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Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/22/2006 07:46 AM Pg: 1 of 74

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V-LAND SCHAUMBURG LLC, an Illinois limited liability company, as Mortgagor
(Mortgagor)

to

AIG MORTGAGE CAPITAL, LLC, a Delaware limited liability company, as Mortgagee
(Mortgagee)

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

This document serves as a fixture filing under the Uniform Commercial Code.
Mortgagor's Organizational Identification Number

939595

Dated: May 18, 2006

Property Location: 950-1010 North Meacham Road, Schaumburg, Illinois

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

Greenberg Traurig LLP
2450 Colorado Avenue, Suite 400E
Santa Monica, California
Attention: David Fairman

Box 400-CTCC

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MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**"), made as of May, 18 2006, by **V-LAND SCHAUMBURG LLC**, an Illinois limited liability company, having an office at c/o V-Land Corporation, 321 North Clark Street, Suite 2440, Chicago, Illinois 60610 ("**Mortgagor**" or "**Borrower**") to **AIG MORTGAGE CAPITAL, LLC**, a Delaware limited liability company (together with its successors and assigns, hereinafter referred to as "**Mortgagee**" or "**Lender**"), having an address at 1999 Avenue of the Stars, 38th Floor, Los Angeles, California 90067.

RECITALS

WHEREAS, Mortgagee is making a secured loan to Mortgagor in the aggregate original principal amount of SEVEN MILLION SIX HUNDRED THOUSAND AND 00/100 (\$7,600,000.00) (the "**Loan**"). The Loan is evidenced by a Note dated as of the date hereof made by Mortgagor to Mortgagee in such principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "**Note**").

WHEREAS, To secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other documents evidencing, securing or executed in connection with the Loan (the Note, this Mortgage and such other documents, as any of the same may, from time to time, be modified, amended or supplemented, being hereinafter collectively referred to as the "**Loan Documents**"), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Mortgagor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "**Bankruptcy Code**"), and (ii) the costs and expenses of enforcing any provision of any Loan Document (all such sums being hereinafter collectively referred to as the "**Debt**"), Mortgagor has given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated and by these presents does hereby give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Mortgagee, **WITH POWER OF SALE**, the land described in Exhibit A (the "**Premises**"), and the buildings, structures, fixtures and other improvements now or hereafter located thereon (the "**Improvements**");

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

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements; and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof; and all the estates, rights, titles, interests,

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dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory, materials, supplies and other articles of personal property and accessions thereof, renewals and replacements thereof and substitutions therefor, and other property of every kind and nature, tangible or intangible, owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "Equipment"), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interest" as defined in the Uniform Commercial Code, as in effect in the State where the Property is located (the "UCC"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(d) all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises or the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "Leases") and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or for the benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or the Improvements, or rendering of services by Mortgagor or any of its agents or employees, and proceeds, if any, from business interruption or other loss of income insurance (hereinafter collectively referred to as the "Rents"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

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

(g) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Property) and causes of action that now or hereafter relate to, are derived from or are used in connection with the Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "*Intangibles*"); and

(h) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Mortgagor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Mortgage shall automatically extend to all Rents acquired by the Mortgagor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

TO HAVE AND TO HOLD the Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever;

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

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

PART I - GENERAL PROVISIONS

1. **Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Mortgagor shall pay the Debt at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to (or shall cause the tenants under the Leases to) insure, repair, maintain and restore damage to the Property, pay Taxes and Other Charges, and comply with Legal Requirements, in accordance with this

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Mortgage, and (ii) agrees that, subject to the terms of the Leases, the Proceeds of Insurance and Awards for Condemnation shall be settled, held and applied in accordance with this Mortgage.

2. Reserves.

2.1 Intentionally Deleted.

2.2 Taxes. (a) Mortgagor shall pay to Mortgagee on each Payment Date (i) one-twelfth (1/12th) of the Taxes that Mortgagee estimates will be payable during the next twelve (12) months in order to accumulate with Mortgagee sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates. Such amounts will be transferred by Mortgagee to a Subaccount (the "**Tax Subaccount**"). Provided that no Default or Event of Default has occurred and is continuing, Mortgagee will (a) apply funds in the Tax Subaccount to payments of Taxes required to be made by Mortgagor pursuant to Section 4.2 hereof, provided that Mortgagor has promptly supplied Mortgagee with notices of all Taxes due, or (b) reimburse Mortgagor for such amounts upon presentation of evidence of payment; subject, however, to Mortgagor's right to contest Taxes in accordance with Section 4.2 hereof. In making any payment relating to Taxes, Mortgagee may do so according to any bill, statement or estimate procured from the appropriate public office, without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If Mortgagee determines in its reasonable judgment that the funds in the Tax Subaccount will be insufficient to pay (or in excess of) the Taxes next coming due, Mortgagee may increase (or decrease) the monthly contribution required to be made by Mortgagor to the Tax Subaccount. Funding of the Tax Subaccount shall commence on the date of this Mortgage in the amount attributable to that portion of the Property leased to TMG Illinois, LLC (hereinafter in this Section 2 "**TMG**") and Weber-Stephens Products, Co. (hereinafter in this Section 2 "**Weber**"). With respect to Taxes attributable to that portion of the Property leased to TCF National Bank (hereinafter in this Section 2 "**TCF**"), the Tax Subaccount shall not be funded in such amount unless and until required pursuant to the provisions of subsection (b) below.

(b) Springing Reserves. Notwithstanding any other provision of this Mortgage, provided that no Event of Default shall have occurred and be continuing, for so long as Borrower provides Lender with evidence reasonably satisfactory to Lender that (i) TCF (or a replacement tenant(s) acceptable to Lender in its commercially reasonable discretion) is required, pursuant to its lease, to pay all Taxes and (ii) that payment of all Taxes due with respect to the Property leased by TCF (the "**TCF Premises**") has been made prior to the date each such payment becomes delinquent, no escrows for Taxes attributable to the TCF Premises shall be required hereunder for so long as (A) TCF (or a replacement tenant(s) acceptable to Lender in its commercially reasonable discretion) is a tenant of the entire premises leased by such tenant as of the date hereof, and (B) Borrower is enforcing all such tenant's (or said replacement tenant(s)) obligations under its Lease.

2.3 Capital Expense Reserves. (a) Mortgagor shall pay to Mortgagee on each Payment Date an amount initially equal to one-twelfth (1/12th) of the product obtained by multiplying \$0.25 by the aggregate number of rentable square feet of space in the Property. Mortgagee will transfer such amounts into a Subaccount (the "**Capital Reserve Subaccount**").

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Additionally, upon thirty (30) days' prior notice to Mortgagor, Mortgagee may reassess the amount of the monthly payment required under this Section 2.3 from time to time in its reasonable discretion (based upon its then current underwriting standards). Provided that no Default or Event of Default has occurred and is continuing, Mortgagee shall disburse funds held in the Capital Reserve Subaccount to Mortgagor, within fifteen (15) days after the delivery by Mortgagor to Mortgagee of a request therefor (but not more often than once per month), in increments of at least \$5,000 provided that (i) such disbursement is for an Approved Capital Expense; (ii) Mortgagee shall have (if it desires) verified (by an inspection conducted at Mortgagor's expense) performance of the work associated with such Approved Capital Expense; and (iii) the request for disbursement is accompanied by (A) an Officer's Certificate certifying (1) that such funds will be used to pay or reimburse Mortgagor for Approved Capital Expenses and a description thereof, (2) that all outstanding trade payables (other than those to be paid from the requested disbursement or those constituting Permitted Indebtedness) have been paid in full, (3) that the same has not been the subject of a previous disbursement, and (4) that all previous disbursements have been used to pay the previously identified Approved Capital Expenses, and (B) lien waivers or other evidence of payment satisfactory to Mortgagee, (C) at Mortgagee's option, a title search for the Property indicating that the Property is free from all Liens, claims and other encumbrances not previously approved by Mortgagee and (D) such other evidence as Mortgagee shall reasonably request that the Approved Capital Expenses at the Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Mortgagor. Any such disbursement of more than \$10,000 to pay (rather than reimburse) Approved Capital Expenses may, at Mortgagee's option, be made by joint check payable to Mortgagor and the payee on such Approved Capital Expenses. The Capital Reserve Subaccount shall not be funded unless and until required pursuant to the provisions of subsection (b) below.

(b) Springing Reserves. Notwithstanding any other provision of this Mortgage, and provided that no Event of Default shall have occurred and be continuing, for so long as Borrower provides Lender with evidence reasonably satisfactory to Lender that (i) TCF, TMG or Weber (or replacement tenant(s) acceptable to Lender in its commercially reasonable discretion) is required, pursuant to its respective lease, to pay all Capital Expenses and (ii) payment of all Capital Expenses due with respect to the Property leased by such tenant has been made prior to the date each such payment becomes delinquent, no escrows for Capital Expenses shall be required hereunder for so long as (A) such tenant (or a replacement tenant(s) acceptable to Lender in its commercially reasonable discretion) is a tenant of the entire premises leased by TCF, TMG or Weber as of the date hereof, and (B) Borrower is enforcing all the obligations of such tenant (or said replacement tenant(s)) under its Lease. Provided that if any of the foregoing requirements are not met with respect to any such tenant, Borrower shall be required to immediately commence funding the Capital Reserve Subaccount in the amount of Capital Expenses attributable to such tenant under its Lease upon notice by Lender.

2.4 Intentionally Deleted.

2.5 Operating Expense Subaccount. During a Cash Management Period, on each Payment Date, a portion of the Rents that have been deposited into the Deposit Account during the immediately preceding Interest Period in an amount equal to the monthly amount set forth in the Approved Operating Budget for the following month as being necessary for payment of

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Approved Operating Expenses at the Property for such month, shall be transferred into a Subaccount for the payment of Approved Operating Expenses (the "**Operating Expense Subaccount**"). Provided no Default or Event of Default has occurred and is continuing, Mortgagee shall disburse funds held in the Operating Expense Subaccount to Mortgagor, within five (5) days after delivery by Mortgagor to Mortgagee of a request therefor (but not more often than once per month), provided (i) such disbursement is for an Approved Operating Expense; and (ii) such disbursement is accompanied by (A) an Officer's Certificate certifying (1) that such funds will be used to pay Approved Operating Expenses and a description thereof, (2) that all outstanding trade payables (other than those to be paid from the requested disbursement or those constituting Permitted Indebtedness) have been paid in full, (3) that the same has not been the subject of a previous disbursement, and (4) that all previous disbursements have been or will be used to pay the previously identified Approved Operating Expenses, and (B) reasonably detailed documentation satisfactory to Mortgagee as to the amount, necessity and purpose therefor.

2.6 **Casualty/Condemnation Subaccount.** Mortgagor shall pay, or cause to be paid, to Mortgagee all Proceeds or Awards due to any Casualty or Condemnation to be transferred to a Subaccount (the "**Casualty Condemnation Subaccount**") in accordance with the provisions of Section 6 hereof. All amounts in the Casualty/Condemnation Subaccount shall be disbursed in accordance with the provisions of Article 7 hereof.

2.7 **Security Deposits.** Mortgagor shall keep and hold all security deposits under Leases in accordance with applicable Legal Requirements (and in the case of a letter of credit, assigned with full power of attorney and executed sight drafts to Mortgagee) and shall not commingle such security deposits with any other funds of Mortgagor (such account, the "**Security Deposit Account**"). During a Cash Management Period, Mortgagor shall, upon Mortgagee's request, if permitted by applicable Legal Requirements, turn over to Mortgagee the security deposits (and any interest theretofore earned thereon) under Leases, to be held by Mortgagee in a Subaccount (the "**Security Deposit Subaccount**") subject to the terms of the Leases. Security deposits held in the Security Deposit Subaccount will be released by Mortgagee upon notice from Mortgagor together with such evidence as Mortgagee may reasonably request that such security deposit is required to be returned to a tenant pursuant to the terms of a Lease or may be applied as Rent pursuant to the rights of Mortgagor under the applicable Lease. Any letter of credit or other instrument that Mortgagor receives in lieu of a cash security deposit under any Lease entered into after the date hereof shall (i) be maintained in full force and effect in the full amount unless replaced by a cash deposit as hereinabove described and (ii) if permitted pursuant to any Legal Requirements, name Mortgagee as payee or mortgagor thereunder (or at Mortgagee's option, be fully assignable to Mortgagee).

2.8 **Cash Collateral Subaccount.** If a Cash Management Period shall have commenced, then on the immediately succeeding Payment Date and on each Payment Date thereafter during the continuance of such Cash Management Period, all Available Cash shall be paid to Mortgagee, which amounts shall be transferred by Mortgagee into a Subaccount (the "**Cash Collateral Subaccount**") as cash collateral for the Debt. Any funds in the Cash Collateral Account and not previously disbursed or applied shall be promptly disbursed to Mortgagor upon the termination of such Cash Management Period following written request by Borrower therefor. Mortgagee shall have the right, but not the obligation, at any time during the continuance of an Event of Default, in its sole and absolute discretion to apply all sums then on

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deposit in the Cash Collateral Subaccount to the Debt, in such order and in such manner as Mortgagee shall elect in its sole and absolute discretion, including to make a prepayment of Principal (together with the Yield Maintenance Premium applicable thereto). Additionally, Mortgagee shall have the right, but not the obligation, at any time subsequent to the second Calculation Date following the commencement of a DSCR Cash Management Period (whether or not an Event of Default is then continuing), in its sole and absolute discretion to apply all sums then on deposit in the Cash Collateral Subaccount towards a partial Defeasance of the Loan (together with any Defeasance costs associated therewith), and Mortgagor shall execute such documents and take such other actions necessary to satisfy the Defeasance requirements set forth in the Note hereof.

2.9 **Grant of Security Interest; Application of Funds.** As security for payment of the Debt and the performance by Mortgagor of all other terms, conditions and provisions of the Loan Documents, Mortgagor hereby pledges and assigns to Mortgagee, and grants to Mortgagee a security interest in, all Mortgagor's right, title and interest in and to all Rents and in and to all payments to or monies held in the Clearing Account, the Deposit Account, all Subaccounts created pursuant to this Mortgage (collectively, the "**Accounts**"). Mortgagor hereby grants to Mortgagee a continuing security interest in, and agrees to hold in trust for the benefit of Mortgagee, all Rents in its possession prior to the (i) payment of such Rents to Mortgagee or (ii) deposit of such Rents into the Deposit Account. Mortgagor shall not, without obtaining the prior written consent of Mortgagee, further pledge, assign or grant any security interest in any Account, or permit any Lien to attach thereto or any levy to be made thereon, or any UCC Financing Statements, except those naming Mortgagee as the secured party, to be filed with respect thereto. This Mortgage is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default, subject to the terms hereof, Mortgagee may apply any sums in any Account in any order and in any manner as Mortgagee shall elect in Mortgagee's discretion without seeking the appointment of a receiver and without adversely affecting the rights of Mortgagee to foreclose the Lien of the Mortgage or exercise its other rights under the Loan Documents. Accounts shall not constitute trust funds and may be commingled with other monies held by Mortgagee. All interest which accrues on the funds in any Account (other than the Tax Subaccount) shall accrue for the benefit of Mortgagor and shall be taxable to Mortgagor and shall be added to and disbursed in the same manner and under the same conditions as the principal sum on which said interest accrued. Upon repayment in full of the Debt or a defeasance of the Debt, all remaining funds in the Subaccounts, if any, shall be promptly disbursed to Mortgagor.

2.10 **Cash Management Arrangements.** Mortgagor shall cause all Rents to be transmitted directly by non-residential tenants of the Property into an Eligible Account (the "**Clearing Account**") maintained by Mortgagor at a local bank selected by Mortgagor, which shall at all times be an Eligible Institution (the "**Clearing Bank**") as more fully described in the Clearing Account Agreement. Without in any way limiting the foregoing, all Rents received by Mortgagor shall be deposited into the Clearing Account within one (1) Business Day of receipt. Funds deposited into the Clearing Account shall be swept by the Clearing Bank on a daily basis into Mortgagor's operating account at the Clearing Bank, unless a Cash Management Period is continuing, in which event such funds shall be swept on a daily basis into an Eligible Account at the Deposit Bank controlled by Mortgagee (the "**Deposit Account**") and applied and disbursed

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in accordance with this Mortgage. Funds in the Deposit Account shall be invested at Mortgagee's discretion only in Permitted Investments. Mortgagee will also establish subaccounts of the Deposit Account which shall at all times be Eligible Accounts (and may be ledger or book entry accounts and not actual accounts) (such subaccounts are referred to herein as "*Subaccounts*"). The Deposit Account and any Subaccount will be under the sole control and dominion of Mortgagee, and Mortgagor shall have no right of withdrawal therefrom. Mortgagor shall pay for all expenses of opening and maintaining all of the above accounts. Following written request by Borrower after the expiration of a Cash Management Period, Mortgagee shall promptly forward a written notice to the Clearing Bank with a copy to Mortgagor revoking any prior direction from Mortgagee to the Clearing Bank to sweep funds deposited into the Clearing Account into the Deposit Account and directing the Clearing Bank to thereafter sweep such deposited funds into the Mortgagor's operating account until further notice or the occurrence of a Cash Management Period.

