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DEC NCS 188222 cny 378

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT AND FIXTURE FILING (Illinois)

MORTGAGOR: SANTA FE INTERESTS, LLC, a Delaware limited liability company

MORTGAGEE: CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a Connecticut corporation

This instrument prepared by and after recording return to:
Michael B. Manuel, Esq.
Goldberg, Kohn, Bell, Black,
Rosenbloom & Moritz, Ltd.
55 East Monroe Street
Suite 3700
Chicago, IL 60603

Date: January 23, 2006

First American Title

Order # _____

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

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- EXHIBIT A – Promissory Note
- EXHIBIT B – Legal Description
- EXHIBIT C – Insurance Requirements

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**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY
AGREEMENT AND FIXTURE FILING
(Santa Fe Office Building, Chicago, Illinois)**

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**") is made as of the 23rd day of January, 2006, by SANTA FE INTERESTS, LLC, a Delaware limited liability company, having its principal place of business at c/o University of Notre Dame, 900 Grace Hall, Notre Dame, IN 46556-5612 (hereinafter referred to as "**Mortgagor**") to CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a Connecticut corporation having its principal address at 280 Trumbull Street, Hartford, Connecticut 06103 (hereinafter referred to as "**Mortgagee**").

WITNESSETH:

THAT, to secure (i) payment to Mortgagee of the principal indebtedness of Forty Million and 00/100 Dollars (\$40,000,000.00) together with interest thereon, as evidenced by that certain Promissory Note in the original principal sum of \$40,000,000, a true and correct copy of which is attached to this Mortgage as Exhibit "A" (hereinafter referred to as the "**Note**") of even date herewith, and any renewals, extensions or modifications thereof, given by Mortgagor to Mortgagee and made payable to the order of Mortgagee, with the final payment being due and payable on February 1, 2016, in and by which Note the Mortgagor promises to pay the said principal indebtedness and interest at the rate and in installments as provided in the Note, (ii) the performance of the covenants herein contained and the payment of any monies expended by Mortgagee in connection therewith, (iii) the payment of all obligations and the performance of all covenants of Mortgagor under any other loan documents, agreements or instruments between Mortgagor and Mortgagee

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given in connection with or related to this Mortgage or the Note and (iv) any and all additional advances made by Mortgagee to protect or preserve the Security or the security interest created hereby on the Security, or for taxes, assessments, or insurance premiums as hereinafter provided or for performance of any of Mortgagor's obligations hereunder or for any other purpose provided herein (whether or not the original Mortgagor remains the owner of the Security at the time of such advances) (all of the aforesaid indebtedness and obligations of Mortgagor being herein called the "**Indebtedness**" and such Indebtedness that is secured by this Mortgage being hereby limited to an amount equal to five hundred percent (500%) of the original principal amount of the Note, and all of the documents, agreements and instruments between Mortgagor and Mortgagee now or hereafter evidencing or securing the repayment of, or otherwise pertaining to, the Indebtedness being herein collectively called the "**Loan Documents**"; and the loan evidenced by the Loan Documents being herein called the "**Loan**"), Mortgagor does hereby mortgage, warrant, grant, bargain, sell, assign, pledge, transfer, and convey unto Mortgagee and to Mortgagee's successors and assigns forever, all of the following described land, improvements, real and personal property, rents and leases, and all of its estate, right, title and interest therein (hereinafter collectively called the "**Security**"):

The land described in Exhibit "B" attached hereto and made a part hereof, situate, lying and being in the City of Chicago, County of Cook, and State of Illinois (the "**Land**");

TOGETHER with all buildings and other improvements now or hereafter located on said Land or any part thereof, including but not limited to, all extensions,

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betterments, renewals, renovations, substitutes and replacements of, and all additions and appurtenances to the Security (the "**Improvements**");

TOGETHER with all of the right, title and interest of Mortgagor in and to the land lying in the bed of any street, road, highway or avenue in front of or adjoining the Land to the center lines thereof;

TOGETHER with all easements now or hereafter located on or appurtenant to the Land and/or Improvements or under or above the same or any part thereof, rights-of-way, licenses, permits, approvals, and privileges, belonging or in any way appertaining to the Land and/or Improvements including without limitation (i) any drainage ponds or other like drainage areas not located on the Land which may be required for water run-off, (ii) any easements necessary to obtain access from the Land to such drainage areas, or to any other location to which Mortgagor has a right to drain water or sewage (iii) any land required to be maintained as undeveloped land by the zoning rules and regulations applicable to the Land, and (iv) any easements and agreements which are or may be established to allow satisfactory ingress to, egress from and operating of the Land and/or the Improvements;

TOGETHER with any and all awards heretofore made and hereafter to be made by any governmental, municipal or State authorities to the present and all subsequent owners of the Security for the taking of all or any portion of the Security by power of eminent domain, including, without limitation, awards for damage to the remainder of the Security and any awards for any change or changes of grade of streets affecting the Security, which said awards are hereby assigned to Mortgagee, and Mortgagee, at its option, is hereby authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts and acquittances therefor,

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and to apply the same toward the payment of the Indebtedness, notwithstanding the fact that such amount may not then be due and payable; and Mortgagor hereby covenants and agrees to and with Mortgagee, upon request by Mortgagee, to make, execute and deliver, at Mortgagor's expense, any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid awards to Mortgagee, free, clear and discharged of any and all encumbrances of any kind or nature whatsoever (all of the foregoing Land, Improvements, rights, easements, rights-of-way, licenses, privileges, and awards, collectively, the "**Real Property**");

TOGETHER with all proceeds, insurance or otherwise, paid for the damage done to any of the Security and all proceeds of the conversion, voluntarily or involuntarily, of any of the Security into cash or liquidated claims;

TOGETHER with all fixtures, machinery, equipment, goods, and every other article of personal property, tangible and intangible, now or hereafter attached to or used in connection with the Real Property, or placed on any part thereof and whether or not attached thereto, appertaining or adapted to the use, management, operation or improvement of the Real Property, insofar as the same and any reversionary right thereto may now or hereafter be owned or acquired by Mortgagor, including, but without limitation, all partitions; screens; awnings; shades; blinds; floor coverings; hall and lobby equipment; heating, lighting, plumbing, ventilating, refrigerating, incinerating, elevator, escalator, air conditioning and communication plants or systems with appurtenant fixtures; vacuum cleaning systems; call systems; sprinkler systems and other fire prevention and extinguishing apparatus and materials; all equipment, manual, mechanical and motorized, for the construction, maintenance, repair and cleaning of, and removal of snow from, parking areas,

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walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets; all equipment, manual, mechanical and motorized, for the transportation of customers or employees to and from the facilities on the Real Property; all telephone, computer and other electronic equipment and appurtenances thereto, including software; and all other machinery, pipes, poles, appliances, equipment, wiring, fittings, panels and fixtures; and any proceeds therefrom, any replacements thereof or additions or accessions thereto; and all building materials, supplies and other property delivered to the Real Property for incorporation into the improvements thereon, all of which are declared to be a part of the realty and covered by the lien hereof, but said lien shall not cover any fixture, machinery, equipment or article of personal property which is owned by a tenant and not required for the operation or maintenance of the Real Property, provided said fixture, machinery, equipment or article of personal property is not permanently affixed to the realty and may be removed without material damage thereto and is not a replacement of any item which shall have been subject to the lien hereof, but said lien shall include any other fixture, machinery, equipment or article of personal property so incorporated into the Improvements so as to constitute realty under applicable law, whether or not owned by Mortgagor;

TOGETHER will all of Mortgagor's books of account and records relating to the Security, including all computers and software relating thereto;

TOGETHER with all contracts for sale and leases in the nature of sales of the Real Property, or any portion thereof, now and hereafter entered into and all right, title and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees or contract purchasers; all proceeds and revenue arising from or out of the Real Property or any part thereof; all licenses, permits,

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franchises, governmental approvals and all sanitary sewer, drainage, water and utility service agreements benefiting the Real Property or any part thereof, together with all accounts, general intangibles, documents, instruments and chattel paper arising from or in connection with the Real Property, including all books and records in connection therewith; and all rights of Mortgagor under any leases, covenants, agreements, easements, restrictions or declarations recorded with respect to, or as an appurtenance to, the Real Property or any part thereof (all of the tangible and intangible personal property described in this and the previous two paragraphs collectively, the "**Personal Property**") and Mortgagor's interest, as lessee, under any lease of property included within the description of Personal Property above;

TOGETHER with all of the right, title and interest of Mortgagor in and to all and singular the tenements, hereditaments and appurtenances belonging to or in any way pertaining to the Security; all the estate, right, title and claim whatsoever of Mortgagor, either in law or in equity, in and to the Security; and any and all other, further or additional title, estate, interest or right which may at any time be acquired by Mortgagor in or to the Security, and if Mortgagor shall at any time acquire any further estate or interest in or to the Security, the lien of this Mortgage shall attach, extend to, cover and be a lien upon such further estate or interest automatically without further instrument or instruments, and Mortgagor, upon request of Mortgagee, shall execute such instrument or instruments as shall reasonably be requested by Mortgagee to confirm such lien, and Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (which appointment is coupled with an interest) to execute all such instruments if Mortgagor shall fail to do so within ten (10) days after demand;

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TO HAVE AND TO HOLD the Security, and each and every part thereof, unto Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

AND, Mortgagor hereby further covenants, agrees and warrants as follows:

1. Payment of Indebtedness.

Mortgagor will pay the principal indebtedness and interest thereon in accordance with the provisions of the Note and all prepayment charges, late charges and fees required thereunder, and all extensions, renewals, modifications, amendments and replacements thereof, and will keep and perform all the covenants, promises and agreements, and pay all sums provided in (i) each of the Note or any other promissory note or notes at any time hereafter issued to evidence the Indebtedness, (ii) this Mortgage and (iii) any and all other Loan Documents, all in the manner herein or therein set forth.

2. Covenants of Title.

Mortgagor has good and indefeasible title to the entire Real Property in fee simple, has absolute unencumbered title to the Personal Property, and has good right and full power to sell, mortgage and convey the same; the Security is free and clear of easements, restrictions, liens, leases and encumbrances, except those easements, restrictions, liens, leases and encumbrances listed on Schedule B of the policy or policies of title insurance delivered to Mortgagee as of the recordation of this Mortgage (the "**Permitted Encumbrances**"), to which this Mortgage is expressly subject, or which may hereafter be created in accordance with the terms hereof; and Mortgagor will warrant and defend title to the Security against all claims and demands whatsoever except the Permitted Encumbrances. Mortgagee shall have the right, at its option and at such time or times as it, in its sole discretion, shall deem

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necessary, to take whatever action it may deem necessary to defend or uphold the lien of this Mortgage or otherwise enforce any of the rights of Mortgagee hereunder or any obligation secured hereby, including without limitation, the right to institute appropriate legal proceedings for such purposes.

3. Usury.

It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section 3 shall control every other covenant and agreement in this Mortgage, the Note and the other Loan Documents. It is hereby expressly further agreed that if from any circumstances whatsoever fulfillment of any provision of the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under the Note or this Mortgage that is in excess of the limit of such validity. In no event shall Mortgagor be bound to pay for the use, forbearance or detention of the money loaned pursuant hereto, interest of more than the current legal limit; the right to demand any such excess being hereby expressly waived by Mortgagee and Mortgagee further agrees that it is Mortgagee's express intent that all excess amounts taken if usury has been charged or collected shall be refunded to Mortgagor with interest, or credited to the outstanding principal balance of the Indebtedness, to the extent as

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provided under applicable Illinois law, but so as to permit the recovery of the fullest amount otherwise called for under the Loan Documents.

4. Impositions.

Mortgagor will pay, not later than thirty (30) days before the last day on which the same may be paid without penalty or interest, all real estate taxes, sewer rents, water charges and all other municipal and governmental assessments, rates, charges, impositions and liens (hereinafter referred to as "**Impositions**") which now or hereafter are imposed by law upon the Security, whether relating directly to the Security or to property adjoining or abutting the Security. If any imposition is not paid within the time hereinabove specified, Mortgagee shall have the right to pay the same, together with any penalty and interest thereon, and the amount or amounts so paid or advanced shall forthwith be payable by Mortgagor to Mortgagee and shall be secured by the lien of this Mortgage; but Mortgagor may in good faith contest, at Mortgagor's own cost and expense, by proper legal proceedings, the validity or amount of any Imposition, on the condition that Mortgagor first shall deposit with Mortgagee, as security for the payment of such contested item, an amount equal to the contested item plus all penalties and interest which would be payable if Mortgagor is ultimately required to pay such contested item, and on the further condition that no amount so contested may remain unpaid for such length of time as shall permit the Security, or the lien thereon created by the item being contested, to be sold for the nonpayment thereof, or as shall permit an action, either of foreclosure or otherwise, to be commenced by the holder of any such lien. Mortgagor will not claim any credit on, or make any deduction from the Indebtedness by reason of the payment of any Imposition.

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Mortgagor hereby assigns to Mortgagee all rights of Mortgagor now or hereafter arising in and to the refund of any Imposition and any interest thereon. If following receipt of any such refund by Mortgagee, there exists no Event of Default (as hereinafter defined) hereunder, then Mortgagee shall, after payment of any refunds owed to tenants under the terms of the leases, pay over the same to Mortgagor promptly after demand; if there exists an Event of Default hereunder, Mortgagee may apply said refund in reduction of the Indebtedness in whatever order Mortgagee may elect.

5. Tax Deposits.

If an Event of Default has occurred, then at Mortgagee's sole option Mortgagor shall deposit with Mortgagee or with an escrow agent selected by Mortgagee, an initial tax deposit and on the first day of each calendar month thereafter (each of which dates is hereinafter called the "**monthly tax deposit date**") until the payment in full of the Indebtedness a sum equal to one-twelfth of the real estate taxes and assessments (collectively "**Taxes**") to be levied, charged, assessed or imposed upon or for the Security and payable within one year after said monthly tax deposit date. If on any monthly tax deposit date the amount of Taxes to be levied, charged, assessed or imposed and payable within the ensuing one year period shall not be fixed, such amount for the purpose of computing the deposit to be made by Mortgagor hereunder, shall be estimated by Mortgagee, with appropriate adjustment when the amount of such Taxes is fixed.

The sums deposited by Mortgagor under this Section shall be held in an interest-bearing account with interest being retained by Mortgagee and free of trust except to the extent, if any, that applicable law shall otherwise require and applied in payment of such Taxes when due. Mortgagor shall give thirty (30) days prior written notice to Mortgagee in

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each instance when an installment of Taxes is due, specifying the Taxes to be paid and the amount thereof, the place of payment and the last day on which the same may be paid in order to be within the time limit specified in Section 4 hereof entitled "**Impositions.**"

Notwithstanding the foregoing provision and so long as Mortgagor holds title to and controls the Security, Taxes are paid in full when due and there has been no Event of Default, or any state of facts which, with the passage of time or giving of notice, or both, would constitute an Event of Default under the Loan Documents, the interest earned by such escrows, less reasonable escrow costs, will be credited to the escrows on each real estate tax payment date.

If for any reason the sums on deposit with Mortgagee or escrow agent under this Section shall not be sufficient to pay an installment of Taxes within the time specified in Section 4 hereof, then Mortgagor shall, within ten (10) days after demand by Mortgagee, deposit sufficient sums so that Mortgagee may pay such installment of Taxes in full, together with any penalty and interest thereon. Mortgagee may change its estimate of Taxes for any period, on the basis of a change in an assessment or tax rate or on the basis of a prior miscalculation or for any other reason, in which event Mortgagor shall deposit with Mortgagee or escrow agent within ten (10) days after demand the amount of any excess of the deposits which would theretofore have been payable under the revised estimate over the sums actually deposited.

If any Imposition shall be levied, charged, assessed or imposed upon or for the Security, or any portion thereof, and if such Imposition shall also be a levy, charge, assessment or imposition upon or for any other premises not covered by the lien of this Mortgage, then the computation of the amounts to be deposited under this Section shall be

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based upon the entire amount of such Imposition and Mortgagor shall not have the right to apportion any deposit with respect to such Imposition.

