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Cook County Recorder of Deeds
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Property of Cook County Clerk's Office

COOK COUNTY RECORDING

- DEED
- MORTGAGE
- ASSIGNMENT
- POWER OF ATTORNEY
- RELEASE
- SUBORDINATION AGREEMENT
- OTHER

RETURN TO:

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8359941028 ②

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

NMC Grove Melrose, LLC, a Delaware limited liability company (as to an undivided 30.56% interest),
NMC Melrose Park, LLC, a California limited liability company (as to an undivided 18.67% interest),
Melrose Park Associates, LLC, a Delaware limited liability company (as to an undivided 5.59% interest),
Melrose Park Equity, LLC, a Delaware limited liability company (as to an undivided 25.21% interest)
and Melrose Park Investments, L.P., a California limited partnership (as to an undivided 19.97% interest)
as tenants-in-common (collectively, "Borrower")

in favor of

PNC BANK, NATIONAL ASSOCIATION
(Lender)

Dated: August 6, 2007

Location: Winston Plaza Shopping Center
900-1384 North Avenue
Melrose Park, Cook County, Illinois

PREPARED BY, RECORD AND RETURN TO:

PNC BANK, NATIONAL ASSOCIATION
10851 Mastin, Suite 300
Overland Park, Kansas 66210
Attention: Closing Department
Loan No.: 94-0953760

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THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (the "Security Instrument") is made as of August 6, 2007, by NMC Grove Melrose, LLC, a Delaware limited liability company (as to an undivided 30.56% interest) and NMC Melrose Park, LLC, a California limited liability company (as to an undivided 18.67% interest), having their principal place of business at 5850 Canoga Avenue #650, Woodland Hills, California 91367 and Melrose Park Associates, LLC, a Delaware limited liability company (as to an undivided 5.59% interest), Melrose Park Equity, LLC, a Delaware limited liability company (as to an undivided 25.21% interest) and Melrose Park Investments, L.P., a California limited partnership (as to an undivided 19.97% interest) having their principal place of business at 9595 Wilshire Boulevard, Suite 501, Beverly Hills, California 90210, as tenants-in-common (collectively, "Borrower") in favor of PNC Bank, National Association ("Lender"), having a mailing address at 10851 Mastin, Suite 300, Overland Park, Kansas 66210.

RECITALS:

To secure the payment of an indebtedness in the principal sum of Forty Six Million and No/100 Dollars (\$46,000,000.00), lawful money of the United States of America, to be paid with interest according to a certain contemporaneously executed Promissory Note made by Borrower to the order of Lender, a copy of which is attached to and made a part hereof as Exhibit A (said Promissory Note, together with all extensions, renewals or modifications thereof, is referred to as the "Note", and said indebtedness, interest and all other sums due hereunder, and under the Note and the Other Security Documents (hereinafter defined), including applicable attorney fees and costs, is collectively referred to as the "Debt"), which Debt in the aggregate shall not at any time exceed the sum of \$100,000,000.00) Borrower hereby irrevocably mortgages, gives, grants, bargains, sells, alienates, conveys, confirms, pledges, assigns, grants a security interest in, and hypothecates to Lender, its successors and assigns, with the right to entry and possession, all of its estate, right, title and interest in, to, and under any and all of the following described property (collectively the "Mortgaged Property"), whether now owned or held or hereafter acquired:

- (a) The real property described in Exhibit B attached hereto (the "Premises") and the buildings, structures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");
- (b) 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, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;
- (c) all other assets of Borrower, of every kind and nature, now existing and hereafter acquired and arising and wherever located, related to the ownership or operation of the Premises, including without limitation, accounts, deposit or reserve accounts, commercial tort claims, letter of credit rights, chattel paper (including electronic chattel paper), documents, instruments, investment property, general intangibles (including payment intangibles), software, goods, inventory, equipment, furniture and fixtures, all supporting

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obligations of the foregoing, and all cash and noncash proceeds and products (including without limitation insurance proceeds) of the foregoing, and all additions and accessions thereto, substitutions therefor and replacements thereof, and including, without limitation, the following;

- (1) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), building equipment, materials and supplies, and other property of every kind and nature, whether tangible or intangible, owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and 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 called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and, without limiting the generality of the foregoing, if any such Equipment is subject to any prior security interest or prior security agreement (as such terms are defined in the Uniform Commercial Code, as adopted and enacted in the state or states in which any of the Mortgaged Property is located), then the Mortgaged Property shall include all of the right, title and interest of Borrower in and to any such Equipment, together with all deposits and payments now or hereafter made by Borrower with respect to such Equipment;
- (2) all awards, payments or compensation, including interest thereon, heretofore or hereafter made with respect to the Mortgaged Property for any injury or decrease in the value of the Mortgaged Property related to any exercise of the right of eminent domain or condemnation (including without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights or for a change of grade);
- (3) all leases, reciprocal easement agreements, and other agreements and arrangements affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or at the Premises and the Improvements heretofore or hereafter entered into (the "Leases"), all income, rents (including, without limitation, all percentage rents), issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Mortgaged Property (the "Rents") and 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;
- (4) all proceeds of, and any unearned premiums on, any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;
- (5) the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Lender in the Mortgaged Property; and
- (6) all other property or collateral of any nature whatsoever, now or hereafter given as additional security for the payment of the Debt, including without limitation, property management agreements now or hereafter entered into with any person or entity providing management services to the Mortgaged Property, service contracts, common area agreements, licenses, permits, construction warranties and other contracts, agreements and instruments relating to the Mortgaged Property (including, without limitation, agreements pursuant to which Borrower acquired any of the Mortgaged Property, and including any security or indemnities given in connection therewith), security deposits, royalties, refunds, expense reimbursements, reserve or escrow deposits or accounts related to the Mortgaged Property or any Lease and all documents relating to each of the foregoing.

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TO HAVE AND TO HOLD the Mortgaged Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever to secure the payment to Lender of the Debt at the time and in the manner provided for its payment in the Note, in this Security Instrument or in the Other Security Documents free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived);

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note, in this Security Instrument or in the Other Security Documents, and shall abide by and comply with each and every covenant and condition set forth herein and in the Note in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void, and Lender shall execute and deliver to Borrower a satisfaction or discharge of this Security Instrument, in recordable form.

Borrower hereby represents and warrants to and covenants and agrees with Lender as follows:

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Borrower will pay the Debt at the time and in the manner provided in the Note, this Security Instrument and the Other Security Documents. All the covenants, conditions and agreements contained in: (a) the Note; and (b) all and any documents (other than the Note or this Security Instrument) (collectively the "Other Security Documents") now or hereafter executed by Borrower and/or others in favor of Lender, which wholly or partially secure or guaranty payment of the Note, provide for any indemnity in favor of or payment to Lender related to the Debt, the Note or the Mortgaged Property, provide for any escrow/holdback arrangements or for any actions to be completed by Borrower subsequent to the date hereof, or are otherwise related to the loan secured by this Security Instrument (the "Loan"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein. Notwithstanding anything herein to the contrary, neither this Security Instrument nor any of the Other Security Documents shall secure the payment of any Environmental Losses (as defined in that certain Environmental Indemnity Agreement executed in favor of Lender contemporaneously herewith).
2. Warranty of Title. Borrower warrants that Borrower has good title to the Mortgaged Property and has the right to mortgage, give, grant a security interest in, bargain, sell, alienate, convey, confirm, pledge, assign and hypothecate the same and that Borrower possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy in favor of Lender insuring the lien of this Security Instrument. Borrower shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Security Instrument to Lender against the claims of all persons whomsoever.
3. Insurance Requirements.
 - (a) Borrower, at its sole cost and expense, will keep the Mortgaged Property insured during the entire term of this Security Instrument for the mutual benefit of Borrower and Lender against loss or damage by fire and against loss or damage by other risks and hazards covered by a standard extended coverage insurance policy providing "special" form coverage including, but not limited to, fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civic commotion, terrorism, vandalism, malicious mischief, burglary, theft, sprinkler leakage, sinkhole collapse, volcanic action, falling objects, weight of snow, ice or sleet or water damage, and to the extent required by Lender, earthquake or any other risks

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insured against by persons operating like properties in the locality of the Mortgaged Property. Such insurance shall be in an amount not less than the lesser of (i) the then full replacement cost of the Mortgaged Property, without deduction for physical depreciation, or (ii) the outstanding principal balance of the Debt; but in any event an amount sufficient to ensure that the insurer issuing said policies would not deem Borrower a co-insurer under said policies. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance, shall contain the "Replacement Cost Endorsement" with a waiver of depreciation, and, if required by Lender, shall contain "Ordinance and Law" coverage.

(b) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain during the entire term of this Security Instrument the following policies of insurance:

(i) Flood insurance (meeting the current requirement of the Federal Insurance Administration) if any part of the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the Flood Disaster Protection Act of 1973 (and any successor act thereof) in an amount at least equal to the lesser of (A) the outstanding principal balance of the Debt; (B) the maximum amount of coverage available to Borrower under the National Flood Insurance Program; or (C) the then full replacement cost of the Mortgaged Property, without deduction for physical depreciation.

(ii) General liability insurance on an "occurrence basis", in the amount of at least \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate against claims for bodily injury or property damage occurring on, in or about the Mortgaged Property.

(iii) Business Income and/or Rental Value insurance in an amount equal to the sum of: (A) the total anticipated rental income (including percentage rents) payable by all tenants under Leases (whether or not such Leases are terminable in the event of a fire or casualty); (B) the total amount of all Taxes (hereinafter defined), Other Charges (hereinafter defined) or similar charges which a tenant is obligated to pay on Borrower's behalf; and (C) an amount equal to the fair rental value of any portion of the Mortgaged Property occupied by Borrower; for a period of at least twelve (12) months after the date of the fire or other casualty in question. The amount of such insurance shall be increased from time to time during the term of this Security Instrument as and when Lender requires, to reflect all rent, additional rent, increased rent and increased additional rent payable by all new or renewal tenants, and all increased profits or other income from the Mortgaged Property. No exclusions shall be allowed for any risks specifically enumerated in subsection (a) above.

(iv) Boiler and Machinery Insurance if any steam boiler, air conditioning equipment, high pressure piping, machinery and equipment pressure vessels or similar apparatus now exists or is hereafter installed in the Improvements (excepting any such apparatus located within and serving individual residential units of the Improvements, if any).

(v) Such other insurance as may from time to time be required by Lender in order to protect its interests.

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(c) All policies of insurance (individually, a "Policy", and collectively the "Policies") required pursuant to this Security Instrument: (i) shall be issued by an insurer satisfactory to Lender, in its sole discretion; (ii) shall contain a mortgagee non-contribution clause satisfactory to Lender, in its sole discretion, naming Lender as the person to which all payments made by such insurance company shall be paid; (iii) shall be maintained throughout the term of this Security Instrument without cost to Lender; (iv) shall be assigned and delivered to Lender; (v) shall contain such provisions as Lender deems necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said Policies and that Lender shall receive at least thirty (30) days prior written notice of any modification, termination or cancellation of the applicable Policy; and (vi) shall be satisfactory in form and substance to Lender and shall be approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Borrower shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable. Not later than thirty (30) days prior to the expiration date of each of the Policies, Borrower will deliver to Lender satisfactory evidence of the renewal of each expiring Policy.

(d) If insurance for earthquake or special hazards is obtained by Borrower in its sole discretion and without requirement of Lender, then Borrower, when obtaining such insurance coverage, shall meet the insurance requirements hereof except as to matters requiring Lender's further approval, and such insurance coverage: (i) shall be within the meaning of a "Policy" or "Policies"; and (ii) shall be for the benefit of Lender and all proceeds thereof constitute additional security for the Debt, and Lender shall have all rights with respect to and be entitled to receive all proceeds in the same manner it would receive any Insurance Proceeds (hereinafter defined) in the event the Mortgaged Property is damaged or destroyed by a Casualty (hereinafter defined) or by any risk or loss insured against.

(e) Any failure by Lender to insist on full compliance with all of the above insurance requirements at closing does not constitute a waiver of Lender's right to subsequently require full compliance with these requirements.

4. Casualty Loss.

(a) If the Mortgaged Property is damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice thereof to Lender. Borrower hereby authorizes and empowers Lender to settle, adjust or compromise any claims for any insurance proceeds arising from any Casualty (the "Insurance Proceeds"), to receive such Insurance Proceeds and to retain and apply such Insurance Proceeds as set forth herein. If no Event of Default (hereinafter defined), or event which with the giving of notice or passage of time, or both, would give rise to an Event of Default, has occurred as of the date of the Casualty or as of the date any Insurance Proceeds are to be paid or disbursed to Borrower, then:

(i) If the aggregate amount of any Insurance Proceeds resulting from a Casualty is equal to \$25,000.00 or less, such Insurance Proceeds shall be paid directly to Borrower and shall be applied by Borrower to the prompt repair and replacement of the Mortgaged Property;

(ii) If the aggregate amount of any Insurance Proceeds resulting from a Casualty (or series of related Casualties) exceeds \$25,000.00 and the value of the Mortgaged Property immediately following such Casualty remains greater than fifty percent (50%) of its value immediately prior to such Casualty, then all Insurance Proceeds from such Casualty shall be paid to Lender; provided, however, that so long as no Event of Default exists and subject to the

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requirements set forth herein, Lender shall disburse such amounts of the Insurance Proceeds (after deduction for Lender's costs and expenses of collection) as Lender reasonably deems necessary for the repair or replacement of the Mortgaged Property, with any balance remaining after such disbursement being applied by Lender to the Debt in such priority and proportions as Lender deems proper;

(iii) If the value of the Mortgaged Property immediately following any Casualty (or series of related Casualties) does not exceed fifty percent (50%) of its value immediately prior to such Casualties, then all Insurance Proceeds from such Casualties shall be paid directly to Lender and Lender, at its discretion may declare the entire Debt to be immediately due and payable and apply all such Insurance Proceeds, after deduction for Lender's costs and expenses of collection, to the Debt in such priority and proportions as Lender deems proper. In the event Lender does not declare the entire Debt to be immediately due and payable, Borrower shall promptly repair, replace or rebuild any part of the Mortgaged Property destroyed by such Casualty. In such event, subject to the requirements set forth herein, Lender shall disburse such amounts of the Insurance Proceeds as Lender reasonably deems necessary for the repair or replacement of the Mortgaged Property, with any balance remaining after such disbursement being applied by Lender to the Debt in such priority and proportions as Lender deems proper; and

(iv) If no Event of Default (as hereinafter defined) has occurred, and no event has occurred that with notice and/or the passage of time, or both, would constitute an Event of Default, then no Prepayment Consideration (as defined in the Note) will be then due with respect to any application of Insurance Proceeds to the Debt pursuant to subclauses (ii) or (iii) above, or with respect to any required prepayment of the entire Debt pursuant to Lender's election to declare the entire Debt to be immediately due and payable pursuant to subclause (iii) above. An Event of Default which existed but which was completely cured prior to the date of Casualty shall not in itself give rise to any Prepayment Consideration under this subsection.

(b) All disbursements of any portion of any Insurance Proceeds held by Lender shall be subject to all terms and conditions deemed necessary by Lender, including (i) Lender's receipt of satisfactory requests for disbursements, paid bills and lien waivers, architect certificates or other certificates, and certificates or endorsements from title insurance companies; (ii) Borrower's deposit with Lender of any additional funds necessary to supplement the Insurance Proceeds, so as to cover, in advance, the entire cost of the necessary repairs or replacements to the Mortgaged Property as established by the certificate of an architect or engineer (employed by Lender at Borrower's expense); (iii) such architect's or engineer's determination that such repairs or replacements may be effected within a period of six (6) months or less; (iv) Borrower's prompt and diligent completion of such repairs or replacements in accordance with plans and specifications submitted to and approved by Lender; and (v) Lender's inspection, at Borrower's cost and expense, of the repairs or replacements to the Mortgaged Property to verify that such repairs or replacements have been completed in a good and workmanlike manner and are otherwise acceptable to Lender. Lender, whether in possession of the Premises or not, shall not have any obligation to advance or make funds other than the Insurance Proceeds available for the repair or replacement of the Mortgaged Property.