2.11 Property Cash Flow Allocation.

(a) During any Cash Management Period, all Rents deposited into the Deposit Account during the immediately preceding Interest Period shall be applied on each Payment Date as follows in the following order of priority: (i) First, to make payments into the Tax Subaccount as required under Section 2.2 hereof; (ii) Second, to pay the monthly portion of the fees charged by the Deposit Bank in accordance with the Deposit Account Agreement; (iii) Third, to Mortgagee to pay the Monthly Debt Service Payment Amount due on such Payment Date (plus, if applicable, interest at the Default Rate and all other amounts, other than those described under other clauses of this Section 2.11, then due to Mortgagee under the Loan Documents); (iv) Fourth, to make payments into the Capital Reserve Subaccount as required under Section 2.3 hereof; (v) (intentionally deleted); (vi) Sixth, to make payments for Approved Operating Expenses as required under Section 2.5 hereof; (vii) Seventh, after the consummation of a Secondary Market Transaction, to pay the pro rata portion of the expenses described herein; (viii) Eighth, to make payments in an amount equal to all remaining Available Cash on such Payment Date into the Cash Collateral Subaccount in accordance with Section 2.8 hereof; and (ix) Lastly payments to Mortgagor of any remaining amounts.

(b) The failure of Mortgagor to make all of the payments required under clauses (i) through (viii) of Section 2.11(a) above in full on each Payment Date shall constitute an Event of Default under this Mortgage; provided, however, if adequate funds are available in the Deposit Account for such payments, the failure by the Deposit Bank to allocate such funds into the appropriate Subaccounts shall not constitute an Event of Default.

Notwithstanding anything to the contrary contained in this Section, after the occurrence of an Event of Default, Mortgagee may apply all Rents deposited into the Deposit Account and other proceeds of repayment in such order and in such manner as Mortgagee shall elect.

3. Representations And Warranties. Mortgagor represents and warrants to Mortgagee as of the date hereof that, except to the extent (if any) disclosed on Schedule 3 hereto with reference to a specific Section of this Section 3:

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- (a) **Organization; Special Purpose.** Mortgagor has been duly organized and is validly existing and in good standing under the laws of the state of its formation, with requisite power and authority, and all rights, licenses, permits and authorizations, governmental or otherwise, necessary to own its properties and to transact the business in which it is now engaged. Each of Mortgagor is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, business and operations. Mortgagor is a Special Purpose Entity.
- (b) **Proceedings; Enforceability.** Mortgagor has taken all necessary action to authorize the execution, delivery and performance of the Loan Documents. The Loan Documents have been duly executed and delivered by Mortgagor and constitute legal, valid and binding obligations of Mortgagor enforceable against Mortgagor in accordance with their respective terms subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and general principles of equity. The Loan Documents are not subject to, and Mortgagor has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury. No exercise of any of the terms of the Loan Documents, or any right thereunder, will render any Loan Document unenforceable.
- (c) **No Conflicts.** The execution, delivery and performance of the Loan Documents by Mortgagor and the transactions contemplated hereby will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the property of Mortgagor pursuant to the terms of, any agreement or instrument to which Mortgagor is a party or by which its property is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Mortgagor or any of its properties. Mortgagor's rights under the Licenses will not be adversely affected by the execution and delivery of the Loan Documents, Mortgagor's performance thereunder, the recordation of the Mortgage, or the exercise of any remedies by Mortgagee. Any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Mortgagor of the Loan Documents has been obtained and is in full force and effect.
- (d) **Litigation.** There are no actions, suits or other proceedings at law or in equity by or before any Governmental Authority now pending or threatened against or affecting Mortgagor, or the Property, which, if adversely determined, might materially adversely affect the condition (financial or otherwise) or business of Mortgagor (including the ability of Mortgagor to carry out its obligations under the Loan Documents), or the use, value, condition or ownership of the Property.
- (e) **Agreements.** Mortgagor is not a party to any agreement or instrument or subject to any restriction which might have a materially adverse affect on Mortgagor or the Property, or Mortgagor's business, properties, operations or condition, financial or otherwise. Mortgagor is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Property is bound.

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(f) **Title.** Mortgagor has good, marketable and indefeasible title in fee to the real property and good title to the balance of the Property, free and clear of all Liens except the Permitted Encumbrances. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Property to Mortgagor have been paid. The Mortgage when properly recorded in the appropriate records, together with any UCC Financing Statements required to be filed in connection therewith, will create (i) a valid, perfected first priority lien on the Mortgagor's interest in the Property and (ii) valid and perfected first priority security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. All Mortgage, recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents have been paid. The Permitted Encumbrances do not materially adversely affect the value, operation or use of the Property, or Mortgagor's ability to repay the Loan. No Condemnation or other proceeding has been commenced or, to Mortgagor's best knowledge, is contemplated with respect to all or part of the Property or for the relocation of roadways providing access to the Property. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents. There are no outstanding options to purchase or rights of first refusal affecting all or any portion of the Property. The survey for the Property delivered to Mortgagee does not fail to reflect any material matter affecting the Property or the title thereto. All of the Improvements included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvement on an adjoining property encroaches upon the Property, and no easement or other encumbrance upon the Property encroaches upon any of the Improvements, except those insured against by the Title Insurance Policy. Each parcel comprising the Property is a separate tax lot and is not a portion of any other tax lot that is not a part of the Property. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, or, to the actual knowledge of Mortgagor, any contemplated improvements to the Property that may result in such special or other assessments. With respect to the Title Insurance Policy, (i) the premium with respect thereto has been paid in full (or will be paid in full with a portion of the proceeds of the Loan), (ii) the Title Insurance Policy is issued by a title insurance company licensed to issue policies in the State, (iii) no claims have been made under the Title Insurance Policy and no other action has been taken that would materially impair the Title Insurance Policy and (vi) the Title Insurance Policy contains no exclusions for any of the following circumstances, or it affirmatively insures Mortgagee against losses relating to any of the following circumstances (unless the Property is located in a jurisdiction where such affirmative insurance is not available): (a) that the Property has access to a public road and (b) that the area shown on the survey delivered to Mortgagee in connection with the Loan is the same as the property legally described in the Mortgage.

(g) **No Bankruptcy Filing.** Mortgagor is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "**Bankruptcy Proceeding**"), and Mortgagor has no knowledge of any Person contemplating the filing of any such petition against it. In addition,

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neither Mortgagor nor any principal of Mortgagor has been a party to, or the subject of a Bankruptcy Proceeding for the past ten (10) years.

(h) **Full and Accurate Disclosure.** No statement of fact made by Mortgagor in any Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein not misleading. There is no material fact presently known to Mortgagor that has not been disclosed to Mortgagee which adversely affects, or, as far as Mortgagor can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Mortgagor in a material manner. All financial data (other than projections), including the statements of cash flow and income and operating expense, that have been delivered to Mortgagee in respect of Mortgagor and the Property (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of Mortgagor and the Property as of the date of such reports in all material respects, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP, Cash, or Income basis accounting, consistently applied throughout the periods covered, except as disclosed therein. Mortgagor has no contingent liabilities, liabilities for taxes, unusual forward or long-term commitments, unrealized or anticipated losses from any unfavorable commitments or any liabilities or obligations not expressly permitted by this Mortgage. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Mortgagor or the Property from that set forth in said financial statements.

(i) **Tax Filings.** To the extent required, Mortgagor has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Mortgagor. Mortgagor believes that its tax returns (if any) properly reflect the income and taxes of Mortgagor for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

(j) **ERISA; No Plan Assets.** As of the date hereof and throughout the Term (i) Mortgagor is not and will not be an "employee benefit plan," as defined in Section 3(3) of ERISA, (ii) none of the assets of Mortgagor constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (iii) Mortgagor is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with Mortgagor are not and will not be subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans. As of the date hereof, neither Mortgagor, nor any member of a "controlled group of corporations" (within the meaning of Section 414 of the Code) maintains, sponsors or contributes to a "defined benefit plan" (within the meaning of Section 3(35) of ERISA) or a "multiemployer pension plan" (within the meaning of Section 3(37)(A) of ERISA).

(k) **Compliance.** Mortgagor and the Property and the use thereof comply in all material respects with all applicable Legal Requirements (including with respect to parking and applicable zoning and land use laws, regulations and ordinances). Mortgagor is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or

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otherwise) or business of Mortgagor. The Property is used exclusively for commercial retail, banking, restaurant and other appurtenant and related uses. In the event that all or any part of the Improvements are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. No legal proceedings are pending or, to the actual knowledge of Mortgagor, threatened with respect to the zoning of the Property. Neither the zoning nor any other right to construct, use or operate the Property is in any way dependent upon or related to any property other than the Property. Except for that portion of the Property constituting the "Leased Parcel" pursuant to that certain Amended and Restated Lease Agreement between Mortgagor and TMG of Illinois, LLC, a Georgia limited liability company signed on an unstated date in 2005 (the "Ted's Lease"), all certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Property (collectively, the "**Licenses**"), have been obtained and are in full force and effect. Except for that portion of the Property affected by the Ted's Lease, the use being made of the Property is in conformity with the certificate(s) of occupancy issued for the Property and all other restrictions, covenants and conditions affecting the Property.

(l) **Contracts.** There are no service, maintenance or repair contracts affecting the Property engaged by or on behalf of Mortgagor that are not terminable on one (1) month's notice or less without cause and without penalty or premium. All service, maintenance or repair contracts affecting the Property and entered into by or on behalf of Mortgagor have been entered into at arms-length in the ordinary course of Mortgagor's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

(m) **Federal Reserve Regulations; Investment Company Act.** No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Loan Document. Mortgagor is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

(n) **Easements; Utilities and Public Access.** Except for the Easement and Operating Agreement to be entered into by Mortgagor and TCF National Bank, a national banking association and Mortgagee attached to the Ted's Lease as Exhibit K, all easements, cross easements, licenses, air rights and rights-of-way or other similar property interests (collectively, "**Easements**"), if any, necessary for the full utilization of the Improvements for their intended purposes have been obtained, are described in the Title Insurance Policy and are in full force and effect without default thereunder. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located in the public right-of-way abutting the Property, and all such utilities are

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connected so as to serve the Property without passing over other property absent a valid easement. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities.

(o) **Physical Condition.** Except as fully disclosed to Mortgagee in writing pursuant to the written reports resulting from the property condition inspection of the Property delivered to Lender, the Property, including all Improvements, parking facilities, systems, Equipment and landscaping, are in good condition, order and repair in all material respects; there exists no structural or other material defect or damages to the Property, whether latent or otherwise. Mortgagor has not received notice from any insurance company or bonding company of any defect or inadequacy in the Property, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. No portion of the Property is located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards. The Improvements have suffered no material casualty or damage which has not been fully repaired and the cost thereof fully paid.

(p) **Leases.** The rent roll dated May 11, 2006 delivered by Mortgagor to, and approved by Mortgagee prior to the date hereof (the "**Rent Roll**") is true, complete and correct and the Property is not subject to any leases other than the Leases described in the Rent Roll. Except as set forth on the Rent Roll: (i) each Lease is in full force and effect; (ii) except for the Ted's Lease, the tenants under the Leases have accepted possession of and are in occupancy of all of their respective demised premises, have commenced the payment of rent under the Leases, and there are no offsets, claims or defenses to the enforcement thereof; (iii) all rents due and payable under the Leases have been paid and no portion thereof has been paid for any period more than thirty (30) days in advance; (iv) the fixed rent payable under each Lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or basis for a claim by the tenant thereunder for an adjustment to the rent; (v) no tenant has made any claim against the landlord under any Lease which remains outstanding, there are no defaults on the part of the landlord under any Lease, and no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default; (vi) to Mortgagor's best knowledge, there is no present material default by the tenant under any Lease; (vii) all security deposits under Leases are as set forth on the Rent Roll and are held consistent with Section 2.7 hereof; (viii) Mortgagor is the sole owner of the entire lessor's interest in each Lease; (ix) each Lease is the valid, binding and enforceable obligation of the Mortgagor and the applicable tenant thereunder; (x) no Person has any possessory interest in, or right to occupy, the Property except under the terms of the Lease; and (xi) each Lease is subordinate to the Loan Documents, either pursuant to its terms or pursuant to a subordination and attornment agreement to be entered into with Mortgagee. None of the Leases contains any option to purchase or right of first refusal to purchase the Property or any part thereof. Neither the Leases nor the Rents have been assigned or pledged except to Mortgagee, and no other Person has any interest therein except the tenants thereunder.

(q) **Fraudulent Transfer.** Mortgagor has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and Mortgagor has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of Mortgagor's assets exceeds and will, immediately following the execution and

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delivery of the Loan Documents, exceed Mortgagor's total probable liabilities, including subordinated, unliquidated, disputed or contingent liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Mortgagor's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Mortgagor does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Mortgagor).

(r) **Ownership of Mortgagor.** The managing member of Mortgagor is Steven J. Parko. The only other member of Mortgagor is LMC Group, LLC. The membership interests in Mortgagor are owned free and clear of all Liens, warrants, options and rights to purchase. Mortgagor has no obligation to any Person to purchase, repurchase or issue any ownership interest in it. The organizational chart delivered by Mortgagor to and approved by Beneficiary prior to the date hereof is complete and accurate and illustrates all Persons who have a direct or indirect ownership interest in Mortgagor.

(s) **Purchase Options.** Neither the Property nor any part thereof is subject to any purchase options or other similar rights in favor of third parties.

(t) **Intentionally Omitted.**

(u) **Hazardous Substances.** Except as fully disclosed to Mortgagee in writing pursuant to the written reports resulting from the environmental assessments of the Property delivered to Lender, (i) the Property is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, any state super-lien and environmental clean-up statutes (including with respect to Toxic Mold), any local law requiring related permits and licenses and all amendments to and regulations in respect of the foregoing laws (collectively, "***Environmental Laws***"); (ii) the Property is not subject to any private or governmental Lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous, toxic and/or dangerous substances, toxic mold or fungus of a type that may pose a risk to human health or the environment or would negatively impact the value of the Property ("***Toxic Mold***") or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "***Hazardous Substances***"); (iii) to the best of Mortgagor's knowledge, after due inquiry, no Hazardous Substances are or have been (including the period prior to Mortgagor's acquisition of the Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Property other than in compliance with all Environmental Laws; (iv) to the best of Mortgagor's knowledge, after due inquiry, no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Property; (v) to the best of Mortgagor's knowledge, after due inquiry, no Toxic Mold is on or about the Property which

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requires remediation; (vi) no underground storage tanks exist on the Property and the Property has never been used as a landfill; and (vii) there have been no environmental investigations, studies, audits, reviews or other analyses conducted by or on behalf of Mortgagor which have not been provided to Mortgagee.

(v) **Name; Principal Place of Business.** Mortgagor does not use and will not use any trade name and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of Mortgagor is its primary address for notices as set forth in Section 16 hereof, and Mortgagor has no other place of business.

(w) **Other Debt.** There is no indebtedness with respect to the Property or any excess cash flow or any residual interest therein, whether secured or unsecured, other than Permitted Encumbrances and Permitted Indebtedness.

All of the representations and warranties in this Section 3 and elsewhere in the Loan Documents (i) shall survive for so long as any portion of the Debt remains owing to Mortgagee and (ii) shall be deemed to have been relied upon by Mortgagee notwithstanding any investigation heretofore or hereafter made by Mortgagee or on its behalf, provided, however, that the representations, warranties and covenants set forth in Section 3 (u) above shall survive in perpetuity.

4. **Covenants.** Until the end of the Term, Mortgagor hereby covenants and agrees with Mortgagee that:

4.1 **Existence.** Mortgagor shall (i) do or cause to be done (or cause the tenants under the Leases to do) all things necessary to preserve, renew and keep in full force and effect its existence, rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain (or cause the tenants under the Leases to obtain or maintain) all Licenses, and (iv) qualify to do business and remain in good standing under the laws of each jurisdiction, in each case as and to the extent required for the ownership, maintenance, management and operation of the Property.