Upon an assignment of this Mortgage, Mortgagee shall have the right to arrange to transfer all amounts deposited and still in its possession to the assignee and Mortgagee shall thereupon be completely released from all liability with respect to such deposit and Mortgagor or owner of the Security shall look solely to the assignee or transferee in reference thereto.

Upon the payment in full by Mortgagor of the entire Indebtedness, any sums then held by Mortgagee under this Section shall be refunded to Mortgagor.

All amounts deposited shall be held by Mortgagee as additional security for the sums secured by this Mortgage, and Mortgagor hereby grants to Mortgagee a security interest in such sums, and upon the occurrence of an Event of Default hereunder Mortgagee may, in its sole and absolute discretion, apply said amounts to the payment of the Indebtedness in whatever order Mortgagee may elect.

Immediately upon receipt of such by Mortgagor, Mortgagor shall deliver to Mortgagee copies of all notices, demands, claims, bills, and receipts in relation to the Impositions.

Notwithstanding the foregoing provisions, Mortgagee will waive the requirement for deposits as to that portion of Taxes payable directly to the governmental or other authority by tenants under the terms of leases approved by Mortgagee, provided satisfactory proof of payment is promptly furnished to Mortgagee.

It is agreed that so long as there shall be a separate Real Estate Tax Escrow and Security Agreement executed by Mortgagor, Mortgagee and an escrow holder selected

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by Mortgagee of even date herewith ("**Tax Escrow Agreement**"), the terms and provisions of such agreement shall control to the extent of any conflict with the provisions of this Section 5.

6. Change in Taxes.

In the event any tax shall be due or become due and payable to the United States of America, the State of Illinois or any political subdivision thereof with respect to the execution and delivery or recordation of this Mortgage or any other Loan Document or the interest of Mortgagee in the Security, Mortgagor shall pay such tax at the time and in the manner required by applicable law and Mortgagor shall hold Mortgagee harmless and shall indemnify Mortgagee against any liability of any nature whatsoever as a result of the imposition of any such tax. In the event of the enactment, after the date of this instrument, of any law changing in any way the present law as to the taxation of notes or debts secured by mortgages, for Federal, State, or local purposes, or the manner of collection of any Impositions, so as to affect this Mortgage or the Note secured hereby, then Mortgagor shall upon demand make such payments to Mortgagee and take such other steps, as may be necessary in Mortgagee's reasonable judgment, to place Mortgagee in the same financial position as it was prior to any such enactment, failing which, or if the Mortgagor is not permitted by law to make such payments, the Indebtedness shall, at the option of Mortgagee, immediately become due and payable, without payment of any prepayment premium or penalty.

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7. Insurance.

Mortgagor shall at all times until the Indebtedness shall be paid in full, keep the Security insured against loss or damage in accordance with the insurance requirements set forth on Exhibit "C" attached hereto and made a part hereof.

(a) Mortgagee will assign and deliver to Mortgagee the original policy or policies of all insurance required to be provided hereunder. Each policy of insurance provided by Borrower shall (i) provide that all proceeds shall be payable to Mortgagee, (ii) provide that it may not be cancelled or modified except upon thirty (30) days prior written notice to Mortgagee, (iii) provide that no act or thing done by Mortgagor shall invalidate the policy as against Mortgagee, (iv) be endorsed with standard noncontributory mortgagee clauses in favor of and in form acceptable to Mortgagee, and (v) otherwise be in such form as shall be reasonably acceptable to Mortgagee, so that at all times until the payment in full of the Indebtedness, Mortgagee shall have and hold the said policy and policies as further collateral for the payment of all Indebtedness.

(b) Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Security. This insurance may but need not, protect Mortgagor's interest. The coverage that Mortgagee purchases may not pay any claim that Mortgagor may make or any claim that is made against Mortgagor in connection with the Security. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Security, Mortgagor will be responsible for the costs of such insurance, including interest and any other charges that may

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be imposed in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Mortgage, the cost of such insurance shall be added to the indebtedness secured hereby. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

(c) Mortgagor shall promptly provide to Mortgagee copies of any and all notices (including notice of non renewal), claims, and demands which Mortgagor receives from insurers of the Security.

(d) Effective from and after any Event of Default, Mortgagor hereby assigns to Mortgagee all rights of Mortgagor in and to any unearned premiums on any insurance policy required to be furnished by Mortgagor.

8. Insurance/Condemnation Proceeds.

Mortgagor hereby assigns to Mortgagee all proceeds of any insurance or condemnation awards which Mortgagor may be entitled to receive for loss or damage to, or a taking of, the Security. In the event of loss or damage to, or a taking of, the Security, the proceeds of said insurance or condemnation award shall be payable to Mortgagee alone and Mortgagor hereby authorizes and directs any affected insurance company or government agency to make payments of the insurance proceeds or condemnation awards directly to Mortgagee. In the event that any such insurance proceeds or condemnation awards are paid directly to Mortgagor, Mortgagor shall make such proceeds or awards available to Mortgagee within five (5) days of Mortgagor's receipt thereof. Mortgagee may apply such proceeds to the Loan as set forth below, including without limitation reduction of the principal of the Indebtedness at par (without any prepayment fee or premium as provided in

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the Note unless there exists an Event of Default at the time of any such application of the proceeds in which event the applicable prepayment fee as provided in the Note shall also be due) or restoration or repair of the Improvements of the Security, at Mortgagee's sole option but further subject to the provisions of Section 10 below. Any principal reduction at par from an early prepayment as a result of a condemnation proceeding or insurance settlement will cause a re-calculation of debt service payments based upon the reduced Loan balance, the remaining amortization schedule and the applicable interest rate as set forth in the Note. No such loss or damage shall itself reduce the Indebtedness. Mortgagee is authorized to adjust and compromise such loss without the consent of Mortgagor, to collect and receive such proceeds or awards in the name of Mortgagee and Mortgagor and to endorse Mortgagor's name upon any check in payment thereof. Subject to the provisions of Sections 9, 10, and 11 hereof, such proceeds or awards shall be applied first toward reimbursement of all costs and expenses of Mortgagee in collecting said proceeds or awards, then toward payment of the Indebtedness or any portion thereof, whether or not then due and payable, in whatever order Mortgagee may elect, or Mortgagee may, at its sole option, apply said insurance proceeds or condemnation awards in whole or in part toward restoration of the Security for which such insurance proceeds or condemnation awards shall have been paid.

In the event of foreclosure of this Mortgage or other transfer of title to the Security and extinguishment, in whole or in part, of the Indebtedness, all right, title, and interest of Mortgagor in and to any insurance policy, or premiums or payments in satisfaction of claims or any other rights thereunder then in force, shall pass to the purchaser or grantee notwithstanding the amount of any bid at such foreclosure sale. Nothing contained herein shall prevent the accrual of interest as provided in the Note on any portion of the principal

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balance due under the Note until such time as the insurance proceeds or condemnation awards are actually received and applied to reduce the principal balance outstanding.

9. Restoration Following Fire and Other Casualty or Condemnation.

In the event of damage to the Security by reason of fire or other hazard or casualty, Mortgagor shall give prompt written notice thereof to Mortgagee and shall proceed with reasonable diligence to perform repair, replacement and/or rebuilding work (hereinafter referred to as the "**Work**") to restore the Security to its condition prior to such damage in full compliance with all legal requirements, whether the loss is uninsured, or if Mortgagee applies the insurance proceeds to the Loan in such circumstances where under the provisions of this Mortgage the Mortgagor is not entitled to, or does not qualify for, receipt of the insurance proceeds for restoration purposes. In the event of a taking by power of eminent domain or conveyance in lieu thereof ("**condemnation**"), if restoration is feasible as reasonably determined by Mortgagee, then Mortgagor shall proceed with reasonable diligence to perform such restoration (also referred to as the "**Work**"). Before commencing the Work, Mortgagor shall comply with the following requirements:

(a) Mortgagor shall furnish to Mortgagee complete plans and specifications for the Work, for Mortgagee's approval, which approval shall not be unreasonably withheld. Said plans and specifications shall bear the signed approval thereof by an architect satisfactory to Mortgagee and shall be accompanied by the architect's signed estimate, bearing the architect's seal, of the entire cost of completing the Work, and shall provide that upon completion of the Work, the Security shall be at least equal in value and general utility to its value and general utility prior to the damage or destruction or condemnation.

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(b) Mortgagor shall furnish to Mortgagee certified copies of all permits and approvals required by law in connection with the commencement and conduct of the Work.

(c) Mortgagor shall furnish to Mortgagee, prior to the commencement of the Work, a surety bond for or guaranty of completion of and payment for the Work, which bond or guaranty shall be in form satisfactory to Mortgagee and shall be signed by a surety or sureties, or guarantor or guarantors, as the case may be, who are acceptable to Mortgagee, and in an amount not less than the architect's estimate of the entire cost of completing the Work, less the amount of insurance proceeds or condemnation award, if any, then held by Mortgagee and which Mortgagee shall have elected or shall be required to apply toward restoration of the Security as provided in Section 10 hereof.

Mortgagor shall not commence any of the Work until Mortgagor shall have complied with the above requirements, and thereafter Mortgagor shall perform the Work diligently and in good faith in accordance with the plans and specifications referred to in subsection (a) above.

If, as provided in Section 10 hereof, Mortgagee shall have elected or is required to apply any insurance proceeds or condemnation awards toward repair or restoration of the Security, then so long as the Work is being diligently performed by Mortgagor in accordance with the provisions of this Mortgage, Mortgagee shall disburse such insurance proceeds or condemnation awards to Mortgagor from time to time during the course of the Work in accordance with the following provisions:

A. The Work shall be in the charge of an experienced construction manager or general contractor satisfactory to Mortgagee with the consultation of an architect or engineer.

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B. Each request for payment shall not be made more often than at thirty (30) day intervals, on ten (10) Business Days (hereinafter defined in Section 58 hereof) prior notice to Mortgagee, and shall be accompanied by a certificate satisfactory to Mortgagee of the architect or engineer, dated not more than ten (10) days prior to the application for withdrawal of funds, stating:

(i) that all of the Work for which payment is being requested is in place and has been completed in compliance with the approved plans and specifications and all applicable legal requirements;

(ii) that the sum then requested to be withdrawn has been paid by Mortgagor and/or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the Work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts so paid or due to each of said persons in respect thereof and stating the progress of the Work up to the date of said certificate;

(iii) that the sum then requested to be withdrawn, plus all sums previously withdrawn, does not exceed the cost of the Work insofar as actually accomplished up to the date of such certificate;

(iv) that the remainder of the moneys held by Mortgagee will be sufficient to pay in full for the completion of the Work;

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(v) that no part of the cost of the services and materials described in the foregoing paragraph (ii) of this Clause B has been or is being made the basis of the withdrawal of any funds in any previous or then pending application; and

(vi) that, except for the amounts, if any, specified in the foregoing paragraph (ii) of this Clause B to be due for services or materials, there is no outstanding indebtedness known, after due inquiry, which is then due and payable for work, labor, services or materials in connection with the Work which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialman's statutory or other similar lien upon the Security or any part thereof.

C. Mortgagor shall deliver to Mortgagee satisfactory evidence that the Security and every part thereof, and all materials and all property described in the certificate furnished pursuant to the foregoing Clause B, are free and clear of all mortgages, liens, charges or encumbrances, except (a) encumbrances, if any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said certificate furnished pursuant to the foregoing Clause B, which encumbrances will be discharged upon disbursement of the funds then being requested, (b) inchoate liens for work in place approved by Mortgagee for which payment is not then due and (c) this Mortgage. Mortgagee shall accept as satisfactory evidence under this Clause C a certificate of a title insurance company acceptable to Mortgagee or an endorsement to Mortgagee's existing loan title policy insuring the lien of this Mortgage, dated as of the date of the making of the disbursement, confirming the foregoing.

D. Mortgagor shall deliver to Mortgagee a survey of the Security dated as of a date within ten (10) days prior to the making of the advance (or revised to a date within

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ten days prior to the advance) showing no encroachments other than those, if any, acceptable to Mortgagee.

E. There shall be no Event of Default by Mortgagor under the Note or under any of the other Loan Documents, or any state of facts existing which, with the passage of time or the giving of notice, or both, would constitute an Event of Default.

Mortgagee at its option may waive any of the foregoing requirements.

Upon compliance by Mortgagor with the foregoing Clauses A, B, C, D, and E (except for such requirements, if any, as Mortgagee at its option may have waived), Mortgagor shall, to the extent of the insurance proceeds or condemnation award, if any, which Mortgagee shall have elected or shall be required to apply to restoration of the Security, pay or cause to be paid to the persons named in the certificate furnished pursuant to the foregoing Clause B, the respective amounts stated in said certificate to be due them less ten percent (10%) retainage ("**Retainage**"), and Mortgagee shall pay to Mortgagor the amounts stated in said certificate to have been paid by Mortgagor, less Retainage.

If upon completion of the Work there shall be insurance proceeds or condemnation awards held by Mortgagee over and above the amounts withdrawn pursuant to the foregoing provisions, plus Retainage, then Mortgagee, at Mortgagee's option, may either retain such proceeds or awards and apply the same in reduction of the Indebtedness in whatever order Mortgagee may elect, or Mortgagee may pay over such proceeds or awards to Mortgagor.

Upon completion of the Work, in addition to the requirements of the foregoing Clauses A, B, C, D, and E, Mortgagor shall promptly deliver to Mortgagee:

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(a) A written certificate of the architect or engineer that the Work has been fully completed in a good and workmanlike manner in accordance with the approved plans and specifications;

(b) A written report and policy of a title insurance company acceptable to Mortgagee insuring the Security against mechanics' and materialmen's liens;

(c) A certificate by Mortgagor in form and substance satisfactory to Mortgagee, listing all costs and expenses in connection with the completion of the Work and the amount paid by Mortgagor with respect to the Work;

(d) A temporary certificate of occupancy and all other applicable certificates, licenses, consents and approvals issued by governmental agencies or authorities with respect to the Security and by the appropriate Board of Fire Underwriters or other similar bodies acting in and for the locality in which the Security is situated, provided that within thirty (30) days after completion of the Work, Mortgagor shall obtain and deliver to Mortgagee a permanent certificate of occupancy for the Security.

Upon receipt of the foregoing items, Mortgagee shall pay any Retainage held by Mortgagee to or for the benefit of Mortgagor.

10. Disposition of Condemnation or Insurance Proceeds.

Mortgagee, in its absolute discretion, may decide whether and to what extent, if any, proceeds of insurance or condemnation will be made available to Mortgagor for repair or restoration of the Security, but Mortgagor shall effect such repair or restoration as provided above whether or not Mortgagee makes any of such proceeds available for that purpose. Notwithstanding the foregoing, Mortgagee agrees to make casualty insurance and

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condemnation proceeds available to Mortgagor for restoration or repair of the Security, provided:

(a) In the case of condemnation occurring prior to the last two (2) Loan Years, that portion of each individual property remaining after the taking is still economically viable in the reasonable opinion of Mortgagee;

(b) There has been no event of default under the Loan Documents in the prior twelve (12) months, and there does not then exist a state of facts which, with the passage of time or the giving of notice, or both, would constitute an Event of Default;

(c) Mortgagor can demonstrate to Mortgagee 's satisfaction that Mortgagor has the financial ability to make all scheduled payments when due under the Loan Documents during reconstruction, from the proceeds of rent insurance and Mortgagor 's own funds;

(d) Such damage or destruction can be repaired prior to the last two (2) Loan Years;

(e) The funds are released under escrow/construction funding arrangements satisfactory to Mortgagee;

(f) Annual income from leases in place and approved by Mortgagee that are not terminable as a result of the casualty or condemnation provide coverage of at least 1.2 times the annual debt service;

(g) The repairs and restoration will restore the Improvements to substantially the size, design and utility as existed immediately prior to the casualty or condemnation; and

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(h) Mortgagor can demonstrate to Mortgagee 's satisfaction that Mortgagor has the financial ability to complete repair and restoration from the proceeds of insurance and Mortgagor 's own funds.

