/or segregating assets in compliance with governmental regulations, and Mortgagee may also be required to report such action to governmental or regulatory authorities, including OFAC.
8. Mortgagor has taken appropriate due diligence efforts required by law to know each investor including, whether the investor is a Prohibited Person. Mortgagor has taken appropriate due diligence

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efforts required by law to know if any investor is a "Senior Foreign Political Figure" (as defined in the PATRIOT Act) and, to the extent that any investor is a Senior Foreign Political Figure, has disclosed such information to Mortgagee.

9. Mortgagor will comply with reporting requirements under applicable law relating to unusual or suspicious activity relating to the PATRIOT Act.
10. Mortgagor does not believe, and after appropriate due diligence, has no reason to believe, that any of its investors is a "Prohibited Foreign Shell Bank" (as defined in the PATRIOT Act), is named on any available lists of known or suspected terrorists, terrorists organizations or of other sanctioned persons issued by the United States government and the government(s) of any jurisdictions(s) in which Mortgagor is doing business.

Mortgagor will advise Mortgagee immediately of any material change that would affect the representations, covenants and warranties provided in this Section 61.

62. Second Disbursement of Loan Proceeds. Upon satisfaction of the conditions precedent set forth below of this Section 62 by no later than 1:00P.M. Chicago, Illinois time on December 1, 2004, Mortgagee shall fund such additional amount of Loan proceeds (the "Second Disbursement") up to \$3,000,000 that is able to be Fully Amortized by the cash flow generated by the Tenant's share of Common Area Construction Costs (as defined in the Lease) and is otherwise in accordance with the terms of the Application

(a) Mortgagee shall have received from the Tenant satisfactory written confirmation of the amount and payment schedule of Tenant's share of Common Area Construction Costs;

(b) Mortgagee shall have received an assignment of the construction contract the Mortgagor has entered into for construction of the Parking Deck (as defined in the Lease), such assignment in form and substance satisfactory to Mortgagee in its sole discretion;

(c) Mortgagee shall have received funds in the amount of \$500,000 to be deposited and held in the Construction Completion Reserve (as defined in the Borrower Reserve Agreement), which funds shall be disbursed from the proceeds of the Second Disbursement;

(d) Mortgagor shall have authorized and executed the replacement Note described below and delivered it in escrow to Mortgagee's special counsel; and

(e) Mortgagor shall have authorized, executed and delivered (in escrow if appropriate) such other instruments and agreements or shall be reasonably requested by Mortgagee to evidence and secure the Second Disbursement.

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day
and year first above written.

MORTGAGOR:

ELSTON DEVELOPMENT L.L.C., a
Delaware limited liability company

by Baker Development Corporation,
an Illinois corporation, its manager

By: [Signature]
Name: Baker Development Corporation
Title: Manager

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STATE OF ILLINOIS

ss.:

COUNTY OF COOK

On the 8th day of July 2004, before me personally came Warren Baker, to me known, who, being by me duly sworn, did depose and say that he is the President of Baker Development Corporation, the manager of Elston Development L.L.C., an Illinois limited liability company, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by authority of the board of directors of said corporation.

Michelle Madril



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PERM TAX#		2003 1ST INST	STATUS
14-31-211-028	(affects part & other ppty)	\$1,335.81	PAID
14-31-211-029	(affects part & other ppty)	\$1,118.66	PAID
14-31-219-001	(affects part)	\$338.13	PAID
14-31-219-002	(affects part)	\$19,127.71	PAID
14-31-219-003	(affects part)	\$486.18	PAID
14-31-219-004	(affects part)	\$211.00	PAID
14-31-219-005	(affects part)	\$161.77	PAID
14-31-219-012	(affects part)	\$221.33	PAID
14-31-219-013	(affects part)	\$221.33	PAID
14-31-219-014	(affects part)	\$221.33	PAID
14-31-219-015	(affects part)	\$221.33	PAID
14-31-219-016	(affects part)	\$464.17	PAID
14-31-219-017	(affects part)	\$558.22	PAID
14-31-219-018	(affects part)	\$600.36	PAID
14-31-219-019	(affects part)	\$533.70	PAID
14-31-219-020	(affects part and other ppty)	\$548.43	PAID
14-31-219-029	(affects part)	\$474.39	PAID
14-31-219-031	(affects part)	\$461.29	PAID
14-31-219-032	(affects part)	\$461.29	PAID
14-31-219-034	(affects part)	\$844.43	PAID
14-31-219-035	(affects part)	\$849.01	PAID
14-31-219-039	(affects part)	\$1,738.59	PAID
14-31-219-040	(affects part)	\$312.08	PAID
14-31-219-041	(affects part)	\$302.73	PAID