4.2 **Taxes and Other Charges.** Mortgagor shall (or shall cause the tenants under the Leases to) pay all Taxes and Other Charges as the same become due and payable, and deliver to Mortgagee receipts for payment or other evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid no later than thirty (30) days before they would be delinquent if not paid. Mortgagor shall (or shall cause the tenants under the Leases to) not suffer and shall promptly cause to be paid and discharged any Lien against the Property, and shall promptly pay for all utility services provided to the Property. Subject to the terms of the Leases, after prior notice to Mortgagee, Mortgagor or any tenants under the Leases, at their own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and is continuing, (ii) such proceeding shall suspend the collection of the Taxes or such Other Charges, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder, (iv) no part of or interest in the Property will be in danger of being sold, forfeited, terminated, canceled or lost, (v) except if Taxes are actually paid to a governmental body under protest, the Mortgagor shall (or

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shall cause any tenants under the Leases to) have furnished such security as may be required in the proceeding, or as may be requested by Mortgagee, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon, which shall not be less than 125% of the Taxes and Other Charges being contested, and (vi) Mortgagor shall (or shall cause the tenants under the Leases to) promptly upon final determination thereof pay the amount of such Taxes or Other Charges, together with all costs, interest and penalties. Mortgagee may pay over any such security or part thereof held by Mortgagee to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

4.2 **Access to Property.** Subject to the rights of the tenants under the Leases, Mortgagor shall permit agents, representatives, consultants and employees of Mortgagee to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

4.4 **Repairs; Maintenance and Compliance; Alterations.**

(a) **Repairs; Maintenance and Compliance.** Mortgagor shall (or shall cause the tenants under the Leases to) at all times maintain, preserve and protect all franchises and trade names, and Mortgagor shall (or shall cause the tenants under the Leases to) cause the Property to be maintained in a good and safe condition and repair and shall not remove, demolish or alter the Improvements or Equipment (except for alterations performed in accordance with the terms hereof and normal replacement of Equipment with Equipment of equivalent value and functionality). Mortgagor shall (or shall cause the tenants under the Leases to) promptly comply with all Legal Requirements and immediately cure properly any violation of a Legal Requirement. Mortgagor shall notify Mortgagee in writing within one (1) Business Day after Mortgagor first receives notice of any such non-compliance. Mortgagor shall (or shall cause the tenants under the Leases to) promptly repair, replace or rebuild any part of the Property that becomes damaged, worn or dilapidated and shall complete and pay for any Improvements at any time in the process of construction or repair.

(b) **Alterations.** Mortgagor (or the tenants under the Leases) may, without Mortgagee's consent, perform alterations to the Improvements and Equipment which (i) do not constitute a Material Alteration, (ii) do not adversely affect Mortgagor's financial condition or the value or Net Operating Income of the Property and (iii) are in the ordinary course of Mortgagor's business. Mortgagor shall not perform any Material Alteration without Mortgagee's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, that Mortgagee may, in its sole and absolute discretion, withhold consent to any alteration the cost of which is reasonably estimated to exceed \$250,000 or which is likely to result in a decrease of Net Operating Income by two and one-half percent (2.5%) or more for a period of thirty (30) days or longer. Mortgagee may, as a condition to giving its consent to a Material Alteration, require that Mortgagor deliver to Mortgagee security for payment of the cost of such Material Alteration in an amount equal to 125% of the cost of the Material Alteration as estimated by Mortgagee. Upon substantial completion of the Material Alteration, Mortgagor shall (or cause the tenants under the Leases to) provide evidence satisfactory to Mortgagee that (i) the Material Alteration was constructed in accordance with applicable Legal Requirements and substantially in accordance with plans and specifications approved by Mortgagee (which approval shall not be unreasonably withheld or delayed), (ii) all contractors, subcontractors, materialmen and professionals who provided work, materials or services in connection with the

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Material Alteration have been paid in full and have delivered unconditional releases of lien and (iii) all material Licenses necessary for the use, operation and occupancy of the Material Alteration (other than those which depend on the performance of tenant improvement work) have been issued. Mortgagor shall reimburse Mortgagee upon demand for all out-of-pocket costs and expenses (including the reasonable fees of any architect, engineer or other professional engaged by Mortgagee) incurred by Mortgagee in reviewing plans and specifications or in making any determinations necessary to implement the provisions of this Section. Notwithstanding the foregoing, to the extent any of the Leases permit alterations without the consent of landlord, no consent shall be required hereunder for such alterations to be performed by any tenant under the Leases (other than Mortgagor).

4.5 **Performance of Other Agreements.** Mortgagor shall (or cause the tenants under the Leases to) observe and perform each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Property, including the Loan Documents.

4.6 **Cooperate in Legal Proceedings.** Mortgagor shall cooperate fully with Mortgagee with respect to, and permit Mortgagee, at its option, to participate in, any proceedings before any Governmental Authority which may in any way affect the rights of Mortgagee under any Loan Document.

4.7 **Further Assurances.** Mortgagor shall, at Mortgagor's sole cost and expense, (i) execute and deliver to Mortgagee such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Debt and/or for the better and more effective carrying out of the intents and purposes of the Loan Documents, as Mortgagee may reasonably require from time to time; and (ii) upon Mortgagee's request therefor given from time to time after the occurrence of any Default or Event of Default pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to Mortgagor and (b) searches of title to the Property, each such search to be conducted by search firms reasonably designated by Mortgagee in each of the locations reasonably designated by Mortgagee. Nothing required by Mortgagee hereunder shall materially increase Mortgagor's obligations under the Loan Documents or decrease Mortgagor's rights under the Loan Documents.

4.8 **Environmental Matters.**

(a) **Hazardous Substances.** So long as Mortgagor owns or is in possession of the Property, Mortgagor shall (or shall cause the tenants under the Leases to) (i) keep the Property free from Hazardous Substances and in compliance with all Environmental Laws, (ii) promptly notify Mortgagee if Mortgagor shall become aware that (A) any Hazardous Substance is on or near the Property, (B) the Property is in violation of any Environmental Laws or (C) any condition on or near the Property shall pose a threat to the health, safety or welfare of humans and (iii) remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law (or as shall be required by Mortgagee in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified environmental consulting

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firm engaged by Mortgagee ("**Mortgagee's Consultant**"), promptly after Mortgagor becomes aware of same, at Mortgagor's sole expense. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure.

(b) Environmental Monitoring.

(i) Mortgagor shall give prompt written notice to Mortgagee of (i) any proceeding or inquiry by any party (including any Governmental Authority) with respect to the presence of any Hazardous Substance on, under, from or about the Property, provided Mortgagor has received prior notice of the same, (ii) all claims made or threatened by any third party (including any Governmental Authority) against Mortgagor or the Property or any party occupying the Property relating to any loss or injury resulting from any Hazardous Substance, provided Mortgagor has received prior notice of the same, and (iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Upon becoming aware of the presence of mold or fungus at the Property, Mortgagor shall (or cause the tenants under the Leases to) (i) undertake an investigation to identify the source(s) of such mold or fungus and shall develop and implement an appropriate remediation plan to eliminate the presence of any Toxic Mold in order to comply with applicable laws, (ii) perform or cause to be performed all acts reasonably necessary for the remediation of any Toxic Mold in order to comply with applicable laws (including taking any action necessary to clean and disinfect any portions of the Property affected by Toxic Mold, including providing any necessary moisture control systems at the Property), and (iii) provide evidence reasonably satisfactory to Mortgagee of the foregoing. Mortgagor shall permit Mortgagee to join and participate in, as a party if it so elects, any legal or administrative proceedings or other actions initiated with respect to the Property in connection with any Environmental Law or Hazardous Substance, and Mortgagor shall pay all reasonable attorneys' fees and disbursements incurred by Mortgagee in connection therewith.

(ii) Upon Mortgagee's request, at any time and from time to time, but not more than twice in any twelve (12) month period, Mortgagor, at Mortgagee's sole cost and expense, shall provide an inspection or audit of the Property prepared by a licensed hydrogeologist, licensed environmental engineer or qualified environmental consulting firm approved by Mortgagee assessing the presence or absence of Hazardous Substances on, in or near the Property; provided that, and if Mortgagee in its good faith judgment determines that reasonable cause exists for the performance of such environmental inspection or audit because of a suspected release or breach of the Mortgage, then the cost and expense of such audit or inspection shall be paid by Mortgagor, and provided further that there shall be no limitation in the number of inspections or audits after the occurrence of an Event of Default. Such inspections and audit may include soil borings and ground water monitoring. If Mortgagor fails to provide any such inspection or audit within thirty (30) days after such request, Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Property and a license to undertake such inspection or audit.

(iii) If any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for any Hazardous Substance, in order to comply with all Environmental Laws,

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whether such Hazardous Substance existed prior to the ownership of the Property by Mortgagor, or presently exists or is reasonably suspected of existing, Mortgagor shall (or shall cause the tenants under the Leases to) cause such operations and maintenance plan to be prepared and implemented at its expense upon request of Mortgagee, and with respect to any Toxic Mold, Mortgagor shall (or shall cause the tenants under the Leases to) take all action necessary to clean and disinfect any portions of the Improvements affected by Toxic Mold in or about the Improvements, including providing any necessary moisture control systems at the Property. If any investigation, site monitoring, containment, cleanup, removal, restoration or other work of any kind is required under an applicable Environmental Law ("**Remedial Work**"), Mortgagor shall (or shall cause the tenants under the Leases to) commence all such Remedial Work within thirty (30) days after written demand by Mortgagee and thereafter diligently prosecute to completion all such Remedial Work within such period of time as may be required under applicable law. All Remedial Work shall be performed by licensed contractors approved in advance by Mortgagee and under the supervision of a consulting engineer approved by Mortgagee. All costs of such Remedial Work shall be paid by Mortgagor, including Mortgagee's reasonable attorneys' fees and disbursements incurred in connection with the monitoring or review of such Remedial Work. If Mortgagor does not timely commence and diligently prosecute to completion the Remedial Work, Mortgagee may (but shall not be obligated to) cause such Remedial Work to be performed at Mortgagor's expense. Notwithstanding the foregoing, Mortgagor shall not be required to commence such Remedial Work within the above specified time period: (x) if prevented from doing so by any Governmental Authority, (y) if commencing such Remedial Work within such time period would result in Mortgagor or such Remedial Work violating any Environmental Law, or (z) if Mortgagor, at its expense and after prior written notice to Mortgagee, is contesting by appropriate legal, administrative or other proceedings, conducted in good faith and with due diligence, the need to perform Remedial Work. Mortgagor shall (or shall cause the tenants under the Leases to) have the right to contest the need to perform such Remedial Work, provided that, (1) Mortgagor is permitted by the applicable Environmental Laws to delay performance of the Remedial Work pending such proceedings, (2) neither the Property nor any part thereof or interest therein will be sold, forfeited or lost if Mortgagor fails to promptly perform the Remedial Work being contested, and if Mortgagor fails to prevail in contest, Mortgagor would thereafter have the opportunity to perform such Remedial Work, (3) Mortgagee would not, by virtue of such permitted contest, be exposed to any risk of any civil liability for which Mortgagor has not furnished additional security as provided in clause (4) below, or to any risk of criminal liability, and neither the Property nor any interest therein would be subject to the imposition of any Lien for which Mortgagor has not furnished additional security as provided in clause (4) below, as a result of the failure to perform such Remedial Work and (4) Mortgagor shall have furnished to Mortgagee additional security in respect of the Remedial Work being contested and the loss or damage that may result from Mortgagor's failure to prevail in such contest in such amount as may be reasonably requested by Mortgagee but in no event less than 125% of the cost of such Remedial Work as estimated by Mortgagee or Mortgagee's Consultant and any loss or damage that may result from Mortgagor's failure to prevail in such contest.

(iv) Mortgagor shall not install or permit to be installed on the Property any underground storage tank.

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4.9 **Title to the Property.** Mortgagor will warrant and defend the title to the Property, and the validity and priority of all Liens granted or otherwise given to Mortgagee under the Loan Documents, subject only to Permitted Encumbrances, against the claims of all Persons.

4.10 **Leases.**

(a) **Generally.** Upon request, but not more than twice in any twelve (12) consecutive month period, Mortgagor shall furnish Mortgagee with executed copies of all Leases then in effect. All renewals of Leases and all proposed leases shall provide for rental rates and terms comparable to existing local market rates and shall be arm's length transactions with bona fide, independent third-party tenants. Lender has approved the renewal options in the existing Leases.

(b) **Consent.** Mortgagor shall not enter into a proposed Lease or a proposed renewal, extension or modification of an existing Lease without the prior written consent of Mortgagee, which consent shall not, so long as no Event of Default is continuing, be unreasonably withheld or delayed. Prior to seeking Mortgagee's consent to any Lease, Mortgagor shall deliver to Mortgagee a copy of such proposed lease (a "**Proposed Lease**") blacklined to show changes from the standard form of Lease approved by Mortgagee and then being used by Mortgagor. Mortgagee shall approve or disapprove each Proposed Lease or proposed renewal, extension or modification of an existing Lease for which Mortgagee's approval is required under this Mortgage within fifteen (15) Business Days of the submission by Mortgagor to Mortgagee of a written request for such approval, accompanied by a final copy of the Proposed Lease or proposed renewal, extension or modification of an existing Lease. If requested by Mortgagor, Mortgagee will grant conditional approvals of Proposed Leases or proposed renewals, extensions or modifications of existing Leases at any stage of the leasing process, from initial "term sheet" through negotiated lease drafts, provided that Mortgagee shall retain the right to disapprove any such Proposed Lease or proposed renewal, extension or modification of an existing Lease, if subsequent to any preliminary approval material changes are made to the terms previously approved by Mortgagee, or additional material terms are added that had not previously been considered and approved by Mortgagee in connection with such Proposed Lease or proposed renewal, extension or modification of an existing Lease.

(c) **Minor Leases.** Notwithstanding the provisions of this Section, provided that no Event of Default is continuing, proposed leases shall not be subject to the prior approval of Mortgagee provided (i) the proposed lease would be a Minor Lease; (ii) the proposed lease (a) shall provide for net effective rental rates comparable to existing local market rates, (b) shall have an initial term (together with all renewal options) of not less than five (5) years or greater than ten (10) years, (c) shall provide for automatic self-operative subordination to the Mortgage and, at Mortgagee's option, Mortgagor attornment to Mortgagee and (d) shall not contain any option to purchase, any right of first refusal to purchase, any right to terminate (except in the event of the destruction or condemnation or substantially all of the Property), any requirement for a non-disturbance or recognition agreement, or any other provision which might adversely affect the rights of Mortgagee under the Loan Documents in any material respect. Mortgagor shall deliver to Mortgagee copies of all Leases which are entered into pursuant to the preceding sentence together with Mortgagor's certification that it has satisfied all of the conditions of the preceding sentence within ten (10) days after the execution of the Lease.

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4.11 **Additional Covenants with respect to Leases.** Mortgagor (i) shall observe and perform the material obligations imposed upon the lessor under the Leases and shall not do or permit anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Mortgagee of all notices of default that Mortgagor shall send or receive under any Lease; (iii) shall enforce, in accordance with commercially reasonable practices for properties similar to the Property, the terms, covenants and conditions in the Leases to be observed or performed by the lessees, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance (other than security deposits); (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (vi) shall not modify any Lease in a manner inconsistent with the Loan Documents; (vii) shall not convey or transfer or suffer or permit a conveyance or transfer of the Property so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of lessees under Leases; (viii) shall not consent to any assignment of or subletting under any Lease where the landlord's consent under the Lease is discretionary without the prior consent of Mortgagee, which may not, so long as no Event of Default is continuing, be unreasonably withheld or delayed; and (ix) shall not cancel or terminate any Lease or accept a surrender thereof without the prior consent of Mortgagee, which consent shall not, so long as no Event of Default is continuing, be unreasonably withheld or delayed.

4.12 **Estoppel Statement.** After request by Mortgagee, but not more than twice in any consecutive twelve (12) month period, Mortgagor shall within ten (10) business days furnish Mortgagee with a statement addressed to Mortgagee, its successors and assigns, duly acknowledged and certified, setting forth (i) the unpaid Principal, (ii) the Interest Rate, (iii) the date installments of interest and/or Principal were last paid, (iv) any offsets or defenses to the payment of the Debt, and (v) that the Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

4.13 **Property Management.** Mortgagor represents and warrants that it self-manages the Property. Mortgagor shall not engage a property manager without Lender's prior consent. In the event that Lender reasonably determines that the Property is not being managed in accordance with generally accepted management practices for properties similar to the Property, Lender shall deliver written notice thereof to Borrower, which notice shall specify with particularity the grounds for Lender's determination. If Lender reasonably determines that the conditions specified in Lender's notice are not remedied to Lender's satisfaction by Borrower within thirty (30) days from receipt of such notice or that Borrower has failed to diligently undertake correcting such conditions within such thirty (30) day period, Borrower shall, at Lender's direction, either engage a professional third party property manager, or terminate any existing management agreement for the Property and enter into a property management agreement acceptable to Lender with a management company reasonably acceptable to Lender. In the event Lender directs Borrower to engage a professional third party property manager, then Borrower shall engage such a property manager pursuant to an agreement reasonably acceptable to Lender, and Borrower and such manager shall execute an agreement reasonably acceptable to Lender conditionally assigning Borrower's interest in such management agreement to Lender and subordinating manager's right to receive fees and expenses under such agreement while the Debt remains outstanding.

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4.14 **Special Purpose Entity.** Mortgagor shall at all times be a Special Purpose Entity. Mortgagor shall not directly or indirectly make any change, amendment or modification to its organizational documents, or otherwise take any action which could result in Mortgagor not being a Special Purpose Entity. A "Special Purpose Entity" shall have the meaning set forth on Schedule 4 hereto.