If Mortgagee elects not to make the proceeds available for the Work, then such proceeds shall be applied to reduce the Indebtedness in whatever order Mortgagee may elect. Any application of such proceeds to the principal indebtedness evidenced by the Note shall be at par and shall cause a pro rata reduction in payments of interest and, if applicable, principal, under the Note; provided, however, that if there exists an Event of Default, the prepayment fee as provided in the Note shall also be due.

11. Fire and Other Casualty; Self-Help.

If within one hundred twenty (120) days after the occurrence of any damage to the Security in excess of \$50,000 or the condemnation of any portion of the Security, Mortgagor shall not have submitted to Mortgagee and received Mortgagee's approval of plans and specifications for the Work or shall not have obtained approval of such plans and specifications from all governmental authorities whose approval is required, or if, after such plans and specifications are approved by Mortgagee and all such governmental authorities, Mortgagor shall fail to promptly commence the Work, or if thereafter Mortgagor fails to perform the Work diligently or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with the Work, or, in the case of any loss or damage not in excess of \$50,000.00, if Mortgagor shall fail to complete the Work promptly, then, in addition to all other rights herein set forth, and after giving Mortgagor twenty (20) days written notice of the nonfulfillment of one or more of the foregoing conditions Mortgagee, or any lawfully appointed receiver of the Security, may at its respective option,

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perform or cause the Work to be performed, and may take such other steps as it deems advisable to perform the Work, and may enter upon the Security for any of the foregoing purposes, and Mortgagor hereby waives, for Mortgagor and all others holding under Mortgagor, any claim against Mortgagee or such receiver arising out of anything done by Mortgagee or such receiver pursuant to this Section, and Mortgagee may apply insurance proceeds (without the need to fulfill the requirements of Section 9 hereof) to reimburse Mortgagee, and/or such receiver for all amounts expended or incurred by them, respectively, in connection with the performance of the Work, and any excess costs shall be paid by Mortgagor to Mortgagee upon demand with interest at the Default Rate (hereinafter defined) and such payment shall be secured by the lien of this Mortgage.

12. Rent Insurance Proceeds.

If Mortgagor shall promptly commence and diligently perform the Work, and there shall be no Event of Default under the Loan Documents, then Mortgagee shall each month pay to Mortgagor out of the rent insurance proceeds held by Mortgagee a sum equal to that amount, if any, of the rent insurance proceeds paid by the insurer which is allocable to the rental loss for the preceding month but not greater than the regularly scheduled payment of principal and interest then due, and other charges, if any, then due to Mortgagee for the current month. Mortgagee at its option may waive any of the foregoing conditions to the payment of rent insurance proceeds. If Mortgagor does not fulfill the foregoing conditions entitling Mortgagor to monthly disbursements of rent insurance proceeds, then such rent insurance proceeds may be applied by Mortgagee, at Mortgagee's option, to the payment of the Indebtedness in whatever order Mortgagee may elect.

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13. Compliance with Laws.

Mortgagor will be required to obtain and at all times keep in full force and effect such governmental approvals as may be necessary to comply with all governmental requirements, including all environmental and land use matters relating to the Real Property and its occupancy, as such requirements may exist from time to time. In addition to, and not by way of limitation of, the Loan closing compliance requirements, Mortgagor represents and warrants that as of the Closing Date and throughout the term of the Loan, the following statements are and shall be true, correct and complete without material misrepresentation or omission:

(a) Neither Mortgagor, nor any guarantor nor the constituent owners or Affiliates of any of them, is or will be in violation of any Anti-Terrorism Law (defined below).

(b) Neither Mortgagor, nor any guarantor, nor the constituent owners or Affiliates of any of them, is or will be a Prohibited Person.

(c) Neither Mortgagor nor any guarantor, nor the constituent owners or Affiliates of any of them, is or will (i) conduct any business or engage in any transaction or dealing with any Prohibited Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose or intent of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

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(d) Mortgagor covenants and agree to deliver to Mortgagee any certification or other reasonable evidence requested from time to time by Mortgagee in its sole discretion, confirming Mortgagor's ongoing compliance with this requirement.

"**Anti-Terrorism Law**" is defined as any Law relating to terrorism or money-laundering, including Executive Order No. 13224 and the USA Patriot Act.

"**Executive Order No. 13224**" is defined as the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism."

"**Prohibited Person**" is defined as:

(i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(ii) entity that is listed in the Annex to, or is otherwise subject to the provisions of, a person or entity owned or controlled by, or acting for or on behalf of, any person or Executive Order No. 13224;

(iii) a person or entity with whom one or more lenders are prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a person or entity who commits, threatens or conspires to commit or supports "**terrorism**" as defined in Executive Order No. 13224;

(v) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office

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of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other official publication of such list; or

(vi) a person or entity who is affiliated with a person or entity described in clauses (i)-(v) of this definition.

"USA Patriot Act" is defined as the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56)

14. Repair; Alterations; Waste; Environmental.

Mortgagor shall keep all of the Security in good and substantial repair, and expressly agrees that it will neither permit nor commit any waste upon the Security, nor do any act or suffer or permit any act to be done, whereby the Security will become less valuable or the lien hereof may be impaired and shall comply with all zoning laws, building codes, subdivision laws, environmental laws, and other laws, ordinances, rules and regulations made or promulgated by any government or municipality, or by any agency thereof or by any other lawful authority, which are now or may hereafter become applicable to the Security. Mortgagor warrants and represents that the Security is being used for retail and general office purposes. Mortgagor shall repair or restore any building now or hereafter under construction on the Security and complete the same within a reasonable period of time. Mortgagor agrees not to initiate or acquiesce in any zoning variance or reclassification, without Mortgagee's prior written consent. Except for tenant improvements performed under the terms of approved by Mortgagee leases in accordance with the Loan Documents, Mortgagor shall not construct any additional building or buildings or make any other improvements on the Land, nor alter, remove or demolish any building or other

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Improvements on the Land, without the prior written consent of Mortgagee. Throughout the term of the Loan, Mortgagee shall maintain and act in accordance with (a) the Lead-Based Paint Plan for the Building dated January, 1999 prepared by ATC and (b) the Operations and Maintenance Plan for the Building dated January 28, 2004 prepared by ATC. If, at any time during the term of the Loan, Mortgagor enters into a written agreement with DePaul University in connection with the sharing of steam between the Building and the adjacent building owned by DePaul, then Mortgagor shall promptly provide Mortgagee with a copy of said instrument.

If Mortgagor fails to observe any of the provisions of this Section, or suffers or permits any Event of Default to exist under this Section, Mortgagee or a lawfully appointed receiver of the Security at its option, from time to time, may perform, or cause to be performed, any and all repairs and such other work as it deems necessary to bring the Security into compliance with the provisions of this Section and may enter upon the Security for any of the foregoing purposes, and Mortgagor hereby waives any claim against Mortgagee and/or such receiver arising out of such entry or out of any other act carried out pursuant to this Section. Mortgagor shall upon demand repay to Mortgagee and such receiver, with interest at the Default Rate, all amounts expended or incurred by them, respectively, in connection with any action taken pursuant to this Section, and such repayment shall be secured by the lien of this Mortgage.

Mortgagor represents and warrants that there are and at all times will be as part of the Security, and at all times throughout the term of the Loan, sufficient parking spaces in quantity, size, location, appearance and handicap designation(s), to comply with all

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applicable governmental and private laws, rules, regulations, ordinances, approvals and agreements and all Leases.

Except as disclosed in the Environmental Report, Mortgagor represents and warrants that Mortgagor has not used and will not use and, to the best of Mortgagor's knowledge, no prior owner or current or prior tenant, subtenant, or other occupant of all or any part of the Security has used or is using Hazardous Materials (hereinafter defined) on, from or affecting the Security in any manner that violates the Environmental Laws (hereinafter defined), that, to the best of Mortgagor's knowledge, no Hazardous Materials have been disposed of on the Security, intentionally or unintentionally, directly or indirectly, by any person whether related or unrelated to Mortgagor, nor have any Hazardous Materials migrated onto the Security, and that Mortgagor will not permit or suffer any such violation of the Environmental Laws.

For purposes of this Mortgage, the following terms shall have the definition set forth:

"Hazardous Materials" shall mean and include those elements, materials, compounds, mixtures, wastes or substances which are contained in any list of hazardous substances adopted by the United States Environmental Protection Agency (the "EPA") or any list of toxic pollutants designated by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious, flammable or radioactive by any of the Environmental Laws (hereinafter defined) and, whether or not included in such lists, shall be deemed to include all products or substances containing petroleum, asbestos, and polychlorinated biphenyls.

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"**Environmental Laws**" shall mean and include any Federal, State, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating or relating to protection of human health or the environment, or regulating or imposing liability or standards of conduct concerning the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of any hazardous, toxic, or dangerous waste, substance, element, compound, mixture or material, as now or at any time hereafter in effect including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq., the Federal Hazardous Materials Transportation Act, the Federal Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§6901 et seq., the Federal Toxic Substance Control Act, 15 U.S.C. §§2601 et seq., the Federal Clean Air Act, the Federal Water Pollution Control Act, or rules and regulations of the EPA, Chapter 376, Pollutant Discharge Prevention and Control Act, Chapter 380, the Illinois Environmental Protection Act, or rules or regulations of the EPA, the Illinois Environmental Protection Agency or any other agency or governmental board or entity having jurisdiction over the Security, as any of the foregoing have been, or are hereafter, amended.

"**Environmental Report**" means that certain Environmental Site Assessment Report Review dated August 29, 1005 and prepared by ATC (Project No. 11.17451.0006) (the "**Environmental Report**"), all as certified to Mortgagee.

Mortgagor represents and warrants that no generation, treatment, storage or disposal of any Hazardous Materials has occurred or is occurring on the Security and that the Mortgagor will not permit or suffer any such generation, treatment storage or disposal of Hazardous Materials on the Security or permit any lien under any federal, state, county or

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municipal law, act, ordinance, rule or regulation to attach to the Security or any portion thereof or interest therein. Mortgagor represents and warrants that it has not received any notice from any governmental agency or any tenant of the Security with regard to such Hazardous Materials, and has received no notice that the environmental and ecological condition of the Security is in violation of any Environmental Law.

Mortgagor represents and warrants that, to Mortgagor's actual knowledge, except to the extent disclosed in the Environmental Report, the Security does not contain, and has not in the past contained, any asbestos-containing material in friable form and there is no current or potential airborne contamination of the Security by asbestos fiber, including any potential contamination that would be caused by maintenance or tenant finish activities in the building(s) and to Mortgagor's actual knowledge there is no current airborne contamination of the Security by asbestos fiber at concentrations exceeding those allowed by the Environmental Laws.

Mortgage represents and warrants that, to Mortgagor's actual knowledge, except to the extent disclosed in the Environmental Report, the Security does not contain, and has not in the past contained any excessive moisture, mildews, mold or other fungi which may pose a risk to human health or the environment or negatively impact the value of the Property ("**Toxic Mold**").

Mortgagor represents and warrants that it has not received any notice that the soil, surface water, and ground water of or on the Security are not free from any spills of oil or other solid or liquid waste, toxic or hazardous substance or contaminate, and Mortgagor, after making reasonable inquiry, has no knowledge of any such spill.

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In the event that any investigation, site monitoring, containment, clean-up, removal, restoration or other remedial work of any kind or nature (the "**Remedial Work**") is reasonably necessary or desirable under any applicable Environmental Law, any judicial order, or by any governmental entity or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Material in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within the Security (or any portion thereof), Mortgagor shall within thirty (30) days after written demand for performance thereof by Mortgagee (or such shorter period of time as may be required under any applicable Environmental Law, order or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. 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, paralegal fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely 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, shall become part of the Indebtedness.

Mortgagor shall provide Mortgagee with prompt written notice (a) upon Mortgagor's becoming aware of any release or threat of release of any Hazardous Materials upon, under or from the Security; (b) upon Mortgagor's receipt of any notice from any federal, state, municipal or other governmental agency or authority in connection with any Hazardous Materials located upon or under or emanating from the Security; and (c) upon

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Mortgagor's obtaining knowledge of any incurrence of expense by any governmental agency or authority in connection with the assessment, containment or removal of any Hazardous Materials located upon or under or emanating from the Security.

15. Environmental Indemnification.

Mortgagor will indemnify Mortgagee against, and hold Mortgagee harmless from and against and with respect to, from, against and with respect to, and shall be responsible for, any and all loss, damage, cost, investigation, remediation, charge, lien, debt, fine, penalty, injunctive relief, claim, demand, expense, suit, order, judgment, adjudication, liability, or injury to person, property or natural resources, including, without limitation, Attorneys' Fees, consultant fees, compensatory, consequential and punitive damages and diminution in value of the Security (any of the foregoing being referred to in this Agreement as a "Claim" arising out of, attributable to, which may accrue out of, or which may result from (i) a violation or alleged violation of the Environmental Laws in connection with the Security by any person or entity or other source whether related or unrelated to Mortgagor, (ii) the actual or alleged presence, release, transportation, migration, generation, treatment, processing, storage or use or disposal (herein collectively referred to as a "**Disposal**") of Hazardous Materials (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) by any person or entity or other source, whether related or unrelated to Mortgagor, provided that if Mortgagee or any person acquiring by through or under Mortgagee owns the Security at the time of a Claim, such violation or Disposal giving rise to such Claim occurred prior to the time Mortgagee or such person owned the Security, (iii) the breach of any representation, warranty, covenant or agreement contained in this Mortgage, or (iv) the filing or imposition of any environmental lien against the Security because of,

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resulting from, in connection with, or arising out of any of the matters referred to in this Mortgage. This indemnity shall survive beyond the full release of the lien of this Mortgage, or the extinguishment of the lien hereof by foreclosure, power of sale, or any other action and shall survive the delivery of any deed in lieu of foreclosure, all to the maximum extent and for the maximum period of time not prohibited by law.

16. Independence of Security.

Mortgagor shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Mortgage to rely on the Security or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Security or any interest therein to be so used. Similarly, no part of the Security shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Real Property as a single zoning lot, and as one or more complete tax parcels, separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section shall be void.

17. No Other Liens.

Mortgagor shall not consent, agree to, or permit any mortgage, lien, or security interest upon or affecting the Security or any part thereof except as granted or permitted in this Mortgage and any other lien or security interest granted to Mortgagee. Mortgagor shall not (a) encumber the Security with any lien other than the lien of this Mortgage, or (b) pledge

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or otherwise encumber all or any of the direct or interests in Mortgagor, as security for any financings.

Mortgagor will promptly pay and discharge any and all amounts which are now or hereafter become liens against the Security whether or not superior to the lien hereof or to any assignment of rents and leases given to Mortgagee.

The covenants of this Section shall survive any foreclosure and sale of the Security and any conveyance thereof by deed in lieu of foreclosure with respect to any such liens in existence as of the date of transfer of title.

18. Management.

During the term of the Loan, Mortgagor shall at all times retain HP Santa Fe, LLC ("**Property Manager**") to operate and manage the Security under the terms of that certain Real Estate Management Agreement dated January 23, 2006 (the "**Management Agreement**") by and between Mortgagor and Property Manager. No change of Property Manager shall be made without the prior written approval of Mortgagee, and any attempted change of Property Manager without such consent shall be void. The Management Agreement must provide that it is subordinate to the lien of this Mortgage or terminable without cause upon thirty (30) days' prior written notice, and may not be modified or amended without Mortgagee's prior written approval. Management fees shall not constitute a lien upon the Security and Mortgagee shall have no liability for payment of such fees.