5. Payment of Taxes and Other Charges.

(a) Borrower shall pay or cause to be paid and discharged all taxes, assessments, water rates and sewer rents now or hereafter levied or assessed or imposed against the Mortgaged Property or any part

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thereof (collectively the "Taxes"), and all ground rents, utility charges, maintenance charges, other governmental impositions, and all other liens or charges whatsoever which may be or become a lien or charge against the Mortgaged Property (including without limitation, mechanics and materialmen's liens, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises), now or hereafter related to, or levied, assessed or imposed against, the Mortgaged Property or any part thereof (collectively the "Other Charges") as the same become due and payable. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes and Other Charges have been paid prior to the same becoming delinquent.

(b) After prior written notice to Lender, Borrower, at its 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 in whole or in part of any of the Taxes or Other Charges, provided that: (i) no Event of Default has occurred and shall be continuing; (ii) Borrower is permitted to do so under the provisions of any mortgage, deed of trust, ground lease, or other instrument which creates a superior or junior lien to this Security Instrument (it being understood that no such superior or junior liens will be permitted unless specifically allowed, in writing, by Lender); (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder; (iv) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall have set aside adequate reserves (which Lender may at its option require to be placed in escrow with Lender) for the payment of the Taxes or Other Charges, together with all interest and penalties; and (vi) Borrower shall have furnished such security as may be required in the proceeding, or as may be requested by Lender to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon.

6. Escrowed Funds. Borrower shall, at the option of Lender or its designee, pay to Lender or its designee on the first day of each calendar month one-twelfth of an amount which would be sufficient to pay all Insurance Premiums, Taxes and Other Charges payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months. (The aggregate of said amounts so held by Lender is hereinafter called the "Escrowed Funds"). Borrower hereby pledges to Lender any and all Escrowed Funds now or hereafter held by Lender as additional security for the payment of the Debt. Lender will apply the Escrowed Funds to payments of Taxes, Other Charges and Insurance Premiums required to be made by Borrower pursuant hereto. If the amount of the Escrowed Funds held by Lender shall exceed the amounts required for the payment of the Taxes, Other Charges and Insurance Premiums described above, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Escrowed Funds. If, at any time, the Escrowed Funds are not sufficient to pay the Taxes, Other Charges and Insurance Premiums described above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Lender may apply any Escrowed Funds held by it to the payment of the following items in any order in its sole discretion:

- (a) Taxes and Other Charges;
- (b) Insurance Premiums;
- (c) Interest on the unpaid principal balance of the Note;
- (d) Amortization of the unpaid principal balance of the Note; and
- (e) All other sums payable pursuant to the Note, this Security Instrument and the Other Security

Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument and any applicable Prepayment Consideration.

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Until expended or applied as above provided, the Escrowed Funds shall constitute additional security for the Debt. The Escrowed Funds shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrowed Funds shall be payable to Borrower.

To the extent Borrower timely deposits all required Escrowed Funds with Lender, Borrower shall be relieved of any further obligation to directly pay, or to deliver to Lender any evidence of the payment of (prior to their expiration or delinquency), any Insurance Premiums, Taxes or Other Charges.

7. Condemnation. Borrower shall promptly give Lender written notice of the actual or threatened commencement of any exercise of a right of condemnation or eminent domain affecting all or any part of the Mortgaged Property (each such event being hereinafter referred to as a "Condemnation"), and shall deliver to Lender copies of any and all papers served in connection with any such Condemnation. Notwithstanding any taking (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking) of all or any part of the Mortgaged Property through a Condemnation, Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, this Security Instrument and the Other Security Documents, and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender (after deducting any expenses of collection, including reasonable attorney's fees) to the Debt. Lender shall not be limited to the rate of interest paid on any such award or payment from a Condemnation but shall be entitled to receive out of such award or payment interest at the rate then applicable under the Note. Borrower shall cause any award or payment payable to Borrower in any Condemnation to be paid directly to Lender. Lender shall apply, at Lender's discretion, any such award or payment (after deducting any expenses of collection, including reasonable attorney's fees) to (a) the reduction or discharge of the Debt (whether or not then due and payable) or (b) the restoration, repair, replacement, or rebuilding of the portion of the Mortgaged Property remaining after the Condemnation. No Prepayment Consideration shall be payable solely in connection with such application; provided, however, that notwithstanding the foregoing, if an Event of Default is existing as of the date of the Condemnation, or an event has occurred as of the date of the Condemnation that with notice and/or the passage of time, or both, would constitute an Event of Default hereunder, then any Condemnation awards or proceeds applied to the Debt pursuant to this section shall be subject to the Prepayment Consideration computed in accordance with the terms of the Note. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of any such award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment in an amount sufficient to fully satisfy the Debt.

8. Leases and Rents. Borrower does hereby absolutely and unconditionally assign to Lender all current and future Leases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. The terms and conditions of this assignment shall be governed by the Assignment of Leases and Rents (the "Assignment of Leases") executed by Borrower in favor of Lender contemporaneously with this Security Instrument. Except as permitted pursuant to the Assignment of Leases, Borrower shall not enter into any future Leases of all or any part of the Mortgaged Property.

9. Maintenance, Use and Management of Mortgaged Property.

(a) Borrower shall maintain the Mortgaged Property in good condition and repair and in such a manner as to allow the Mortgaged Property to remain consistently competitive in its market. The

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Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Lender, not to be unreasonably withheld. Borrower shall promptly repair, replace or rebuild any part of the Mortgaged Property which may become damaged, worn or dilapidated, and shall also complete and pay for any structure at any time in the process of construction or repair on the Premises. Borrower shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof, except that Borrower shall be permitted to contest any change or proposed change thereto under the same terms and conditions as permitted in paragraph 5(b), above.

(b) Without limiting any rights Lender or its selected representatives may possess hereunder, under the Note or under any Other Security Document to inspect the Mortgaged Property, Lender shall have the right to conduct physical inspections of the Mortgaged Property to ensure Borrower is appropriately maintaining the Mortgaged Property. Following any such inspection, should Lender determine that the Mortgaged Property has not been maintained as required herein, Lender shall have the right to demand that Borrower complete corrective measures within a ninety (90) day period of time. Failure of Borrower to complete such corrective measures within such period shall constitute an immediate Event of Default and shall entitle Lender to exercise all remedies available to it, including, without limitation, performing Borrower's obligations hereunder.

(c) Borrower shall use and continuously operate and permit the use and continuous operation of the Premises and the Improvements as provided for in Borrower's original loan application to Lender.

(d) Unless Lender otherwise consents in writing, Borrower shall not initiate, join in, acquiesce in or consent to: (i) the removal or resignation of the property manager for the Mortgaged Property; or (ii) if such property manager is an entity affiliated with Borrower, the transfer of ownership, management or control of such property manager to a person or entity other than Borrower, its managing member, general partner or similar controlling entity in Borrower.

(e) Unless Lender otherwise consents in writing, Borrower shall not initiate, join in, acquiesce in or consent to: (i) any change, modification or alteration of the existing access to the Mortgaged Property; (ii) any change in any private restrictive covenant, replat, easement, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Borrower will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Lender.

10. Sale of Mortgaged Property or Change in Borrower.

(a) Borrower acknowledges that Lender has examined and relied on the creditworthiness and experience of Borrower in agreeing to make the loan secured hereby, and that Lender has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that should Borrower default in the repayment of the Debt, Lender can recover the Debt by a sale of the Mortgaged Property.

(b) Borrower may not Transfer (hereinafter defined) the Mortgaged Property, nor allow any Change in Ownership (hereinafter defined), unless all of the following conditions shall have been satisfied: (i) Lender has received Borrower's written request for a Transfer, or for a Change in Ownership (or any other request resulting in a new obligor under the Loan) and Lender shall have expressly approved, in its sole

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discretion, such request in writing, subject to the satisfaction of all requirements hereunder; (ii) no Event of Default has occurred and is continuing; (iii) the proposed new owner/assignee of the Mortgaged Property (the "New Borrower") meets all of Lender's Underwriting Standards (hereinafter defined); (iv) the Mortgaged Property meets all of Lender's Underwriting Standards related to its financial condition, cash flow, operating income, physical condition, management and operation; (v) Borrower provides Lender such other information and documentation reasonably required by Lender, including without limitation, engineering reports, appraisals, environmental reports and title endorsements; (vi) Borrower reimburses Lender for all underwriting and other costs ("Underwriting Costs") incurred by Lender in connection with such Transfer or Change in Ownership (including without limitation, engineering and/or architect's fees, environmental studies, title searches, credit checks, title endorsements, appraisal fees, attorney fees and any costs associated with obtaining any REMIC Opinion or Rating Agency No-Downgrade Letter (as such terms are hereinafter defined) required by Lender); and (vii) Borrower remits to Lender both a reasonable administrative fee and an assumption fee in the amount of one percent (1%) of the outstanding balance of the Debt as of the date of such Transfer or Change in Ownership. Borrower shall reimburse Lender for all Underwriting Costs incurred by Lender in connection with any request for Lender's consent to a Transfer or a Change in Ownership, whether or not any requested Transfer or Change in Ownership is approved or consummated. A failure to comply with any of the terms of this paragraph 10 shall constitute an Event of Default, and Lender may then declare the entire Debt immediately due and payable upon any such Transfer or Change in Ownership. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to so declare the Debt immediately due and payable, or in denying any request for approval of a Transfer or Change in Ownership. This provision shall apply to every Transfer or Change in Ownership whether or not Lender has consented to any previous Transfer or Change in Ownership.

(c) "Lender's Underwriting Standards" shall mean the actual commercial loan underwriting standards used by PNC Bank, National Association, in connection with its making of loans for the purpose of commercial securitization, or any successor entity that is then servicing the Loan, in effect at the time of the proposed Transfer or Change in Ownership, or, if no such standards exist, such standards which are then customary for a commercial lender in connection with the origination of a commercial mortgage loan, for the purpose of securitization, of the size and type of Borrower's loan from Lender secured hereby.

(d) A "Transfer" is defined as any sale, conveyance, assignment, alienation, mortgage, hypothecation, encumbrance, grant of a lien over or a security interest in, pledge or other transfer of the Mortgaged Property or any part thereof or interest therein, whether voluntary or involuntary. Without limiting the generality of the foregoing, a Transfer is deemed to include: (i) an installment sales agreement wherein Borrower agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder; or (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents.

(e) A "Change in Ownership" shall occur: (i) when the ownership or control of more than forty-nine percent (49%), in the aggregate, of the applicable indicia of ownership or actual ownership interest in Borrower, any Guarantor (hereinafter defined), or any Controlling Entity (hereinafter defined) shall be vested in a party or parties who were not owners of such indicia of ownership or actual ownership interest as of the closing of the Loan (1) by any one or more voluntary or involuntary sales, conveyances, transfers, assignments, mortgages, hypothecations, encumbrances, grants of liens over or security interests in, or

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pledges of such indicia of ownership or actual ownership interest or any interest therein, or (2) in one or a series of transactions causing the creation or issuance of any additional indicia of ownership or actual ownership interest; (ii) upon the change, removal or resignation of a managing member, general partner or similar controlling person or entity of Borrower, any Guarantor or any Controlling Entity; or (iii) upon the change or removal of the property manager without the prior written approval of the relevant Rating Agency (defined below). The term "Controlling Entity" shall mean any managing member, general partner or similar controlling entity in Borrower or any Guarantor. Involuntary changes in ownership resulting from a death or physical or mental disability shall not be considered a Change in Ownership.

(f) A Change of Ownership shall not be deemed to have occurred when a shareholder, member, partner or other person (for purposes of this paragraph, each of the foregoing is called an "Estate Planning Transferor") possessing an ownership interest in Borrower makes a one-time transfer (an "Estate Planning Transfer") during the term of the Loan, of all or part of such ownership interest for estate planning purposes to a trust or other entity for the benefit of any of such person's spouse, children or grandchildren, or any of them (each, a "Permitted Transferee"); provided, however, that any such Estate Planning Transfer shall be subject to the following conditions:

(i) No Event of Default, and no event or condition that, with the giving of notice or passage of time or both, would constitute an Event of Default, shall exist on the date of the proposed Estate Planning Transfer; and

(ii) No such Estate Planning Transfer shall in any event absolve any Estate Planning Transferor, in whole or in part, from his liability, if any, to Lender under the Note, this Security Instrument or any Other Security Document; and

(iii) Each applicable Permitted Transferee shall execute and deliver to Lender an agreement, in a form acceptable to Lender in its sole discretion, whereby such Permitted Transferee, upon the death of the applicable Estate Planning Transferor, becomes jointly and severally liable for the liability, if any, of such Estate Planning Transferor to Lender under the Note, this Security Instrument or any Other Security Documents; and

(iv) Lender has been paid a \$3,500 administrative fee and all out-of-pocket costs incurred by Lender (including, without limitation, attorney fees) in effecting any Estate Planning Transfer; and

(v) Lender has determined that, from the date of the closing of the loan to the date of the proposed Estate Planning Transfer, there has been no material adverse change in the (a) financial condition of the Estate Planning Transferor, and (b) financial or physical condition of the Mortgaged Property.

An Estate Planning Transfer shall be effective only upon the date of satisfaction of the last of such conditions to be satisfied. Lender shall have the absolute and unconditional right to require reasonable evidence of the satisfaction of each condition to an Estate Planning Transfer.

(g) Borrower shall be released from liability for the Debt only after: (i) all conditions for a Transfer or Change in Ownership have been satisfied; (ii) all security documents deemed necessary by Lender have been executed, delivered, recorded and perfected; (iii) Lender has received a policy of title

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insurance (or similar assurance) reflecting the new ownership and the priority and perfection of Lender's security; (iv) the New Borrower has assumed all required personal liability; and (v) all other reasonable requirements of Lender are satisfied.

(h) Notwithstanding anything herein to the contrary, in connection with any request for Lender's consent to a Transfer or Change in Ownership subsequent to the conveyance of the Note to a real estate mortgage investment conduit (a "REMIC"), within the meaning of Section 860D of the Internal Revenue Code of 1986, as amended from time to time or any successor statute (the "Code") or to another entity in connection with a Secondary Market Transaction (hereinafter defined), Borrower acknowledges that Lender may require Borrower to obtain and deliver to Lender other documentation evidencing that the proposed Transfer or Change in Ownership will not (i) cause the then owner of the Note to fail to qualify as a REMIC (a "REMIC Opinion"); and (ii) result in a qualification, downgrade or withdrawal of any credit rating then in effect for any securities or certificates issued by the then owner of the Note in connection with a securitization which includes the Note (a "Rating Agency No-Downgrade Letter").

11. Anti-Terrorism Laws.

(a) Neither Borrower nor any of its affiliates is in violation of any laws or regulations relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order") and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) Neither Borrower, any of its affiliates, or any of its brokers or other agents acting or benefitting from the Loan is a Prohibited Person. A "Prohibited Person" is any of the following:

(i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a person or entity with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list.

(c) Neither Borrower, any of its affiliates or any of its brokers or other agents acting in any capacity in connection with the Loan (1) conducts any business or engages in making or receiving any

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contribution of funds, goods or services to or for the benefit of any Prohibited Person, (2) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) Borrower shall not (1) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and Borrower shall deliver to Lender any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming Borrower's compliance herewith).

12. Estoppel Certificates and No Default Affidavits.

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

(b) Within ten (10) business days after request by Lender, Borrower will furnish Lender with estoppel certificates, in form and content satisfactory to Lender, from all tenants specified by Lender (other than tenants under Leases for residential purposes, congregational care services or mini-warehouse storage rentals where such storage rental is less than ten percent (10%) of the rentable square footage of such storage facility (collectively "Residential Leases"). If any tenant fails to provide such estoppel certificate, Borrower shall provide a certificate with respect to the tenancy of such tenant, in form and substance satisfactory to Lender.