4.15 **Change in Business or Operation of Property.** Mortgagor shall not purchase or own any real property other than the Property and shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business or otherwise cease to lease the Property as a commercial retail property, including, but not limited to a bank or a restaurant or terminate such business for any reason whatsoever (other than temporary cessation in connection with renovations, casualty, or condemnation to the Property).

4.16 **Debt Cancellation.** Mortgagor shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Mortgagor by any Person, except for adequate consideration and in the ordinary course of Mortgagor's business.

4.17 **Affiliate Transactions.** Mortgagor shall not enter into, or be a party to, any transaction with an Affiliate of Mortgagor or any of the members of Mortgagor except in the ordinary course of business and on terms which are fully disclosed to Mortgagee in advance and are no less favorable to Mortgagor or such Affiliate than would be obtained in a comparable arm's length transaction with an unrelated third party.

4.18 **Zoning.** Mortgagor shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Mortgagee.

4.19 **No Joint Assessment.** Mortgagor shall not suffer, permit or initiate the joint assessment of the Property (i) with any other real property constituting a tax lot separate from the Property, and (ii) with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

4.20 **Principal Place of Business.** Mortgagor shall not change its principal place of business or chief executive office without first giving Mortgagee thirty (30) days' prior notice.

4.21 **Change of Name, Identity or Structure.** Mortgagor shall not change its name, identity (including its trade name or names) or Mortgagor's corporate, partnership or other structure without notifying Mortgagee of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Mortgagor's structure, without first obtaining the prior written consent of Mortgagee. Mortgagor shall execute and deliver to Mortgagee, prior to or contemporaneously with the effective date of any such change, any

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financing statement or financing statement change required by Mortgagee to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Mortgagee, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the trade names under which Mortgagor intends to operate the Property, and representing and warranting that Mortgagor does business under no other trade name with respect to the Property.

4.22 **Indebtedness**. Mortgagor shall not directly or indirectly create, incur or assume any indebtedness other than (i) the Debt and (ii) unsecured trade payables incurred in the ordinary course of business relating to the ownership and operation of the Property which in the case of such unsecured trade payables (A) are not evidenced by a note, (B) do not exceed, at any time, a maximum aggregate amount of one percent (1%) of the original amount of the Principal and (C) are paid within thirty (30) days of the date incurred (collectively, "**Permitted Indebtedness**").

4.23 **Licenses**. Mortgagor shall not Transfer any License required for the operation of the Property.

4.24 **Compliance with Restrictive Covenants, Etc.** Mortgagor will not enter into, modify, waive in any material respect or release any Easements, restrictive covenants or other Permitted Encumbrances, or suffer, consent to or permit the foregoing, without Mortgagee's prior written consent, which consent may be granted or denied in Mortgagee's sole discretion.

4.25 **ERISA**.

(a) Mortgagor shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Mortgagee of any of its rights under the Note, this Mortgage or the other Loan Documents), to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Mortgagor shall not maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of Mortgagor to maintain, sponsor, contribute to or become obligated to contribute to, any Plan or any Welfare Plan or permit the assets of Mortgagor to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

(c) Mortgagor shall deliver to Mortgagee such certifications or other evidence from time to time throughout the Term, as requested by Mortgagee in its sole discretion, that (A) Mortgagor is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (B) Mortgagor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (C) the assets of Mortgagor do not constitute "plan assets" within the meaning of 29 C.F.R. Section 2510.3-101.

4.26 **Prohibited Transfers**.

(a) **Generally**. Mortgagor shall not directly or indirectly make, suffer or permit the occurrence of any Transfer other than a Permitted Transfer.

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(b) Transfer and Assumption.

(i) Notwithstanding the foregoing and subject to the terms and satisfaction of all the conditions precedent set forth in this Section 4.26(b), Mortgagor shall have a one-time right to Transfer the Property to another party (the "**Transferee Mortgagor**") and have the Transferee Mortgagor assume all of Mortgagor's obligations under the Loan Documents, and have replacement guarantors and indemnitors assume all of the obligations of the indemnitors and guarantors of the Loan Documents (collectively, a "**Transfer and Assumption**"). Mortgagor may make a written application to Mortgagee for Mortgagee's consent to the Transfer and Assumption, subject to the conditions set forth in paragraphs (b) and (c) of this Section 4.26(b). Together with such written application, Mortgagor will pay to Mortgagee the reasonable review fee then required by Mortgagee. Mortgagor also shall pay on demand all of the reasonable costs and expenses incurred by Mortgagee, including reasonable attorneys' fees and expenses, and including the fees and expenses of Rating Agencies and other outside entities, in connection with considering any proposed Transfer and Assumption, whether or not the same is permitted or occurs.

(ii) Mortgagee's consent, which may be withheld in Mortgagee's reasonable discretion, to a Transfer and Assumption shall be subject to the following conditions:

(1) No Default or Event of Default has occurred and is continuing;

(2) Mortgagor has submitted to Mortgagee true, correct and complete copies of any and all information and documents of any kind reasonably requested by Mortgagee concerning the Property, Transferee Mortgagor, replacement guarantors and indemnitors and Mortgagor;

(3) Evidence reasonably satisfactory to Mortgagee has been provided showing that the Transferee Mortgagor and such of its Affiliates as shall be designated by Mortgagee comply and will comply with Section 4.14 hereof, as those provisions may be modified by Mortgagee taking into account the ownership structure of Transferee Mortgagor and its Affiliates;

(4) If the Loan, by itself or together with other loans, has been the subject of a Secondary Market Transaction, then Mortgagee shall have received a Rating Comfort Letter from the applicable Rating Agencies, if required by the applicable Rating Agencies;

(5) If the Loan has not been the subject of a Secondary Market Transaction, then Mortgagee shall have determined in its reasonable discretion (taking into consideration such factors as Mortgagee may determine, including the attributes of the loan pool in which the Loan might reasonably be expected to be securitized) that no rating for any securities that would be issued in connection with such securitization will be diminished, qualified, or withheld by reason of the Transfer and Assumption;

(6) Mortgagor shall have paid all of Mortgagee's reasonable costs and expenses in connection with considering the Transfer and Assumption, and shall have

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paid the amount requested by Mortgagee as a deposit against Mortgagee's costs and expenses in connection with the effecting the Transfer and Assumption;

(7) Mortgagor, the Transferee Mortgagor, and the replacement guarantors and indemnitors shall have indicated in writing in form and substance reasonably satisfactory to Mortgagee their readiness and ability to satisfy the conditions set forth in subsection (c) below;

(8) The identity, experience, financial condition and creditworthiness of the Transferee Mortgagor and the replacement guarantors and indemnitors shall be reasonably satisfactory to Mortgagee; and

(9) If not self-managed, the proposed property manager and proposed Management Agreement shall be satisfactory to Mortgagee and the applicable Rating Agencies.

(10) If Mortgagee consents to the Transfer and Assumption, the Transferee Mortgagor and/or Mortgagor as the case may be, shall immediately deliver the following to Mortgagee:

a. Mortgagor shall deliver to Mortgagee an assumption fee in the amount of one percent (1%) of the then unpaid Principal;

b. Mortgagor, Transferee Mortgagor and the original and replacement guarantors and indemnitors shall execute and deliver to Mortgagee any and all documents required by Mortgagee, in form and substance required by Mortgagee, in Mortgagee's sole discretion;

c. Counsel to the Transferee Mortgagor and replacement guarantors and indemnitors shall deliver to Mortgagee opinions in form and substance reasonably satisfactory to Mortgagee as to such matters as Mortgagee shall reasonably require, which opinions shall relate to the same matters which were required in connection with the origination of the Loan and such other matters as Mortgagee may reasonably require;

d. Mortgagor shall cause to be delivered to Mortgagee, an endorsement (relating to the change in the identity of the vestee and execution and delivery of the Transfer and Assumption documents) to the Title Insurance Policies in form and substance acceptable to Mortgagee, in Mortgagee's reasonable discretion (the "**Endorsement**"); and

e. Mortgagor shall deliver to Mortgagee a payment in the amount of all remaining unpaid costs incurred by Mortgagee in connection with the Transfer and Assumption, including but not limited to, Mortgagee's reasonable attorneys fees and expenses, all recording fees, and all fees payable to the title company for the delivery to Mortgagee of the Endorsement.

(c) Mortgagor acknowledges that (i) Mortgagee has examined and relied on the creditworthiness and experience of the principals of Mortgagor in owning and operating properties such as the Property in agreeing to make the Loan, (ii) Mortgagee will continue to

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rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for the Debt, and (iii) Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Property. Mortgagor shall not sell, convey, alienate, Mortgage, encumber, pledge or otherwise transfer the Property or any part thereof, or suffer or permit any Transfer to occur, other than a Permitted Transfer.

(d) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Transfer in violation of this Paragraph 4.26. This provision shall apply to every sale, conveyance, alienation, Mortgage, encumbrance, pledge or transfer of the Property (and every other Transfer) regardless of whether voluntary or not. Any Transfer made in contravention of this Paragraph 4 shall be null and void and of no force and effect. Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any Permitted Transfer.

4.27 **Liens.** Without Mortgagee's prior written consent, Mortgagor shall not create, incur, assume, permit or suffer to exist any Lien on all or any portion of the Property or any direct or indirect legal or beneficial ownership interest in Mortgagor, except Liens in favor of Mortgagee and Permitted Encumbrances, unless such Lien is bonded or discharged within thirty (30) days after Mortgagor first receives notice of such Lien.

4.28 **Dissolution.** Mortgagor shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) engage in any business activity not related to the ownership and operation of the Property or (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the property or assets of Mortgagor except to the extent expressly permitted by the Loan Documents or the Leases.

4.29 **Expenses.** Mortgagor shall reimburse Mortgagee upon receipt of notice for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Mortgagee or Servicer in connection with the Loan, including (i) the preparation, negotiation, execution and delivery of the Loan Documents and the consummation of the transactions contemplated thereby and all the costs of furnishing all opinions by counsel for Mortgagor; (ii) Mortgagor's and Mortgagee's ongoing performance under and compliance with the Loan Documents, including confirming compliance with environmental laws and insurance requirements; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Loan Document and any other documents or matters requested by Mortgagee; (iv) filing and recording of any Loan Documents; (v) title insurance, surveys, inspections and appraisals; (vi) the creation, perfection or protection of Mortgagee's Liens in the Property and the Cash Management Accounts (including fees and expenses for title and lien searches, intangibles taxes, personal property taxes, Mortgage, recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports and Mortgagee's Consultant, surveys and engineering reports); (vii) enforcing or preserving any rights in response to third party claims or

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the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Mortgagor, the Loan Documents, the Property, or any other security given for the Loan; (viii) reasonable fees charged by Servicer or the Rating Agencies in connection with the Loan or any modification thereof and (ix) enforcing any obligations of or collecting any payments due from Mortgagor under any Loan Document or with respect to the Property or in connection with any refinancing or restructuring of the Loan in the nature of a "work-out," or any insolvency or bankruptcy proceedings. Any costs and expenses due and payable by Mortgagor hereunder which are not paid by Mortgagor within ten (10) days after demand may be paid from any amounts in the Deposit Account, with notice thereof to Mortgagor. The obligations and liabilities of Mortgagor under this Section 4.29 shall survive the Term and the exercise by Mortgagee of any of its rights or remedies under the Loan Documents, including the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

4.30 **Indemnity.** Mortgagor shall defend, indemnify and hold harmless Mortgagee and each of its Affiliates and their respective successors and assigns, including the directors, officers, partners, members, shareholders, participants, employees, professionals and agents of any of the foregoing (including any Servicer) and each other Person, if any, who Controls Mortgagee, its Affiliates or any of the foregoing (each, an "**Indemnified Party**"), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for an Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Mortgagee shall be designated a party thereto, court costs and costs of appeal at all appellate levels, investigation and laboratory fees, consultant fees and litigation expenses), that may be imposed on, incurred by, or asserted against any Indemnified Party (collectively, the "**Indemnified Liabilities**") in any manner, relating to or arising out of or by reason of the Loan, including: (i) any breach by Mortgagor of its obligations under, or any misrepresentation by Mortgagor contained in, any Loan Document; (ii) the use or intended use of the proceeds of the Loan; (iii) any information provided by or on behalf of Mortgagor, or contained in any documentation approved by Mortgagor; (iv) ownership of the Mortgage, the Property or any interest therein, or receipt of any Rents; (v) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (vi) any use, nonuse or condition in, on or about the Property or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Property; (viii) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance on, from or affecting the Property; (ix) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance; (x) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance; (xi) any violation of the Environmental Laws which is based upon or in any way related to such Hazardous Substance, including the costs and expenses of any Remedial Work; (xii) any failure of the Property to comply with any Legal Requirement; (xiii) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof, or any liability asserted against Mortgagee with respect thereto; and (xiv) the claims of any lessee of any portion of the Property or any Person acting through or under any lessee or otherwise arising under or as a consequence of any

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Lease; provided, however, that Mortgagor shall not have any obligation to any Indemnified Party hereunder to the extent that it is finally judicially determined that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of any Indemnified Party. Any amounts payable to any Indemnified Party by reason of the application of this paragraph shall be payable on demand and shall bear interest at the Default Rate from the date loss or damage is sustained by any Indemnified Party until paid. The obligations and liabilities of Mortgagor under this Section shall survive the Term and the exercise by Mortgagee of any of its rights or remedies under the Loan Documents, including the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

4.31 Patriot Act Compliance.

(a) Mortgagor will use its good faith and commercially reasonable efforts to comply with the Patriot Act (as defined below) and all applicable requirements of governmental authorities having jurisdiction over Mortgagor and the Property, including those relating to money laundering and terrorism. Mortgagee shall have the right to audit Mortgagor's compliance with the Patriot Act and all applicable requirements of governmental authorities having jurisdiction over Mortgagor and the Property, including those relating to money laundering and terrorism. In the event that Mortgagor fails to comply with the Patriot Act or any such requirements of governmental authorities, then Mortgagee may, at its option, cause Mortgagor to comply therewith and any and all reasonable costs and expenses incurred by Mortgagee in connection therewith shall be secured by the Mortgage and the other Loan Documents and shall be immediately due and payable. For purposes hereof, the term "**Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

(b) Neither Mortgagor nor any partner in Mortgagor or member of such partner nor any owner of a direct or indirect interest in Mortgagor (a) is listed on any Government Lists (as defined below), (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (d) is currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "**Patriot Act Offense**" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "**Government Lists**" means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control ("**OFAC**"), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and

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Regulations of OFAC that Mortgagee notified Mortgagor in writing is now included in "Governmental Lists," or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Mortgagee notified Mortgagor in writing is now included in "Governmental Lists."

4.32 **Use of Property.** Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property. If under applicable zoning provisions the use of the Property is or shall become a nonconforming use, Mortgagor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Mortgagee. Mortgagor shall not (i) change the use of the Property, (ii) permit or suffer to occur any waste on or to the Property or (iii) take any steps to convert the Property to a condominium or cooperative form of ownership.

5. **Financial Reporting.**

5.1 **Bookkeeping.** Mortgagor shall keep on a calendar year basis, in accordance with GAAP, Cash, or Income basis accounting, proper and accurate books, records and accounts reflecting all of the financial affairs of Mortgagor and all items of income and expense and any services, Equipment or furnishings provided in connection with the Mortgagor's operation of the Property, whether such income or expense is realized by Mortgagor, or any Affiliate of Mortgagor. Upon ten (10) days prior written notice to Mortgagee and no more than twice in any consecutive twelve (12) month period, (provided that the foregoing limitations shall not apply after the occurrence of an Event of Default) Mortgagee shall have the right from time to time during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Mortgagor or other Person maintaining them, and to make such copies or extracts thereof as Mortgagee shall desire. After an Event of Default, Mortgagor shall pay any reasonable costs incurred by Mortgagee to examine such books, records and accounts, as Mortgagee shall determine to be necessary or appropriate in the protection of Mortgagee's interest.

5.2 **Annual Reports.** Mortgagor shall furnish to Mortgagee annually, within ninety (90) days after each calendar year, a complete copy of Mortgagor's annual financial statements audited by a "big four" accounting firm or another independent certified public accountant (accompanied by an unqualified opinion from such accounting firm or other independent certified public accountant) reasonably acceptable to Mortgagee, each in accordance with GAAP, Cash or Income basis accounting, and containing balance sheets and statements of profit and loss for Mortgagor and the Property in such detail as Mortgagee may request. Each such statement (x) shall be in form and substance reasonably satisfactory to Mortgagee, (y) shall set forth the financial condition and the income and expenses for the Property for the immediately preceding calendar year, including statements of annual Net Operating Income as well as (1) a list of tenants, if any, occupying more than twenty percent (20%) of the rentable space of the Property, (2) a breakdown showing (a) the year in which each Lease then in effect expires, (b) the percentage of rentable space covered by such Lease, (c) the percentage of base rent with respect to which Leases shall expire in each such year, expressed both on a per year and a cumulative basis and (z) shall be accompanied by an Officer's Certificate certifying (1) that such

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statement is true, correct, complete and accurate and presents fairly the financial condition of the Property and has been prepared in accordance with GAAP, Cash or Income basis accounting and (2) whether there exists a Default or an Event of Default, and if so, the nature thereof, the period of time it has existed and the action then being taken to remedy it.