19. Restrictions on Transfer.

Except as expressly set forth in this Section 19, Mortgagor shall not transfer, sell or assign the Security, any interest in the Security, or any interest in Mortgagor. Mortgagor shall have the right to a one time sale, transfer or assignment in whole or in part

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of its interest in the Security to any party of equal qualification and credit worthiness provided:

- (i) there is no Event of Default or no event which, with the passage of time and/or giving of notice would constitute an Event of Default under the Loan Documents at the time of transfer;
- (ii) a property inspection by Mortgagee or Mortgagee 's designee shows that all reasonably necessary maintenance on or damage or destruction to the Real Property has been completed or repaired;
- (iii) the proposed transferee shall be a Qualified Real Estate Investor (hereinafter defined);
- (iv) the Debt Service Coverage on the loan exceeds 1.5 times based upon Mortgagee's projections of Total Annual Debt Service for the succeeding twelve (12) month period;
- (v) the proposed transferee or its property manager has specific related commercial real estate experience in the Metropolitan Statistical Area where the Real Property is located;
- (vi) the proposed transferee or its property manager must own or manage a minimum of 1,000,000 square feet of industrial space;
- (vii) At least 30 days prior to such a transfer Mortgagor must provide Mortgagee with all of the material provisions of such transfer including without limitation the proposed date of transfer, and the name, net worth, background and address of the proposed transferee and the purchase price;

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(viii) Mortgagor shall provide Mortgagee with such evidence as Mortgagee may require that the proposed transferee shall fulfill each and every obligation of Mortgagor under the Loan Documents and such transfer shall not affect or impair Mortgagee's security and rights under the Loan Documents, or other guaranty or undertaking relating to the indebtedness, including, without limitation, that certain Environmental Indemnification Agreement of even date herewith by Mortgagor and the University of Notre Dame du Lac, a not-for-profit corporation chartered by the Legislature of the State of Indiana ("**Notre Dame**," and together with Mortgagor, "**Indemnitors**") in favor of Mortgagee (the "**Environmental Indemnification Agreement**") and that certain Guaranty of even date herewith by Notre Dame in favor of Mortgagee (the "**Guaranty**"), and Indemnitors shall be released from any future obligations as of the date of the permitted transfer, but would still be liable for any obligations which first arose prior to the date of the permitted transfer with the permitted transferee liable for any obligations first arising after the date of the permitted transfer; provided, however, if a permitted transferee does not assume the obligations under the Environmental Indemnification Agreement or under the Guaranty at the time of the permitted transfer as to the obligations first arising after the date of the permitted transfer then Indemnitors shall remain fully liable thereunder;

(ix) such transfer may shall not be permitted during the Closed Period (as such term is defined in the Note);

(x) such notice received under (vii) above shall be accompanied by the payment of Mortgagee of a non refundable fee in the amount of one percent (1%) of the then outstanding principal balance of the Loan in cash or certified check to be retained by Mortgagee in order to induce Mortgagee to allow the proposed transferee to assume the

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obligations of Mortgagor under the Loan Documents, and such fee shall be returned to Mortgagor if Mortgagee disapproves of such transfer;

(xi) the loan to value ratio of the Mortgage based on a then current appraisal obtained at Mortgagor 's expense and acceptable to Mortgagee must not exceed 60%;

(xii) Mortgagor shall provide Mortgagee with such evidence as Mortgagee may require that such transfer shall not affect or impair Mortgagee 's security and rights under the Loan Documents or under any Leases; and

(xiii) Mortgagor shall pay for all of Mortgagee's costs and expenses associated with the transfer, including without limitation, attorney's fees charged by Mortgagee's staff counsel or special counsel.

Notwithstanding the foregoing, and so long as Notre Dame retains a majority interest in Mortgagor, Notre Dame may, without payment of the fee described in (x) above or satisfaction of any of the requirements set forth in (i) through (xiii) above, admit new members and accept capital subscriptions from such new members and use the proceeds thereof for any lawful purpose, provided that such new members are first approved by Lender in writing.

Notwithstanding any provision to the contrary contained in this Section 19, Mortgagor shall not transfer, sell or assign the Security, any interest in the Security, or any interest in Mortgagor, until the Guaranteed Amount (as defined in the Guaranty) has been paid in full to Lender, together with all applicable fees, costs and expenses, except as otherwise provided in the Guaranty.

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"**Qualified Real Estate Investor**" is defined as any reputable corporation, partnership, joint venture, joint stock company, trust or individual with a minimum net worth of \$20,000,000, real estate assets of \$25,000,000, a minimum current cash position of \$1,000,000, based in the United States and free from any bankruptcy, reorganization or insolvency proceedings or any criminal charges or proceedings and shall not have been, at the time of transfer or in the past, a litigant, plaintiff or defendant in any suit brought against or by Mortgagee. Mortgagee agrees to be reasonable in the review of such qualifications.

"**Debt Service Coverage**" is defined as the ratio, as determined by Mortgagee, of (a) Net Operating Income from the Real Property for the applicable period of time to (b) Total Annual Debt Service. "Net Operating Income" is defined as gross income from operations of the Real Property for the previous twelve (12)-month period from leases of space therein (to the extent Mortgagee reasonably projects such income will continue for the immediately succeeding twelve (12) month period), subtracting therefrom all necessary and ordinary operating expenses applicable to the Real Property for such period of time (both fixed and variable to the extent reasonably projected by Mortgagee to continue for the next succeeding a twelve (12) month period), including but not limited to, utilities, administrative, cleaning, landscaping, security, repairs and maintenance, ground rent payments, management fees, real estate and other taxes, assessments and insurance, but excluding therefrom deductions for federal, state and other income taxes, debt service expense, depreciation or amortization of capital expenditures and other similar noncash items. Gross income shall not be anticipated for any greater time period than that approved by generally accepted accounting principles nor shall ordinary operating expenses be prepaid. Documentation of Net Operating Income shall be certified by an officer of Mortgagor with detail satisfactory to

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Mortgagee and shall be subject to the approval of Mortgagee. "Total Annual Debt Service" shall mean the sum of (i) the aggregate debt service payments (including principal and interest) on the Loan for the applicable time period, plus (ii) the aggregate debt service payments (including principal and interest) on all other indebtedness secured by a lien on all or part of the Real Property for the applicable time period.

20. Sidewalks, Municipal Charges.

Mortgagor will promptly pay and discharge any and all license fees and similar charges, with penalties and interest thereon, which may be imposed by the municipality in which the Security is situated, for the use of vaults, chutes, areas and other space beyond the lot line and under or abutting the public sidewalks in front of or adjoining the Security, and Mortgagor will promptly cure any violation of law and comply with any order of such municipality respecting the repair, replacement or condition of the sidewalk or curb in front of or adjoining the Security, and in default thereof Mortgagee may, upon five (5) days notice to Mortgagor, pay any and all such license fees or similar charges, with penalties and interest thereon, and the charges of the municipality for such repair or replacement, and any amount so paid or advanced by Mortgagee and all costs and expenses incurred in connection therewith (including, without limitation, attorneys' fees), with interest thereon at the Default Rate specified in the Note, shall be a demand obligation of Mortgagor to Mortgagee, and, to the extent permitted by law, shall be added to the Indebtedness and shall be secured by the lien of this Mortgage.

21. Assignment of Rents and Leases.

Mortgagor hereby presently, irrevocably, absolutely and unconditionally transfers, assigns and sets over unto Mortgagee all of its right, title and interest in and to all

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present and future leases, license agreements, concession agreements, lease termination agreements and other occupancy agreements of any nature, oral or written, of Land and of space in the Improvements, together with all modifications, supplements, extensions, renewals and replacements thereof now existing or hereafter made, and also together with the rights to sue for, collect and receive all rents, prepaid rents, additional rents, royalties, security deposits, damages payable upon default by tenant, or other sums in any of said leases provided to be paid to the lessor thereunder, profits, income, license fees, concession fees, lease termination fees and issues of the Security (collectively, "**Rents**"), to be applied by Mortgagee in payment of the Indebtedness and also together with any and all guaranties of the obligations of the tenants thereunder and the rights of Mortgagor to receive, hold and apply all bonds and security in all of said leases provided to be furnished to the lessor thereunder, and also together with the rights of Mortgagor to enforce any and all of the agreements, terms, covenants and conditions in all of said leases provided and to give notices thereunder. Mortgagee may receive and collect the Rents personally or through a receiver upon the occurrence of an Event of Default, for so long as such Event of Default shall exist, and during the pendency of any foreclosure proceeding and during any redemption period. Mortgagor agrees to consent to a receiver if this is believed necessary or desirable by Mortgagee to enforce its rights under this Section. Prior to the occurrence of an Event of Default, Mortgagor shall have a license to collect and apply the Rents as permitted and provided by the Assignment of Rents and Leases of even date herewith ("**Assignment of Rents**").

Mortgagor shall not otherwise assign or pledge, or contract, expressly or by implication, to assign or pledge, any lease of the Land or space in the Improvements or the

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rights to sue for, collect and receive any Rents, or the rights to receive, hold and apply any bonds and security in any of said leases provided to be furnished to the lessor thereunder, or the rights to enforce any of the agreements, terms, covenants or conditions of said leases or to give notices thereunder, unless in each instance the written consent thereto of Mortgagee be first obtained.

Nothing in this Mortgage shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as lessor under any of the leases hereinabove assigned or to pay any sum of money or damages therein provided to be paid by the lessor.

If Mortgagee shall from time to time suffer or permit Mortgagor to sue for, collect or receive any Rents, or to receive, hold or apply any bonds or security under said leases, or to enforce any of the agreements, terms, covenants or conditions thereunder or to give notices thereunder, neither such sufferance nor permission shall constitute a waiver or relinquishment by Mortgagee of the rights hereunder and hereby assigned to Mortgagee with respect to any subsequent Rents, or with respect to any subsequent receipt, holding or application of bonds or security or any subsequent enforcement of such agreements, terms, covenants or conditions or any subsequent notices.

22. Future Leases.

Subject to Section 3.2(f) of the Assignment of Rents, Mortgagor will not hereafter make any lease to any tenant, or amend, modify, terminate, renew or extend any lease (other than a renewal to which a tenant is entitled under the terms of an existing lease or contained in a lease that is subsequently approved by Mortgagee), affecting the Security unless Mortgagee shall first consent in writing to the terms of said lease and the form of the

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lease, which consent shall not be unreasonably withheld, subject, however, to the provisions of the Assignment of Rents and Leases recorded of even date herewith ("**Assignment**") which sets forth certain leasing criteria applicable to the operation of the Security.

All leases must be subordinate to the lien of the Mortgage unless Mortgagee otherwise specifies. Each lease must contain a provision that, upon notice to tenant by Mortgagee, the lease shall become superior, in whole or in part, to the lien of the Mortgage.

Mortgagor will furnish to Mortgagee a true and complete copy of each lease, amendment, modification, extension, or renewal of lease, hereafter made by Mortgagor with respect to the Land or space in the Security, within ten (10) days after delivery of each such lease, amendment, modification, extension, or renewal by the parties thereto.

Mortgagor will from time to time upon demand of Mortgagee, confirm in writing the assignment to Mortgagee of any or all leases of the Land and space in the Improvements, and such written confirmation shall be in such form as Mortgagee shall require and as shall be necessary to make the same recordable.

23. Mortgagor's Obligations as Lessor.

(a) Mortgagor shall, at Mortgagor's cost and expense, promptly and fully perform each and every covenant, condition, promise and obligation on the part of the lessor to be performed pursuant to the terms of each and every lease or letting, written or oral, now or hereafter made with respect to the Security or any part or parts thereof, and shall not suffer or permit there to exist any default in such performance on the part of such lessor or permit any event to occur which would give the tenant under any such lease the right to terminate the same or to offset Rent.

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(b) Mortgagor shall give Mortgagee immediate notice of any default under any lease or of the receipt by Mortgagor of any notice of default from the lessee or its successors or assigns under a lease, and Mortgagor shall furnish to Mortgagee immediately any and all information which Mortgagee may request concerning the performance and observance of all covenants, agreements and conditions contained in the leases by the lessor thereunder to be kept, observed and performed and concerning the compliance with all terms and conditions of the leases. Mortgagor hereby authorizes Mortgagee and its representatives to make investigations and examinations concerning such performance, observance and compliance, and Mortgagor, upon request, shall promptly deposit with Mortgagee any and all documentary evidence relating to such performance, observance and compliance and copies of any and all notices, communications, plans, specifications or other instruments or documents received or given by Mortgagor in any way relating to or affecting the leases which may concern or affect the estate of the lessor or the lessee in or under the leases or in the premises thereby demised.

(c) In the event of any failure by Mortgagor to keep, observe or perform any covenant, agreement or condition contained in the leases or to comply with the terms and conditions of the leases, any performance, observance or compliance by Mortgagee pursuant to this Mortgage on behalf of Mortgagor shall not remove or waive, as between Mortgagor and Mortgagee the corresponding Event of Default under the terms of this Mortgage.

24. Leases; Foreclosure.

Any proceedings or other steps taken by Mortgagee to foreclose this Mortgage, or otherwise to protect the interests of Mortgagee hereunder, shall not operate to terminate the rights of any present or future tenant of space in the Improvements,

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notwithstanding that said rights may be subject and subordinate to the lien of this Mortgage, unless Mortgagee specifically elects otherwise in the case of any particular tenant. The failure to make any such tenant a defendant in any such foreclosure proceeding and to foreclose such tenant's rights will not be asserted by Mortgagor or any other defendant in such foreclosure proceeding as a defense to any proceeding instituted by Mortgagee to foreclose this Mortgage or otherwise protect the interests of Mortgagee hereunder.

25. Operating Agreement.

Mortgagor shall, at Mortgagor's cost and expense, promptly and fully perform each and every covenant, condition, promise and obligation of the owner of the Security under the Mortgagor's First Amended and Restated Limited Liability Company Agreement dated as of January 23, 2006 ("**Operating Agreement**"), and shall make all payments therein and thereby required to be made by the owner of the Security. Mortgagor shall not cancel, transfer, amend, or assign the Operating Agreement without the prior written consent of Mortgagee, and Mortgagor shall not consent to the cancellation, transfer, amendment, or assignment of the Operating Agreement by any other party thereto, without the prior written consent of Mortgagee.

Mortgagor shall furnish to Mortgagee, within three (3) days after receipt thereof, or after the mailing or service thereof by Mortgagor, as the case may be, a copy of each notice of default which Mortgagor shall give to, or receive from any person, based upon the occurrence, or alleged occurrence, of any default or defaults in the performance of any covenant, condition, promise or obligation under the Operating Agreement.

Whenever and as often as Mortgagor shall fail to perform, promptly and fully, at Mortgagor's cost and expense, any covenant, condition, promise or obligation on the part

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of the owner of the Security under and pursuant to the Operating Agreement, Mortgagee, or a lawfully appointed receiver of the Security, may, at their respective options, enter upon the Security and perform, or cause to be performed, such work, labor, services, acts or things, and take such other steps and do such other acts as they may deem advisable, to cure such defaulted covenant, condition, promise or obligation, and Mortgagor shall reimburse Mortgagee upon demand for all costs and expenses incurred by Mortgagee and any such receiver in taking any action pursuant to this Section, which reimbursement shall be secured by the lien of this Mortgage.