13. Cooperation; Loan Servicing. Borrower acknowledges that Lender and its successors and assigns may: (a) sell or assign this Security Instrument, the Note and any of the Other Security Documents to one or more investors as a whole loan; (b) sell or assign a participation interest in the Debt to one or more investors; (c) deposit this Security Instrument, the Note and any of the Other Security Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets; or (d) otherwise sell or assign the Debt, the Note, this Security Instrument and any of the Other Security Documents, or any interest therein to investors. The transactions referred to in subparagraphs (a) through (d) above are hereinafter referred to as "Secondary Market Transactions". Borrower shall cooperate in good faith with Lender in effecting any such Secondary Market Transaction and in addressing such matters as any party involved in a Secondary Market Transaction may require, including the provision of such information and documents relating to Borrower, any Guarantors, the Mortgaged Property and any tenants of the Improvements as Lender may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Borrower, any Guarantors, the Mortgaged Property and

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any tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Mortgaged Property may be included in a private placement memorandum, prospectus or other disclosure documents. Prior to or in connection with a Secondary Market Transaction, Lender may assign or delegate all or part of the responsibility for servicing the Loan to one or more loan servicers. All references to Lender herein, in the Note or any other Security Document, shall include all such loan servicers.

14. Books and Records; Reporting Requirements.

(a) Borrower and Guarantor(s), if any, shall keep complete and accurate books and records of account in accordance with generally accepted accounting principles consistently applied. Borrower shall deliver, or cause to be delivered, the reports and financial statements described below, all in form acceptable to Lender (collectively the "Reports"), within the time period required. Any required certification of such reports and financial statements must be by the chief financial officer (or other person acceptable to Lender) of Borrower or Guarantor, as applicable.

(i) Within thirty (30) days after the close of each fiscal year of Borrower, Borrower shall deliver, or cause to be delivered to Lender: (A) a certified current rent roll; (B) a certified annual operating statement of the Mortgaged Property; and (C) a certified annual balance sheet and profit and loss statement of Borrower. If the original principal amount of the Loan was \$20,000,000.00 or more, then all of the foregoing must be delivered within sixty (60) days after the close of each fiscal year of Borrower and must be audited by independent certified public accountants acceptable to Lender.

(ii) Within thirty (30) days after the close of the separate individual fiscal years of any Guarantor, Borrower shall deliver, or cause to be delivered to Lender, a certified annual balance sheet and profit and loss statement of each Guarantor, if any. If the original principal amount of the Loan was \$20,000,000.00 or more, then all of the foregoing must be delivered within sixty (60) days after the close of each fiscal year of Guarantor and must be audited by independent certified public accountants acceptable to Lender.

(iii) Within thirty (30) days after the close of each calendar quarter, Borrower shall deliver, or cause to be delivered to Lender the following: (A) a certified current rent roll; (B) a certified quarterly operating statement of the Mortgaged Property; (C) a certified quarterly balance sheet and profit and loss statement of Borrower.

(iv) Within sixty (60) days after filing, Borrower shall deliver, or cause to be delivered to Lender a certified copy of Borrower's tax return.

(b) Within thirty (30) days after the close of each fiscal year of Borrower, Borrower shall deliver to Lender, for Lender's approval in its sole discretion, a report (the "Leasing Report") setting forth the minimum economic terms which Borrower proposes for use in connection with the standard lease form for Leases of portions of the Mortgaged Property during the twelve month period beginning upon such anniversary date. The terms set forth in the Leasing Report shall reflect the prevailing market conditions for like properties in the locality of the Mortgaged Property.

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(c) In addition to the other requirements of this paragraph 14, until such time as the Note is transferred to a REMIC or to another entity in connection with a securitization including the Note, Borrower shall deliver, or cause to be delivered to Lender, within ten (10) days after the close of each calendar month, a current certified rent roll and certified monthly (on a trailing 12 month basis) and annual year to date income statements of the Mortgaged Property.

(d) Borrower shall supplement the required Reports and Leasing Reports and provide such other financial information in respect of Borrower, any Guarantor and the Mortgaged Property as Lender, from time to time, may request. Borrower acknowledges that, without timely delivery of complete and accurate Reports and Leasing Reports, Lender may not be able to execute a Secondary Market Transaction. Borrower agrees that failure to timely deliver any of the Reports or the Leasing Reports shall be an Event of Default hereunder.

15. Performance of Other Agreements. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

16. Further Acts, Etc. Borrower will, at Borrower's cost, complete and deliver any such further acts or documents required by Lender, from time to time, to correct errors in the documenting of the Loan or to better assure, convey, assign, transfer, perfect or confirm unto Lender the property and rights intended to be given it in this Security Instrument, the Note or any Other Security Document. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender under the Note, this Security Instrument, the Other Security Documents, at law or in equity, including without limitation the rights and remedies described in this paragraph.

17. Recording of Security Instrument, Etc. Except where otherwise prohibited by law, Borrower will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment, and subsequent release or reconveyance of this Security Instrument and the Note, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, any instrument of further assurance and all federal, state, county and municipal, taxes, duties, impositions, assessments and charges arising out of or in connection with the same. Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Security Instrument.

18. Events of Default. The Debt shall become immediately due and payable at the option of Lender, without notice or demand, upon the occurrence of any one or more of the following events (each an "Event of Default"):

(a) if Borrower fails to make the full and punctual payment of any amount payable pursuant to this Security Instrument, the Note or any Other Security Document, which failure is not cured on or before the fifth (5th) day after written notice from Lender to Borrower of such failure;

(b) if Borrower fails to pay the entire outstanding principal balance of the Note, together with all accrued and unpaid interest, on the date when due, whether on the Maturity Date (as defined in the Note), or upon acceleration, or on the Prepayment Date (as defined in the Note);

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- (c) if Borrower fails to make the full and punctual payment of Taxes or Other Charges as required hereby;
- (d) if Borrower fails to keep the Policies of insurance required hereby in full force and effect, or fails to promptly deliver copies thereof to Lender upon request;
- (e) if a Transfer or a Change in Ownership occurs in violation of the provisions of this Security Instrument, or if Borrower violates or does not comply with the provisions of the Assignment of Leases;
- (f) if any representation or warranty of Borrower or any Guarantor made herein, in any guaranty or indemnity or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;
- (g) if Borrower shall make an assignment for the benefit of creditors or if Borrower is not paying debts as and when the same become due;
- (h) if a receiver, liquidator or trustee of Borrower shall be appointed or if Borrower is adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, then upon the same not being discharged, stayed or dismissed within sixty (60) days;
- (i) if Borrower shall be in default under any other deed of trust, mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in priority to this Security Instrument (it not being implied by this clause that any such encumbrance will be permitted);
- (j) if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien (other than a lien for local real estate taxes and assessments not then due and payable, or any lien being contested by Borrower pursuant to its rights hereunder) and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) calendar days,
- (k) the expiration, dismissal or final adjudication of any appeal rights of Borrower in connection with any judgment entered against it in excess of \$100,000.00 which is not fully covered by insurance (other than Borrower's deductible, if any);
- (l) if Borrower fails to promptly and diligently cure any material violations of laws or ordinances affecting the Mortgaged Property; or
- (m) if for more than thirty (30) days after written notice from Lender, Borrower shall fail to perform any other term, covenant or condition of the Note, this Security Instrument or any of the Other Security Documents; provided, however, that if such failure to perform is of a type which cannot be cured within such thirty (30) day period and Borrower diligently commences and prosecutes such cure, Lender shall allow a reasonable additional time period (not to exceed sixty (60) additional days) to complete such cure.

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19. Right to Cure Defaults. Upon the occurrence of any Event of Default, or if Borrower fails to make any payment or to do any act as herein required, Lender may do such acts or make such payments in Borrower's stead, in such manner and to the extent that Lender may deem necessary to protect the security hereof. Any such acts or payments by Lender shall be at Lender's sole discretion, may be taken without notice to or demand on Borrower, and will not release Borrower from any obligation hereunder. Lender is authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend or bring any action or proceeding to protect its interest in the Mortgaged Property, to cause this Security Instrument to be foreclosed or to collect the Debt. All such costs and expenses (including attorney fees) incurred by Lender in remedying any such Event of Default, in acting or making payments in Borrower's stead, or in appearing in, defending or bringing any of the foregoing actions or proceedings, shall bear interest at the Default Rate from the date incurred by Lender until the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the above rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor. All advances, disbursements and expenditures made by Lender before and during a foreclosure and before and after a judgment of foreclosure and at any time prior to sale, and where applicable after sale, shall have the benefit of all applicable provisions of the Illinois Mortgage Foreclosure Act, as amended from time to time.

20. Lender's Remedies

(a) Upon the occurrence of any Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Mortgaged Property, including, without limitation, the following actions:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute proceedings to foreclose this Security Instrument, in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien of this Security Instrument for the balance of the Debt not then due;
- (iv) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or the Other Security Documents;
- (v) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument;
- (vi) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt or the solvency of Borrower, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;

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(vii) enforce Lender's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, and thereupon Lender may: (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Lender deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Borrower with respect to the Mortgaged Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof; and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorney fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, assessments, Insurance Premiums and Other Charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; or

(viii) pursue such other rights and remedies as may then be available at law and in equity. To the extent permitted presently or in the future by laws of the state in which the Premises and Improvements are located, Lender may institute a proceeding or proceedings, judicial, or nonjudicial, by advertisement or otherwise, for the complete or partial foreclosure of this Security Instrument or the complete or partial sale of the Mortgaged Property under a power of sale which power is hereby granted to Lender.

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

(b) Upon the completion of any sale or sales made under or by virtue of this Security Instrument, an officer of any court empowered to do so shall execute and deliver to the 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. Lender is hereby irrevocably appointed the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that Lender shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Security Instrument pursuant to any judicial proceedings or any 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 Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

(c) In any suit or proceeding to foreclosure the lien hereof, there shall be allowed and included as additional indebtedness in judgment or decree of foreclosure and sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorney fees, appraiser fees, outlays for documentary and expert evidence, stenographer charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and

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examinations, title insurance policies and similar data and assurances with respect to title, as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. Upon any sale made under or by virtue of this Security Instrument pursuant to any judicial proceedings or any judgment or decree of foreclosure and sale, Lender may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom, to the extent allowed by applicable law, the expenses of the sale and costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument.

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

(e) Lender may release, regardless of consideration and without the necessity for any notice to or a consent by any person or entity, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by this Security Instrument or the Other Security Documents or their stature as a first and prior lien and security interests in and to the Mortgaged Property. For payment of the Debt, Lender may resort to any security in such order and manner as Lender may elect.

(f) Lender shall have all rights, remedies and recourses granted in this Security Instrument and the Other Security Documents or available at law or equity (including the Uniform Commercial Code), which rights: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Borrower or others obligated under the Note, this Security Instrument and the Other Security Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefore shall arise and exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse; and (iv) are intended to be, and shall be, nonexclusive. No enforcement of any rights, remedies or recourse under the Note, this Security Instrument and the Other Security Documents or otherwise at law or equity shall be deemed to cure any Event of Default. The remedies provided for in this Security Instrument may be exercised in any order.

21. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Security Instrument which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Mortgaged Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the entire Debt immediately due and payable; provided, however, that no Prepayment Consideration shall be required solely as a result of a prepayment required by any such declaration.

22. Documentary Stamps. If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps to be affixed to the Note or this Security

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Instrument, or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

23. Usury Laws. This Security Instrument, the Other Security Documents and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt or any other charges at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by law to contract or agree to pay. If by the terms of this Security Instrument, the Other Security Documents or the Note, Borrower is at any time required or obligated to pay any such amounts at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all previous payments in excess of such maximum rate shall be deemed to have been payments in reduction of the principal and not on account of the interest due hereunder.

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

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

26. Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code adopted and enacted by the state or states where any of the Mortgaged Property is located (the "Uniform Commercial Code"), made by and between Borrower, as debtor, and Lender, as secured party. Borrower hereby grants to Lender, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being herein referred to as the "Collateral"). If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorney fees, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing Lender's rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower. The Collateral may be sold in such manner, portions, order or parcels as Lender may determine, with or without having first taken possession of same. The right of sale arising out of any Event of Default shall not be exhausted by any one or more sales or attempted sales, any other action, proceeding, or other exercise of a remedy, and the liens granted by this Security Instrument shall continue unimpaired. The proceeds of any

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disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

27. Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Mortgaged Property. Lender shall, at its option, be subrogated to the lien of any deed of trust, mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

28. WAIVER OF COUNTERCLAIM. BORROWER HEREBY WAIVES THE RIGHT TO ASSERT A COUNTERCLAIM, OTHER THAN A MANDATORY OR COMPULSORY COUNTERCLAIM, IN ANY ACTION OR PROCEEDING BROUGHT AGAINST IT BY LENDER, AND, TO THE EXTENT PERMITTED BY LAW, WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER, IN ANY COUNTERCLAIM ASSERTED BY LENDER, OR ITS SUCCESSORS OR ASSIGNS, AGAINST BORROWER OR IN ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS SECURITY INSTRUMENT, THE NOTE, ANY OF THE OTHER SECURITY DOCUMENTS OR THE DEBT.

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

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

31. Costs and Expenses. Without limiting Lender's rights under any other provision herein or in the Note or any Other Security Document, Borrower agrees that it will reimburse Lender for any and all costs and expenses incurred by Lender in connection with any breach or default of this Security Instrument, the Note or any Other Security Document, or in connection with any request that Lender take, or refrain from taking, any action with respect to Borrower or the Mortgaged Property.

32. Access Laws.

(a) Borrower agrees that the Mortgaged Property shall at all times comply with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all similar state and local laws and ordinances related to access and all rules, regulations, and orders issued pursuant thereto

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including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively the "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Mortgaged Property, Borrower shall not alter the Mortgaged Property in any manner which would increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of an architect, engineer or other person acceptable to Lender regarding compliance with applicable Access Laws.

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

33. Indemnification. Borrower shall protect, defend, indemnify and save harmless Lender from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including without limitation reasonable attorney fees and expenses) (the "Indemnified Obligations"), imposed upon, incurred by or asserted against Lender by reason of: (a) ownership of this Security Instrument, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, non-use or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; and (e) any failure of the Mortgaged Property to comply with any Access Laws. Any amounts payable to Lender by reason of the application of this indemnification shall be secured by this Security Instrument and the Other Security Documents, shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. The obligations and liabilities of Borrower under this paragraph shall survive any termination, satisfaction or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure. The foregoing indemnification shall not relate to Indemnified Obligations arising from Lender's gross negligence or willful misconduct.

34. Notices. Except as otherwise specified herein, any notice, consent, request or other communication required or permitted hereunder shall be in writing and shall be deemed properly given if delivered in accordance with the notice requirements contained in the Note.

35. Authority.

(a) Borrower (and the undersigned representative of Borrower, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Security Instrument, and to mortgage, give, grant, bargain, sell, alienate, convey, confirm, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

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

36. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any other notice.

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

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

39. Nonwaiver. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of: (a) the failure of Lender to comply with any request of Borrower or any Guarantor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof, of the Note or the Other Security Documents; (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof; or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Other Security Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights and remedies of Lender under this Security Instrument and the Other Security Documents shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. An Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Lender or a cure has been accepted by Lender as confirmed in a writing executed by Lender. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

40. Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against Borrower (other than an involuntary petition filed by or joined by Lender), Borrower shall not assert, or request any other party to assert, that the automatic stay under § 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict,

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condition, reduce or inhibit the ability of the Lender to enforce any rights it has by virtue of this Security Instrument, or any other rights that Lender has, whether now or hereafter acquired, against any Guarantor. Further, Borrower shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to §105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Security Instrument against any Guarantor. The waivers contained in this paragraph are a material inducement to Lender's willingness to make the Loan, and Borrower acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Lender of its rights and remedies against Borrower or any Guarantor.

41. Bankruptcy Acknowledgment. In the event the Mortgaged Property or any portion thereof or interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then Lender shall immediately become entitled, in addition to all other relief to which Lender may be entitled under this Security Instrument, to obtain: (a) an order from the Bankruptcy Court or other appropriate court granting immediate relief from any automatic stay laws (including §362 of the Bankruptcy Code) so to permit Lender to pursue its rights and remedies against Borrower as provided under this Security Instrument and all other rights and remedies of Lender at law and in equity under applicable state law; and (b) an order from the Bankruptcy Court prohibiting Borrower's use of all "cash collateral" as defined under §363 of the Bankruptcy Code. In connection with any such orders, Borrower shall not contend or allege in any pleading or petition that Lender does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by Borrower to stay, condition, or inhibit Lender from exercising its remedies are hereby admitted by Borrower to be in bad faith and Borrower further admits that Lender would have just cause for relief from the automatic stay in order to take such actions authorized by state law.