5.3 **Monthly/Quarterly Reports.** Mortgagor shall furnish to Mortgagee within fifteen (15) days after the end of each calendar month or calendar quarter (as indicated below) the following items: (i) monthly and year-to-date operating statements, noting Net Operating Income and other information necessary and sufficient under GAAP, Cash or Income basis accounting, to fairly represent the financial position and results of operation of the Property during such calendar month, all in form reasonably satisfactory to Mortgagee; (ii) a balance sheet for such calendar month; (iii) a comparison of the budgeted income and expenses and the actual income and expenses for each month and year-to-date for the Property, together with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such period and year-to-date; (iv) a statement of the actual Capital Expenses made by Mortgagor during each calendar quarter as of the last day of such calendar quarter; (v) a statement that Mortgagor has not incurred any indebtedness other than indebtedness permitted hereunder; (vi) an aged receivables report and (vii) rent rolls identifying the leased premises, names of all tenants, units leased, monthly rental and all other charges payable under each Lease, date to which paid, term of Lease, date of occupancy, date of expiration, material special provisions, concessions or inducements granted to tenants, and a year-by-year schedule showing by percentage the rentable area of the Improvements and the total base rent attributable to Leases expiring each year) and a delinquency report for the Property. Each such statement shall be accompanied by an Officer's Certificate certifying (1) that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Mortgagor and the Property in accordance with GAAP, Cash or Income basis accounting (subject to normal year-end adjustments) and (2) whether there exists a Default or Event of Default, and if so, the nature thereof, the period of time it has existed and the action then being taken to remedy it.

5.4 **Other Reports.** Mortgagor shall furnish to Mortgagee, within ten (10) Business Days after request, such further detailed information with respect to the operation of the Property and the financial affairs of Mortgagor, as may be reasonably requested by Mortgagee or any applicable Rating Agency.

5.5 **Annual Budget.** Mortgagor shall prepare and submit to Mortgagee within thirty (30) days after a Cash Management Period and by November 30th of each year thereafter during the Term until such Cash Management Period has ended, for approval by Mortgagee, which approval shall not be unreasonably withheld or delayed, a proposed pro forma budget for the Property for the succeeding calendar year (the "**Annual Budget**," and each Annual Budget approved by Mortgagee is referred to herein as the "**Approved Annual Budget**"), and, promptly after preparation thereof, any revisions to such Annual Budget. The Annual Budget shall consist of (i) an operating expense budget showing, on a month-by-month basis, in reasonable detail, each line item of the Mortgagor's anticipated operating income and operating expenses (on a cash and accrual basis), including amounts required to establish, maintain and/or increase any monthly payments required hereunder (and once such Annual Budget has been approved by Mortgagee, such operating expense budget shall be referred to herein as the "**Approved Operating Budget**"), and (ii) a Capital Expense budget showing, on a month-by-

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month basis, in reasonable detail, each line item of anticipated Capital Expenses (and once such Annual Budget has been by Mortgagee, such Capital Expense budget shall be referred to herein as the "**Approved Capital Budget**"). Until such time that any Annual Budget has been approved by Mortgagee, in Mortgagee's reasonable discretion, the prior Approved Annual Budget shall apply for all purposes hereunder (with such adjustments as reasonably determined by Mortgagee (including increases for any non-discretionary expenses)).

6. Insurance; Casualty; And Condemnation

6.1 Insurance. The Mortgagor shall (or cause the Tenants under the Leases to) obtain and maintain, or cause to be maintained, during all times that any sum is outstanding under the Note or the other Loan Documents ("**Term**"), insurance for the Mortgagor and the Property providing at least the coverages set forth in that certain Agreement Concerning Insurance Requirements dated as of the date hereof entered into by Mortgagor (the "**Insurance Agreement**").

6.2 Policies. All policies of insurance (the "**Policies**") required pursuant to Section 6.1 above shall (i) be issued by companies approved by Mortgagee and licensed to do business in the State, with a claims paying ability rating of "AA" or better by S&P (and the equivalent by any other Rating Agency) [(provided, however for multi-layered policies, (A) if four (4) or less insurance companies issue the Policies, then at least 75% of the insurance coverage represented by the Policies must be provided by insurance companies with a claims paying ability rating of "AA" or better by S&P (and the equivalent by any other Rating Agency), with no carrier below "BBB" (and the equivalent by any other Rating Agency) or (B) if five (5) or more insurance companies issue the Policies, then at least sixty percent (60%) of the insurance coverage represented by the Policies must be provided by insurance companies with a claims paying ability rating of "AA" or better by S&P (and the equivalent by any other Rating Agency), with no carrier below "BBB" (and the equivalent by any other Rating Agency)], and a rating of A:X or better in the current Best's Insurance Reports; (ii) name Mortgagee and its successors and/or assigns as their interest may appear as the Mortgage (in the case of property insurance), loss payee (in the case of business interruption/loss of rents coverage) and an additional insured (in the case of liability insurance); (iii) contain (in the case of property insurance) a Non-Contributory Standard Mortgage Clause and a Mortgagee's Loss Payable Endorsement, or their equivalents, naming Mortgagee as the person to which all payments made by such insurance company shall be paid; (iv) contain a waiver of subrogation against Mortgagee; (v) be assigned and the originals thereof delivered to Mortgagee; (vi) contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest, including (A) endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under the Policies, (B) that Mortgagee shall receive at least thirty (30) days' prior written notice of any modification, reduction or cancellation of any of the Policies, (C) an agreement whereby the insurer waives any right to claim any premiums and commissions against Mortgagee, provided that the policy need not waive the requirement that the premium be paid in order for a claim to be paid to the insured and (D) providing that Mortgagee is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums; (vii) in the event any insurance policy (except for general public and other liability and workers compensation insurance) shall contain breach of warranty provisions, such policy shall provide that with respect to the interest of Mortgagee, such insurance policy shall not be invalidated by

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and shall insure Mortgagee regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured, (B) the occupancy or use of the premises for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Mortgagee pursuant to any provision of the Loan Documents; and (viii) be satisfactory in form and substance to Mortgagee and approved by Mortgagee as to amounts, form, risk coverage, deductibles, loss payees and insureds. Mortgagor shall (or cause the Tenants under the Leases to) pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and furnish (or cause the Tenants under the Leases to furnish) to Mortgagee evidence of the renewal of each of the Policies together with (unless such Insurance Premiums have been paid by Mortgagee pursuant to Section 2.2 hereof) receipts for or other evidence of the payment of the Insurance Premiums reasonably satisfactory to Mortgagee. If Mortgagor does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Mortgagee may, but shall not be obligated to, procure such insurance and pay the Insurance Premiums therefor, and Mortgagor shall reimburse Mortgagee for the cost of such Insurance Premiums promptly on demand, with interest accruing at the Default Rate. Mortgagor shall deliver to Mortgagee a certified copy of each Policy within thirty (30) days after its effective date. Within thirty (30) days after request by Mortgagee, Mortgagor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Mortgagee, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

6.3 Casualty.

(a) Notice; Restoration. If the Property is damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Mortgagor shall give prompt notice thereof to Mortgagee. Following the occurrence of a Casualty, Mortgagor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the Property in accordance with Legal Requirements to be of at least equal value and of substantially the same character as prior to such damage or destruction.

(b) Settlement of Proceeds. If a Casualty covered by any of the Policies (an "**Insured Casualty**") occurs where the loss does not exceed \$250,000, provided no Default or Event of Default has occurred and is continuing, Mortgagor may settle and adjust any claim without the prior consent of Mortgagee; provided such adjustment is carried out in a competent and timely manner, and Mortgagor is hereby authorized to collect and receipt for the insurance proceeds (the "**Proceeds**"). In the event of an Insured Casualty where the loss equals or exceeds \$250,000 (a "**Significant Casualty**"), Mortgagee may, in its sole discretion, settle and adjust any claim without the consent of Mortgagor and agree with the insurer(s) on the amount to be paid on the loss, and the Proceeds shall be due and payable solely to Mortgagee and held by Mortgagee in the Casualty/Condemnation Subaccount and disbursed in accordance herewith. If Mortgagor or any party other than Mortgagee is a payee on any check representing Proceeds with respect to a Significant Casualty, Mortgagor shall immediately endorse, and cause all such third parties to endorse, such check payable to the order of Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to endorse such check payable to the order of Mortgagee. The expenses incurred by Mortgagee in the settlement, adjustment and collection of the Proceeds shall become part of the Debt and shall be reimbursed

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by Mortgagor to Mortgagee upon demand. Notwithstanding anything to the contrary contained herein, if in connection with a Casualty any insurance carrier makes a payment under a property insurance Policy that Mortgagor proposes be treated as business or rental interruption insurance, then, notwithstanding any designation (or lack of designation) by the insurance carrier as to the purpose of such payment, as between Mortgagee and Mortgagor, such payment shall not be treated as business or rental interruption insurance proceeds unless Mortgagor has demonstrated to Mortgagee's satisfaction that the remaining net Proceeds that will be received from the property insurance carriers are sufficient to pay 100% of the cost of fully restoring the Improvements or, if such net Proceeds are to be applied to repay the Debt in accordance with the terms hereof, that such remaining net Proceeds will be sufficient to pay the Debt in full.

6.4 Condemnation.

(a) Notice; Restoration. Mortgagor shall promptly give Mortgagee notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Property (a "Condemnation") after Mortgagor shall have been made aware of such Condemnation and shall deliver to Mortgagee copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Mortgagor, regardless of whether an Award is available, shall promptly proceed to restore, repair, replace or rebuild the Property in accordance with Legal Requirements to the extent practicable to be of at least equal value and of substantially the same character (and to have the same utility) as prior to such Condemnation.

(b) Collection of Award. Mortgagee is hereby irrevocably appointed as Mortgagor's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment in respect of a Condemnation (an "Award") and to make any compromise, adjustment or settlement in connection with such Condemnation. Notwithstanding any Condemnation (or any transfer made in lieu of or in anticipation of such Condemnation), Mortgagor shall continue to pay the Debt at the time and in the manner provided for in the Loan Documents, and the Debt shall not be reduced unless and until any Award shall have been actually received and applied by Mortgagee to expenses of collecting the Award and to discharge of the Debt. Mortgagee shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such Award, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of the Award sufficient to pay the Debt. Mortgagor shall cause any Award that is payable to Mortgagor to be paid directly to Mortgagee. Mortgagee shall hold such Award in the Casualty/Condemnation Subaccount and disburse such Award in accordance with the terms hereof.

6.5 Application of Proceeds or Award.

(a) Application to Restoration. If an Insured Casualty or Condemnation occurs where (i) the loss is in an aggregate amount less than the fifteen percent (15%) of the unpaid Principal; (ii) in the reasonable judgment of Mortgagee, the Property can be restored within six (6) months, and prior to six (6) months before the Stated Maturity Date and prior to

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the expiration of the rental or business interruption insurance with respect thereto, to the Property's pre-existing condition and utility as existed immediately prior to such Insured Casualty or Condemnation and to an economic unit not less valuable and not less useful than the same was immediately prior to the Insured Casualty or Condemnation, and after such restoration will adequately secure the Debt; (iii) less than (x) thirty percent (30%), in the case of an Insured Casualty or (y) fifteen percent (15%), in the case of a Condemnation, of the rentable area of the Improvements has been damaged, destroyed or rendered unusable as a result of such Insured Casualty or Condemnation; (iv) Leases demising in the aggregate at least sixty-five percent (65%) of the total rentable space in the Property and in effect as of the date of the occurrence of such Insured Casualty or Condemnation remain in full force and effect during and after the completion of the Restoration (hereinafter defined); and (v) no Default or Event of Default shall have occurred and be then continuing, then the Proceeds or the Award, as the case may be (after reimbursement of any expenses incurred by Mortgagee), shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Property (the "**Restoration**"), in the manner set forth herein. Mortgagor shall commence and diligently prosecute such Restoration. Notwithstanding the foregoing, in no event shall Mortgagee be obligated to apply the Proceeds or Award to reimburse Mortgagor for the cost of Restoration unless, in addition to satisfaction of the foregoing conditions, both (x) Mortgagor shall pay (and if required by Mortgagee, Mortgagor shall deposit with Mortgagee in advance) all costs of such Restoration in excess of the net amount of the Proceeds or the Award made available pursuant to the terms hereof; and (y) Mortgagee shall have received evidence reasonably satisfactory to it that during the period of the Restoration, the Rents will be at least equal to the sum of the operating expenses and Debt Service and other reserve payments required hereunder, as reasonably determined by Mortgagee.

(b) Application to Debt. Except as provided in Section 6.5(a) above, any Proceeds and/or Award may, at the option of Mortgagee in its discretion, be applied to the payment of (i) accrued but unpaid interest on the Note, (ii) the unpaid Principal and (iii) other charges due under the Note and/or any of the other Loan Documents, or applied to reimburse Mortgagor for the cost of any Restoration, in the manner set forth in Section 6.5(c) below. Any such prepayment of the Loan shall be without any Yield Maintenance Premium, unless an Event of Default has occurred and is continuing at the time the Proceeds are received from the insurance company or the Award is received from the condemning authority, as the case may be, in which event Mortgagor shall pay to Mortgagee an additional amount equal to the Yield Maintenance Premium, if any, that may be required with respect to the amount of the Proceeds or Award applied to the unpaid Principal.

(c) Procedure for Application to Restoration. If Mortgagor is entitled to reimbursement out of the Proceeds or an Award held by Mortgagee, such Proceeds or Award shall be disbursed from time to time from the Casualty/Condemnation Subaccount upon Mortgagee being furnished with (i) evidence satisfactory to Mortgagee of the estimated cost of completion of the Restoration, (ii) a fixed price or guaranteed maximum cost construction contract for Restoration satisfactory to Mortgagee, (iii) prior to the commencement of Restoration, all immediately available funds in addition to the Proceeds or Award that in Mortgagee's judgment are required to complete the proposed Restoration, (iv) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey, permits, approvals, licenses and such other documents and items as Mortgagee

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may reasonably require and approve in Mortgagee's discretion, and (v) all plans and specifications for such Restoration, such plans and specifications to be approved by Mortgagee prior to commencement of any work not to be unreasonably withheld, delayed or conditioned. Mortgagee may, at Mortgagor's expense, retain a consultant to review and approve all requests for disbursements, which approval shall also be a condition precedent to any disbursement. No payment made prior to the final completion of the Restoration shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than the Proceeds or Award shall be disbursed prior to disbursement of such Proceeds or Award; and at all times, the undisbursed balance of such Proceeds or Award remaining in the hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the Restoration, free and clear of all Liens or claims or Lien. Provided no Default or Event of Default then exists, any surplus that remains out of the Proceeds held by Mortgagee after payment of such costs of Restoration shall be paid to Mortgagor. Any surplus that remains out of the Award received by Mortgagee after payment of such costs of Restoration shall, in the discretion of Mortgagee, be retained by Mortgagee and applied to payment of the Debt or returned to Mortgagor.