26. Events of Default.

Each of the following shall constitute an "**Event of Default**" hereunder and shall entitle the Mortgagee to exercise its remedies hereunder and under any of the other Loan Documents or as otherwise provided by law:

(a) if any payment of any installment of the Indebtedness, and/or interest or of any other sum due hereunder is not received by Holder by 5:00 P.M. Eastern Time on the 5th Business Day from and after the monthly payment date, or if any escrow payment is not received by the escrow holder by local time on the 5th Business Day from and after the date such payment is due, or any other payment of money or indebtedness by any other Loan Document is not made by the 5th Business Day after such payment is due and payable;

(b) Failure of the Mortgagor in the observance or performance of any covenant, promise or agreement provided in this Mortgage or in any other Loan Document other than relating to the payment of indebtedness or money (a "**failure to perform**"), for thirty (30) days after the giving of notice by Mortgagee to Mortgagor specifying the nature of the failure to perform; provided, however, that if the nature of such failure to perform is such

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that the same cannot be cured within such thirty (30) day period, such failure to perform shall not be deemed an Event of Default if Mortgagor shall within such period commence to cure that failure to perform and thereafter diligently prosecute the cure to completion, but in no event more than one hundred twenty (120) days in the aggregate. Notwithstanding anything contained herein to the contrary, the notice and cure period provided under this clause (b) shall not be applicable to and shall not be in addition to any specific notice and cure or performance period provided under any other provision of this Mortgage, and the specific notice and cure or performance period provided for in such provision shall control, and a failure by Mortgagor to cure a default under such provision within the applicable cure period shall be an Event of Default under this Mortgage;

(c) Any representation, warranty, or statement of the Mortgagor or the sole member of Mortgagor contained herein or of Mortgagor, the sole member of Mortgagor or of any guarantor of the Loan in any of the Loan Documents including without limitation the Environmental Indemnification Agreement and the Guaranty, or in any writing delivered to Mortgagee on or before with the execution and delivery of the Loan Documents, proves to be untrue in any material respect as of the date when made;

(d) Mortgagor or the sole member of Mortgagor or any guarantor shall (i) have an order for relief entered in a proceeding under Title 11, United States Code, whether such order shall result from a voluntary or involuntary petition, (ii) seek or consent to the appointment of a receiver or trustee for itself or for any of the Security, (iii) file a petition or initiate a proceeding under the bankruptcy, insolvency, receivership, or similar laws of the United States, any state or any jurisdiction, (iv) make a general assignment for the benefit of creditors, or (v) be unable to pay its debts as they mature;

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(e) A court shall enter an order, judgment or decree appointing, without the consent of Mortgagor or the sole member of Mortgagor, a receiver or trustee for it or for any of the Security or approving a petition filed against Mortgagor which seeks relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, and such order, judgment or decree shall remain in force, undischarged or unstayed, sixty (60) days after it is entered;

(f) Without the prior written consent of Mortgagee unless otherwise expressly permitted by the provisions of this Mortgage, (i) the Security or any portion thereof or interest therein shall be mortgaged, encumbered, sold, assigned or otherwise transferred by Mortgagor or by operation of law or there is any mezzanine or other secondary financing or (ii) if Mortgagor is a limited liability company, partnership, joint venture, syndicate or other group, all or any portion of the interest of any partner or member thereof is sold or otherwise transferred or (iii) if Mortgagor is a corporation, the majority shareholder ceases to own a controlling interest in Mortgagor or Mortgagor is liquidated or dissolved or its charter expires or is revoked; or (iv) if Mortgagor is a trust or trustee(s), there is any change in the identity of any of the trustee(s), there is any sale or other transfer of all or any portion of the beneficial interest under the trust, or if any beneficiary of the trust is an entity described in clause (ii) or clause (iii) of this subparagraph (f), there is any event with respect to such entity that is prohibited by said clauses (ii) and (iii), as applicable;

(g) Mortgagor violates the transfer provisions as expressly set forth in this Mortgage; or

(h) A default occurs under any other Loan Document which remains uncured within the applicable curing period, if any.

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27. Remedies Upon Default.

Immediately upon the occurrence of any Event of Default, Mortgagee shall have the option, in addition to and not in lieu of or substitution for all other rights and remedies provided in this Mortgage or any other Loan Document or provided by law or in equity, and is hereby authorized and empowered by Mortgagor, to do any or all of the following.

(a) Declare with notice the entire unpaid amount of the Indebtedness immediately due and payable and, at Mortgagee's option, (i) to bring suit therefor, or (ii) to bring suit for any delinquent payment of or upon the Indebtedness, or (iii) to take any and all steps and institute any and all other proceedings in law or in equity that Mortgagee deems necessary to enforce payment of the Indebtedness and performance of other obligations secured hereunder and to protect the lien of this Mortgage.

(b) Commence foreclosure proceedings against the Security, in a single parcel or in several parcels, through judicial proceedings, by advertisement or as otherwise provided by law, at the option of Mortgagee, pursuant to the statutes in such case made and provided, and sell the Security or to cause the same to be sold at public sale, and convey the same to the purchaser, in accordance with said statutes in a single parcel or in several parcels at the option of Mortgagee.

(c) Proceed against the Personal Property in accordance with Mortgagee's rights and remedies with respect to the Personal Property including the right to sell the Personal Property together with the Real Property separately and without regard to the remainder of the Security in accordance with Mortgagee's rights and remedies provided by

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the Illinois Uniform Commercial Code as well as other rights and remedies available at law or in equity.

(d) Cause to be brought down to date a title examination and tax histories of the Security, procure title insurance or title reports or, if necessary, procure new abstracts and tax histories.

(e) Procure an updated or entirely new environmental audit of the Security including building, soil, ground water and subsurface investigations; have the Improvements inspected by an engineer or other qualified inspector and procure a building inspection report; procure an MAI or other appraisal of the Security or any portion thereof; enter upon the Security at any time and from time to time to accomplish the foregoing and to show the Security to potential purchasers and potential bidders at foreclosure sale; make available to potential purchasers and potential bidders all information obtained pursuant to the foregoing and any other information in the possession of Mortgagee regarding the Security.

(f) Either by itself or by its agent to be appointed by it for that purpose or by a receiver appointed by a court of competent jurisdiction, as a matter of strict right, without notice and without regard to the adequacy or value of any security for the Indebtedness or the solvency of any party bound for its payment, to take possession of and to operate the Security, Mortgagor hereby waiving any right Mortgagor might have to object to or oppose any such possession and whether or not Mortgagee has taken possession of the Security, to collect and apply the Rents, including those past due and unpaid, after payment of all necessary charges and expenses, in reduction of the Indebtedness. The receiver shall have all of the rights and powers permitted under the laws of the State of Illinois, including, but not limited to, the right to enter upon and take possession of the Mortgaged Property and

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to collect all rents, income and other benefits thereof and apply the same as the court may direct or to be placed by the court into possession of the Security as mortgagee in possession with the same power herein granted to a receiver and with all other rights and privileges of a mortgagee in possession under law.. Except for damage caused by Mortgagee's gross negligence or willful misconduct, Mortgagor hereby waives any claim Mortgagor may have against Mortgagee for mismanagement of the Security during Mortgagee's operation of the Security under this subparagraph or as mortgagee in actual possession under applicable statutes.

(g) Mortgagee may, at its option without waiving any Event of Default, pay, perform or observe the same, and all payments made or costs or expenses incurred by Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee with interest thereon at the Default Rate hereunder. Mortgagee shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Security or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without hereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

(h) Apply against the Indebtedness in such order as Mortgagee shall determine any funds held for the benefit of Mortgagor in escrow by Mortgagee or by any third-party escrow agent under any of the Loan Documents, including without limitation any funds held under the escrow established by Section 5 of this Mortgage.

Upon any foreclosure sale, Mortgagee may bid for and purchase the Security and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase

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price. In the event of any sale of the Security by foreclosure, through judicial proceedings, by advertisement or otherwise, the proceeds of any such sale which are applied in accordance with this Mortgage shall be applied in the order following to: (i) all expenses incurred for the collection of the Indebtedness and the foreclosure of this Mortgage, including reasonable attorneys' fees, or such attorneys' fees as are permitted by law; (ii) all sums expended or incurred by Mortgagee directly or indirectly in carrying out the terms, covenants and agreements of the Note or notes evidencing the Indebtedness, of this Mortgage and any other Loan Documents, together with interest thereon as therein provided; (iii) all late payment charges, prepayment fees, advances and other amounts due under any of the Loan Documents; (iv) all accrued and unpaid interest upon the Indebtedness; (v) the unpaid principal amount of the Indebtedness; and (vi) the surplus, if any, to the person or persons legally entitled thereto.

In the event of any acceleration of the Indebtedness pursuant to the first paragraph of this Section, Mortgagor shall pay to Mortgagee together with the principal indebtedness and interest thereon an amount equal to the prepayment fee provided for in the Note and such fee shall be included as part of the Indebtedness.

Failure to exercise any option to accelerate in the event of a default or other circumstance permitting the exercise of such option, shall not constitute a waiver of the default or of the right to exercise such option at a later time, or a waiver of the right to exercise such option in the event of any other default or circumstance specified above.

Any foreclosure of this Mortgage shall be governed by the Illinois Mortgage Foreclosure Act (735 ILCS 5/15-1101 et seq.)(the "**Illinois Act**"), and in the event of any conflict between the provisions of this Section 27 and those of the Illinois Act, the Illinois

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Act shall govern, but in no event shall this sentence invalidate or render unenforceable any provisions of this Mortgage that can fairly be construed in a manner consistent with the Illinois Act.

28. Acceleration Interest.

In addition to any late payment charge which may be due under the Note, Mortgagor shall pay interest on all sums due hereunder at a rate (the "**Default Rate**") equal to the lesser of (i) the interest rate set forth in the Note plus four percent (4%) per annum, or (ii) the maximum rate permitted by law, from and after the first to occur of the following events: if Mortgagee elects to cause the acceleration of the Indebtedness; if a petition under Title 11, United States Code, shall be filed by or against Mortgagor or if Mortgagor shall seek or consent to the appointment of a receiver or trustee for itself or for any of the Security, file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, make a general assignment for the benefit of creditors, or be unable to pay its debts as they become due; if a court shall enter an order, judgment or decree appointing, with or without the consent of Mortgagor, a receiver or trustee for it or for any of the Security or approving a petition filed against Mortgagor which seeks relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, and any such order, judgment or decree shall remain in force, undischarged or unstayed, sixty (60) days after it is entered; or if all sums due hereunder are not paid on the Maturity Date as set forth in the Note.

29. Late Charge.

In the event any sums due under the Note, this Mortgage, or any other Loan Document (other than the outstanding Indebtedness due on the Maturity Date), are not paid

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by Mortgagor when due, Mortgagor shall pay to Mortgagee a late charge ("**Late Charge**") for the initial month during which such payment is not made when due, equal to the lesser of four percent (4%) of such Delinquent Payment or the maximum amount permitted by law. Mortgagor and Mortgagee agree that each Late Charge is a reasonable estimate by Mortgagee and Mortgagor of a fair average compensation for the loss that may be sustained by Mortgagee due to the failure of Mortgagor to make timely payments, and such amount shall be secured hereby. Each Late Charge shall be determined without regard to any cure or grace period, and shall be imposed only with respect to the initial date on which a payment becomes a Delinquent Payment. Mortgagor's payment of any Late Charge shall be without prejudice to the right of Mortgagee to collect any other amounts owed by Mortgagor under this Mortgage or any other Loan Document (including, without limitation, Late Charges with respect to Delinquent Payments first falling due in subsequent months), or to declare an Event of Default under this Mortgage, the Note or any other Loan Document.

30. Waiver of Statutory Rights.

Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisement, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Security or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Security marshalled upon any foreclosure of the lien hereof

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and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Security in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) (herein called the "Act")) or residential real estate (as defined in Section 15-1219 of the Act). To the full extent permitted by law, Mortgagor hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601 of the Act.

31. Security Interest.

This Mortgage shall, as to any equipment and other Personal Property covered hereby, be deemed to constitute a security agreement, and Mortgagor, as debtor, hereby grants to Mortgagee, as secured party, a security interest therein pursuant to the Illinois Uniform Commercial Code. Mortgagor agrees, upon request of Mortgagee, to furnish an inventory of Personal Property owned by Mortgagor and subject to this Mortgage and, upon request by Mortgagee, to execute any supplements to this Mortgage, any separate security agreement and any financing statements and continuation statements in order to include specifically said inventory of Personal Property or otherwise to perfect the security interest granted hereby. Upon any Event of Default, Mortgagee shall have all of the rights and remedies provided in said Code or otherwise provided by law or by this Mortgage, including but not limited to the right to require Mortgagor to assemble such Personal Property and make it available to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to both parties, the right to take possession of such Personal Property with or without demand and with or without process of law and the right to sell and dispose of the

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same and distribute the proceeds according to law. The parties hereto agree that any requirement of reasonable notice shall be met if Mortgagee sends such notice to Mortgagor at least ten (10) days prior to the date of sale, disposition or other event giving rise to the required notice, and that the proceeds of any disposition of any such Personal Property may be applied by Mortgagee first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and legal expenses incurred, and then to payment of the Indebtedness. With respect to the Personal Property that has become so attached to the Real Property that an interest therein arises under the real property law of the State of Illinois, this Mortgage shall also constitute a financing statement and a fixture filing under the Illinois Uniform Commercial Code.

32. Right of Entry.

Mortgagee and Mortgagee's representatives may at all times and without notice to Mortgagor enter upon the Security and inspect the same, or cause it to be inspected by agents, employees or independent contractors of Mortgagee, and show the same to others, but Mortgagee shall not be obligated to make any such entry or inspection.

33. Estoppel Certificate.

Mortgagor, within fifteen (15) days after written request from Mortgagee, will furnish a signed statement in writing, duly acknowledged, of the amount then due or outstanding hereunder and whether or not any offsets or defenses exist against the Indebtedness, and if so, specifying such offsets and defenses. Upon request by Mortgagee, Mortgagor shall exercise any right it may have to request an estoppel certificate from any or all of the tenants on the Security within five (5) days following Mortgagee's request.

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34. Financial Reporting and Financial Statements.

On an ongoing basis, Mortgagor will give to Mortgagee the following financial statements and information, all of which reports shall be in hardcopy and electronic format:

(a) a quarterly rent roll, delivered within 20 days after the end of the calendar quarter;

(b) quarterly financial statements including a balance sheet and a statement of revenues and expenses, within 20 days after the end of each calendar quarter;

(c) annual audited balance sheets for the Security and annual audited financial statements for Mortgagor using tax basis accounting, within 90 days after the end of each calendar year; in lieu of audited balance sheets and financial statements Mortgagee shall accept unaudited balance sheets and financial statements certified to be correct by the chief financial officer or other responsible officer;

(d) annual capital expenditure summaries for the Security, within 90 days after the end of the calendar year; and

(e) such other financial information as Mortgagee or any rating agency may reasonably request in writing, but in all cases subject to the limitations with respect to financial information contained in the Guaranty.

In addition to the regularly scheduled reports required above, Mortgagor agrees to provide Mortgagee within five (5) business days of a written request therefor the following: (i) a current rent roll, (ii) a balance sheet and year-to-date operating statements for the Security certified by the chief financial officer, sole member, managing member,

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manager or general partner of Mortgagor, and (iii) if the Real Property is operated as a shopping center, all sales information of tenants and anchors that make up the center (total sales and sales per square foot) and that report sales to Mortgagor. Mortgagor also agrees to cooperate with Mortgagee and Mortgagee's loan servicer in providing information and access to the Real Property in connection with the annual inspection of the Real Property, or such other inspections as Mortgagee may reasonably require.

Notwithstanding the provisions of Sections (a), (b) and (c) above, Mortgagee agrees to conditionally waive such reporting requirements on the terms set forth below, but shall retain the right, in its sole discretion and at any time and from time to time, to reinstate such requirements of subsections (a), (b) and (c) by written notice to Mortgagor effective upon receipt by Mortgagor of such notice:

- (x) Subsection (a) above shall be modified such that Mortgagor shall be required to submit the rent roll described therein annually, instead of quarterly; and
- (y) Subsection (b) above shall be waived.

If Mortgagor omits to prepare and deliver promptly any report required by this Section, Mortgagee may elect, in addition to exercising any remedy for an Event of Default as provided for in this Mortgage, to make an audit of all books and records of Mortgagor and its beneficiaries, including without limitation their bank accounts, which in any way pertain to the Security, and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statements shall be prepared by an independent Certified Public Accountant to be selected by Mortgagee. Mortgagor shall pay all expenses of the audit and other services, which expenses shall be secured hereby as part

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of the Indebtedness and shall be immediately due and payable with interest thereon at the Default Rate set forth herein.