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

43. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

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

45. Headings, Etc. The headings and captions of various paragraphs of this Security Instrument 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.

46. Counterparts. This Security Instrument may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same Security Instrument.

47. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument (including pronouns) shall include the

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corresponding masculine, feminine or neuter forms, and the singular form such words shall include the plural and vice versa. The word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein"; the word "Lender" shall mean "Lender and any subsequent holder of the Note"; the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument"; the word "person" shall include an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, trust, unincorporated association, government, governmental authority and any other entity; and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein. Additionally, the word "Guarantor" shall mean any person or entity guaranteeing or indemnifying payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument, the Note or the Other Security Documents, including, without limitation, any person or entity executing the Non-Recourse Exception Indemnification Agreement delivered to Lender in connection with the Loan.

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

49. Assignments. Lender shall have the right to assign or transfer its rights under this Security Instrument without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Security Instrument.

50. Exculpation. Notwithstanding anything to the contrary contained in this Security Instrument, the liability of Borrower for the payment of the Debt and for the performance of the other agreements, covenants and obligations contained herein, in the Note or in any of the Other Security Documents shall be limited as set forth in Paragraph 12 of the Note.

51. Integration. This Security Instrument, the Note and the Other Security Documents embody the entire agreement by and between Borrower and Lender with respect to the Loan, and any and all prior correspondence, discussions or negotiations are deemed merged therein; provided, however, that except to the extent inconsistent with the specific terms and provisions of this Security Instrument, the Note and the Other Security Documents, all representations, warranties, statements, covenants and agreements of Borrower contained in any loan commitment and/or loan application executed in connection with the Loan shall survive the funding of the Loan, any termination, satisfaction, or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

52. Applicable Law; Jurisdiction. This Security Instrument shall be governed and construed in accordance with the laws of the state in which the Premises and Improvements encumbered by this Security Instrument are located. Borrower hereby submits to personal jurisdiction in the state courts located in said state and the federal courts of the United States of America located in said state for the enforcement of Borrower's obligations hereunder and waives any and all personal rights under the law of any other state to object to jurisdiction within such state for the purposes of any action, suit, proceeding or litigation to enforce such obligations of Borrower.

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53. Single Purpose Entity.

(a) Until the Debt has been paid in full to Lender, Borrower's organizational documents will provide that Borrower's sole business purpose shall be the acquisition, ownership and operation of the Mortgaged Property. Borrower shall at all times during the term of the Note conduct its business affairs in compliance with such organizational documents. In addition, Borrower represents and warrants to, and covenants and agrees with Lender that Borrower has not and shall not: (a) engage in any business or activity other than the ownership, operation and maintenance of the Mortgaged Property, and activities incidental thereto; (b) acquire or own any material assets other than (i) the Mortgaged Property, and (ii) such incidental personal property as may be necessary for the operation of the Mortgaged Property; (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's prior written consent; (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's partnership agreement, articles or certificate of incorporation, articles of organization, operating agreement, or similar organizational documents, as the case may be, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of Borrower to perform its obligations hereunder, under the Note or under the Other Security Documents; (e) own any subsidiary or make any investment in, any person or entity without the prior written consent of Lender; (f) commingle its assets with the assets of any of its general partners, managing members, shareholders, affiliates, principals or any other person or entity; (g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, excepting trade payables (which must be paid when due) incurred by Borrower in the ordinary course of its business of owning and operating the Mortgaged Property; (h) fail to maintain its records, books of account and bank accounts separate and apart from those of the general partners, managing members, shareholders, principals and affiliates of Borrower, the affiliates of a general partner or managing member of Borrower, and any other person or entity; (i) enter into any contract or agreement with any general partner, managing member, shareholder, principal or affiliate of Borrower, any Guarantor or any indemnitee, or any general partner, managing member, shareholder, principal or affiliate thereof, 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 any general partner, managing member, shareholder, principal or affiliate of Borrower, any Guarantor or any indemnitee, or any general partner, managing member, shareholder, principal or affiliate thereof; (j) seek the dissolution or winding up in whole, or in part, of Borrower; (k) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any general partner, managing member, shareholder, principal or affiliate of Borrower, or any general partner, managing member, shareholder, principal or affiliate thereof or any other person; (l) hold itself out to be responsible for the debts of another person; (m) make any loans to any third party; (n) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any general partner, managing member, shareholder, principal or affiliate of Borrower, or any general partner, managing member, shareholder, principal or affiliate thereof); (o) fail 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; or (p) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

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(b) In addition to the foregoing, if Borrower or its Controlling Entity is a single member limited liability company, it must be organized under the laws of Delaware, its organizational documents must also contain continuation of existence provisions acceptable to Lender, it must cause an acceptable Delaware counsel to deliver acceptable non-consolidation and non-dissolution opinions to Lender and it must satisfy any other requirements imposed by Lender.

(c) If the original principal amount of the Loan was \$20,000,000.00 or more, then, in addition to the foregoing:

(i) Borrower's organizational documents shall require unanimous consent of all shareholders, members, partners or other owners of an equity ownership interest in Borrower prior to the filing of petition in bankruptcy, or for the dissolution, liquidation, consolidation, merger or sale of all or substantially all of Borrower's assets.

(ii) Borrower must have (A) at least two Independent Controlling Persons (hereinafter defined), and (B) organizational documents requiring the unanimous consent of all directors, members, partners or other persons having similar decision-making authority with respect to Borrower (each, a "Controlling Person") prior to the filing of petition in bankruptcy, or for the dissolution, liquidation, consolidation, merger or sale of all or substantially all of either Borrower's assets. The term "Independent Controlling Person" shall mean a Controlling Person approved by Lender who shall at no time during the term of the Loan be, or have been within the 5 years immediately preceding becoming an Independent Controlling Person, (1) an employee, director, member, stockholder, partner or employee of Borrower or of any of its Affiliates (hereinafter defined), (2) a customer of or supplier to (including any attorney, accountant, broker or banker) to Borrower or any of its Affiliates, or (3) an immediate family member of any such employee, director, member, stockholder, partner, customer or supplier. The term "Affiliate" shall mean any person or entity (I) which owns beneficially, directly or indirectly, ten percent (10%) or more of the outstanding ownership interest in Borrower (each, an "Owning Affiliate"), or (II) of which ten percent (10%) or more of its outstanding ownership interest is owned beneficially, directly or indirectly, by any Owning Affiliate, or (III) which is controlled by any Owning Affiliate, as the term "control" is defined under Section 230.405 of the Rules and Regulations of the Securities and Exchange Commission, 17 C.F.R. Section 230.405, or (IV) any immediate family member of the foregoing.

(iii) Borrower agrees that its Controlling Entity shall also be subject to all of the requirements contained in this section, except that its organizational documents shall prohibit it from engaging in any business or activity other than the operation and maintenance of the Mortgaged Property, and activities incidental thereto, or acquiring or owning any material assets other than its interest in Borrower.

54. Fixture Filing. This Security Instrument shall be deemed a fixture filing within the meaning of any applicable uniform commercial code, and for such purpose, the following information is given:

Name, address and tax identification number of Debtor(s):	NMC Grove Melrose, LLC 5850 Canoga Avenue #650 Woodland Hills, California 91367 Attention: Sanford D. Sigal Tax ID No. 26-0565222
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NMC Melrose Park, LLC
5850 Canoga Avenue #650
Woodland Hills, California 91384
Attention: Sanford D. Sigal
Tax ID No.: 26-0565084

Melrose Park Associates, LLC
9595 Wilshire Boulevard, Suite 501
Beverly Hills, California 90210
Attn: Michael Soroudi
Tax ID No.: 83-0488139

Melrose Park Equity, LLC
9595 Wilshire Boulevard, Suite 501
Beverly Hills, California 90210
Attn: Michael Soroudi
Tax ID No.: 83-0488137

Melrose Park Investments, L.P.
9595 Wilshire Boulevard, Suite 501
Beverly Hills, California 90210
Attn: Michael Soroudi
Tax ID No.: 68-0651561

Name and address
of Secured Party

PNC Bank, National Association
10851 Mastin, Suite 300
Overland Park, Kansas 66210

Description of the type
(or items) of property:

See the Recitals herein.

Description of real estate
to which the collateral
is attached or upon which
it is or will be located:

See Exhibit B hereto.

Some of the above described collateral is or is to become fixtures upon the above-described real estate, and this fixture filing is to be filed for record in the public real estate records.

55. Additional Terms and Provisions. Certain additional and supplemental terms and provisions of this Security Instrument are set forth in this paragraph. The terms and provisions of this paragraph control and supersede any conflicting terms and provisions contained in this Security Instrument.

- (a) The term "Rating Agency" shall mean a nationally recognized credit rating agency (including, without limitation, Standard & Poor's Rating Group, Fitch Investors Service,

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L.P., Moody's Investors Service, Inc. or Duff and Phelps Credit Rating Co., and their respective successors and assigns).

- (b) Amendments to Paragraph 3.
- (1) Any deductibles applicable to any insurance policy with respect to physical loss (including fire, lightning, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, terrorism, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, falling objects, weight of snow, ice or sleet and water damage) shall not exceed \$50,000 (except where a separate wind-loss deductible applies in which event the deductible shall not exceed two percent (2%) of the face amount of the policy).
- (2) Paragraph 3 is amended to add subsection (f) as follows:
- “(f) All insurance required hereunder shall be issued by companies approved by Lender, and licensed to do business in the state where the Property is located. All policies evidencing the required insurance shall contain a special mortgagee clause in favor of Lender providing, among other things, that the policies may not be canceled without thirty (30) days prior to written notice to Lender; shall not contain any effective co-insurance provisions; shall be written for a term of not less than one year, with premiums prepaid, and shall be issued by a company or companies acceptable to Lender and having a rating of AA or higher (or the equivalent thereof) from at least two (2) of the Rating Agencies (one of which shall be Standard & Poor's if Standard & Poor's is rating the securities issued in any Secondary Market Transaction (the "Securities") and one of which must be Moody's if Moody's is rating the Securities, or if only one Rating Agency is rating the Securities, then by such one Rating Agency.”
- (c) Insurance. Notwithstanding anything in Paragraph 3 to the contrary:
- (i) The replacement cost of the Mortgaged Property shall exclude foundations.
- (ii) No earthquake insurance will be required by Lender during the term of the Loan.
- (iii) Section 3(b)(v) is modified to add “reasonably” before the word “required”.
- (d) Casualty Loss. Notwithstanding anything in Paragraph 4 to the contrary:
- (i) The phrase "\$25,000.00" in each of Paragraphs 4(a)(i) and 4(a)(ii) is amended to read "\$250,000.00".
- (ii) The phrase "six (6) months or less" in Paragraph 4(b)(iii) is amended to read "twelve (12) months or less".
- (e) Partial Waiver of Monthly Tax Escrows. Notwithstanding anything contained in Paragraph 6 to the contrary, so long as, but only so long as: (1) no Event of Default exists; (2) the lease of any tenant (each, a "Paying Tenant") requires such Paying Tenant to pay the Taxes applicable to the portion of the Mortgaged Property occupied by it directly to the taxing authority; (3) Borrower makes prompt payment of all amounts payable hereunder when due;

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(4) Borrower causes each Paying Tenant to pay the Taxes applicable to the portion of the Mortgaged Property occupied by it on or before their payment due date; and (5) Borrower furnishes paid receipts and other evidence of the payment of all Taxes applicable to all of the Mortgaged Property to Lender within 30 days after their due dates; Borrower shall not be obligated to make any monthly escrow deposits for Taxes applicable to the portion of the Mortgaged Property occupied by a Paying Tenant. Upon Borrower's or a Paying Tenant's failure to satisfy any of the above requirements, Lender may revoke its conditional partial waiver of Borrower's obligation to escrow Taxes hereunder. Not later than thirty (30) days following any such revocation, Borrower shall pay to Lender or its designee an amount equal to the aggregate funds which would have been held by Lender for the payment of Taxes upon such date if the foregoing partial waiver had not been granted by Lender, and Borrower shall thereafter pay monthly Tax escrow payments as required under Paragraph 6. If the above requirements are thereafter satisfied following any such revocation, Lender will restore the partial waiver contained in this paragraph and disburse all remaining amounts then held for the payment of Taxes to Borrower; provided that no such restoration of the partial waiver shall occur more often than one time in any 12 month period. Lender's conditional partial waiver of Tax escrows hereunder shall not constitute any waiver of Borrower's obligation to pay all Taxes as required in this Security Instrument.

- (f) Partial Waiver of Monthly Insurance Escrows. Borrower may provide the insurance required hereunder pursuant to a blanket insurance policy so long as such insurance otherwise satisfies the insurance requirements contained herein. In such case, notwithstanding anything contained in Paragraph 6 to the contrary, so long as, but only so long as: (1) no Event of Default exists, (2) Borrower makes prompt payment of all amounts payable hereunder when due; (3) Borrower furnishes paid receipts and other evidence of the payment of all Insurance Premiums applicable to all of the Mortgaged Property to Lender within 30 days after their due dates; and (4) Borrower furnishes renewal certificates of all insurance policies required hereunder to Lender not less than 30 days prior to the date of their expiration, Borrower shall not be obligated to make any monthly escrow deposits for Insurance Premiums applicable to the insurance required hereunder provided pursuant to such blanket insurance policy. Upon Borrower's failure to satisfy any of the above requirements, Lender may revoke its conditional partial waiver of Borrower's obligation to escrow Insurance Premiums hereunder, and, not later than thirty (30) days following any such revocation, Borrower shall pay to Lender or its designee an amount equal to the aggregate funds which would have been held by Lender for the payment of Insurance Premiums upon such date if the foregoing partial waiver had not been granted by Lender. If the above requirements are thereafter satisfied following any such revocation, Lender will restore the partial waiver contained in this paragraph and disburse all remaining amounts then held for the payment of Insurance Premiums to Borrower; provided that no such restoration of the partial waiver shall occur more often than one time in any 12 month period. Lender's conditional partial waiver of Insurance Premium escrows hereunder shall not constitute any waiver of Borrower's obligation to maintain all insurance as required in this Security Instrument.
- (g) Lender's Right of Entry. Lender's right to enter the Mortgaged Property to conduct inspections under Paragraphs 9 or 24 shall be at Lender's cost unless an Event of Default then exists.

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- (h) A new sentence is inserted in subparagraph 9(b) after the existing second (2nd) sentence to read as follows:

If any such corrective measures are of a type which cannot be completed within such ninety (90) day period but Borrower diligently commences and prosecutes such corrective measures, Lender shall allow a reasonable additional time period (not to exceed an additional ninety (90) days) to complete such corrective measures.

- (i) Paragraph 9(d) is amended to read as follows:

“(d) Unless Lender otherwise consents in writing (which consent shall not be unreasonably withheld prior to the occurrence of an Event of Default), Borrower shall not initiate, join in, acquiesce in or consent to: (i) the removal or resignation of the property manager for the Mortgaged Property; or (ii) if such property manager is an entity affiliated with Borrower, the transfer of ownership, management or control of such property manager to a person or entity other than Borrower, its managing member, general partner or similar controlling entity in Borrower. Notwithstanding anything herein to the contrary, in connection with any request for Lender's consent to a any removal or replacement of the property manager subsequent to the conveyance of the Note to a real estate mortgage investment conduit (a "REMIC"), within the meaning of Section 860D of the Internal Revenue Code of 1986, as amended from time to time or any successor statute (the "Code") or to another entity in connection with a Secondary Market Transaction (hereinafter defined), Borrower acknowledges that Lender may require Borrower to obtain and deliver to Lender a new non-consolidation opinion (if the replacement property manager is in anyway affiliated with the Borrower or any Guarantor) issued by counsel acceptable to Lender and other documentation evidencing that the proposed removal or replacement will not (i) cause the then owner of the Note to fail to qualify as a REMIC; and (ii) result in a qualification, downgrade or withdrawal of any credit rating then in effect for any securities or certificates issued by the then owner of the Note in connection with a securitization which includes the Note. Lender may condition its consent to any change, removal or replacement of the property manager upon the issuance of written approval from the Rating Agencies.