7. Leases and Rents.

7.1 Mortgagor does hereby absolutely and unconditionally assign to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment shall not be construed to bind Mortgagee to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to exercise all of Mortgagor's rights as landlord under the Leases and to operate and manage the Property and to collect the Rents subject to the requirements of this Mortgage (including the deposit of Rents into the Clearing Account, if applicable). Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents in the Clearing Account, the Deposit Account (including all Subaccounts thereof) and all Rents collected thereafter (including Rents past due and unpaid), whether or not Mortgagee enters upon or takes control of the Property. Mortgagor hereby grants and assigns to Mortgagee the right, at its option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of such license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

7.2 Mortgagor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 4.10 of this Mortgage.

8. Limitation on Personal Liabilities. Nothing contained in the Loan Documents shall be deemed to impair or limit Lender's rights: in foreclosure proceedings or in any ancillary proceedings brought to facilitate Lender's foreclosure on the Property or any portion thereof or to exercise any specific rights or remedies afforded Lender under any other provisions of the

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Loan Documents or by law or in equity, subject to the non-recourse provisions set forth below; to recover under any guarantee given in connection with the Loan; or to pursue any personal liability of Borrower or any Guarantor under the Environmental Indemnity Agreement or the ERISA indemnity provisions of the Mortgage. Notwithstanding anything contained in the Loan Documents to the contrary, except as expressly set forth below, the recourse of Lender with respect to the obligations evidenced by the Note shall be solely to the Property (as defined in the Mortgage), chattels and intangible personalty:

8.1 Notwithstanding anything to the contrary contained in the Note or in any Loan Document, nothing shall be deemed in any way to impair, limit or prejudice the rights of Lender to collect or recover from Borrower or any Guarantor any of the following (collectively, the "*Recourse Liabilities*"):

(a) damages or costs (including without limitation reasonable attorneys' fees) actually incurred by Lender as a result of physical waste of the Property resulting from the intentional misconduct or gross negligence of Borrower, any Guarantor, or any of their respective affiliates;

(b) any Proceeds or any Award attributable to the Property which were not paid to Lender or used to restore the Property to the extent required by and in accordance with the terms of the Mortgage;

(c) any rents, profits, advances, rebates, prepaid rents or other similar sums attributable to the Property collected by or for Borrower following an Event of Default under any Loan Document and not properly applied to the reasonable fixed and operating expenses of the Property, including payments of the Note and other sums due under the Loan Documents;

(d) any security deposits collected by or for Borrower and not applied in accordance with the Leases or paid over to Lender;

(e) the amount of any accrued real property taxes and/or real property assessments affecting the Property (whether or not the same have been billed to Borrower) that are either unpaid by Borrower or paid by Lender under the Mortgage; provided, however, that if (1) Lender forecloses upon the Property, (2) Lender accepts a deed in lieu of foreclosure of the Property, or (3) Borrower tenders to Lender a deed in lieu of foreclosure together with such ancillary conveyances legally sufficient to convey Borrower's interests in the Property to Lender (and together with such keys to the Property and copies of leases, service contracts, other material contracts, utility invoices, permits and licenses to the extent in Borrower's possession and not theretofore delivered to Lender), then Borrower and Guarantor shall not be personally liable for those sums accruing after the date of such foreclosure, deed in lieu of foreclosure or tender;

(f) any sums expended by Lender in fulfilling the obligations of Borrower, as lessor, under any leases affecting the Property; provided, however, that if (1) Lender forecloses upon the Property, (2) Lender accepts a deed in lieu of foreclosure of the Property, or (3) Borrower tenders to Lender a deed in lieu of foreclosure together with such ancillary conveyances legally sufficient to convey Borrower's interests in the Property to Lender (and

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together with such keys to the Property and copies of leases, service contracts, other material contracts, utility invoices, permits and licenses to the extent in Borrower's possession and not theretofore delivered to Lender), then Borrower and Guarantor shall not be personally liable for those sums expended by Lender with respect to obligations of Borrower, as lessor, under any leases affecting the Property that accrue after the date of such foreclosure, deed in lieu of foreclosure or tender;

(g) the amount of any loss suffered by Lender (that would otherwise be covered by insurance) as a result of Borrower's failure to maintain the insurance required under the terms of any Loan Document; provided, however, that if (1) Lender forecloses upon the Property, (2) Lender accepts a deed in lieu of foreclosure of the Property, or (3) Borrower tenders to Lender a deed in lieu of foreclosure together with such ancillary conveyances legally sufficient to convey Borrower's interests in the Property to Lender (and together with such keys to the Property and copies of leases, service contracts, other material contracts, utility invoices, permits and licenses to the extent in Borrower's possession and not theretofore delivered to Lender), then Borrower and Recourse Carve-Out Guarantor shall not be personally liable for Borrower's failure to maintain such insurance to the extent such obligation to maintain such insurance accrues after the date of such foreclosure, deed in lieu of foreclosure or tender;

(h) the amount of any loss actually incurred by Lender by reason of the fraud or intentional misrepresentation by Borrower in connection with the Property, any Loan Document or the Loan Application;

(i) the amount of any loss suffered by Lender by reason of Borrower's violation of any of the single purpose entity and separateness covenants contained in the Mortgage, but only to the extent such violation causes the consolidation of Borrower with another person in a bankruptcy proceeding; and

(j) the amount of actual loss suffered by Lender on account of Borrower's execution, amendment, modification or termination of any existing ground lease, or any other lease to any tenant under a lease that requires Lender's approval pursuant to any Loan Document.

(k) The foregoing provisions of this section 8.1 shall not impair the right of Lender to obtain the appointment of a receiver, or impair the enforcement by Lender of the Mortgage.

8.2 The foregoing agreement to limit the personal liability of Borrower shall become null and void and be of no further force and effect, and Borrower and each Guarantor shall be personally liable for repayment of the Loan, in the event (A) that the Property shall be further encumbered by a lien voluntarily granted by Borrower in violation of any Loan Document, and the same remains uncured beyond all applicable cure periods contained in the Loan Documents; (B) that any transfer of Borrower's fee title interest in the Property or any voluntary transfer of a direct or indirect interest in Borrower or control of Borrower in breach or violation of any provision of the Mortgage occurs, which breach or violation remains uncured beyond all applicable cure periods contained in the Loan Documents; (C) that Borrower forfeits the Property, chattels, intangible property, or any portion thereof, due to criminal activity; (D) that

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Borrower files a petition in bankruptcy for Borrower, or Borrower fails to oppose in good faith the entry of an order for relief pursuant to any involuntary bankruptcy petition filed against Borrower (where a good faith defense to such entry of an order actually exists under applicable law), or Borrower voluntarily seeks any reorganization, liquidation, dissolution or similar relief under the bankruptcy laws of the United States or under any other similar federal, state or other statute relating to relief from indebtedness, or Borrower voluntarily makes an assignment for the benefit of creditors, or (E) of any bad faith attempt by Borrower, any Guarantor, or any other person directly or indirectly responsible for the management of Borrower or liable for repayment of Borrower's obligations under the Loan (whether as Borrower, endorser, guarantor, surety, general partner or otherwise) to materially delay any foreclosure against the Property, chattels and/or intangible personalty or any other exercise by Lender of its remedies under the Loan Documents. The events set forth in clauses (A) through (E) above shall, individually, be referred to in the Loan Documents as a "*Springing Recourse Event*" and collectively as the "*Springing Recourse Events*".

9. **Right to Cure Defaults.** Upon the occurrence of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, perform the obligations of Mortgagor which constitute the Event of Default in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Subject to the terms of the Leases, Mortgagee is authorized to enter upon the Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Property. Mortgagee is authorized to enter upon the Property for such purposes or appear in, defend or bring any action or proceeding to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

10. **Events of Default and Remedies.**

10.1 **Events of Default.** An "Event of Default" shall exist with respect to the Loan if any of the following shall occur:

(a) any portion of the Debt is not paid when due or any other amount under Section 2.11(a)(i) through (viii) hereof is not paid in full on each Payment Date (provided, however, if adequate funds are available in the Deposit Account for such payments, the failure by the Deposit Bank to allocate such funds into the appropriate Subaccounts shall not constitute an Event of Default);

(b) any of the Taxes are not paid when due and payable, subject to Mortgagor's (and the tenant's rights under the Leases) right to contest Taxes in accordance with the terms hereof;

(c) the Policies are not kept in full force and effect, or are not delivered to Mortgagee upon request;

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(d) a Transfer other than a Permitted Transfer occurs without the prior written consent of Mortgagee;

(e) any representation or warranty made by Mortgagor or Guarantor or in any Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished by Mortgagor or Guarantor in connection with any Loan Document, shall be false or misleading in any material respect as of the date the representation or warranty was made;

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

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

(h) Mortgagor breaches any covenant contained in Sections 4.13, 4.14, 4.15, 4.22, 4.25 or 4.28 hereof;

(i) except as expressly permitted hereunder (and except with respect to alterations under the Leases), the actual or threatened alteration, improvement, demolition or removal of all or any portion of the Improvements without the prior written consent of Mortgagee;

(j) an Event of Default as defined or described elsewhere in this Mortgage or in any other Loan Document occurs; or any other event shall occur or condition shall exist, if the effect of such event or condition is to accelerate or to permit Mortgagee to accelerate the maturity of any portion of the Debt;

(k) a default occurs under any term, covenant or provision set forth herein or in any other Loan Document which specifically contains a notice requirement or grace period and such notice has been given and such grace period has expired;

(l) **Intentionally deleted;**

(m) a default shall be continuing under any of the other terms, covenants or conditions of this Mortgage or any other Loan Document not otherwise specified in this Section 10.1, for fifteen (15) days after notice to Mortgagor (and Guarantor, if applicable) from Mortgagee, in the case of any default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Mortgagee in the case of any other default; provided, however, that if such non-monetary default is susceptible of cure but cannot reasonably be cured within such thirty (30)-day period, and Mortgagor (or Guarantor, if applicable) shall have

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commenced to cure such default within such thirty (30)-day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30)-day period shall be extended for an additional period of time as is reasonably necessary for Mortgagor (or Guarantor, if applicable) in the exercise of due diligence to cure such default, such additional period not to exceed sixty (60) days.

10.2 **Remedies.** Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, by Mortgagee itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (a) declare the entire Debt to be immediately due and payable;
- (b) give such notice of default and of election to cause the Property to be sold as may be required by law or as may be necessary to cause Mortgagee to exercise the power of sale granted herein; Mortgagee shall then record and give such notice of Mortgagee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the Property at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by Beneficiary, or by Mortgagor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. Mortgagee, from time to time, may postpone or continue the sale of all or any portion of the Property by public declaration at the time and place last appointed for the sale and no other notice of the postponed sale shall be required unless provided by applicable law. Upon any sale, Mortgagee shall deliver its deed conveying the property sold, without any covenant or warranty, expressed or implied, to the purchaser or purchasers at a sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof;
- (c) institute a proceeding or proceedings, judicial or nonjudicial, to the extent permitted by law, by advertisement or otherwise, for the complete foreclosure of this Mortgage, in which case the Property may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (d) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;
- (e) sell for cash or upon credit the Property and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

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(f) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;

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

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

(i) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Property either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and employees therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Property and conduct the business thereon; (B) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Property; (D) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents; and (E) apply the receipts from the Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, and its counsel, agents and employees;

(j) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Property occupied by Mortgagor, and require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver, and, in default thereof, evict Mortgagor by summary proceedings or otherwise; or

(k) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Mortgagor relating to the Property.

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

10.3 The proceeds of any sale made under or by virtue of this Section 10, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

10.4 Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for

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such adjourned sale or sales; and, except as otherwise provided by any applicable law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

10.5 Upon the completion of any sale or sales pursuant hereto, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Paragraph 10.5, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from through or under Mortgagor.

10.6 Upon any sale made under or by virtue of this Section 10, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage or any other Loan Document.

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

10.8 Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Section 10 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

10.9 Mortgagee may resort to any remedies and the security given by this Mortgage or in any other Loan Document in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Mortgagee to exercise any right, remedy or option provided in any Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Mortgagee of any payment after the

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occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Section 10 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee, and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

10.10 The interests and rights of Mortgagee under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Property or any portion thereof or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

11. **Right of Entry.** In addition to any other rights or remedies granted under this Mortgage, subject to the terms of the Leases, Mortgagee and its agents shall have the right to enter and inspect the Property at any reasonable time during the term of this Mortgage. The reasonable cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

12. **Security Agreement.** This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the UCC. The "Property" includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Property to the full extent that the Property may be subject to the UCC (such portion of the Property so subject to the UCC being called in this paragraph the "Collateral"). This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient

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place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral, sent to Mortgagor in accordance with the provisions hereof at least ten days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity or structure of Mortgagor, Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such UCC forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional UCC forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such UCC forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Loan Documents.

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

14. **Marshalling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Mortgagee of any other security for any portion of the Debt, (ii) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Debt or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Debt or of any of the collateral security therefor; and Mortgagee may foreclose, or exercise any other remedy available to Mortgagee under other Loan Documents without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee hereunder shall not in any manner impair the Debt or the liens of any other Loan Document or any of Mortgagee's rights and remedies thereunder.

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15. Restructuring Loan, Secondary Market Transactions.

15.1 Secondary Market Transactions Generally. Mortgagee, at Mortgagee's cost other than administrative costs incurred by Mortgagor in connection therewith, shall have the right to engage in one or more Secondary Market Transactions, and to structure and restructure all or any part of the Loan, including without limitation in multiple tranches, as a wraparound loan, or for inclusion in a REMIC or other Securitization. Without limitation, Mortgagee shall have the right to cause the Note and this Instrument to be split into a first and a second Mortgage loan in whatever proportion Mortgagee determines, and thereafter to engage in Secondary Market Transactions with respect to all or any part of the indebtedness and loan documentation. Mortgagor acknowledges that it is the intention of the parties that all or a portion of the Loan will be securitized and that all or a portion of the Loan (either itself, or in combination with other loans) will be rated by one or more Rating Agencies. Mortgagor further acknowledges that additional structural modifications may be required to satisfy issues raised by any Rating Agencies.

15.2 Cooperation; Limitations. Mortgagor shall use all reasonable efforts and cooperate reasonably and in good faith with Mortgagee in effecting any such restructuring or Secondary Market Transaction. Such cooperation shall include without limitation, executing and delivering such reasonable amendments to the Loan Documents as Mortgagee may request, provided however that no such amendment shall on an over-all basis modify (i) the interest rate payable under the Note; (ii) the stated maturity date of the Note, (iii) the amortization of the principal amount of the Note, (iv) any other economic terms of the Loan, or (v) the non-recourse provisions of the Loan. Such cooperation also shall include using commercially reasonable efforts to obtain such certificates and assurances from governmental entities and others as Mortgagee may request. Mortgagor shall not be required to provide additional collateral that was not initially contemplated by the parties to effect any such restructuring or Secondary Market Transaction. All costs and expenses of Mortgagor's cooperation as described herein shall be at the expense of Mortgagor.

15.3 Information. Mortgagor shall provide such information and documents relating to Mortgagor and its principals, the manager of the Property, the Property and the business and operations of all of the foregoing as Mortgagee may reasonably request in connection with any such Secondary Market Transaction. Mortgagee shall be permitted to share all such information with the investment banking firms, Rating Agencies, accounting firms, law firms, other third party advisory firms, potential investors, and other parties involved in any proposed Secondary Market Transaction. Any such information may be incorporated into offering documents for the Secondary Market Transactions. Mortgagee and all of the aforesaid third-party advisors and professional firms and investors shall be entitled to rely upon such information, and Mortgagor shall indemnify, defend, and hold harmless Mortgagee from and against any losses, claims, damages and liabilities that arise out of or are based upon any actual or alleged untrue or misleading statement of material fact contained in such information or the actual or alleged omission of any material fact without which such information is materially misleading. Mortgagee may publicize the existence of the Loan in connection with Mortgagee's Secondary Market Transaction activities or otherwise.

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15.4 Additional Provisions. In any Secondary Market Transaction, Mortgagee may transfer its obligations under the Loan Documents (or may transfer the portion thereof corresponding to the transferred portion of the obligations of Mortgagor), and thereafter Mortgagee shall be relieved of any obligations under the Loan Documents arising after the date of said transfer with respect to the transferred interest. Each transferee investor shall be deemed to be a "Mortgagee" under the applicable Loan Documents.

16. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document (a "Notice") shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile and confirmed by facsimile answer back, in each case addressed as follows (or to such other address or Person as a party shall designate from time to time by notice to the other party): If to Mortgagee: AIG Mortgage Capital, LLC, 1999 Avenue of the Stars, 38th Floor, Los Angeles, California 90067, Attention: Director of Mortgage Finance, Telecopier (310) 772-6584, with a copy to: Greenberg Traurig, LLP, 2450 Colorado Avenue, Suite 400E, Santa Monica, California 90404, Attention: Angela Crowder, Telecopier (310) 580-0201; if to Mortgagor: V-Land Schaumburg LLC, c/o V-Land Corporation, 321 North Clark Street, Suite 2440, Chicago, Illinois 60610, Attention: Steven Panko, Telecopier: (312) 832-0960, with a copy to: Levenfield Pearlstein, LLC, 2 North LaSalle Street, Suite 1300, Chicago, Illinois 60602, Attention: Nick S. Legatos, Telecopier: (312) 346-8434. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of overnight delivery, upon the first attempted delivery on a Business Day; or in the case of facsimile, upon the confirmation of such facsimile transmission.

16.1 Mortgagor Notices and Deliveries. Mortgagor shall (a) give prompt written notice to Mortgagee of: (i) any litigation, governmental proceedings or claims or investigations pending or threatened against Mortgagor which might materially adversely affect Mortgagor's condition (financial or otherwise) or business or the Property; (ii) any material adverse change in Mortgagor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Mortgagor has knowledge; and (b) furnish and provide to Mortgagee: (i) any Securities and Exchange Commission or other public filings, if any, of Mortgagor, or any Affiliate of any of the foregoing within two (2) Business Days of such filing; and (ii) all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, reasonably requested, from time to time, by Mortgagee. In addition, after request by Mortgagee (but no more frequently than twice in any year), Mortgagor shall furnish to Mortgagee (x) within fifteen (15) Business Days, a certificate addressed to Mortgagee, its successors and assigns reaffirming all representations and warranties of Mortgagor set forth in the Loan Documents as of the date requested by Mortgagee or, to the extent of any changes to any such representations and warranties, so stating such changes, and (y) subject to the terms of the Leases, upon the later of thirty (30) days following Mortgagor's receipt of a written request from Mortgagee for an estoppel certificate from any of the tenants under the Leases, and the expiration of any other time period requiring the tenants to return estoppel certificates under their respective Leases, tenant estoppel certificates addressed to Mortgagee, its successors and assigns from each tenant

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at the Property in the form attached to the Leases, or if no form is attached in form and substance reasonably satisfactory to Mortgagee.