Mortgagee shall afford any information received pursuant to this Section the same degree of confidentiality that Mortgagee affords similar information proprietary to Mortgagee; provided, however, that Mortgagee does not in any way warrant or represent that such information received from Mortgagor will remain confidential, and, provided further, that Mortgagee shall have the unconditional right to disclose, as necessary, any such information in the event Mortgagee sells, transfers, conveys, or assigns the Mortgage or any portion of the Indebtedness but Mortgagee agrees in such event to require that substantially similar standards of confidentiality are maintained by any such transferee or assignee.

In furtherance of the foregoing, Mortgagor acknowledges that Mortgagee may sell, transfer or assign the Loan, or any interest therein (whether by sale of the whole loan, the issuance of participation certificates in private unrated transactions, or in connection with a securitization of the Loan individually or as part of a pool of loans in a public or private rated transaction, or otherwise). In connection therewith, Mortgagor agrees that Mortgagee shall be entitled to disclose, as Mortgagee may deem necessary or desirable, to any and all investors, purchasers, transferees, servicers, participants, rating agencies or organizations maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Mortgagee has or may hereafter acquire relating to the Loan, whether furnished by Mortgagor or any guarantor or indemnitor but Mortgagee agrees in such event to require that substantially similar standards of confidentiality are maintained by any such party.

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35. Rights Cumulative.

Each right and remedy of Mortgagee under this Mortgage, the Note and any other Loan Documents, shall be in addition to every other right and remedy of Mortgagee and such rights and remedies may be enforced separately or in any combination.

36. Subrogation.

To the extent that proceeds of the Indebtedness are used to pay any outstanding lien, charge or encumbrance affecting the Security, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to all rights, interest and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record; provided, however, that the terms and provisions hereof shall govern the rights and remedies of Mortgagee and shall supersede the terms, provisions, rights, and remedies under the lien or liens to which Mortgagee is subrogated hereunder.

37. No Waiver.

Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions hereof to be performed by Mortgagor.

38. Mortgage Extension.

The lien hereof shall remain in full force and effect during any postponement or extension of the time of payment of the Indebtedness, or of any part thereof, and any number of extensions or modifications hereof, or any additional notes taken by Mortgagee,

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shall not affect the lien hereof or the liability of Mortgagor or of any subsequent obligor to pay the Indebtedness unless and until such lien or liability be expressly released in writing by Mortgagee.

39. Indemnification.

Mortgagor shall indemnify and hold Mortgagee harmless from and against all obligations, liabilities, losses, costs, expenses, fines, penalties or damages (including attorneys' fees) which Mortgagee may incur by reason of this Mortgage or with regard to the Security prior to the exercise of any remedies under this Mortgage. Mortgagor shall defend Mortgagee against any claim or litigation involving Mortgagee for the same, and should Mortgagee incur such obligation, liability, loss, cost, expense, fine, penalty or damage, then Mortgagor shall reimburse Mortgagee upon demand. Any amount owed Mortgagee under this provision shall bear interest at the Default Rate set forth herein.

40. Nonrecourse.

Except as hereinafter in this Section and in Section 15 of the Note specifically provided, Mortgagor shall not be personally liable for the payment of any sums due hereunder or the performance of any obligations of Mortgagor hereunder or under any other Loan Document. No judgment for the repayment of the Indebtedness will be enforced against the undersigned personally or any property of the Mortgagor other than the Security and any other security furnished under the Loan Documents in any action to foreclose this Mortgage or to otherwise realize upon any security furnished under the Loan Documents or to collect any amount payable under the Loan Documents. Notwithstanding the foregoing:

(a) Nothing herein contained shall be construed as prohibiting Mortgagee from exercising any and all remedies which the Loan Documents permit, including the right

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to bring actions or proceedings against Mortgagor and to enter a judgment against Mortgagor, so long as the exercise of any remedy does not extend to execution against or recovery out of any property of Mortgagor other than the security furnished under the Loan Documents;

(b) Mortgagor shall be fully and personally liable for (i) misapplying any condemnation awards or insurance awards attributable to the Security, to the full extent of such awards so misapplied, (ii) misapplying any security deposits or reserves attributable to the Security, to the full extent of such deposits or reserves so misapplied, (iii) collecting any rents in advance in violation of any covenant contained in the Loan Documents, to the full extent of such rents so collected in advance, (iv) committing fraud, misrepresentation or waste in connection with the operation of the Security or the making of the Loan evidenced hereby, to the full extent of any loss, damage, expense or costs (including reasonable attorneys' fees) incurred by Mortgagee resulting from such fraud, misrepresentation or waste, and to the extent of any remedies available to Mortgagee at law or in equity, (v) any debt service on any indebtedness related to the Security, operating and maintenance expenses, insurance premiums, deposits into a reserve for replacement, or other sums required by the Loan Documents, but only to the extent of any gross revenues from the Security during the period beginning twelve (12) months prior to a notice of acceleration to Mortgagor through the date of foreclosure or deed in lieu of foreclosure that were available to pay such expenses but were not so used; (vi) failing to maintain the levels, coverages and maximum deductibles of insurance required under the Loan Documents, to the extent of the loss incurred as a result of such uninsured casualty or uninsured liability, including without limitation any insurance proceeds that would have been available had such levels of

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insurance been maintained; and (vii) the timely payment of all real estate taxes, assessments, or other lienable impositions that are due with respect to the Security and at such time if due and payable under the Loan Documents, to the full extent of such taxes, assessments and other lienable impositions including without limitation any interest, penalties or other charges assessed as a result of nonpayment of any of the foregoing when due.

(c) There shall be no limitation, on the Mortgagor's personal liability under, and the exercise of any of Mortgagee's rights under any indemnity from Mortgagor to Mortgagee including but not limited to, the Environmental Indemnification Agreement with regard to the Security except as may be expressly set forth therein;

(d) Nothing contained in this Section shall be deemed to prejudice the rights of Mortgagee to proceed against any entity or person whatsoever, including the Mortgagor, with respect to the enforcement of any guarantees, leases, master leases, or similar rights of payment, except with respect to Mortgagee's rights to proceed against the guarantors named in the Environmental Indemnification Agreement and the Guaranty, which are subject to the express terms of the Environmental Indemnification Agreement and the Guaranty.

41. Attorneys' Fees.

Any reference to "attorney fees", "attorneys' fees", or "attorney's fees" in this document includes but is not limited to both the fees, charges and costs incurred by Mortgagee through its retention of outside legal counsel and the allocable fees, costs and charges for services rendered by Mortgagee's in-house counsel. Any reference to "attorney fees", "attorneys' fees", or "attorney's fees" shall also include but not be limited to those attorneys or legal fees, costs and charges incurred by Mortgagee in the collection of any

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Indebtedness, the enforcement of any obligations hereunder, the protection of the Security, the foreclosure of this Mortgage, the sale of the Security, the defense of actions arising hereunder and the collection, protection or setoff of any claim the Mortgagee may have in a proceeding under Title 11, United States Code. Attorneys' fees provided for hereunder shall accrue whether or not Mortgagee has provided notice of default or of an intention to exercise its remedies for such default.

42. Administrative Fees.

Mortgagee shall have the right to charge administrative fees during the term of the Note as Mortgagee may determine, in its sole reasonable discretion, in connection with any servicing requests made by Mortgagor requiring Mortgagee's evaluation, preparation and processing of any such requests. Administrative fees shall not be charged for routine servicing matters contemplated by the Loan Documents including, without limitation: processing payments; processing insurance and UCC continuation documentation; processing escrow draws; review of tenant leases, subordination non-disturbance and attornment agreements and tenant estoppels on standard forms approved by Mortgagee without material modifications. Such administrative fees shall apply without limitation to requests for matters not permitted or contemplated by the Loan Documents (including, without limitation: requests for review of new easements), and to requests, which, while contemplated by the Loan Documents, because of the nature of the request, will require significantly more time than an institutional lender, acting reasonably, would contemplate for such request (including without limitation, requests for the transfers or assignments, approval of tenant leases, tenant estoppels and tenant subordination, non-disturbance and attornment agreements which contain material differences from Mortgagee's standard forms).

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Mortgagee shall also be entitled to reimbursement for professional fees it incurs for such administration, including without limitation, those of architects, engineers and attorneys (whether (i) employed by Mortgagee or its affiliate or (ii) engaged by Mortgagee or its affiliates as independent contractors).

43. Protection of Security; Costs and Expenses.

Mortgagor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Mortgagee, and shall pay all costs and expenses, including without limitation cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which Mortgagee may appear, and in any suit brought by Mortgagee to foreclose this Mortgage or to enforce or establish any other rights or remedies of Mortgagee hereunder. If Mortgagor fails to perform any of the covenants or agreements contained in this Mortgage, or if any action or proceeding is commenced which affects Mortgagee's interest in the Security or any part thereof, including, but not limited to, eminent domain, code enforcement, or proceedings of any nature whatsoever under any federal or state law, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, or to a decedent, then Mortgagee may, but without obligation to do so and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereunder, make such appearances, disburse such sums and take such action as Mortgagee deems necessary or appropriate to protect Mortgagee's interest, including, but not limited to, disbursement of reasonable attorneys' fees, entry upon the Security to make repairs or take other action to protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or

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superior hereto. Mortgagor further agrees to pay all reasonable expenses of Mortgagee (including without limitation fees and disbursements of counsel) incident to the protection of the rights of Mortgagee hereunder, or to enforcement or collection of payment of the Indebtedness, whether by judicial or non-judicial proceedings, or in connection with any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding of Mortgagor, or otherwise. Any amounts disbursed by Mortgagee pursuant to this Section shall be additional indebtedness of Mortgagor secured by the Loan Documents as of the date of disbursement and shall bear interest at the Default Rate. All such amounts shall be payable by Mortgagor immediately without demand. Nothing contained in this Section shall be construed to require Mortgagee to incur any expense, make any appearance, or take any other action. All expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.), whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

44. Notices.

Any notice, demand, request, statement or consent made hereunder shall be in writing, signed by the party giving such notice, request, demand, statement, or consent, and shall be deemed to have been properly given when either delivered personally, delivered to a reputable overnight delivery service providing a receipt or deposited in the United States mail, postage prepaid and registered or certified return receipt requested, at the address set forth below, or at such other address within the continental United States of America as may have theretofore have been designed in writing. The effective date of any notice given as

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aforesaid shall be the date of personal service, one (1) Business Day after delivery to such overnight delivery service, or three (3) Business Days after being deposited in the United States mail, whichever is applicable. For purposes hereof, the addresses are as follows:

If to Mortgagee:

Connecticut General Life Insurance Company
c/o CIGNA Realty Investors
280 Trumbull Street
Hartford, Connecticut 06103
Attn: Debt Asset Management, H-11-G

With a copy to:

CIGNA Corporation
280 Trumbull Street
Hartford, Connecticut 06103
Attn: Real Estate Law, H-16-C

If to Mortgagor:

SANTA FE INTERESTS, LLC
c/o University of Notre Dame
Investment Office
900 Grace Hall
Notre Dame, IN 46556-5612
Attn: Scott Malpass

With a copy to:

University of Notre Dame
203 Main Building
Notre Dame, IN 46556
Attn: Carol Kaesebier, Esq.

With a courtesy copy to:

Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, IL 60606-4637
Attn: John J. Gearen

Notwithstanding the foregoing agreement to provide a courtesy copy to other parties on behalf of Mortgagor, such copies shall be a courtesy copy only, and failure to

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provide such courtesy copies shall have absolutely no effect or entitle Mortgagor to any remedy whatsoever. Any notice duly given to Mortgagor shall be effective whether or not the courtesy copy was given to Mortgagor's attorneys.

45. Release.

Upon the satisfaction in full of the Indebtedness, Mortgagee shall release of record the Security from the lien hereof and shall surrender this Mortgage and all notes evidencing indebtedness secured by this Mortgage to Mortgagor. Mortgagor shall pay all costs of recordation.

46. Applicable Law

The provisions hereof shall be construed in accordance with the laws of the State of Illinois.

47. Invalidity.

If any provision of this Mortgage shall be held invalid or unenforceable, the same shall not affect in any respect whatsoever the validity of the remainder of this Mortgage, except that if such provision relates to the payment of a monetary sum, then the Mortgagee may, at its option, declare the Indebtedness due and payable upon sixty (60) days prior written notice to Mortgagor and, provided there exists no Event of Default hereunder, without prepayment fee or premium.

48. Captions.

The captions in this instrument are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be any part hereof.

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49. Modifications.

This Mortgage may not be changed or terminated except in writing signed by both parties. The provisions of this Mortgage shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the other Loan Documents, and any and all references herein to the Loan Documents shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

50. Bind and Inure.

The provisions of this Mortgage shall be binding on the Mortgagor and its heirs, successors and assigns, and any subsequent owners of the Security. The covenants of Mortgagor herein shall run with the land, and this Mortgage and all of the covenants herein contained shall inure to the benefit of the Mortgagee, its successors and assigns.

51. Replacement of Note.

Upon receipt of evidence reasonably satisfactory to Mortgagor of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Mortgagor or, in the case of any such mutilation, upon surrender and cancellation of the Note, Mortgagor will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement Note.

52. Time of the Essence.

Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage, the Note and the other Loan Documents.

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53. Future Advances.

54. It is further covenanted and agreed by the parties hereto that this Mortgage also secures the payment of and includes all future or further advances as may be made by Mortgagee herein or its successors or assigns, at the request of or for the benefit of Mortgagor, its heirs, personal representatives, or assigns, within ten (10) years from the date hereof or the maximum period allowed in the State of Illinois, whichever is the lesser, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of principal indebtedness that may be secured by this Mortgage at any one time shall not exceed a maximum principal sum equal five hundred percent (500%) of the original principal amount of the Note, together with interest thereon and any and all disbursements made by Mortgagee for the payment of taxes, levies or insurance on the property covered by the lien of this Mortgage with interest on such disbursements at the rate specified therein (if specified) or in the Note referred to in this Mortgage and for reasonable attorneys' fees and court costs incurred in the collection of any or all of such sums of money. Any such future advance shall be made in the sole discretion of Mortgagee.

55. Further Assurances.

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 assignments, transfers and assurances as Mortgagee shall from time to time reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed or assigned 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

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facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, will execute and deliver, and hereby authorizes Mortgagee to execute in the name of Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the mixed or Personal Property.

56. Recordation.

(a) 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 evidencing the lien hereof upon the mixed or Personal 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 hereof upon, and the interest of Mortgagee in, the Security.

(b) 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 Personal Property encumbered hereby and any instrument of further assurance and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the chattels or any instrument of further assurance.

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57. Intentionally Omitted

58. Waiver of Jury Trial.

MORTGAGOR AND MORTGAGEE, BY ACCEPTING THIS AGREEMENT, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, PROCEEDING, LITIGATION OR COUNTERCLAIM BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE MORTGAGE, THE NOTE, THE LOAN DOCUMENTS AND ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, WHETHER VERBAL OR WRITTEN, OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE ACCEPTING THIS MORTGAGE.

59. Business Day.

The term "Business Day" or "Business Days" as used in this Note shall mean any calendar day other than Saturday, Sunday or a federal holiday on which the U.S. Postal Service offices are closed for business in one or all of Chicago, Illinois, Itasca, Illinois or Hartford, Connecticut.

(REST OF PAGE INTENTIONALLY LEFT BLANK)

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IN WITNESS WHEREOF, the Mortgagor has duly executed this Mortgage as of the date hereinabove written, in the presence of:

MORTGAGOR:

Santa Fe Interests, LLC,
a Delaware limited liability company

By: The University of Notre Dame du Lac,
an Indiana not-for-profit corporation,
its sole member

By: *Scott C. Malpass*
Name: Scott C. Malpass
Title: Vice President & Chief Investment Officer

By: *Carol C. Kaesebier*
Name: Carol C. Kaesebier
Title: Vice President & General Counsel

Property of Cook County Clerk's Office

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ACKNOWLEDGMENT

STATE OF Indiana)
) SS
 COUNTY OF Saint Joseph)

I, Barbara J. Robinson, a Notary Public in and for and residing in said County and State, do hereby certify that Scott C. Malpass, the Vice President & Chief Investment Officer of The University of Notre Dame du Lac, which is the sole member of Santa Fe Interests, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19th day of January, 2006.