Lender may terminate the Manager and any management agreement between Borrower and Manager, and require Borrower to replace the Manager and the management agreement with a Manager and management agreement reasonably acceptable to Lender, by notice to Borrower and Manager (1) upon any default by Manager under any management agreement, and (2) with or without cause, after acquisition by Lender of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure, or other transfer of the Mortgaged Property, or upon Lender otherwise obtaining possession of the Mortgaged Property by any lawful means. Upon the appointment of a receiver or court appointed officer, either Lender or such receiver or officer may terminate the management agreement, with or without cause, by notice to Borrower, and Manager.”

- (j) Transfers. Paragraph 10(b) is modified as follows:

- (i) Paragraph 10(b)(i) is modified to read as follows: "Lender has received Borrower's written request for a Transfer, or for a Change in Ownership (or any other request resulting in a new obligor under the Loan) and Lender shall have expressly approved such request in writing, which approval shall not be unreasonably withheld by Lender, subject to the satisfaction of all requirements hereunder;"

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- (ii) Lender shall not require any updated or new engineering reports, appraisals, environmental reports under Paragraph 10(b)(v) if the existing versions of such reports are less than one year old at the time of the proposed Transfer or Change in Ownership.
- (iii) Paragraph 10(b)(vii) is modified to read as follows: "Borrower remits to Lender both a reasonable administrative fee (not to exceed \$3,500.00) and an assumption fee in the amount of one fourth of one percent (1/4%) of the outstanding balance of the Debt for every Transfer or Change in Ownership as of the date of such Transfer or Change in Ownership".
- (iv) Transfers of interests in the Mortgaged Property between existing tenant in common owners of the Mortgaged Property shall not be considered a Transfer.
- (v) provided all of the conditions contained in Section 10(b) are satisfied as to each Transfer or Change in Ownership, this Security Instrument shall not be deemed to limit the number of Transfers or Changes in Ownership that may be approved during the term of the loan.
- (k) Paragraph 10(e) is amended to add the following at the end of the first sentence: "provided, however, that so long as the Mortgaged Property is owned by more than one entity which constitutes the Borrower, as tenants in common, then a "Change of Ownership" during such period shall occur:
- (i) when the ownership or control of more than forty-nine percent (49%), in the aggregate, of the applicable indicia of ownership or actual ownership interest in any tenant-in-common comprising Borrower, any Guarantor (hereinafter defined), or any Controlling Entity (hereinafter defined) shall be vested in a party or parties who were not owners of such indicia of ownership or actual ownership interest as of the closing of the Loan (1) by any one or more voluntary or involuntary sales, conveyances, transfers, assignments, mortgages, hypothecations, encumbrances, grants of liens over or security interests in, or pledges of such indicia of ownership or actual ownership interest or any interest therein, or (2) in one or a series of transactions causing the creation or issuance of any additional indicia of ownership or actual ownership interest; (ii) upon the change, removal or resignation of a managing member, general partner or similar controlling person or entity of any tenant-in-common comprising Borrower, any Guarantor or any Controlling Entity; or (iii) upon the change or removal of the property manager without the prior written approval of the relevant Rating Agency (defined below). The term "Controlling Entity" shall mean any managing member, general partner or similar controlling entity in any tenant-in-common comprising Borrower or any Guarantor. Involuntary changes in ownership resulting from a death or physical or mental disability shall not be considered a Change in Ownership.
- (l) Section 10(g) is deleted and replaced with the following:

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- (g) Borrower and all Guarantors shall be released from liability for the Debt (including obligations under the Environmental Indemnity Agreement, Non-Recourse Indemnification Agreement and Other Security Documents) except for any liability or obligation under the Note, Environmental Indemnity Agreement, Non-Recourse Indemnification Agreement Security Instrument and Other Security Documents attributable to any act or omission occurring prior to the Transfer or Change in Ownership, only after: (i) all conditions for a Transfer or Change in Ownership have been satisfied; (ii) all security documents deemed necessary by Lender have been executed, delivered, recorded and perfected; (iii) Lender has received a policy of title insurance (or similar assurance) reflecting the new ownership and the priority and perfection of Lender's security; (iv) the New Borrower has assumed all required personal liability; and (v) all other reasonable requirements of Lender are satisfied. The foregoing shall not apply to a Transfer to tenants-in-common where the transferor shall remain after the transfer as a tenant-in-common holding an interest in the Property. In such event the transferor shall not be released from any liability under the Note, this Security Instrument or the Other Security Documents.
- (m) Estate Planning Transfers. Paragraph 10(f)(iii) is deleted.
- (n) Estoppel Certificates. Paragraph 12(b) is amended to read as follows: Within ten (10) business days after request by Lender, Borrower will use commercially reasonable efforts to furnish Lender with estoppel certificates, in form and content satisfactory to Lender, from all tenants specified by Lender (other than tenants under Leases for residential purposes, congregate care services or mini warehouse storage rentals where such storage rental is less than ten percent (10%) of the rentable square footage of such storage facility (collectively "Residential Leases")). If any tenant fails to provide such estoppel certificate, Borrower shall provide a certificate to the best of its knowledge, information and belief with respect to the tenancy of such tenant, in form and substance reasonably satisfactory to Lender.
- (o) Secondary Market Transactions. Borrower's cooperation with Lender in connection with any Secondary Market Transaction shall be at no cost to Borrower.
- (p) Financial Reporting Requirements.
- (1) Each of the Reports and financial statements required by Section 14 to be delivered by Borrower shall be certified by a certified public accountant and by Sanford D. Sigal (or other person acceptable to Lender). Each of the financial statements required by Section 14 to be delivered by Guarantors shall be certified by a certified public accountant and by the chief financial officer (or other person acceptable to Lender) of Guarantors.
 - (2) The second sentence of Section 14(a)(i) and 14(a)(ii) is deleted.
 - (3) Any approval required to be obtained from Lender with respect to any Leasing Report shall not be unreasonably withheld or delayed.
 - (4) The following new section 14(e) is added to the end of Section 14:

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- “(e) Within thirty (30) days after the close of the separate individual fiscal years of Maxxam Enterprises, LLC (“Maxxam”), Borrower shall deliver, or cause to be delivered to Lender, a certified annual balance sheet and profit and loss statement of Maxxam executed by Michael or Behrouz Soroudi. If the original principal amount of the Loan was \$20,000,000.00 or more, then all of the foregoing must be delivered within sixty (60) days after the close of each fiscal year of Maxxam.”
- (q) **Events of Default.** Paragraph 18(k) is amended to read as follows: the expiration, dismissal or final adjudication of any appeal rights of Borrower in connection with any judgment entered against it in excess of \$100,000.00 which is not fully covered by insurance (other than Borrower's deductible, if any), or which is not fully satisfied by Borrower within thirty (30) days thereafter;
- (r) **Remedies of Borrower.** Paragraph 37 is amended to read as follows: "In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Security Instrument or the Other Security Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any punitive or consequential damages."
- (s) **Single Asset Entity.** Paragraph 53 is amended as follows:
- (1) Section 53(a)(o) is modified to add, “provided there is adequate capital from the operation of the Mortgaged Property to do so” after the word “operations”.
 - (2) Section 53(c)(iii) shall not apply to any entity comprising Borrower which is a single-member Delaware limited liability company provided said entity complies with Section 53(b).
- (t) **Tenant in Common Provisions.**
- (1) **Amendment to Granting Clause.** Granting clause (c) (6) of the Security Instrument is amended to read as follows:

“(6) all other property or collateral of any nature whatsoever, now or hereafter given as additional security for the payment of the Debt, including without limitation, property management agreements now or hereafter entered into with any person or entity providing management services to the Mortgaged Property (including, without limitation, that certain Management Agreement dated on or about the date hereof between Borrower and NewMark Merrill Companies, LLC, service contracts, common area agreements, licenses, permits, construction warranties and other contracts, agreements and instruments relating to the Mortgaged Property (including, without limitation, the Co-Tenancy Agreement, as defined below), and any other agreements pursuant to which Borrower acquired any of the Mortgaged Property, and including any security or indemnities given in connection therewith), security deposits, royalties, refunds, expense

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reimbursements, reserve or escrow deposits or accounts related to the Mortgaged Property or any Lease and all documents relating to each of the foregoing."

(2) Amendments to Paragraph 10.

A. INTENTIONALLY DELETED.

B. Paragraph 10 of the Security Instrument is amended to add a new Paragraph 10(i) as follows:

"(i) In addition to any other requirements of this Paragraph 10, so long as the Mortgaged Property is owned by tenants in common, as a condition to any Transfer, any purchaser of an undivided interest in the Mortgaged Property shall execute an assignment and assumption of the Co-Tenancy Agreement (as defined below) or in the case of a Transfer of all tenant-in-common interests the purchaser(s) shall execute a new co-tenancy agreement/tenant-in-common agreement acceptable in form and substance to the Lender. Any purchaser of the Mortgaged Property shall take its interest in the Mortgaged Property subject to that certain Management Agreement dated on or about the date hereof between Borrower and NewMark Merrill Companies, LLC or any other management agreement then in effect."

C. The following is hereby added as new Section 10(i):

(i) Notwithstanding any provision to the contrary contained in Section 10(b), replacement of the Manager of Melrose Park Associates, LLC ("Melrose") (which position is held on the date hereof by Summit View Holdings, LLC, a California limited liability company ("Summit")) with Maxxam Enterprises, LLC, a California limited liability company ("Maxxam"); shall be permitted without payment of the assumption fee provided in section 10(b)(vii); provided all of the following conditions are satisfied (hereinafter a "Permitted Assignment"): (I) all out-of-pocket costs incurred by Lender in effecting the Permitted Assignment are paid by Borrower, (II) a \$5,000.00 administrative fee shall be paid by Borrower immediately upon receipt from Lender of a statement therefor (III) that no change in control or ownership in Maxxam has occurred from the date hereof through the date of the Permitted Assignment, (IV) no Event of Default shall have occurred and be continuing under the Note, this Security Instrument or the Other Security Documents, (V) forty-five (45) days prior written notice of such Permitted Assignment is provided to Lender, (VI) except for section 10(b)(iii), (iv) and (vii), all remaining provisions of section 10 of the Security Instrument are satisfied, (VIII) upon Borrower's request for a Permitted Assignment, Borrower shall deliver to Lender such documents and information as requested by Lender concerning any amendments or modifications to the organizational documents of Melrose and Maxxam, (IX) Borrower, Summit, Melrose and Maxxam shall execute such additional documents as Lender shall

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reasonably require to effectuate the Permitted Assignment including attorney opinions and if required a Rating Agency No-Downgrade Letter, and (X) the Permitted Assignment shall not release Maxaam from its continued liability under the Non-Recourse Exception Indemnification Agreements and Environmental Indemnification Agreement executed in conjunction with the loan.

- (3) Amendments to Paragraph 18. Paragraph 18 of the Security Instrument is amended to add a new subsection (o) as follows:

"(o) If any entity executing or assuming this Security Instrument as Borrower shall breach the Co-Tenancy Agreement (as defined above) in any respect including, without limitation, if any entity executing this Security Instrument as Borrower shall file any action to partition the Mortgaged Property."

- (4) Co-Tenancy Agreement; No Partitioning. Each Borrower is a party to that Tenancy in Common Agreement (the "Co-Tenancy Agreement") dated on or about the date hereof. The Co-Tenancy Agreement shall not be amended or assigned without the prior written consent of Lender, and shall remain in effect during the term of the Loan. Each entity executing or assuming this Security Instrument as Borrower further agrees that the Mortgaged Property shall not be partitioned during the term of the Loan. Each entity executing or assuming this Security Instrument as Borrower acknowledges and agrees that its rights, remedies and liens with respect to the Mortgaged Property are subordinate to this Security Instrument and that no such rights, remedies or liens shall be enforced by any entity executing or assuming this Security Instrument as Borrower until the Loan is paid and satisfied in full.

- (5) The Borrower may not consist of more than six (6) tenants-in-common.

- (u) Permitted Mezzanine Debt. After the date hereof, one or more of the entities comprising Borrower may wish to pledge their entire membership or partnership interest to secure a mezzanine loan (the "Mezzanine Loan"). Lender shall not unreasonably withhold its consent to the Mezzanine Loan and its consent to a pledge of membership interests or partnership interests in an entity comprising Borrower (the "Pledge") to secure the repayment of the Mezzanine Loan, provided that Lender determines in its reasonable discretion that all of the following terms and conditions are satisfied:

- (i) No Event of Default has occurred which remains uncured
- (ii) Borrower makes a written request to Lender for consent under this Section to obtain the Mezzanine Loan at least forty-five (45) days prior to any anticipated closing date;
- (iii) No Borrower shall have any liability or obligations under the loan documents relating to the Mezzanine Loan and no rights of any mezzanine lender against or concerning the Mortgaged Property shall survive foreclosure of this Security Instrument;

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- (iv) Prior to such Pledge, Lender has the opportunity to review and approve the lender of the Mezzanine Loan and to review and approve the final loan documents relating to the Mezzanine Loan and Pledge and such loan documents shall provide that all payments due under the Mezzanine Loan must be fully subordinate to the Debt and that the Mezzanine Loan be paid out of monthly excess cash flow payments to the owners of Borrower only after monthly payments of principal and interest and all other payments under the Note, this Security Instrument and the Other Security Documents have been made as required pursuant to the terms thereof and further providing that the Mezzanine Loan lender cannot file an involuntary bankruptcy with respect to its loan while the Debt is outstanding;
- (v) Prior to such Pledge, a customary intercreditor agreement approved by the Rating Agencies (as that term is defined in the Note) and Lender shall be entered into by the Mezzanine Loan lender and Lender acknowledging, among other items, the subordination of the Mezzanine Loan and the debt established thereunder;
- (vi) Lender has determined that the Mezzanine Loan shall not result in a lien against the Property and that the Mezzanine Loan shall be secured solely by the Pledge;
- (vii) No memorandum or other evidence of the Mezzanine Loan or Pledge shall be filed of record in the Recorder of Deeds and the Mezzanine Loan shall not encumber all or any portion of the Mortgaged Property;
- (viii) The minimum debt service coverage ratio (defined below) for the Debt and the Mezzanine Loan together shall not be less than 1.15:1.0;
- (ix) The aggregate sum of the Debt and the Mezzanine Loan cannot at the time of the closing of the Mezzanine Loan exceed an amount equal to eighty percent (80%) of the fair market value of the Mortgaged Property based upon a then current appraisal acceptable to Lender and obtained at Borrower's expense;
- (x) If the Note is then held by a REMIC, Borrower delivers to Lender an opinion of nationally recognized tax counsel concluding that the Mezzanine Loan transaction to be engaged in (a) will not cause the then owner of the Note to be subject to a "prohibited transaction", within the meaning of Section 860F(a)(2) of the Internal Revenue Code of 1986, as amended from time to time or any successor statute (the "Code"), with respect to the Note and (b) will not cause the then owner of the Note to fail to qualify as a REMIC;

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- (xi) Borrower delivers at the request of Lender documentation evidencing that the proposed Mezzanine Loan transaction will not result in a qualification, downgrade or withdrawal of any credit rating then in effect for any securities or certificates issued by the then owner of the Note in connection with a securitization which includes the Note;
- (xii) The maturity date for the Mezzanine Loan must occur on or after the Maturity Date for the Loan;
- (xiii) Lender shall be provided with notice of and an opportunity to cure any default under the Mezzanine Loan, but Lender shall have no obligation to cure any such default;
- (xiv) Borrower delivers to Lender such opinions of counsel as Lender shall reasonably require;
- (xv) Borrower shall pay to Lender all costs and expenses including reasonable attorneys fees incurred by Lender in confirming the foregoing conditions are satisfied and processing Borrower's request to obtain the Mezzanine Loan;
- (xvi) The Mezzanine Loan shall not cause any modification of the organizational documents of any entity comprising the Borrower and the Lender's consent shall be obtained for any modification of the organizational documents of any obligor under the mezzanine loan documents, which consent shall not be unreasonably withheld; and
- (xvii) the Mezzanine Loan transaction is completed no later than one year prior to the Maturity Date.

Except for the Mezzanine Loan, no other mezzanine loan or pledge of membership interest in the Borrower or entities directly or indirectly comprising Borrower shall be permitted which (if a default shall occur thereunder) could result in a Change in Ownership of Borrower or any entity comprising Borrower.