17. Miscellaneous.

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

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

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

17.4 Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form; and the word "**Mortgagor**" shall mean "each Mortgagor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Mortgagee**" shall mean "Mortgagee and any subsequent holder of the Note," the words "**Property**" shall include any portion of the Property and any interest therein, the word "**including**" means "including but not limited to" and the words "**attorneys' fees**" shall include any and all attorneys' fees, paralegal and law clerk fees, including fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Property and Collateral and enforcing its rights hereunder.

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

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

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

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17.8 Consents. Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date, and the failure of Mortgagee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all reasonable costs reasonably incurred in connection with the employment of such persons, firms or corporations.

17.9 Loan Repayment and Defeasance. Provided no Event of Default exists, the Lien of this Mortgage shall be terminated, released and reconveyed of record by Mortgagee (and the Trustee, to the extent required by law to effect a full and proper termination, release and reconveyance) prior to the Maturity Date only in accordance with the terms and provisions set forth in this Mortgage.

17.10 Intentionally Omitted.

17.11 Governing Law. THIS MORTGAGE SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS MORTGAGE, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

17.12 Intentionally Omitted.

18. Changes in Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. If Mortgagee is advised by its counsel that the payment of such tax or interest and penalties by Mortgagor would be unlawful, taxable to Mortgagee or unenforceable, or would provide the basis for a defense of usury, then Mortgagee shall have the option, by notice of not less than 90 days, to declare the Debt immediately due and payable.

19. No Credits on Account of the Debt. Mortgagor shall not claim or demand or be entitled to any credit on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, and no deduction shall otherwise be made or claimed from the assessed value of the

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Property for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by notice of not less than 90 days, to declare the Debt immediately due and payable.

20. **Further Acts, Etc.** Mortgagor shall, at its sole cost, do execute, acknowledge and deliver all and every such further acts, deeds, conveyances, Mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby Mortgage, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage or for facilitating the sale and transfer of the Loan and the Loan Documents in connection with a Secondary Market Transaction as described in Section 9.1 of this Mortgage; provided that nothing required by Mortgagee as set forth above shall materially increase Mortgagor's obligations under the Loan Documents or decrease Mortgagor's rights under the Loan Documents. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor shall, at its sole cost, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Property. In the event Mortgagor fails to promptly comply with the provisions hereof, Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including such rights and remedies available to Mortgagee pursuant to this paragraph. Notwithstanding anything to the contrary in the immediately preceding sentence, Mortgagee shall not execute any document as attorney-in-fact of Mortgagor unless (x) Mortgagor shall have failed or refused to execute the same within five (5) Business Days after Mortgagee's request therefor, or (y) in Mortgagee's good faith determination it would be materially prejudiced by the delay involved in making such a request. Mortgagee shall give prompt notice to Mortgagor of any exercise of the power of attorney as provided for in this Paragraph 7, along with copies of all documents executed in connection therewith.

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

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PART II - ILLINOIS SPECIFIC PROVISIONS

22. **Conflict of Provisions.** In the event of any inconsistencies between this Section 22 of this Mortgage and any other terms and provisions of this Mortgage, the terms and conditions of this Section 22 of this Mortgage shall control and be binding

22.1 Mortgagor hereby represents and agrees that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in the Illinois Interest Act, 815 ILCS 205/4(1), and the indebtedness secured hereby constitutes a business loan which comes within the purview of Section 205/4(1)(c) and a loan secured by a mortgage on real estate within the purview of Section 204/4(1)(1).

22.2 Any references to the "power of sale" in this Mortgage are permitted only the extent allowed by law.

22.3 The following words are hereby inserted in Section (b) of the recitals of this Mortgage immediately following the words "fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures),"

And all proceeds and products of and accessions to and substitutions and replacements for all such fixtures and other property owned by Mortgagor

22.4 The text of the last three (3) sentences of Section 12 entitled "Security Agreement" are hereby deleted and the following is substituted therefor:

Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter in this Section 22 referred to as the "Code") with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of the Note, this Mortgage or the other loan documents and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Property or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter in this Section 22 collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Debt. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property; and the following provisions of this paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(i) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, except such incidental furnishings, fixtures and equipment which are leased by Mortgagor, such as furniture in model apartments and club houses, and whose value, in the aggregate, is immaterial relative to the owned collateral, subject

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to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents;

(ii) The Collateral is to be used by Mortgagor solely for business purposes;

(iii) The Collateral will be kept at the Property (except for normal replacement of Personal Property) and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Property but will not be affixed to any other real estate;

(iv) The only persons having any interest in the Property are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby;

(v) No financing statement (other than financing statements showing Mortgagee as the sole secured party or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may reasonably request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Debt, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Mortgagee and no other party and liens and encumbrances, if any, expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices whenever filing or recording is deemed by Mortgagee to be desirable;

(vi) Upon default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least twenty (20) days' notice of time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinabove set forth at least twenty (20) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a

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recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Mortgagee so elects, the Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Debt in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition;

(vii) The terms and provisions contained in this Section, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code;

(viii) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinabove set forth. This Mortgage is to be filed for recording with the recorder of deeds of the county or counties where the Property is located. Mortgagor is the record owner of the Property;

(ix) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder; and

(x) The address of Mortgagor, from which information concerning the security interests in the Collateral may be obtained, is set forth on page 1 of this Mortgage.

22.5 (a) In the event any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS Sections 5/15-1101 et. seq., Illinois Compiled Statutes) (the "Foreclosure Act"), the provisions of the Foreclosure Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Foreclosure Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Section 14 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

22.6 Mortgagor hereby waives (a) its statutory rights of redemption and reinstatement and (b) its homestead rights, to the fullest extent allowable by applicable law, including without limitation the Illinois Mortgage Foreclosure Law.

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22.7 To the extent Mortgagee is obligated to make advances, Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b)(1) of IMFL. That portion of the Obligations which comprises the principal amount then outstanding constitutes revolving credit indebtedness secured by a mortgage on real property, pursuant to the terms and conditions of IMFL. Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made by Mortgagee, whether such loans and advances are made as of the date hereof, or at any time in the future, and whether such future advances are obligatory, or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than twenty (20) years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and, although there may be no other indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Property is located. The total amount of the Obligations may increase or decrease from time to time, but the total unpaid principal balance of the Obligations (including disbursements which Mortgagee may make under this Mortgage, or any other document or instrument evidencing or securing Obligations), at any time outstanding, shall not exceed three hundred percent (300%) of the face amount of the Note.

22.8 All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by IMFL (collectively "Protective Advances") shall have the benefit of all applicable provisions of IMFL, including those provisions of IMFL hereinbelow referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (1) preserve or maintain, repair, restore or rebuild the improvements upon the Land; (2) preserve the lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of IMFL;

(b) payments by Mortgagee of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (2) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any party thereof; (3) other obligations authorized by Mortgagee; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of IMFL;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under any prior liens;

(d) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of IMFL; (2) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (3) in the

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preparation for the commencement or defense of any such foreclosure or other action related to this Mortgage or the Property;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of IMFL;

(f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of IMFL;

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Mortgagee's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (3) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Property imposed by Subsection (c)(1) of Section 15-1704 of IMFL; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the mortgaged real estate under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (7) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) pursuant to any lease or other agreement for occupancy of the Improvements for amounts required to be paid by Mortgagor; and (9) if this Mortgage is insured, payments of FHA or private mortgage insurance required to keep insurance in force.

(ii) All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note.

(iii) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 15-1302 of IMFL.

(iv) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of IMFL, apply to and be included in:

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(A) determination of the amount of indebtedness secured by this Mortgage at any time;

(B) the indebtedness found due and owing to this Mortgage in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(C) if right of redemption has not been waived by Mortgagor in this Security Agreement, computation of the amount required to redeem, pursuant to Subsections (d) and (e) of Section 15-1603 of IMFL;

(D) determination of the amount deductible from sale proceeds pursuant to Section 15-1512 of IMFL;

(E) application of income in the hands of any receiver or Mortgagee in possession; and

(F) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 15-1508 and 15-1511 of IMFL.

22.9 In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of IMFL, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of IMFL.”

22.10 MORTGAGOR AND MORTGAGEE HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THIS MORTGAGE OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF MORTGAGEE OR MORTGAGOR OR THEIR OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

22.11 Mortgagor acknowledges that the Property does not constitute agricultural real estate as defined in Section 15-1201 of the Foreclosure Act or residential real estate as defined in Section 15-1219 of the Foreclosure Act.

23. **Release Parcels.** Borrower shall have the right to cause a Release Parcel (as defined in the Note) to be released from the lien of this Mortgage on the following terms and conditions:

(a) Borrower shall have complied with all of the provisions of Section 7.3 of the Note with respect to the release;

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(b) Lender shall have received payment of all Lender's costs and expenses, including reasonable counsel fees and disbursements, and any rating agency fees payable in connection with the Rating Comfort Letters required by the Note, incurred in connection with the release of the Release Parcel from the lien of the Mortgage and the review and approval of the documents and information required to be delivered in connection therewith;

(c) Lender shall have received evidence reasonably satisfactory to Lender that Borrower is Solvent (hereinafter defined) and shall not be rendered Insolvent (hereinafter defined) by the release of the Release Parcel. The term "**Solvent**" as used herein shall mean both (a) that the financial condition of Borrower is such that the sum of Borrower's debts is less than the aggregate of, at fair valuation, all of Borrower's parcels (exclusive of personally transferred, canceled or removed with intent to hinder, delay or defraud Borrower's creditors) and (b) that Borrower is paying its debts as such debts become due, unless such debts are the subject of a bona fide dispute. The term "**Insolvent**" as used herein shall have the meaning set forth in Section 101(B.) of Rule 11 of the United States Code, as the same may be amended from time to time;

(d) Lender shall have received evidence reasonably satisfactory to Lender that Borrower continues to comply with the terms of Schedule 4 of the Mortgage;

(e) Borrower provides Lender with an endorsement to its title insurance policy evidencing that the lien of the Mortgage (other than this Mortgage) is and continues to constitute a valid first priority lien on the remaining Property.

(g) Each of the Release Parcel, and all improvements thereon, and the remaining portion of the Property (the "**Remaining Property**"), and all improvements thereon, shall comply with all applicable zoning, land use and similar laws, rules, regulations and ordinances of all governmental authorities having or claiming jurisdiction thereover, and all other applicable laws, with each such determination assuming the separate ownership and operation of each parcel;

(h) Borrower provides evidence reasonably acceptable to Lender that (1) all zoning and subdivision approvals of governmental authorities having jurisdiction as necessary to create legally identifiable tracts of real property, and separate tax and zoning lots for all real property taxes, have been granted; and 2) from and after the release of the outparcel, no acts relating to development, further subdivision, construction or use on the outparcel can affect in any respect the compliance of the Remaining Property with all applicable laws;

(i) Borrower provides evidence satisfactory to Lender that, following any such release, the Remaining Property shall have available to it all necessary utility and other services for the development, use, occupancy and operation of the Remaining Property, and adequate, free, unimpeded and unencumbered access for pedestrian and vehicular ingress and egress onto all adjacent public roads;

(j) Borrower provides Lender with an updated survey of the Remaining Property and the Release Parcel, satisfactory to Lender, prepared by a registered Illinois land surveyor and certified to the Lender, its successors and assigns, and the title insurer in form acceptable to

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Lender, containing metes and bounds legal descriptions of each of the Release Parcel and the Remaining Property.

(k) Borrower provides Lender with an opinion of counsel satisfactory to Lender, which opinion shall be in form and substance satisfactory to Lender, or other evidence satisfactory to Lender, that the lien of this Mortgage is and continues to constitute a valid lien on the Remaining Property;

(l) Borrower shall procure from the title insurer insuring the lien of this Mortgage an endorsement of Lender's title insurance policy which all provide, inter alia, that the lien and priority of this Mortgage on the Remaining Property shall be unaffected as a result of the release of the Release Parcel, together with such other matters as Lender shall reasonably require; and

(m) Borrower pays all of Lender's fees and expenses (including, without limitation, attorneys' fees and expenses) incurred in connection with the release of such Release Parcel.

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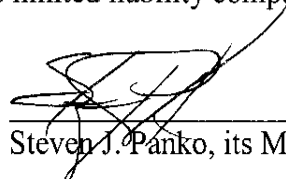
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IN WITNESS WHEREOF, Mortgagor has executed this instrument as of the day and year first above written.

MORTGAGOR:

V-LAND SCHAUMBURG LLC, an
Illinois limited liability company

By:



Steven J. Panko, its Manager

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STATE OF Illinois
COUNTY OF Cook) ss.:

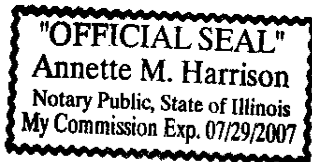
On May 10, 2006 before me, Annette M. Harrison, a Notary Public for said state, personally appeared Steven J. Panko, personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity as Manager of V-Land Schaumburg LLC, and that his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

Annette M. Harrison

Notary Public

State of Illinois

My commission expires:



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EXHIBIT A

Legal Description

PARCEL 1:

LOT 12 IN ANDERSON'S WOODFIELD PARK A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 7, 1974 AS DOCUMENT 22869159, (EXCEPT THAT PART DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 12, AFORESAID; THENCE ON AN ASSUMED BEARING OF SOUTH 00 DEGREE, 25 MINUTES, 59 SECONDS WEST ALONG EAST LN OF LOT 12 AFORESAID, A DISTANCE OF 20.00 FEET; THENCE NORTH 52 DEGREES, 41 MINUTES, 55 SECONDS WEST, A DISTANCE OF 25.00 FEET; THENCE NORTH 82 DEGREES, 26 MINUTES, 40 SECONDS WEST, A DISTANCE OF 40.31 FEET TO THE NORTH LINE OF LOT 12 AFORESAID; THENCE SOUTH 89 DEGREES, 34 MINUTES, 11 SECONDS EAST ALONG SAID NORTH LINE, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 13 IN ANDERSON'S WOODFIELD PARK, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AS APPEARING ON THE PLAT OF SUBDIVISION RECORDED AS DOCUMENT 22869159 IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 2, AS SET FORTH IN THE RECIPROCAL EASEMENT AGREEMENT DATED APRIL 16, 2003 AND RECORDED JULY 8, 2003 AS DOCUMENT 0318919006 MADE BY AND BETWEEN CHICAGO TITLE LAND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 26, 1991 AND KNOWN AS TRUST NO. 1096423 AND AUDIT BUREAU OF CIRCULATIONS, FOR THE PURPOSE OF PEDESTRIAN AND VEHICULAR INGRESS OVER AND ACROSS THE FOLLOWING DESCRIBED LAND:

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THE NORTH 18.00 FEET OF THE EAST 47.00 FEET OF LOT 1 IN ANDERSON'S RESUBDIVISION OF LOT 11 IN ANDERSON'S WOODFIELD PARK, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED AUGUST 21, 1979 AS DOCUMENT 25112191 AND LETTER OF CORRECTION THERETO RECORDED JULY 23, 1980 AS DOCUMENT 25524232, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE RIGHT OF WAY AGREEMENT RECORDED AS DOCUMENT 0517239014 FOR THE CONSTRUCTION OF A WATER IRRIGATION SYSTEM TO BE CONSTRUCTED IN THE RIGHT OF WAY IMMEDIATELY ADJACENT TO PARCEL 1.

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SCHEDULE 1

Specific Definitions. The following terms have the meanings set forth below:

Affiliate: as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

Approved Capital Expenses: Capital Expenses incurred by Mortgagor, provided that during a Cash Management Period, such which Capital Expenses shall either be (i) included in the Approved Capital Budget for the current calendar month or (ii) approved by Mortgagee.

Approved Leasing Expenses: actual out-of-pocket expenses incurred by Mortgagor and payable to third parties that are not Affiliates of Mortgagor or Guarantor in leasing space at the Property pursuant to Leases entered into in accordance with the Loan Documents, including brokerage commissions and tenant improvements, which expenses (i) are (A) specifically approved by Mortgagee in connection with approving the applicable Lease, (B) incurred in the ordinary course of business and on market terms and conditions in connection with Leases which do not require Mortgagee's approval under the Loan Documents, or (C) otherwise approved by Mortgagee, which approval shall not be unreasonably withheld or delayed, and (ii) are substantiated by executed Lease documents and brokerage agreements.