 Notary Public

My Commission Expires:

August 11, 2010

BARBARA J. ROBINSON
 Notary Public, State of Indiana
 County of St. Joseph
 My Commission Expires Aug. 11, 2010

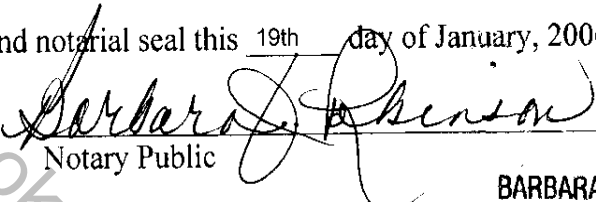
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ACKNOWLEDGMENT

STATE OF Indiana)
) SS
 COUNTY OF Saint Joseph)

I, Barbara J. Robinson, a Notary Public in and for and residing in said County and State, do hereby certify that Carol C. Kaesebier, the Vice President & General Counsel of The University of Notre Dame du Lac, which is the sole member of Santa Fe Interests, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19th day of January, 2006.


 Notary Public

My Commission Expires:

August 11, 2010

BARBARA J. ROBINSON
 Notary Public, State of Indiana
 County of St. Joseph
 My Commission Expires Aug. 11, 2010

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EXHIBIT A

Promissory Note

[See attached]

A large section of the document is redacted with thick, black, horizontal scribbles, completely obscuring the text underneath.

Property of Cook County Clerk's Office

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Chicago, Illinois

**PROMISSORY NOTE
(Santa Fe Office Building)
Chicago, Illinois**

\$40,000,000.00

January 23, 2006

FOR VALUE RECEIVED, SANTA FE INTERESTS, LLC, a Delaware limited liability company, (hereinafter referred to as "**Maker**"), promises to pay to the order of CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a Connecticut corporation, having its principal address at 280 Trumbull Street, Hartford, Connecticut 06103 (the "**Payee**"), or such other place as the Holder hereof may designate in writing (the legal holder from time to time of this Note, including Payee as the initial holder, hereinafter referred to as "**Holder**"), the principal sum of Forty Million and NO/100 Dollars (\$40,000,000.00), or so much thereof as may be advanced to or for the benefit of Maker by Holder (hereinafter referred to as "**Principal Indebtedness**"), together with interest thereon at an annual rate of five and sixty-eight hundredths percent (5.68%) (the "**Interest Rate**"), in accordance with the provisions hereinafter set forth.

1. Terms of Payment If the date on which Principal Indebtedness is advanced to Maker ("**the Advancement Date**") is not the first day of a calendar month, then on the date on which the Principal Indebtedness is advanced to Maker, Maker shall pay to Holder interest only on the Principal Indebtedness, at the Interest Rate, calculated on the basis of a 365-day year and the number of days from and including the Advancement Date to and including the first day of the first calendar month following the Advancement Date. On the first day of the second calendar month following the Advancement Date (or on the first day of the first calendar month following the date of this Note, if the date of this Note is the first day of a calendar month), and on the first day of each calendar month thereafter (hereinafter called the "**monthly payment dates**") until February 1, 2009, Maker shall pay to Holder an amount equal to all accrued interest under this Note for the calendar month just ended; and commencing on March 1, 2009 and on the first day of each calendar month thereafter until the Maturity Date (as hereinafter defined) the sum of Two Hundred Thirty One Thousand Six Hundred Fifty Three and 45/100 Dollars (\$231,653.45) (hereinafter referred to as "**monthly payments**"), to be applied first to interest on the Principal Indebtedness from time to time outstanding at the Interest Rate and the balance to be applied in reduction of the Principal Indebtedness. The interest component of the monthly payments shall be calculated and applied on the basis of a 360-day year consisting of twelve 30-day months. On February 1, 2016 (the "**Maturity Date**"), Maker shall pay to Holder the entire Principal Indebtedness then remaining unpaid, together with accrued and unpaid interest thereon at the Interest Rate and any other charges due under this Note, the Mortgage (hereinafter defined), and any other documents evidencing or securing or pertaining to the advancement or disbursement of the Principal Indebtedness, including without limitation the Assignment of Rents and Leases, the Environmental Indemnification Agreement and the Guaranty (collectively, the "**Loan Documents**"). The period from and including the date hereof to the Maturity Date will be referred to hereinafter as the "**Term**".

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2. **Prepayment.** Except as specifically provided herein or in the Mortgage, no prepayment of the Principal Indebtedness shall be allowed during the first three (3) loan years (the "**Closed Period**"). Maker, whether or not a debtor in a proceeding under Title 11, United States Code, may prepay the Principal Indebtedness in full, but not in part, on any monthly payment date after the Closed Period, provided Maker gives Holder at least sixty (60) days prior written notice and pays a prepayment fee as described below.

The loan may be prepaid after the Closed Period by the payment by Maker to Holder of a prepayment fee equal to the greater of one percent (1%) of the outstanding principal balance of the Loan or the Yield Maintenance, calculated based upon a determination of Yield Maintenance as defined below.

The loan may be prepaid without payment of a prepayment fee during the last six (6) months of the Term. The loan years shall be consecutive 12-month periods measured from the initial monthly payment date. The foregoing prepayment fee will be due when the loan is prepaid after the Closed Period and prior to the date which is six months prior to the Maturity Date, whether such prepayment is voluntary or results from default, acceleration or any other cause.

In the event of a prepayment during the Closed Period resulting from a default, acceleration or any other reason other than for prepayments in connection with a partial release as provided for under the Mortgage, Maker shall pay to Holder a default prepayment fee calculated as follows:

- (a) 2% of the then existing principal balance of this Note, plus
- (b) Yield Maintenance as defined below.

Notwithstanding any provision herein to the contrary, no prepayment fee shall be due with respect to prepayments from condemnation or insurance proceeds unless there exists an Event of Default at the time of such application.

The "**Yield Maintenance**" is defined as the sum of Present Values on the date of prepayment of each Monthly Interest Shortfall for the remaining Term of the loan.

The "**Monthly Interest Shortfall**" is calculated for each monthly payment date (including the Maturity Date) and is the product of (i) the positive difference, if any, of the Semi Annual Equivalent Rate less the Treasury Yield plus 50 basis points, divided by 12, multiplied by (ii) the scheduled outstanding Principal Indebtedness of the Loan on each monthly payment date (before application of the principal installment due for that month, if any) for each full and partial month remaining in the Term.

The "**Present Value**" is then determined by discounting each Monthly Interest Shortfall at the Treasury Yield divided by twelve plus 50 basis points.

The "**Semi-Annual Equivalent Rate**" for this loan is 5.7476%.

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The "**Treasury Yield**" The "**Treasury Yield**" will be determined by reference to the (i) the yields reported, as of 10:00 A.M. (New York City time) on the second Business Day (hereinafter defined in Section 22) preceding the prepayment date, on the display designated as "**Page PX1**" on the Bloomberg Financial Services Screen (or such other display as may replace Page PX1 on the Bloomberg Financial Services Screen) for actively traded U.S. Treasury securities having a maturity equal to the remaining term as of such prepayment date, or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the prepayment date, in Federal Reserve Statistical Release H.15 (519) (<http://www.federalreserve.gov/releases/H15/update/>) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the remaining term as of such prepayment date. Such implied yield will be determined, if necessary, by converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice. If the remaining Term is equal to or less than 1 year, the Treasury Yield will equal the yield for Treasuries having a 1 year maturity date. If the remaining Term is equal to one of the reported 2, 5, 10 or 30 year maturity dates, then the Treasury Yield will equal the yield for the Treasury with a maturity equaling the remaining Term. If the remaining Term is longer than 1 year but does not equal one of the reported maturity dates, then the Treasury Yield will be determined by straight-line interpolation of the yields of the two Treasuries maturing immediately before and immediately after the expiration of remaining Term.

The aforementioned prepayment fee does not constitute a penalty, but rather represents the reasonable estimate, agreed to between Maker and Payee, of a fair compensation for the loss that may be sustained by Holder due to prepayment of the Principal Indebtedness prior to the Maturity Date. Any prepayment fee required pursuant to the preceding paragraphs shall be paid without prejudice to the right of Holder to collect any of the amounts owing under this Note or the Mortgage or otherwise, to enforce any of its rights or remedies arising out of an Event of Default (hereinafter defined) hereunder.

In no event shall the prepayment fee hereunder exceed the maximum allowed by applicable law.

3. Security. This Note is secured by, among other things, a Mortgage, Assignment of Rents and Leases and Security Agreement and Fixture Filing (hereinafter referred to as the "**Mortgage**") given by Maker to Payee, of even date herewith, constituting a first lien on real estate and a first priority security interest in personal property and any leasehold interest in such personal property and an Assignment of Rents and Leases (hereinafter collectively referred to as the "**Security**"), in the County of Cook, State of Illinois.

4. Location and Medium of Payments. The sums payable under this Note or under the Mortgage shall be paid to Holder at its principal address hereinabove set forth, or at such other place as Holder may from time to time hereafter designate to Maker in writing, in legal tender of the United States of America.

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5. Acceleration of Maturity. At the option of Holder, which may be exercised at any time after one or more of the following events (each being an "**Event of Default**") shall have occurred, the whole of the Principal Indebtedness, together with all interest and other charges due under any of the Loan Documents, shall immediately become due and payable ("**Acceleration of Maturity**"): (a) if any payment of any installment of the Principal Indebtedness, and/or interest or of any other sum due hereunder is not received by Holder by 5:00 P.M. Eastern Time on the 5th Business Day from and after the monthly payment date; (b) if any escrow payment is not received by the escrow holder by 5:00 P.M. local time on the 5th Business Day from and after the date such payment is due; or (c) if a default or an Event of Default shall occur under the Mortgage or any other of the Loan Documents which is not cured within any applicable grace period afforded therein, if any. Without limiting the Acceleration of Maturity available to Payee, Payee shall also have the right to foreclose any liens and security interests securing payment of this Note and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at law or in equity if an Event of Default shall have occurred.

All of the rights, remedies, powers and privileges (together, "**Rights**") of Payee provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Payee to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Note, shall be construed as a waiver of any Event of Default or as a waiver of any Right.

6. Late Charges; Interest Following Event of Default. If any payment due under this Note, the Mortgage or any other Loan Document (other than the outstanding indebtedness due on the Maturity Date), is not paid when due (each such unpaid amount, a "**Delinquent Payment**"), Maker shall pay and Holder shall be entitled to collect a late payment charge ("**Late Charge**") for the initial month during which such payment is not made when due, equal to the lesser of four percent (4%) of such Delinquent Payment or the maximum amount permitted by law. Maker and Holder agree that each Late Charge is a reasonable estimate by Holder and Maker of a fair average compensation for the loss that may be sustained by Holder due to the failure of Maker to make timely payments, and such amount shall be secured hereby. Each such late charge shall be determined without regard to any cure or grace period, and shall be imposed only with respect to the initial date on which a payment becomes a Delinquent Payment. Maker's payment of any Late Charge shall be without prejudice to the right of Holder to collect any other amounts owed by Maker under this Note or any other Loan Document (including, without limitation, Late Charges with respect to Delinquent Payments first falling due in subsequent months), or to declare an Event of Default under this Note or the Mortgage or any other Loan Document.

In addition to any late payment charge which may be due under this Note, Maker shall pay interest on all sums due hereunder at a rate (the "**Default Rate**") equal to the lesser of (i) the Interest Rate plus four percent (4%) per annum, or (ii) the maximum rate

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permitted by law, from and after the first to occur of the following events: if Holder elects to cause the Acceleration of Maturity; if a petition under Title 11, United States Code, shall be filed by or against Maker or if Maker shall seek or consent to the appointment of a receiver or trustee for itself or for any of the Security, file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, make a general assignment for the benefit of creditors, or be unable to pay its debts as they become due; if a court shall enter an order, judgment or decree appointing, with or without the consent of Maker, a receiver or trustee for it or for any of the Security or approving a petition filed against Maker which seeks relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, and any such order, judgment or decree shall remain in force, undischarged or unstayed, sixty days after it is entered; or if all sums due hereunder are not paid on the Maturity Date.

7. Collection and Enforcement Costs. Maker, upon demand, shall pay Holder for all costs and expenses, including without limitation reasonable attorneys' fees and costs through litigation and all appeals and bankruptcy proceedings, paid or incurred by Holder in connection with the collection of any sum due hereunder, or in connection with enforcement of any of Holder's rights or Maker's obligations under this Note, the Mortgage or any of the other Loan Documents.

8. Continuing Liability. The obligation of Maker to pay the Principal Indebtedness, interest and all other sums due hereunder shall continue in full force and effect and in no way be impaired, until the actual payment thereof to Holder, and in case of a sale or transfer of all or any part of the Security, or in case of any further agreement given to secure the payment of this Note, or in case of any agreement or stipulation extending the time or modifying the terms of payment above recited, Maker shall nevertheless continue to be liable on this Note, as extended or modified by any such agreement or stipulation, unless released and discharged in writing by Holder.

9. Joint and Several Liability. If more than one person, corporation, partnership or other entity shall execute this Note, then each person and entity shall be fully liable for all obligations of Maker hereunder, and such obligations shall be joint and several.

10. No Oral Changes; Waivers. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of a change is sought. The provisions of this Note shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the Mortgage and/or the other Loan Documents, and any and all references herein to the Mortgage and/or the Loan Documents shall be deemed to include any such renewals, amendments, extensions, consolidations, or modifications thereof.

Maker and any future endorsers, sureties, and guarantors hereof, jointly and severally, waive presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest, and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default (except notice of default required hereby, if any), or enforcement of the payment of this Note, and they agree

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that the liability of each of them shall be unconditional without regard to the liability of any other party and shall not be in any manner affected by an indulgence, extension of time, renewal, waiver, or modification granted or consented to by the Holder; and Maker and all future endorsers, sureties and guarantors hereof consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by the Holder hereof with respect to the payment or other provisions of this Note, and to the release of the collateral, or any part thereof, with or without substitution, and agree that additional makers, endorsers, guarantors, or sureties may become parties hereto without notice to them or affecting their liability hereunder.

Holder shall not by any act of omission or commission be deemed to waive any of its rights or remedies hereunder unless such waiver be in writing and signed by Holder, and then only to the extent specifically set forth therein; a waiver on one event shall not be construed as continuing or as a bar to or waiver of such right or remedy on a subsequent event. The acceptance by Holder of payment hereunder that is less than payment in full of all amounts due at the time of such payment shall not without the express written consent of Holder: (i) constitute a waiver of the right to exercise any of Holder's remedies at that time or at any subsequent time, (ii) constitute an accord and satisfaction, or (iii) nullify any prior exercise of any remedy.

No failure to cause an Acceleration of Maturity hereof by reason of an Event of Default hereunder, acceptance of a past due installment, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Holder thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by the laws of the State of Illinois; and, to the maximum extent permitted by law, Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

To the maximum extent permitted by law, Maker hereby waives and renounces for itself, its heirs, successors and assigns, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisalment, now provided, or which may hereafter be provided, by the Constitution and laws of the United States of America and of any state thereof, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note.

Each Maker and endorser, guarantor or other party liable hereon, in any litigation arising out of or relating to this Note in which Holder and any of them shall be adverse parties, waives trial by jury and the right to interpose any defense, set-off or counterclaim of any nature or description.

11. Bind and Inure. This Note shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

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12. Applicable Law. The provisions of this Note shall be construed and enforceable in accordance with the laws of the State of Illinois.