For purposes hereof, "debt service coverage ratio" shall mean the ratio of Net Operating Income to Debt Service for the twelve (12) month period prior to the proposed closing date of the Mezzanine Loan.

For purposes hereof, Debt Service shall mean the amount of interest and any escrow or reserve deposits and principal payments due and payable in accordance with the Note, this Security Instrument or the Other Security Documents during any applicable period other than at the Maturity Date.

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For purposes hereof, Net Operating Income shall mean the excess of Operating Income over Operating Expenses for such period, as such amount may be adjusted by Lender in accordance with Lender's Underwriting Standards.

For purposes hereof, Operating Income shall mean, for any period, all income of Borrower during such period from the operation of the Mortgaged Property. Operating Income specifically shall include (i) all amounts payable to Borrower by any person or entity as rent and other amounts under leases (excluding rent under leases where a monetary default has occurred and is continuing for a period of thirty (30) days), license agreements, occupancy agreements, concession agreements or other agreements relating to the Mortgaged Property (including reimbursements and percentage rents) up to a maximum occupancy of 95%, (ii) business interruption insurance proceeds, and (iii) all other amounts which in accordance with generally accepted accounting principles are included in Borrower's annual financial statements as operating income attributable to the Mortgaged Property. Notwithstanding the foregoing, Operating Income shall not include (a) any Insurance Proceeds (other than business interruption insurance proceeds) or awards with respect to a Condemnation (as defined in the Security Instrument) and, in either such case, only to the extent allocable to the applicable reporting period, (b) any proceeds resulting from the Transfer of all or any portion of the Mortgaged Property, (c) any rent or similar payments attributable to a period prior to the date on which the actual payment thereof is due and payable, (d) any item of income otherwise includable in Operating Income but paid directly by any tenant to a person or entity other than Borrower, provided such item of income is an item of expense (such as payments for utilities paid directly to a utility company) and is otherwise excluded from the definition of Operating Expenses, (e) security deposits received from tenants or other deposits made by patrons of the Mortgaged Property until forfeited or applied, (f) tips and gratuities (including service charges added to customer's bill or statement in lieu of gratuities which are payable to employees), (g) sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges, and any other taxes collected directly from tenants, customers, guests or patrons or included as part of the sales price of any goods or services, unless included in Operating Expenses, (h) credits, refunds, discounts or rebates made to tenants, customers, guests or patrons, (i) sums and credits received in settlement of claims for loss or damage to merchandise, (j) income from the sale of furnishings, fixtures or equipment and (k) bad debts. Operating Income shall be calculated on a cash basis of accounting with normal accrual adjustments and, except to the extent otherwise provided in this definition or required by Lender, in accordance with generally accepted accounting principles.

For purposes hereof, Operating Expenses shall mean for any period, without duplication, all expenses actually paid or payable by Borrower during such period in connection with the operation, management, maintenance, repair and use of the Mortgaged Property, determined on a cash basis of accounting with normal accrual adjustments, and except to the extent otherwise provided in this definition, in accordance with generally accepted accounting principles. Operating Expenses

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specifically shall include (i) all payments required to be made pursuant to any operating agreements applicable to the Mortgaged Property, (ii) property management fees (which shall not, in the aggregate, exceed 4% of Mortgaged Property revenues), incentive fees and license, advertising and sale expenses, subject to provisions set forth below in this definition, (iii) departmental expenses incurred at departments within the Mortgaged Property, (iv) administrative and general expenses, (v) the cost of inventories and fixed asset supplies consumed in the operation of the Mortgaged Property, (vi) intentionally omitted, (vii) costs and fees for independent professionals, technical consultants, operational experts (including quality assurance inspectors) or other third parties retained to perform services required or permitted hereunder or under any of the other Loan Documents, (viii) intentionally deleted, (ix) association dues, (x) computer processing charges, (xi) operational equipment and other lease payments as reasonably approved by Lender, and (xii) Taxes and Other Charges (as such terms are defined in the Security Instruments). Notwithstanding the foregoing, Operating Expenses shall not include (1) depreciation or amortization, (2) income taxes or other charges in the nature of income taxes, (3) any expenses (including legal, accounting and other professional fees, expenses and disbursements) incurred in connection with the making of the Loan or the sale, exchange, transfer, financing or refinancing of all or any portion of the Mortgaged Property or in connection with the recovery of Insurance Proceeds (as defined in the Security Instruments) which are applied to prepay the Note, (4) Debt Service, and (5) any item of expense which would otherwise be considered within Operating Expenses pursuant to the provisions above but is paid directly by any tenant or reimbursed by a tenant to Borrower.

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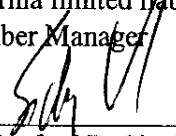
IN WITNESS WHEREOF, Borrower has executed this Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing to be effective as of the day and year first above written.

"Borrower"

NMC Grove Melrose, LLC,
a Delaware limited liability company

By: NewMark Merrill Companies, LLC,
a California limited liability company,
its Manager

By: Sigal Investments, LLC,
a California limited liability company,
its Member Manager

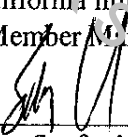
By: 
Name: Sanford D. Sigal
Title: Manager

NMC Melrose Park, LLC,
a California limited liability company

By: NMC Melrose Park Manager, LLC,
a Delaware limited liability company,
its Member Manager

By: NewMark Merrill Companies, LLC,
a California limited liability company,
its Manager

By: Sigal Investments, LLC,
a California limited liability company,
its Member Manager

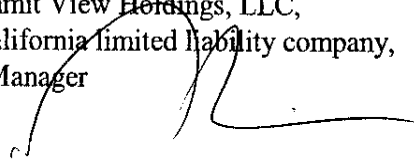
By: 
Name: Sanford D. Sigal
Title: Manager

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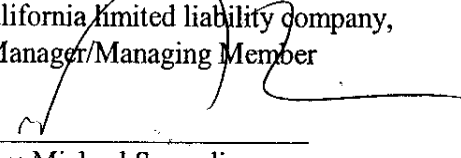
Melrose Park Associates, LLC,
a Delaware limited liability company

By: Summit View Holdings, LLC,
a California limited liability company,
its Manager

By: 
Name: Michael Soroudi
Title: Co-Manager

Melrose Park Equity, LLC,
a Delaware limited liability company

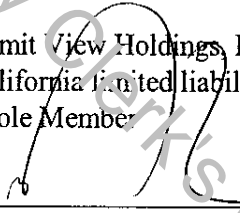
By: Maxxam Enterprises, LLC,
a California limited liability company,
its Manager/Managing Member

By: 
Name: Michael Soroudi
Title: Co-Manager

Melrose Park Investments, L.P.,
a California limited partnership

By: Winston Investment Group, LLC,
a Delaware limited liability company,
its General Partner

By: Summit View Holdings, LLC,
a California limited liability company,
its Sole Member

By: 
Name: Michael Soroudi
Title: Co-Manager

Property of Cook County Clerk's Office

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ACKNOWLEDGEMENT

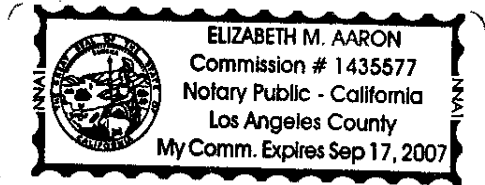
State of California)
)
 County of Los Angeles)

SS.

On August 6, 2007, before me, Elizabeth M. Aaron, a Notary Public in and for said State, personally appeared, Sanford D. Sigal, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Elizabeth M. Aaron*
 Elizabeth M. Aaron



(Seal)

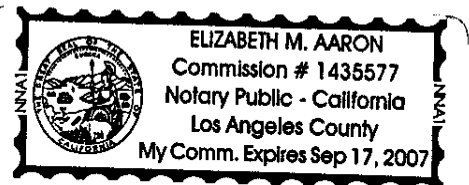
State of California)
)
 County of Los Angeles)

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WITNESS my hand and official seal.

Signature *Elizabeth M. Aaron*
 Elizabeth M. Aaron



(Seal)

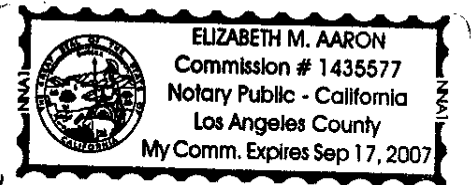
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ACKNOWLEDGEMENT

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) SS.
 County of Los Angeles)

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WITNESS my hand and official seal.



Signature

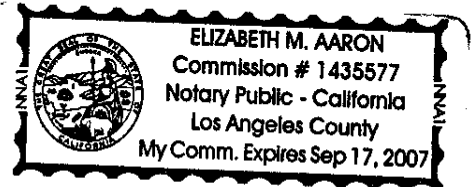
Elizabeth M. Aaron
 Elizabeth M. Aaron

(Seal)

State of California)
) SS.
 County of Los Angeles)

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WITNESS my hand and official seal.



Signature

Elizabeth M. Aaron
 Elizabeth M. Aaron

(Seal)

UNOFFICIAL COPY

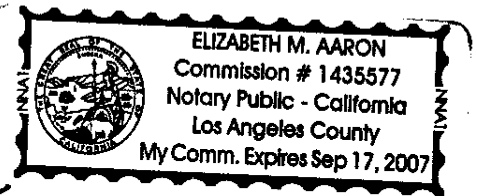
ACKNOWLEDGEMENT

State of California)
)
 County of Los Angeles) SS.

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WITNESS my hand and official seal.

Signature *Elizabeth M. Aaron*
 Elizabeth M. Aaron



(Seal)

County Clerk's Office

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Loan No.: 94-0953760

PROMISSORY NOTE

\$46,000,000.00

Los Angeles, California

August 6, 2007

FOR VALUE RECEIVED, NMC Grove Melrose, LLC, a Delaware limited liability company and NMC Melrose Park, LLC, a California limited liability company having their principal place of business at 5850 Canoga Avenue #650, Woodland Hills, California 91367 and Melrose Park Associates, LLC, a Delaware limited liability company, Melrose Park Equity, LLC, a Delaware limited liability company and Melrose Park Investments, L.P., a California limited partnership having their principal place of business at 9595 Wilshire Boulevard, Suite 501, Beverly Hills, California 90210 (collectively, "**Borrower**") promise to pay to the order of PNC Bank, National Association ("**Lender**"), at the following address: 10851 Mastin, Suite 300, Overland Park, Kansas 66210, or such other place as the holder hereof may from time to time designate in writing, the principal sum of Forty Six Million and No/100 Dollars (\$46,000,000.00) in lawful money of the United States of America, with interest thereon to be computed from the date of disbursement under this Promissory Note (the "**Note**") at the Applicable Interest Rate (hereinafter defined), and to be paid in installments as follows:

- A. A payment, on the date of disbursement, representing interest from the date of disbursement through the last day of the calendar month in which such disbursement is made;
- B. A payment of interest only on the first day of October, 2007 and on the first day of each calendar month thereafter up to and including the first day of September, 2012;
- C. A constant payment of \$287,130.60 (based upon an amortization schedule assuming a 360 day year consisting of 12 months of 30 days each) on the first day of October, 2012 and on the first day of each calendar month thereafter up to and including the first day of August, 2017; and
- D. The balance of said principal sum, all unpaid interest thereon and all other amounts owed pursuant to this Note, the Security Instrument (hereinafter defined), the Other Security Documents (hereinafter defined), or otherwise in connection with the loan evidenced by this Note shall be due and payable on the first day of September, 2017 (the "**Maturity Date**").

All payments to be made by Borrower to Lender shall be deemed received by Lender only upon Lender's actual receipt of same.

1. **Applicable Interest Rate.** Interest accruing on the principal sum of this Note shall be calculated based upon a per annum interest rate divided by 360 days resulting in a per diem interest amount that will accrue for each calendar day in a year of 365 days (366 days in a leap year). The term "**Applicable Interest Rate**" as used in this Note shall mean, from the date of this Note through and including the Maturity Date, a rate of Six and 38/100 percent (6.38%) per annum.

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2. Application. All payments on this Note shall be applied at any time and from time to time in the following order: (i) the payment or reimbursement of any expenses (including but not limited to late charges), costs or obligations (other than the principal hereof and interest hereon) for which Borrower shall be obligated or Lender entitled pursuant to the provisions hereof or of the Security Instrument or the Other Security Documents, (ii) the payment of accrued but unpaid interest thereon, (iii) the payment of unpaid escrow amounts required herein, in the Security Instrument or in the Other Security Documents, and (iv) the payment of all or any portion of the principal balance then outstanding hereunder, in either the direct or inverse order of maturity, at Lender's option.

3. Late Charge. If any part of the Debt (hereinafter defined) is not actually received by Lender by close of business on the fifth (5th) day after the date on which it was due, Borrower shall pay to Lender an amount (the "Late Charge") equal to the lesser of five percent (5%) of such unpaid portion of the missed payment or the maximum amount permitted by applicable law, to defray the expenses incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. All such Late Charges shall be automatically due and payable without notice or demand and shall be secured by the Security Instrument and the Other Security Documents.

4. Security; Defined Terms; Incorporation by Reference. This Note is secured by the Security Instrument and the Other Security Documents. The term "Security Instrument" as used in this Note shall mean the Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, executed and delivered by Borrower contemporaneously with this Note and which secures the Debt. The term "Other Security Documents" means all documents other than this Note or the Security Instrument now or hereafter executed and/or delivered by Borrower and/or others and to or in favor of Lender, which wholly or partially secure, evidence or guarantee payment of the Debt, provide for any indemnity in favor of or payment to Lender related to the Debt, this Note or the Mortgaged Property (as defined in the Security Instrument), provide for any escrow/holdback arrangements or for any actions to be completed by Borrower subsequent to the date hereof, or are otherwise related to the loan evidenced by this Note. All amounts due and payable under this Note, together with all sums due under the Security Instrument and the Other Security Documents, including any applicable Prepayment Consideration (hereinafter defined) and all applicable attorney fees and costs, are collectively referred to herein as the "Debt." Where appropriate, the singular number shall include the plural, the plural shall include the singular, and the words "Lender," and "Borrower" shall include their respective successors, assigns, heirs, personal representatives, executors and administrators.

5. Prepayment/Defeasance.

(a) When Permitted. Prior to June 1, 2017 (the "Early Payment Date"), Borrower shall not have the right to prepay all or any portion of the Debt at any time during the term of this Note (except for any prepayment permitted under the Security Instrument in the event of a casualty or condemnation). No Prepayment Consideration (hereinafter defined) will be due from any prepayment of this Note (in whole but not in part) on or after the Early Payment Date. Notwithstanding the forgoing or anything else to the contrary herein, upon the completion of a defeasance as set forth below, Borrower shall have no further right to prepay all or any portion of the Debt. In the event of a prepayment on or after such date, Borrower shall pay, together with the amount of such prepayment, an amount equal to (i) all accrued and unpaid interest, and (ii) any other sums due under this Note, the Security Instrument or any Other Security Document. Additionally, any such prepayment not actually received by Lender before 5:00 p.m., central time, on the 5th day of any calendar month must also include the interest which would have accrued on the amount of such prepayment during the entire calendar month in which the prepayment is made.

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(b) Notice. Borrower may give written notice to Lender specifying the date, which date must be on or after the Early Payment Date, on which a full prepayment of the Debt is to be made (the date of any prepayment hereunder, whether pursuant to such notice or not, and whether voluntary or involuntary, being herein called the "Prepayment Date"). Lender shall receive this notice not more than sixty (60) days and not less than thirty (30) days prior to the Prepayment Date. If any such notice of prepayment is given, the entire Debt, including any applicable Prepayment Consideration (as defined below), shall be due and payable on the Prepayment Date.

(c) Prepayment After Event of Default. If following the occurrence of any Event of Default, Borrower shall tender payment of an amount sufficient to satisfy the Debt at any time prior to or after a sale of the Mortgaged Property, either through foreclosure or the exercise of the other remedies available to Lender under the Security Instrument or the Other Security Documents, such tender by Borrower shall be deemed to be a voluntary prepayment under this Note in the amount tendered and in such case Borrower shall also pay to Lender with respect to the amount tendered, the applicable Prepayment Consideration set forth in this Note, which Prepayment Consideration shall be immediately due and payable. Lender shall not be obligated to accept any such prepayment of this Note unless it is accompanied by an amount (the "Prepayment Consideration") equal to the greater of: (x) one percent (1%) of the outstanding principal balance of this Note at the time of prepayment; or (y) the Yield Maintenance Amount (hereinafter defined).