Approved Operating Expenses: during a Cash Management Period, operating expenses incurred by Mortgagor which (i) are included in the Approved Operating Budget for the current calendar month, (ii) are for real estate taxes, insurance premiums, electric, gas, oil, water, sewer or other utility service to the Property or (iii) have been approved by Mortgagee.

Available Cash: as of each Payment Date during the continuance of Cash Management Period, the amount of Rents, if any, remaining in the Deposit Account after the application of all of the payments required under clauses (i) through (v) of Section 2.11(a) hereof.

Business Day: any day other than a Saturday, Sunday or any day on which commercial banks in New York, New York are authorized or required to close.

Calculation Date: the last day of each calendar quarter during the Term.

Capital Expenses: expenses that are capital in nature or required under GAAP to be capitalized.

Cash Management Period: shall commence upon Mortgagee giving notice to the Clearing Bank of the occurrence of any of the following: (i) an Event of Default, or (ii) if, as of any Calculation Date, the Debt Service Coverage Ratio is less than 1.20:1 (a "***DSCR Cash Management Period***"); and shall end upon Mortgagee giving notice to the Clearing Bank that the sweeping of funds into the Deposit Account may cease, which notice Mortgagee shall only be required to give if (A) with respect to the matters described in clause (i) above, such Event of Default has been cured and no other Event of Default has occurred and is continuing or (B) with respect to the matter described in clause (ii) above, Mortgagee has determined that the Property has achieved a Debt Service Coverage Ratio of at least 1.20:1 for two (2) consecutive Calculation Dates.

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Code: the Internal Revenue Code of 1986, as amended and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

Control: with respect to any Person, either (i) ownership directly or indirectly of 49% or more of all equity interests in such Person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

Debt: the unpaid Principal, all interest accrued and unpaid thereon, any Yield Maintenance Premium, if applicable, and all other sums due to Mortgagee in respect of the Loan or under any Loan Document.

Debt Service: with respect to any particular period, the greater of (i) scheduled Principal and interest payments due under the Note in such period or (ii) the product of (A) the outstanding principal as of the end of such period multiplied by (B) 6.38%.

Debt Service Coverage Ratio: as of any date, the ratio calculated by Mortgagee of (i) the Net Operating Income for the twelve (12) month period ending with the most recently completed calendar month to (ii) the Debt Service with respect to such period.

Default: the occurrence of any event under any Loan Document which, with the giving of notice or passage of time, or both, would be an Event of Default.

Default Rate: a rate per annum equal to the lesser of (i) the maximum rate permitted by applicable law, or (ii) five percent (5%) above the Interest Rate, compounded monthly.

Defeasance Collateral: U.S. Obligations, which provide payments (i) on or prior to, but as close as possible to, all Payment Dates and other scheduled payment dates, if any, under the Note after the Defeasance Date and up to and including the Stated Maturity Date, and (ii) in amounts equal to or greater than the Scheduled Defeasance Payments.

Deposit Bank: Bridgeview Bank Group or such other bank or depository selected by Mortgagee in its discretion.

Eligible Account: a separate and identifiable account from all other funds held by the holding institution that is either (i) an account or accounts (A) maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (B) as to which Mortgagee has received a Rating Comfort Letter from each of the applicable Rating Agencies with respect to holding funds in such account, or (ii) a segregated trust account or accounts maintained with the corporate trust department of a federal depository institution or state chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulations §9.10(b), having in either case corporate trust powers, acting in its fiduciary capacity, and a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authorities. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

Eligible Institution: a depository institution insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P, P-1 by Moody's and F-1+ by Fitch, in the case of accounts in which funds are held for thirty (30) days or less or, in the case of Letters of Credit or accounts in which funds are

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held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's.

ERISA: the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

ERISA Affiliate: all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with Mortgagor, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

GAAP: generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

Governmental Authority: any court, board, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) now or hereafter in existence.

Guarantor: Steven Panko, an individual

Interest Period: (i) the period from the date hereof through the last day the calendar month and (ii) each period thereafter from the 1st day of each calendar month through the last day of such calendar month.

Interest Rate: a rate of interest equal to 0.38% per annum (or, when applicable pursuant to this Mortgage or any other Loan Document, the Default Rate).

Key Principal(s): Steven Panko.

Leases: all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Property or the Improvements, including any guarantees, extensions, renewals, modifications or amendments thereof and all additional remainders, reversions and other rights and estates appurtenant thereunder.

Lease Termination Payments: (i) all fees, penalties, commissions or other payments made to Mortgagor in connection with or relating to the rejection, buy-out, termination, surrender or cancellation of any Lease (including in connection with any bankruptcy proceeding), (ii) any security deposits or proceeds of letters of credit held by Mortgagor in lieu of cash security deposits, which Mortgagor is permitted to retain pursuant to the applicable provisions of any Lease and (iii) any payments made to Mortgagor relating to unamortized tenant improvements and leasing commissions under any Lease.

Legal Requirements: statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Mortgagor, any Loan Document or all or part of the Property or the construction, ownership, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to Mortgagor, at any time in force affecting all or part of the Property.

Lien: any mortgage, Mortgage, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest or any other encumbrance, charge

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or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting all or any part of the Property or any interest therein, or any direct or indirect interest in Mortgagor, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances.

Loan Documents: this Mortgage and all other documents, agreements and instruments now or hereafter evidencing, securing or delivered to Mortgagee in connection with the Loan, including the following, each of which is dated as of the date hereof: (i) the Promissory Note or Promissory Notes made by Mortgagor to Mortgagee in the aggregate principal amount equal to the Loan (the "**Note**"), (ii) the Mortgage, Assignment of Leases and Rents and Security Agreement made by Mortgagor (or the Mortgage, Assignment of Leases and Rents and Security Agreement made by Mortgagor to a trustee, as the case may be) in favor of Mortgagee which covers the Property (the "**Mortgage**"), (iii) Assignment of Leases and Rents from Mortgagor to Mortgagee, (iv) Assignment of Agreements, Licenses, Permits and Contracts from Mortgagor to Mortgagee, (v) and (vi) the Guaranty of Recourse Obligations made by Guarantor; as each of the foregoing may be (and each of the foregoing defined terms shall refer to such documents as they may be) amended, restated, replaced, severed, split, supplemented or otherwise modified from time to time pursuant to the terms hereof.

Material Alteration: any alteration affecting structural elements of the Property the cost of which exceeds \$100,000; provided, however, that in no event shall (i) any tenant improvement work performed pursuant to any Lease existing on the date hereof or entered into hereafter in accordance with the provisions of this Mortgage, or (ii) alterations performed as part of a Restoration, constitute a Material Alteration.

Material Lease: all Leases which demise all or substantially all of the square footage of a building or of the Property.

Maturity Date: the date on which the final payment of principal of the Note becomes due and payable as therein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

Minor Lease: any Lease demising less than 5,000 rentable square feet of any Building.

Net Operating Income: For any period, the underwritten net cash flow of the Property determined by Mortgagee in its sole and absolute discretion in accordance with Mortgagee's then current underwriting standards for loans of this type and the then current underwriting standards of the Rating Agencies (including adjustments for market vacancy, bankrupt tenants, leasing costs and capital items).

Obligations: Borrower's obligations for the payment of the debt and the performance of all other obligations of Borrower contained herein and the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Mortgage, the Note or the other Loan Documents.

Officer's Certificate: a certificate delivered to Mortgagee by Mortgagor which is signed by a manager in its capacity as manager of Mortgagor.

Other Charges: all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar

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areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

Payment Date: the 1st day of each calendar month, or, if such day is not a Business Day, the Payment Date shall be the first Business Day thereafter). The first Payment Date hereunder shall be July 1, 2006.

Permitted Encumbrances: (i) the Liens created by the Loan Documents, (ii) all Liens and other matters disclosed in the Title Insurance Policy, (iii) Liens, if any, for Taxes or Other Charges not yet due and payable and not delinquent, (iv) any workers', mechanics' or other similar Liens on the Property provided that any such Lien is bonded or discharged within thirty (30) days after Mortgagee first receives notice of such Lien and (v) such other title and survey exceptions as Mortgagee approves in writing in Mortgagee's discretion.

Permitted Transfers: The members of the Mortgagor shall be permitted to transfer such interests to each other and to family members, trusts, family limited liability companies and like entities for estate planning purposes without the same constituting a Transfer hereunder and in any event, requiring Lender's consent, provided that Steven Panko maintains, either directly or indirectly, management control and at least 51% beneficial interest (through direct ownership or as a member of a member) in the Borrower.

Person: any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other person or entity, and any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

Plan: (i) an employee benefit or other plan established or maintained by Mortgagor or any ERISA Affiliate or to which Mortgagor or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is subject to Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

Property: the parcel of real property and Improvements thereon owned by Mortgagor and encumbered by the Mortgage; together with all rights pertaining to such real property and Improvements, and all other collateral for the Loan as more particularly described in the Granting Clauses of the Mortgage and referred to therein as the Property. The Property is located in Schaumburg, Illinois.

Rating Agency: each of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P"), Moody's Investors Service, Inc. ("Moody's"), and Fitch, Inc., a division of Fitch Ratings Ltd. ("Fitch") or any other nationally-recognized statistical rating organization to the extent any of the foregoing have been engaged by Mortgagee or its designee in connection with or in anticipation of any Secondary Market Transaction.

Rating Comfort Letter: a letter issued by each of the applicable Rating Agencies which confirms that the taking of the action referenced to therein will not result in any qualification, withdrawal or downgrading of any existing ratings of Securities created in a Secondary Market Transaction.

Release Date: the earlier to occur of (i) the forty second (42nd) Payment Date of the Term and (ii) the date that is two (2) years from the "startup day" (within the meaning of Section 860G(a)(9) of the Code) of the REMIC Trust established in connection with the final Secondary Market Transaction involving this Loan.

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REMIC Trust: a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds the Note.

Rents: all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding) or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor, any of its agents or employees from any and all sources arising from or attributable to the Property and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Mortgagor or any of its agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

Scheduled Defeasance Payments: the Monthly Debt Service Payment Amount required under the Note for all Payment Dates occurring after the Defeasance Date (including the outstanding Principal balance on the Note as of the Stated Maturity Date).

Security Agreement: a security agreement in form and substance that would be satisfactory to Mortgagee (in Mortgagee’s sole but good faith discretion) pursuant to which Mortgagor grants Mortgagee a perfected, first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral.

Secondary Market Transaction means any of (i) the sale, assignment, or other transfer of all or any portion of the Loan or the Loan Documents or any interest therein to one or more investors, (ii) the sale, assignment, or other transfer of one or more participation interests in the Loan or Loan Documents to one or more investors, or (iii) the transfer or deposit of all or any portion of the Loan or Loan Documents to or with one or more trusts or other entities which may sell certificates or other instruments to investors evidencing an ownership interest in the assets of such trust or the right to receive income or proceeds therefrom.

Securitization shall mean a rated offering of securities representing direct or indirect interests in one or more Mortgage loans or the right to receive income therefrom.

Servicer: a servicer selected by Mortgagee to service the Loan, including any “master servicer” or “special servicer” appointed under the terms of any pooling and servicing agreement or similar agreement entered into as a result of a Secondary Market Transaction.

State: the state in which the Property is located.

Stated Maturity Date: June 1, 2016, as such date may be changed in accordance with the terms of the Note.

Taxes: all real estate and personal property taxes, assessments, water rates or sewer rents, maintenance charges, impositions, vault charges and license fees, now or hereafter levied or assessed or imposed against all or part of the Property.

Term: the entire term of the Loan, which shall expire upon repayment in full of the Debt and full performance of each and every obligation to be performed by Mortgagor pursuant to the Loan Documents.

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Title Insurance Policy: the ALTA mortgagee title insurance policy in the form acceptable to Mortgagee issued with respect to the Property and insuring the Lien of the Mortgage.

Transfer: (i) any sale, conveyance, transfer, lease or assignment, or the entry into any agreement to sell, convey, transfer, lease or assign, whether by law or otherwise, of, on, in or affecting (y) all or part of the Property (including any legal or beneficial direct or indirect interest therein), (z) any direct or indirect interest in Mortgagor (including any profit interest), or (ii) any change of Control of Mortgagor. For purposes hereof, (i) a Transfer of an interest in Mortgagor shall be deemed to include (A) if Mortgagor or controlling shareholder of Mortgagor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than ten percent (10%) of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation and (B) if Mortgagor, or controlling shareholder of Mortgagor or is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member and (ii) a change of Control of Mortgagor shall be deemed to have occurred if (A) there is any change in the identity of any individual or entity or any group of individuals or entities who have the right, by virtue of any partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement or any other agreement, with or without taking any formative action, to cause Mortgagor to take some action or to prevent, restrict or impede Mortgagor from taking some action which, in either case, Mortgagor could take or could refrain from taking were it not for the rights of such individuals or (B) the individual or entity or group of individuals or entities that Control Mortgagor as described in clause (A) ever cease to own at least fifty-one percent (51%) of all equity interests (direct or indirect) in Mortgagor).

UCC: the Uniform Commercial Code as in effect in the State or the state in which any of the Cash Management Accounts are located, as the case may be.

U.S. Obligations: obligations that are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended, to the extent such obligations are not subject to prepayment, call or early redemption.

Welfare Plan: an employee welfare benefit plan, as defined in Section 3(1) of ERISA.

Yield Maintenance Premium: an amount which, when added to the outstanding Principal, would be sufficient to purchase U.S. Obligations which provide payments (a) on or prior to, but as close as possible to, all successive scheduled payment dates under the Note through the Stated Maturity Date and (b) in amounts equal to the Monthly Debt Service Payment Amounts required and as defined under the Note through the Stated Maturity Date together with the outstanding principal balance of the Note as of the Stated Maturity Date assuming all such Monthly Debt Service Payment Amounts are made (including any servicing costs associated therewith). In no event shall the Yield Maintenance Premium be less than zero.

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SCHEDULE 2

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SCHEDULE 3

Disclosure as to Representations

NONE

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SCHEDULE 4

Special Purpose Entity

(a) PERTAINING TO MORTGAGOR PARTIES. Mortgagor represents, warrants and covenants as of the date of hereof and until such time as the indebtedness secured hereby is paid in full, that Mortgagor:

(i) does not own and will not own any assets other than the Property (including incidental personal property necessary for the operation thereof and proceeds therefrom);

(ii) is not engaged and will not engage in any business, directly or indirectly, other than the ownership, management and operation of the Property;

(iii) will not enter into any contract or agreement with any partner, member, shareholder, trustee, Mortgagee, principal or affiliate of any Mortgagor Party except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than such affiliate;

(iv) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the obligations secured by this Instrument, and (ii) trade payables or accrued expenses incurred in the ordinary course of business of operating the Property;

(v) has not made and will not make any loan or advances to any person or entity;

(vi) is and reasonably expects to remain solvent and pay its own liabilities, indebtedness, and obligations of any kind from its own separate assets as the same shall become due;

(vii) has done or caused to be done and will do all things necessary to preserve its existence, and will not, nor will any partner, member, shareholder, trustee, Mortgagee, or principal amend, modify or otherwise change Borrower's partnership certificate, partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement, or other organizational documents in any manner;

(viii) shall continuously maintain its existence and be qualified to do business in all states necessary to carry on its business, specifically including in the case of Mortgagor, the state where the Property is located;

(ix) will conduct and operate its business as presently conducted and operated;

(x) will maintain books and records and bank accounts separate from those of its partners, members, shareholders, trustees, beneficiaries, principals, affiliates, and any other person or entity;

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(xi) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other (including any of its partners, members, shareholders, trustees, beneficiaries, principals and affiliates), and not as a department or division of any entity;

(xii) will file its own tax returns;

(xiii) has and reasonably expects to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xiv) will not seek, acquiesce in, or suffer or permit its liquidation, dissolution or winding up, in whole or in part;

(xv) will not enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock of beneficial ownership of, any person or entity;

(xvi) will not commingle or permit to be commingled its funds or other assets with those of any other person or entity;

(xvii) has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any other person or entity;

(xviii) except as expressly provided or in the Loan Documents, does not and will not hold itself out to be responsible for the debts or obligations of any other person or entity;

(xix) except as expressly provided for in the Loan Documents, has not and will not guarantee or otherwise become liable on or in connection with any obligation of any other person or entity;

(xx) shall not do any act which would make it impossible to carry on its ordinary business;

(xxi) will not possess or assign the Property for other than a business or company purpose;

(xxii) shall not hold title to its assets other than in its name;

(xxiii) shall not institute proceedings to be adjudicated bankrupt or insolvent; consent to the institution of bankruptcy or insolvency proceedings against it; file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of it or a substantial part of its property; or make any assignment for the benefit of creditors; or admit in writing its inability to pay its debts generally as they become due; and

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(xxiv) shall comply with all (and shall not suffer to be inaccurate any) of the assumptions, statements, certifications, representations, warranties and covenants regarding or made by Mortgagor contained in or appended to any opinion of Mortgagor's legal counsel delivered in connection with the transaction in which the Loan Documents are executed.

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