If any provision of this Note or the application hereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Note nor the application of such provision to any other person or circumstance shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law, except that if such provision relates to the payment of a monetary sum, then the Holder may, at its option, declare the entire indebtedness evidenced hereby due and payable upon one hundred twenty (120) days prior written notice to Maker as to payment due of any amount of principal and/or interest, and seventy-five (75) days for any other monetary sum that may be due, and provided no Event of Default is then continuing, without prepayment fee or premium.

13. Usury. It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Holder to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section 13 shall control every other covenant and agreement in this Note and the other Loan Documents. It is hereby expressly further agreed that if from any circumstances whatsoever fulfillment of any provision of this Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Note that is in excess of the limit of such validity. In no event shall Maker be bound to pay for the use, forbearance or detention of the money loaned pursuant hereto, interest of more than the current legal limit; the right to demand any such excess being hereby expressly waived by Holder and Holder further agrees that it is Holder's express intent that all excess amounts taken if usury has been charged or collected shall be refunded to Maker with interest, or credited to the outstanding principal balance of the Indebtedness, to the extent as provided under applicable Illinois law, but so as to permit the recovery of the fullest amount otherwise called for under the Loan Documents.

14. Notice. Any notice, request, demand, statement or consent made hereunder shall be in writing signed by the party giving such notice, request, demand, statement or consent, and shall be deemed to have been properly given when either delivered personally, delivered to a reputable overnight delivery service providing a receipt or deposited in the United States Mail, postage prepaid and registered or certified return receipt requested, at the address set forth below, or at such other address within the continental United States of America as may have theretofore been designated in writing. The effective date of any notice given as aforesaid shall be the date of personal service, one (1) Business Day after delivery to such overnight delivery service, or three (3) Business Days after being deposited in the United States Mail, whichever is applicable. For purposes hereof, the addresses are as follows:

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If to Holder:

Connecticut General Life Insurance Company
c/o CIGNA Realty Investors
280 Trumbull Street
Hartford, Connecticut 06103
Attn: Debt Asset Management, H-11-G

With a copy to:

CIGNA Corporation
280 Trumbull Street
Hartford, Connecticut 06103
Attn: Real Estate Law, H-16-C

If to Make::

SANTA FE INTERESTS, LLC
c/o University of Notre Dame
Investment Office
900 Grace Hall
Notre Dame, IN 46556-5612
Attn: Scott Malpass

With a copy to:

University of Notre Dame
203 Main Building
Notre Dame, IN 46556
Attn: Carol Kaesebier, Esq.

With a courtesy copy to:

Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, IL 60606-4637
Attn: John J. Gearen

Notwithstanding the foregoing agreement to provide a courtesy copy to other parties on behalf of Maker, such copies shall be a courtesy copy only, and failure to provide such courtesy copies shall have absolutely no effect or entitle Maker to any remedy whatsoever. Any notice duly given to Maker shall be effective whether or not the courtesy copy was given to Maker's attorneys.

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15. Nonrecourse. Except as hereinafter in this Section 15 and in Section 40 of the Mortgage, Maker shall not be personally liable for the payment of any sums due hereunder or the performance of any obligations of Maker hereunder or under the other Loan Documents. No judgment for the repayment of the Principal Indebtedness or interest thereon will be enforced against the Maker personally or any property of the Maker other than the Security and any other security furnished under the Loan Documents in any action to foreclose the Mortgage or to otherwise realize upon any security furnished under the Loan Documents or to collect any amount payable hereunder. Notwithstanding the foregoing:

(a) Nothing herein contained shall be construed as prohibiting Holder from exercising any and all remedies which the Loan Documents permit, including the right to bring actions or proceedings against Maker and to enter a judgment against Maker, so long as the exercise of any remedy does not extend to execution against or recovery out of any property of Maker other than the security furnished under the Loan Documents;

(b) Maker shall be fully and personally liable for (i) misapplying any condemnation awards or insurance awards attributable to the Security, to the full extent of such awards so misapplied, (ii) misapplying any security deposits attributable to the Security, to the full extent of such deposits so misapplied, (iii) collecting any rents in advance in violation of any covenant contained in the Loan Documents, to the full extent of such rents so collected in advance, (iv) committing fraud, misrepresentation or waste in connection with the operation of the Security or the making of the Loan evidenced hereby, to the full extent of any loss, damage, expense or costs (including reasonable attorneys' fees) incurred by Holder resulting from such fraud, misrepresentation or waste, and to the extent of any remedies available to Holder at law or in equity, (v) any debt service on any indebtedness related to the Security, operating and maintenance expenses, insurance premiums, deposits into a reserve for replacements or other sums required by the Loan Documents, but only to the extent of any gross revenues from the Security during the period beginning twelve (12) months prior to a notice of acceleration to Maker through the date of foreclosure or deed in lieu of foreclosure that were available to pay such expenses but were not so used; (vi) failing to maintain the levels, coverages and maximum deductibles of insurance required under the Loan Documents, to the extent of the loss incurred as a result of such uninsured casualty or uninsured liability, including without limitation any insurance proceeds that would have been available had such levels of insurance been maintained; and (vii) the timely payment of all real estate taxes, assessments, or other lienable impositions that are due with respect to the Security and at such time if due and payable under the Loan Documents, the timely payment of all real estate taxes and any and all other amounts due and payable under the Tax Escrow Agreement, if any, to the full extent of such taxes, assessments and other lienable impositions including without limitation any interest, penalties or other charges assessed as a result of nonpayment of any of the foregoing when due.

(c) There shall be no limitation, in any event of Maker's personal liability under, and the exercise of any of Holder's rights under any indemnity from Maker to Holder including but not limited to, the Environmental Indemnification Agreement of even date herewith from Maker to Payee with regard to the Security except as may be expressly set forth therein;

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(d) There shall be no limitation on or prejudice to the rights of Holder to proceed against any entity or person whatsoever, including Maker, with respect to the enforcement of any guarantees of the Principal Indebtedness or other sums due hereunder or under any of the other Loan Documents or any part thereof, any master leases, or any similar rights of payment except with respect to Holder's rights to proceed against the guarantors named in the Environmental Indemnification Agreement and the Guaranty which are subject to the express terms of the Environmental Indemnification Agreement and the Guaranty.

16. Time of the Essence. Time is of the essence in this Note and the other Loan Documents.

17. Attorneys' Fees. Any reference to "**attorney fees**" in this document includes but is not limited to both the fees, charges and costs incurred by Holder through its retention of outside legal counsel and the allocable fees, costs and charges for services rendered by Holder's in-house counsel. Any reference to "attorney fees" shall also include but not be limited to those attorneys or legal fees, costs and charges incurred by Holder in the collection of any Principal Indebtedness, the enforcement of any obligations hereunder, the protection of the Security, the foreclosure of the Mortgage, the sale of the Security, the defense of actions arising hereunder and the collection, protection or setoff of any claim the Holder may have in a proceeding under Title 11, United States Code. Attorneys fees provided for hereunder shall accrue whether or not Holder has provided notice of an Event of Default or of an intention to exercise its remedies for such Event of Default.

18. Waiver of Trial of Jury. TO THE MAXIMUM EXTENT NOW OR HEREAFTER PERMITTED BY LAW, THE MAKER AND THE HOLDER HEREBY IRREVOCABLY AS AN INDEPENDENT COVENANT WAIVE A JURY TRIAL AND THE RIGHT THERETO IN ANY ACTION OR PROCEEDING BETWEEN THE MAKER AND THE HOLDER, WHETHER HEREUNDER OR UNDER THE TERMS AND CONDITIONS OF ANY OF THE LOAN DOCUMENTS.

19. Wire Transfer. Payment by Maker to Holder of the entire indebtedness evidenced by the Note and the other Loan Documents, whether by prepayment, at the Maturity Date, by Acceleration of Maturity, or otherwise, shall be deemed made on a designated Business Day only if such funds are both sent by a federal wire transfer of immediately available funds and are received by Holder on such designated Business Day no later than 2:00 p.m. local time in the State of Connecticut. Funds not so received shall continue to bear interest at the applicable rate until payment is received in compliance with the foregoing.

20. Commercial Purpose. Maker warrants that the Loan is being made solely to acquire or carry on a business or commercial enterprise, and Maker is a business or commercial organization. Maker further warrants that all of the proceeds of this Note shall be used for business purposes and stipulates that the Loan shall be construed for all purposes as a business loan made for business purposes, and is made for other than personal, family, household or agricultural purposes. The Loan is secured by a mortgage on real estate.

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21. Business Day. The term "**Business Day**" or "**Business Days**" as used in this Note shall mean any calendar day other than Saturday, Sunday or a federal holiday on which the U.S. Postal Service offices are closed for business in one or all of Chicago, Illinois, Itasca, Illinois or Hartford, Connecticut.

(SIGNATURE PAGE FOLLOWS)



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IN WITNESS WHEREOF, Maker has duly executed this Note as a sealed instrument as of the day and year first above written.

MAKER:

SANTA FE INTERESTS, LLC,
a Delaware limited liability company

By: The University of Notre Dame du Lac, an
Indiana not-for-profit corporation, its sole
member

By: *Scott C. Malpass*
Name: Scott C. Malpass
Title: Vice President & Chief Investment Officer

By: *Carol C. Kaesebier*
Name: Carol C. Kaesebier
Title: Vice President & General Counsel

Property of Cook County Clerk's Office

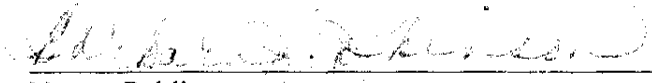
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ACKNOWLEDGMENT

STATE OF Indiana)
) SS
 COUNTY OF Saint Joseph)

I, Barbara J. Robinson, a Notary Public in and for and residing in said County and State, do hereby certify that Scott C. Malpass, the Vice President & Chief Investment Officer of The University of Notre Dame du Lac, which is the sole member of Santa Fe Interests, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19th day of January, 2006.



 Notary Public

My Commission Expires:

August 11, 2010

BARBARA J. ROBINSON
 Notary Public, State of Indiana
 County of St. Joseph
 My Commission Expires Aug. 11, 2010

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ACKNOWLEDGMENT

STATE OF Indiana)
) SS
 COUNTY OF Saint Joseph)

I, Barbara J. Robinson, a Notary Public in and for and residing in said County and State, do hereby certify that Carol C. Kaesebier, the Vice President & General Counsel of The University of Notre Dame du Lac, which is the sole member of Santa Fe Interests, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19th day of January, 2006.



Notary Public

My Commission Expires:

August 11, 2010

BARBARA J. ROBINSON
 Notary Public, State of Indiana
 County of St. Joseph
 My Commission Expires Aug. 11, 2010

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EXHIBIT B

Legal Description

THE SOUTH 15 FEET OF LOT 5 AND SUB LOTS 1 AND 2 OF LOT 8 AND ALL OF LOT 9 IN BLOCK 5 IN FRACTIONAL SECTION 15, ADDITION TO CHICAGO IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 224 SOUTH MICHIGAN AVENUE, CHICAGO, ILLINOIS

PIN: 17-15-105-013-0000

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EXHIBIT C

Insurance Requirements

All such policies of insurance shall be issued by companies acceptable to Mortgagee. Mortgagee will require that Mortgagee be named an additional insured under all liability policies, and mortgagee and loss payee on all other such policies except those pertaining to general and excess liability coverage. The following are general requirements for insurance coverage with respect to the Security as of the date of this Agreement. Mortgagee reserves the right to amend these requirement at any time prior to the Closing Date based upon the results of underwriting the Security, changes in underwriting criteria or changes in market conditions:

- Rating:** A-/ X or better in accordance with the latest Best Insurance Guide.
- Deductibles:**
- | | |
|--------------------------------|---------------------------------------|
| Property insurance | Up to \$25,000 |
| Earthquake (except California) | Up to \$50,000 |
| Earthquake (California) | Up to 5% of the value of the Security |
- All-Risk:** The property insurance must be an All-Risk form with 100% Replacement Cost basis of valuation
- Loss of Rents:** Business Interruption insurance or Loss of Rents in an amount sufficient to cover any loss of rents, including any expenses payable by tenant, for a 12 month period
- Mortgagee:** Mortgagee clause naming Mortgagee as Mortgagee/Loss Payee. Mortgagee should also be named as Additional Insured under all liability coverages.
- Mortgagee Clause:** The mortgagee clause must provide a minimum of 30 days prior written notice in the event of cancellation of the policy. If an ACCORD 25 form is given as evidence of liability coverage, the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" must be stricken from the clause on the certificate.
- Location:** The policy must indicate the exact location of the Security.
- Named Insured:** The named insured must be the Mortgagor under the Loan Documents.
- Blanket Policies:** Mortgagor must provide the signed Statement of Values that was

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submitted to the carrier for rating purposes.

Waiver of Subrogation:	Policies must contain a waiver of subrogation in favor of the mortgagee												
Demolition:	Mortgagor must provide a Demolition and Increased Costs of Construction endorsement.												
Earthquake:	This coverage will be determined prior to Closing by Mortgagee's Engineering Unit. If required at Closing it must be renewed annually.												
Windstorm:	This coverage must be provided at Closing.												
Boiler & Machinery:	If property damage resulting from a breakdown, explosion, etc. of the boiler and/or machinery is excluded from the property coverage, the Boiler and Machinery coverage must be in an amount equal to the property coverage. If resulting damages are not excluded, coverage must be in an amount sufficient to cover the replacement cost of the equipment.												
Flood Insurance:	Flood insurance is required if the security is located in a flood plain, according to the Federal Emergency Management Agency. If this insurance is required at Closing, it must be renewed annually. If property is in Flood Zone A (non-coastal) or Flood Zone V (coastal), we require flood insurance. Mortgagee does not require flood insurance for Flood Zone B (100 - 500 flood plain), Flood Zone C (minimal flood expectation), Flood Zone X (outside the 100 year flood plain) or Flood Zone D (not determined).												
Worker's Comp:	As required by law, statutory limits.												
Environmental:	If required, must cover preexisting and undetected conditions and contamination during the policy period. Must include asbestos.												
Liability Insurance:	Comprehensive General Liability Insurance must be carried in a minimum amount of \$1,000,000.												
Excess Liability:	The excess liability minimums are: <table> <tr> <td>Suburban Office Buildings(less than 7 stories)</td> <td>\$ 10,000,000</td> </tr> <tr> <td>Shopping Centers/High Rise Apartments/Office</td> <td>\$ 25,000,000</td> </tr> <tr> <td>Small Apartments(less than 300 units)</td> <td>\$ 10,000,000</td> </tr> <tr> <td>Strip Shopping Centers</td> <td>\$ 5,000,000</td> </tr> <tr> <td>Hotels</td> <td>\$100,000,000</td> </tr> <tr> <td>Industrial Buildings</td> <td>\$ 10,000,000</td> </tr> </table>	Suburban Office Buildings(less than 7 stories)	\$ 10,000,000	Shopping Centers/High Rise Apartments/Office	\$ 25,000,000	Small Apartments(less than 300 units)	\$ 10,000,000	Strip Shopping Centers	\$ 5,000,000	Hotels	\$100,000,000	Industrial Buildings	\$ 10,000,000
Suburban Office Buildings(less than 7 stories)	\$ 10,000,000												
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Small Apartments(less than 300 units)	\$ 10,000,000												
Strip Shopping Centers	\$ 5,000,000												
Hotels	\$100,000,000												
Industrial Buildings	\$ 10,000,000												

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- Builder's Risk** During any period of restoration, construction or alterations, Mortgagor shall provide a policy or policies of builder's "all risk" insurance in an amount not less than the full insurable value of the Security.
- Additional Insured:** Mortgagee must be named as an Additional Insured
- Evidence of Insurance:** ACCORD 27 and ACCORD 25S forms, are acceptable as temporary evidence of coverage for Closing. A certified copy of the original policy must be provided to Mortgagee within 30 days following the Closing Date.
- Terrorism Coverage:** Each policy shall contain no exclusion for acts of terrorism and shall include coverages, limits, deductibles and amounts relating to acts of terrorism acceptable to Mortgagee in its sole discretion.

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