Lender shall not be obligated to accept any such tender unless it is accompanied by all Prepayment Consideration due in connection therewith. Borrower acknowledges that the Prepayment Consideration is a bargained for consideration and not a penalty, and Borrower recognizes that Lender would incur substantial additional costs and expenses in the event of a prepayment of the Debt and that the Prepayment Consideration compensates Lender for such costs and expenses (including without limitation, the loss of Lender's investment opportunity during the period from the date such tender is accepted until the Maturity Date). Borrower agrees that Lender shall not, as a condition to receiving the Prepayment Consideration, be obligated to actually reinvest the amount prepaid in any treasury obligation or in any other manner whatsoever. Except as otherwise set forth in the Security Instrument, no Prepayment Consideration will be due for involuntary prepayments resulting from any Casualty (as defined in the Security Instrument) or Condemnation (as defined in the Security Instrument).

Yield Maintenance Amount. The "Yield Maintenance Amount" shall mean the present value, as of the Prepayment Date, of the remaining scheduled payments of principal and interest from the Prepayment Date through the Maturity Date (including any balloon payment) determined by discounting such payments at the Discount Rate (hereinafter defined), less the amount of principal being prepaid. The term "Discount Rate" shall mean the rate which, when compounded monthly, is equivalent to the Treasury Rate (hereinafter defined) when compounded semi-annually. The term "Treasury Rate" shall mean the yield calculated by the linear interpolation of the yields, as reported in Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Government Securities/Treasury Constant Maturities for the week ending prior to the Prepayment Date, of U.S. Treasury constant maturities with maturity dates (one longer and one shorter) most nearly approximating the Maturity Date. (In the event Release H.15 is no longer published, Lender shall select a comparable publication to determine the Treasury Rate.) Lender shall notify Borrower of the amount and the basis of determination of the required Prepayment Consideration.

(d) Defeasance. Any provision hereof to the contrary notwithstanding, at any time during the Defeasance Period (as defined below), Borrower may obtain a release of the Mortgaged Property from the lien of the Security Instrument only upon the satisfaction of the following conditions:

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(i) not less than thirty (30) days prior written notice shall be given to Lender specifying a date (the "Defeasance Date") on which the Defeasance Collateral (as defined below) is to be delivered, such date being the first day of the month;

(ii) all accrued and unpaid interest and all other sums due under this Note, the Security Instrument and the Other Security Documents up to the Defeasance Date, including, without limitation, all reasonable costs and expenses incurred by Lender or its agents in connection with such defeasance, including, without limitation, any legal fees and expenses incurred in connection with obtaining and reviewing the Defeasance Collateral, the preparation of the Defeasance Security Agreement (as defined below) and related documentation, accountant fees, and investment advisor fees, all of which shall be paid in full on or prior to the Defeasance Date;

(iii) no Event of Default, and no event or condition that, with the giving of notice or passage of time or both, would constitute an Event of Default, shall exist either at the time Borrower gives notice of the Defeasance Date to Lender or on the Defeasance Date;

(iv) Borrower shall deliver to Lender on or before the Defeasance Date direct, non-callable obligations of the United States of America in such form and amount that provide for the payments prior, but as close as possible, to all successive regularly scheduled monthly payment dates, including the Maturity Date, with such payments being equal to or greater than the amount of the corresponding monthly payment required to be paid under this Note (hereafter, "Scheduled Defeasance Payments") for the balance of the term hereof and the amount required to be paid on the Maturity Date (such obligations are collectively and singularly referred to herein as "Defeasance Collateral") each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender (including, without limitation, such instrument as may be required by the depository institution holding such securities or the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect a first priority security interest in such Defeasance Collateral in favor of Lender. The Defeasance Collateral may be purchased by Lender on Borrower's behalf, in which case Borrower shall deposit with Lender at least three days before the Defeasance Date a sum sufficient, in Lender's sole and absolute discretion, to purchase the Defeasance Collateral. Any sums in excess of the amount necessary to purchase the Defeasance Collateral shall be remitted to Borrower upon release of the Mortgaged Property.

(v) Borrower shall deliver the following to Lender, at Borrower's cost, on or prior to the Defeasance Date:

(A) a pledge and security agreement, in form and substance satisfactory to Lender in its sole discretion, creating a first priority security interest in favor of Lender in the Defeasance Collateral (the "Defeasance Security Agreement");

(B) a certificate of Borrower certifying that all of the requirements hereunder for a defeasance have been satisfied;

(C) an opinion of counsel in form and substance and delivered by counsel satisfactory to Lender in its sole discretion stating, among other things, (x) that Lender has

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a perfected first priority security interest in the Defeasance Collateral, (y) that the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms and (z) that the defeasance will not cause the entity which holds this Note to fail to qualify as a "real estate mortgage investment conduit" (a "REMIC"), within the meaning of Section 860D of the Internal Revenue Code of 1986, as amended from time to time or any successor statute (the "Code");

(D) an opinion of an independent certified public accountant acceptable to Lender representing and warranting to Lender that the Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments including the amount required to be paid on the Maturity Date of this Note, and such other approvals required by Lender;

(E) evidence in writing from each of the Rating Agencies to the effect that such release will not result in a qualification, downgrade or withdrawal of any rating in effect immediately prior to the Defeasance Date for any securities or "Pass-Through Certificates" issued pursuant to the terms of a trust and servicing agreement in the event that this Note or any interest therein is included in a REMIC or other securitization vehicle;

(F) such other certificates, opinions, documents or instruments as Lender may reasonably require;

(G) upon approval by Lender of the schedule of Defeasance Collateral to be delivered to Lender, Borrower shall (i) pay Lender a nonrefundable fee, in an amount reasonably determined by Lender, as compensation for the review, analysis and processing of the defeasance request; and (ii) if required by Lender, deposit with Lender an amount estimated by Lender to be sufficient to fund all other fees, costs and expenses related to the defeasance, including Lender's reasonable attorneys' fees and expenses and rating agency fees, if any and expenses together with all expenses and costs associated with the release of the lien on the Mortgaged Property. Borrower shall be responsible for all fees, costs and expenses associated with the defeasance which, if not covered by the above deposit, shall be paid to Lender no later than the Defeasance Date; and

(H) if required by Lender, written approval from the Rating Agencies of the defeasance.

Upon compliance with the foregoing requirements relating to the delivery of the Defeasance Collateral, the Mortgaged Property shall be released from the lien of the Security Instrument and the Defeasance Collateral shall constitute collateral which shall secure this Note and the Debt.

The "Defeasance Period" shall mean the period of time: (1) commencing on the date which is the later to occur of: (A) two (2) years after the "start-up day", within the meaning of Section 860(G)(a)(9) of the Code, of the REMIC that holds this Note; and (B) three (3) years after the date of the first regularly scheduled monthly payment due hereunder, and (2) ending on the Early Payment Date. The "Rating Agencies" shall mean, collectively, Standard and Poor's Ratings Services, Moody's Investors Service, Inc., and Fitch IBCA, Inc., and their respective successors and assigns, to the extent each of the foregoing performed credit rating services for the REMIC or other securitization vehicle which owns this Note.

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(e) Successor Borrower. In connection with a defeasance under this Section, Borrower shall establish or designate a successor entity (the "Successor Borrower") which shall be a single purpose entity approved by Lender in its sole discretion. Borrower shall transfer and assign all obligations, rights and duties under and to this Note together with the Defeasance Collateral to such Successor Borrower. Such Successor Borrower shall assume the obligations under this Note and the Security Instrument and Borrower shall be relieved of its obligations under such documents except for any such representations that specifically survive the defeasance. Borrower shall pay \$1,000 to any such Successor Borrower as consideration for assuming the obligations under this Note and the Security Instrument. Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorneys' fees and expenses, incurred in connection with establishment of the Successor Borrower.

(f) Defeasance Collateral Account. All cash from interest and principal payments paid on the Defeasance Collateral shall be paid over to Lender for each Scheduled Defeasance Payment and applied first to accrued and unpaid interest and then to principal. Any cash from interest and principal paid on the Defeasance Collateral not needed to pay accrued and unpaid interest or principal shall be retained in a designated account established by Borrower or Successor Borrower as the case may be, (the "Defeasance Collateral Account") which shall constitute additional collateral for the loan evidenced hereby. The Defeasance Collateral Account shall contain only cash from interest and principal paid on the Defeasance Collateral. Borrower or Successor Borrower, as applicable, shall be the owner of the Defeasance Collateral Account and shall report all income accrued thereon for federal, state and local income tax purposes and shall pay all costs and expenses associated with opening and maintaining the account and may pay all costs and expenses associated with maintaining the Successor Borrower from such account. Lender shall have no responsibility to fund any Scheduled Defeasance Payments and shall not be liable in any way by reason of any insufficiency in the Defeasance Collateral Account. Upon an assumption by Successor Borrower acceptable to Lender, Borrower shall be relieved of its obligations under this Note and the Defeasance Security Agreement and, to the extent such documents relate to the Mortgaged Property, the Other Security Documents.

(g) Release of Security Instrument Following Defeasance. Upon compliance with the requirements hereunder for a defeasance, the Mortgaged Property shall be released from the lien of the Security Instrument and the Other Security Documents, and the Defeasance Collateral shall constitute collateral securing this Note. Lender will, at Borrower's expense, execute and deliver any agreements reasonably requested by Borrower to release the lien of the Security Instrument from the Mortgaged Property.

(h) Purchase of Defeasance Collateral. In the event of purchase by Lender of the Defeasance Collateral, such purchase may, in Lender's sole and absolute discretion be through an affiliate of Lender or a third party entity. Borrower shall be responsible for the payment of any brokerage or other transaction fees in connection with such purchase.

6. Default. An "Event of Default" shall occur if:

(a) Borrower fails to make the full and punctual payment of any amount payable hereunder or under the Security Instrument or Other Security Documents, which failure is not cured on or before the fifth (5th) day after the date of written notice from Lender to Borrower of such failure;

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(b) Borrower fails to pay the entire outstanding principal balance hereunder, together with all accrued and unpaid interest, on the date when due, whether on the Maturity Date, upon acceleration or prepayment or otherwise; or

(c) an Event of Default (as defined in the Security Instrument or any of the Other Security Documents) has occurred under the Security Instrument and/or Other Security Documents.

7. Acceleration. The whole of the Debt, including without limitation, the principal sum of this Note, all accrued interest and all other sums due under this Note, the Security Instrument and the Other Security Documents, together with any applicable Prepayment Consideration, shall become immediately due and payable at the option of Lender, without notice, at any time following the occurrence of an Event of Default.

8. Default Interest. Upon the occurrence of an Event of Default (including without limitation, the failure of Borrower to pay the Debt in full on the Maturity Date), Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid principal balance at the rate (the "Default Rate") equal to the greater of: (a) four percent (4%) above the Applicable Interest Rate; or (b) four percent (4%) above the Prime Rate (hereinafter defined) in effect at the time of the occurrence of the Event of Default; provided, however, that notwithstanding the foregoing, in no event shall the Default Rate exceed the Maximum Rate (hereinafter defined). The term "Prime Rate" shall mean the prime rate reported in the Money Rates section of The Wall Street Journal for the date (the "Default Rate Calculation Date") upon which the Event of Default occurred, or if no publication occurs upon such date, then the date of publication immediately preceding the date of the Event of Default. In the event that The Wall Street Journal should cease or temporarily interrupt publication, the term "Prime Rate" shall mean the daily average prime rate published upon the Default Rate Calculation Date in another business newspaper, or business section of a newspaper, of national standing chosen by Lender. In the event that a prime rate is no longer generally published or is limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index which is readily available and verifiable to Borrower but is beyond Lender's control. The Default Rate shall be computed from the occurrence of the Event of Default until the actual payment in full of the Debt. This charge shall be added to the Debt, and shall be deemed secured by the Security Instrument. This clause, however, shall not be construed as an agreement or privilege to extend the Maturity Date, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default.

9. Attorney Fees. In the event that Lender employs attorney(s) to collect the Debt, to enforce the provisions of this Note or to protect or foreclose the security herefor, Borrower agrees to pay Lender's attorney fees and disbursements, whether or not suit be brought. Such fees shall be immediately due and payable.

10. Limit of Validity. This Note is subject to the express condition that at no time shall Borrower be obligated or required to pay interest or other charges on the Debt at a rate which may subject Lender to civil or criminal liability as a result of such rate exceeding the maximum interest rate which Borrower is permitted to pay by applicable law (the "Maximum Rate"). If by the terms of this Note, Borrower is at any time required or obligated to pay interest or other charges on the Debt at a rate in excess of the Maximum Rate, the rate of interest due under this Note shall be deemed to be immediately reduced to the Maximum Rate and any previous payments in excess of the Maximum Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder.

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11. No Oral Amendments. This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

12. Exculpation. Subject to the provisions of this Section, Borrower's liability under this Note, the Security Instrument or the Other Security Documents shall only extend to the Mortgaged Property and other collateral given to secure the Debt, and Lender shall not enforce such liability against any other asset, property or funds of Borrower; provided, however, the foregoing shall not:

(a) impair the right of Lender to bring suit and obtain personal, recourse judgments against any person or entity (including Borrower) relating to any losses sustained by Lender in connection with any fraud, intentional misrepresentation, waste, or misappropriation of tenant security deposits or rents collected more than one (1) month in advance by Borrower;

(b) impair the right of Lender to name, and obtain a judgment against any person or entity (including Borrower) to the extent required by law to either obtain a judgment of specific performance with respect to any of the provisions of this Note, the Security Instrument or any of the Other Security Documents, or to foreclose the Security Instrument and obtain title to the Mortgaged Property and other collateral given to secure the Debt;

(c) affect the validity or enforceability of, or impair the right of Lender to bring suit and obtain personal, recourse judgments against any person or entity (including Borrower) to enforce any guaranty, indemnity or release of liability made by such person or entity (whether made in this Note, the Security Instrument, any of the Other Security Documents or in any other separate agreement);

(d) impair the right of Lender to obtain the appointment of a receiver;

(e) impair the enforcement of the Assignment of Leases and Rents executed in connection herewith; or

(f) affect the validity or enforceability of, or impair the right of Lender to bring suit and obtain personal, recourse judgments against any person or entity (including Borrower) relating to any losses sustained by Lender in connection with any of the provisions of this Note, the Security Instrument or any of the Other Security Documents requiring that: (i) any person or entity maintain any insurance over any of the Mortgaged Property, or (ii) any insurance proceeds or condemnation awards be paid to Lender; or

(g) impair the right of Lender to bring suit and obtain personal, recourse judgments against any person or entity (including Borrower) for the full amount of the Debt if the Mortgaged Property or any part thereof shall become an asset in: (i) a voluntary bankruptcy or insolvency proceeding, or (ii) an involuntary bankruptcy or insolvency proceeding: (A) which is commenced by any person or entity controlling, controlled by or under common control with Borrower (the "Borrowing Group") or (B) in which any member of the Borrowing Group objects to a motion by Lender for relief from any stay or injunction from the foreclosure of the Security Instrument or any other remedial action permitted under this Note, the Security Instrument or any of the Other Security Documents.

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Items (a) through (g) above are collectively the "Non-Recourse Exceptions". To the extent Borrower is a general partnership and Lender is required under applicable law to pursue its remedies against the persons or entities constituting Borrower, each reference to the phrase "(including Borrower)" in the Non-Recourse Exceptions shall be deemed to read "(including Borrower or any person or entity constituting Borrower)". Borrower's liability under the Non-Recourse Exceptions, excepting item (g), shall be limited to the amount of any losses or damages sustained by Lender in connection with such Non-Recourse Exceptions. Nothing herein shall be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt secured by the Security Instrument or to require that all of the Mortgaged Property and other collateral given to secure the Debt shall continue to secure all of the Debt.

13. Assignment. Lender, and its successors, endorsees and assigns, may freely transfer and assign this Note. Borrower's right to transfer its rights and obligations with respect to the Debt, and to be released from liability under this Note, shall be governed by the Security Instrument.