Proctor County Clerk's Office

Elston Development L.L.C.

UNOFFICIAL COPYMortgage, Security Agreement and
Assignment of Leases and Rents**EXHIBIT A****Legal Description****Parcel 1**

That part of various lots: vacated streets and alleys; in various subdivisions in the East Half of the Northeast Quarter of Section 31, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows: Commencing at the intersection of the South line of West Webster Avenue with the Southwesterly line of North Elston Avenue; Thence South $44^{\circ} 59' 59''$ East along said Southwesterly line 919.25 feet to the point of beginning; Thence continue South $44^{\circ} 59' 59''$ East along said Southwesterly line 280.89 feet to the Westerly line of the Chicago and Northwestern Railway Company right of way; Thence South $16^{\circ} 30' 34''$ East along said Westerly line of said right of way 439.44 feet to the North line of West Armitage Avenue; Thence North $89^{\circ} 20' 44''$ West along said North line 144.37 feet to the Northeasterly line of Chicago and Northwestern Railway Company right of way; Thence Northwesterly along said Northeasterly right of way line being an arc of a circle convex Northeasterly and having a radius of 3538.26 feet for a distance of 339.30 feet (the chord of said arc having a bearing of North $43^{\circ} 17' 15''$ West and a distance of 339.17 feet) Thence North $48^{\circ} 38' 53''$ West along said right of way line 183.40 feet; Thence North $50^{\circ} 35' 39''$ West along said right of way line 42.30 feet to a point on said Northeasterly line 695.54 feet (as measured on said Northeasterly line) Southeasterly of the East line of North Wood Street; Thence North $45^{\circ} 03' 01''$ East 316.20 feet to the point of beginning (except therefrom Lots 14 and 34 in Hurford's Subdivision of Original Lot 1 in Block 21 in Sheffield's Addition to Chicago in said Section 31) in Cook County, Illinois.

Excepting therefrom:

That part of Lot "A" in the consolidation of parts of Original Block 21 in Sheffield's Addition to Chicago in Section 31, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows: Commencing at the intersection of the South line of West Webster Avenue with the Southwesterly line of North Elston Avenue; thence South $44^{\circ} 59' 59''$ East, along the Southwesterly line of North Elston Avenue 941.33 feet to the point of beginning; thence South $44^{\circ} 59' 59''$ East, along the Southwesterly line of North Elston Avenue, 20.02 feet to the Northwesterly line of vacated North Hobson Avenue; thence South $45^{\circ} 03' 01''$ West, along the Northwesterly line of vacated North Hobson Avenue, 20.00 feet; thence North $44^{\circ} 59' 59''$ West 20.00 feet; thence North $45^{\circ} 00' 01''$ East 20.00 feet to the point of beginning, in Cook County, Illinois.

Parcel 2

Together with non-exclusive easements for ingress, egress and parking as contained in Declaration of Covenants, Conditions, Reciprocal Rights and Easements dated August 4, 2004 and recorded on _____, 2004 as document No. _____.

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(f) Mortgagee shall have received an updated MAI appraisal taking into account the increased rent reflecting an appraised amount equal to or greater than the amount of the Loan.

On the date of the Second Disbursement, the original Note shall be exchanged for a replacement Note in the same form and tenor as the original Note in an amount of principal equal to the then outstanding principal amount of the original Note plus the amount of the Second Disbursement.

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