14. Applicable Law; Jurisdiction. This Note shall be governed and construed in accordance with the laws of the state in which the real property encumbered by the Security Instrument is located. Borrower hereby submits to personal jurisdiction in the state courts located in said state and the federal courts of the United States of America located in said state for the enforcement of Borrower's obligations hereunder and waives any and all personal rights under the law of any other state to object to jurisdiction within such state for the purposes of any action, suit, proceeding or litigation to enforce such obligations of Borrower.

15. Joint and Several Liability. If Borrower consists of more than one person or entity, the obligations and liabilities of each such person or entity shall be joint and several.

16. Waiver of Presentment, Etc. Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest, notice of protest, and notice of intent to accelerate the maturity hereof (and of such acceleration), except to the extent that specific notices are required by this Note, the Security Instrument or the Other Security Documents.

17. No Waiver. Any failure by Lender to insist upon strict performance by Borrower of any of the provisions of this Note, the Security Instrument or the Other Security Documents shall not be deemed to be a waiver of any of the terms or provisions of this Note, the Security Instrument or the Other Security Documents, and Lender shall have the right thereafter to insist upon strict performance by Borrower of any and all of the terms and provisions of this Note, the Security Instrument or the Other Security Documents.

18. Notices. Except as otherwise specified herein, any notice, consent, request or other communication required or permitted to be given hereunder shall be in writing, addressed to the other party as set forth below (or to such other address or person as either party or person entitled to notice may by notice to the other party specify), and shall be: (a) personally delivered; (b) delivered by Federal Express or other comparable overnight delivery service; or (c) transmitted by United States certified mail, return receipt requested with postage prepaid; to:

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Lender: PNC Bank, National Association
10851 Mastin, Suite 300
Overland Park, Kansas 66210
Attention: Closing Department

Borrower: NMC Grove Melrose, LLC, a Delaware limited liability company and
NMC Melrose Park, LLC, a California limited liability company
5850 Canoga Avenue #650
Woodland Hills, California 91367
Attention: Sanford D. Sigal

Melrose Park Associates, LLC, a Delaware limited liability company,
Melrose Park Equity, LLC, a Delaware limited liability company and
Melrose Park Investments, L.P., a California limited partnership
9595 Wilshire Boulevard, Suite 501
Beverly Hills, California 90210
Attn: Michael Soroudi

Unless otherwise specified, all notices and other communications shall be deemed to have been duly given on the first to occur of actual receipt of the same or: (i) the date of delivery if personally delivered; (ii) one (1) business day after depositing the same with the delivery service if by overnight delivery service; and (iii) three (3) days following posting if transmitted by mail. Borrower must prominently display Lender's Loan Number (as set forth on page 1 of this Note) on all notices or communications to Lender.

19. Severability. If any term, covenant or condition of this Note is held to be invalid, illegal or unenforceable in any respect, this Note shall be construed without such provision.

20. Time of the Essence. Time shall be of the essence in the performance of all obligations of Borrower hereunder.

21. Additional Terms and Provisions. Certain additional and supplemental terms and provisions of this Note are set forth in this paragraph. The terms and provisions of this paragraph control and supersede any conflicting terms and provisions contained in this Note.

- (a) Late Charge. Late Charges shall only be calculated upon the part of the Debt that was not paid when due, not upon the entire outstanding Debt. No Late Charge will be applicable in connection with a failure to pay the remaining outstanding principal, unpaid interest and other amounts payable on the Maturity Date.
- (b) Prepayment Notice. The second sentence of paragraph 5(b) is amended to read as follows: "Lender shall receive this notice not more than one hundred twenty (120) days and not less than thirty (30) days prior to the Prepayment Date."
- (c) Attorney Fees. Notwithstanding anything to the contrary herein, any obligation for Borrower to pay Lender's attorney fees and related costs shall only apply to reasonable attorney fees and related costs.

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- (d) Notices. The phrase "three (3) days" in paragraph 18(iii) is amended to read "three (3) business days".
- (e) Exculpation. Paragraph 12 is amended as follows:
- (i) Each use of the phrase "any person or entity (including Borrower)" in Paragraph 12 is amended to read "Borrower or any Guarantor (as defined in the Security Instrument)".
 - (ii) Section 12(a) is modified to add the following after the last word contained therein, "and/or the failure of Borrower to make any deposit required at anytime by the Anchor Tenant Escrow Agreement in an amount equal to the sums required to be deposited thereunder".
 - (iii) Subparagraph (g) and the last paragraph of Paragraph 12 are amended to read as follows: "(g) impair the right of Lender to bring suit and obtain personal, recourse judgments against any person or entity (including Borrower) for any losses sustained by Lender in connection with the Mortgaged Property or any part thereof becoming an asset in: (i) a voluntary bankruptcy or insolvency proceeding, or (ii) an involuntary bankruptcy or insolvency proceeding: (A) which is commenced by any person or entity controlling, controlled by or under common control with Borrower (the "Borrowing Group") or (B) in which any member of the Borrowing Group objects to a motion by Lender for relief from any stay or injunction from the foreclosure of the Security Instrument or any other remedial action permitted under this Note, the Security Instrument or any of the Other Security Documents.
- Items (a) through (g) above are collectively the "Non Recourse Exceptions". To the extent Borrower is a general partnership and Lender is required under applicable law to pursue its remedies against the persons or entities constituting Borrower, each reference to the phrase "(including Borrower)" in the Non Recourse Exceptions shall be deemed to read "(including Borrower or any person or entity constituting Borrower)". Borrower's and any Guarantor's liability under the Non Recourse Exceptions shall be limited to the amount of any losses or damages sustained by Lender in connection with such Non Recourse Exceptions. Nothing herein shall be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt secured by the Security Instrument or to require that all of the Mortgaged Property and other collateral given to secure the Debt shall continue to secure all of the Debt."
- (f) Defeasance Date. Notwithstanding subparagraph 5(d)(i), but subject to Lender's consent, the applicable Defeasance Date may occur in the first five days of any month (or any other date that Lender approves), rather than on the first day of such month.
- (g) Section 5(d)(iv) is hereby deleted and replaced with the following:

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(iv) Borrower shall deliver to Lender, on or before the Defeasance Date, U.S. Obligations (as defined below) in such form and amount that provide for the payments prior, but as close as possible, to all successive regularly scheduled monthly payment dates, including the Maturity Date, with such payments being equal to or greater than the amount of the corresponding monthly payment required to be paid under this Note (hereafter, "Scheduled Defeasance Payments") for the balance of the term hereof and the amount required to be paid on the Maturity Date (such obligations are collectively and singularly referred to herein as "Defeasance Collateral") each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender (including, without limitation, such instrument as may be required by the depository institution holding such securities or the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect a first priority security interest in such Defeasance Collateral in favor of Lender. The Defeasance Collateral may be purchased by Lender (or a defeasance facilitating company acceptable to Lender) on Borrower's behalf, in which case Borrower shall deposit with Lender at least three days before the Defeasance Date a sum sufficient, in Lender's sole and absolute discretion, to purchase the Defeasance Collateral. Any sums in excess of the amount necessary to purchase the Defeasance Collateral shall be remitted to Borrower upon release of the Mortgaged Property. For purposes hereof, the term "U.S. Obligations" shall mean: (I) direct, non-callable obligations of the United States of America for the payment of which its full faith and credit is pledged, or (II) to the extent acceptable to the Rating Agencies (as evidenced by written approval from the Rating Agencies issued prior to any proposed defeasance hereunder), other "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

- (h) The first sentence of the last paragraph of Section 5(d) providing for the definition of "Defeasance Period" is hereby deleted and replaced with the following:

The "Defeasance Period" shall mean shall mean the period of time: (1) commencing on the date which is the earlier to occur of: (A) two (2) years after the "start-up day", within the meaning of Section 860(G)(a)(9) of the Code, of the REMIC that holds this Note; and (B) three (3) years after the date of the first regularly scheduled monthly payment due hereunder, and (2) ending on the Early Payment Date. Notwithstanding the foregoing, if the loan evidenced by this Note is ever transferred to a REMIC, the term "Defeasance Period" shall mean the period of time commencing on the date which is two (2) years after the "start-up day," within the meaning of Section 860(G)(a)(9) of the Code, of such REMIC and ending on the Early Payment Date.

- (i) Notwithstanding the provisions of Section 5, solely for purposes of defeasing the Loan and determining the amount of the Defeasance Collateral required hereunder, Lender shall assume that the Maturity Date shall be the Early Payment Date.

BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY, OR THEIR RESPECTIVE SUCCESSORS OR ASSIGNS, MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THE LOAN EVIDENCED BY THIS NOTE OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE SECURITY INSTRUMENT OR ANY OF THE OTHER SECURITY DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR

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WRITTEN) OR ACTION OF BORROWER OR LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER'S MAKING OF THE LOAN SECURED BY THE SECURITY INSTRUMENT AND THE OTHER SECURITY DOCUMENTS.

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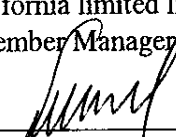
IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note to be effective the day and year first above written.

"Borrower"

NMC Grove Melrose, LLC,
a Delaware limited liability company

By: NewMark Merrill Companies, LLC,
a California limited liability company,
its Manager

By: Sigal Investments, LLC,
a California limited liability company,
its Member Manager

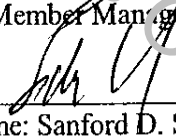
By: 
Name: Sanford D. Sigal
Title: Manager

NMC Melrose Park, LLC,
a California limited liability company

By: NMC Melrose Park Manager, LLC,
a Delaware limited liability company,
its Member Manager

By: NewMark Merrill Companies, LLC,
a California limited liability company,
its Manager

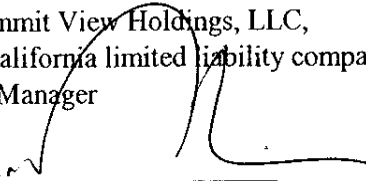
By: Sigal Investments, LLC,
a California limited liability company,
its Member Manager

By: 
Name: Sanford D. Sigal
Title: Manager

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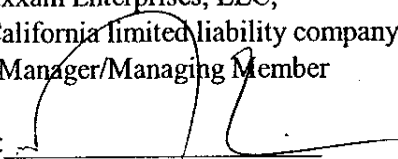
Melrose Park Associates, LLC,
a Delaware limited liability company

By: Summit View Holdings, LLC,
a California limited liability company,
its Manager

By: 
Name: Michael Soroudi
Title: Co-Manager

Melrose Park Equity, LLC,
a Delaware limited liability company

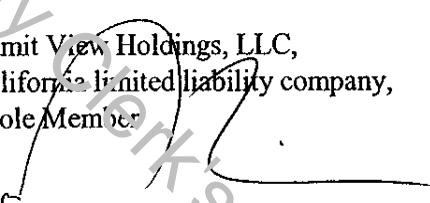
By: Maxxam Enterprises, LLC,
a California limited liability company,
its Manager/Managing Member

By: 
Name: Michael Soroudi
Title: Co-Manager

Melrose Park Investments, L.P.,
a California limited partnership

By: Wirston Investment Group, LLC,
a Delaware limited liability company,
its General Partner

By: Summit View Holdings, LLC,
a California limited liability company,
its Sole Member

By: 
Name: Michael Soroudi
Title: Co-Manager

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STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Sanford D. Sigal, the Manager of Sigal Investments, LLC, a California limited liability company, the Manager of NewMark Merrill Companies, LLC, a California limited liability company, the Manager of NMC Grove Melrose, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of August, 2007.

Notary Public
My Commission Expires:

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Sanford D. Sigal, the Manager of Sigal Investments, LLC, a California limited liability company, the Manager of NewMark Merrill Companies, LLC, a California limited liability company, the Manager of NMC Melrose Park Manager, LLC, a Delaware limited liability company, the Member Manager of NMC Melrose Park, LLC, a California limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of August, 2007.

Notary Public
My Commission Expires:

5

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STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Michael Soroudi, the Co-Manager of Summit View Holdings, LLC, a California limited liability company, the Manager of Melrose Park Associates, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Co-Manager appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of August, 2007.

Notary Public
My Commission Expires:

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Michael Soroudi, the Co-Manager of Maxxam Enterprises, LLC, a California limited liability company, the Manager/Managing Member of Melrose Park Equity, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager/Managing Member appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of August, 2007.

Notary Public
My Commission Expires:

S

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STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Michael Soroudi, the Co-Manager of Summit View Holdings, LLC, a California limited liability company, the Sole Member of Winston Investment Group, LLC, a Delaware limited liability company, the General Partner of Melrose Park Investments, L.P., a California limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Co-Manager appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6th day of August, 2007.

Notary Public
My Commission Expires:

J

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This Endorsement forms a part of that certain Promissory Note in the stated principal amount of Forty Six Million and No/100 Dollars (\$46,000,000.00) dated August 6, 2007, made by NMC Grove Melrose, LLC, a Delaware limited liability company, NMC Melrose Park, LLC, a California limited liability company, Melrose Park Associates, LLC, a Delaware limited liability company, Melrose Park Equity, LLC, a Delaware limited liability company and Melrose Park Investments, L.P., a California limited partnership, to PNC Bank, National Association.

Pay to the order of _____, without recourse.

PNC Bank, National Association

By: _____
Jeannette Butler, Vice President

Property of Cook County Clerk's Office

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EXHIBIT B

Being that certain parcel of land situate in Melrose Park, Cook County, Illinois, and being more particularly described as follows:

A PARCEL OF LAND IN THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 94.82 FEET SOUTH OF THE NORTH LINE OF AFORESAID SECTION 3 AND 33.0 FEET WEST OF THE EAST LINE OF AFORESAID SECTION 3, BEING THE INTERSECTION OF THE WEST LINE OF 9TH AVENUE AND THE SOUTH LINE OF NORTH AVENUE; THENCE NORTH 89 DEGREES 42 MINUTES 10 SECONDS WEST IN THE SOUTH LINE OF AFORESAID NORTH AVENUE TO A POINT 95.68 FEET SOUTH OF AFORESAID NORTH LINE OF SECTION 3, A DISTANCE OF 1628.12 FEET, TO A POINT IN THE EAST LINE OF 14TH AVENUE AS SHOWN IN THE PLAT OF SUBDIVISION OF WINSTON PARK UNIT NUMBER 1 RECORDED JULY 6, 1955 AS DOCUMENT 16291419 IN PLAT BOOK 448 ON PAGES 22 AND 23; THENCE SOUTH 0 DEGREES 30 MINUTES WEST IN THE EAST LINE OF AFORESAID 14TH AVENUE A DISTANCE OF 855.28 FEET TO THE NORTHWEST CORNER OF LOT 1 IN AFORESAID WINSTON PARK UNIT NUMBER 1; THENCE SOUTHEASTERLY IN A NORTHERLY LINE OF AFORESAID WINSTON PARK UNIT NUMBER 1, BEING A CURVED LINE, CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 1130.0 FEET, AN ARC DISTANCE OF 528.87 FEET TO A POINT OF TANGENCY WITH A LINE PARALLEL TO AND 1643.0 FEET NORTH OF THE SOUTH LINE OF THE AFORESAID NORTHEAST 1/4, AND BEING THE NORTH LINE OF AFORESAID WINSTON PARK UNIT NUMBER 1; THENCE EAST IN AFORESAID NORTH LINE OF UNIT NUMBER 1 A DISTANCE OF 700.07 FEET TO A POINT OF CURVE; THENCE SOUTHEASTERLY IN A NORTHEASTERLY CURVED LINE OF AFORESAID UNIT NUMBER 1, CONVEX NORTHEASTERLY HAVING A RADIUS OF 520.0 FEET, AN ARC DISTANCE OF 493.51 FEET (493.48 FEET MEASURED), TO THE NORTHEASTERLY CORNER OF LOT 26 IN AFORESAID WINSTON PARK UNIT NUMBER 1; THENCE NORTH 0 DEGREES 09 MINUTES EAST IN THE WEST LINE OF AFORESAID 9TH AVENUE A DISTANCE OF 1185.44 FEET (1185.43 FEET MEASURED) TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

15-03-211-004

15-03-211-006

15-03-211-007

15-03-211-008

15-03-211-009