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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



0835231091

Doc#: 0835231091 Fee: \$84.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/17/2008 01:24 PM Pg: 1 of 25

The property identified as: **PIN:** 17-09-250-007-0000

**Address:**

**Street:** 431 North Orleans Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60654

**Lender:** TCF National Bank

**Borrower:** ORLEANS HUBBARD LLC

**Loan / Mortgage Amount:** \$10,200,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILC § 77-70 et seq. because it is commercial property.

2542701

**Certificate number:** F4B0665

**Execution date:** 12/17/2008

**UNOFFICIAL COPY****INSTRUMENT PREPARED BY:**

Thomas A. McCarthy  
 Quarles & Brady LLP  
 500 W. Madison Street  
 Suite 3700  
 Chicago, Illinois 60069

**AFTER RECORDING RETURN TO:**

TCF National Bank  
 500 W. Brown Deer Road  
 Milwaukee, Wisconsin 53217  
 Attn: Russ McMin

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SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

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

DATED December 17, 2008

This MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Security Instrument**") is made by and between **ORLEANS HUBBARD LLC**, a Delaware limited liability company, having an office at c/o Merchandise Mart Properties, Inc. 222 Merchandise Mart Plaza, Suite 470, Chicago, Illinois 60654 (the "**Borrower**"), and **TCF NATIONAL BANK**, having an office at 500 W. Brown Deer Road, Milwaukee, Wisconsin 53217, its successors and assigns ("**Lender**").

WITNESSETH: THAT FOR THE PURPOSE OF SECURING (1) payment in the sum of Ten Million Two Hundred Thousand and No/100 Dollars (**\$10,200,000.00**) with interest thereon, according to the terms of the Promissory Note of even date herewith made by Borrower and other co-makers, if any, named therein, payable to Lender or order, which, if not sooner paid, is due and payable in full on December 17, 2013 and all modifications, extensions, renewals, and/or replacements thereof (the "**Note**"); (2) payment of such additional sums with interest thereon (a) as may be hereafter borrowed from Lender by the then record owner of the property hereinbelow described and evidenced by a promissory note or notes reciting it is or they are so secured, and all modifications, extensions, renewals and/or replacements thereof, and, (b) as may be incurred, paid out, or advanced by Lender or may otherwise be due to Lender under any provision of this Security Instrument and all modifications, extensions, renewals and/or replacements thereof; (3) performance of each agreement or obligation of Borrower contained herein or incorporated herein by reference or contained in any papers executed by Borrower relating to the loan of money by Lender to Borrower as evidenced by the Note and any future notes secured hereby (the "**Loan**"), including, without limitation, performance of each provision or agreement of Borrower contained in the Loan Agreement ("**Loan Agreement**"), dated of even date herewith, between Borrower and Lender relating to the property hereinbelow described (all of such documents and agreements are herein called the "**Loan Documents**"). Notwithstanding the foregoing, this Security Instrument shall not be construed to secure any agreement or obligation of Borrower contained in any such papers or agreements which expressly provide that the same either are unsecured or are not secured by this Security Instrument; (4) performance and keeping by Borrower of each of the covenants and agreements required to be kept and

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performed by Borrower pursuant to any instruments creating Borrower's interest in or defining Borrower's rights in respect to the property hereinbelow described; (5) payment by Borrower of each and every monetary provision to be performed by Borrower under any declaration of covenants, conditions, and restrictions pertaining to the property hereinbelow described and upon written request of Lender, the enforcement by Borrower of any covenant to pay maintenance or other charges, which enforcement shall include, if the same have not been paid within 30 days after such written request is made, or such other time period as otherwise required by any other Loan Document, valid legal steps to enforce such payment; (6) payment of all fees and charges owing to Lender in connection with the Loan, whether or not herein set forth, except where the document or agreement relating to such fees and charges expressly provides that payment of the same is an unsecured obligation of Borrower or is otherwise not intended to be secured by this Security Instrument; and (7) payment of charges, as allowed by law when such charges are made, for any statement regarding the obligations secured hereby.

Borrower irrevocably MORTGAGES, WARRANTS, GRANTS, CONVEYS AND ASSIGNS TO LENDER, with right of entry and possession to the extent provided herein or by law, all of Borrower's right, title and interest in and to that certain real property located at 431 N. Orleans Street, in the City of Chicago, County of Cook, State of Illinois, described as:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE.**

(the "Land").

**TOGETHER WITH** all interests which Borrower now has or may hereafter acquire in or to the Land and in and to: (a) all tenements, hereditaments, licenses, easements, gores of land, streets, ways, alleys, passages, sewer rights, and rights of way appurtenant thereto; (b) all buildings, structures, improvements, fixtures, appliances, machinery, equipment, goods, building or construction materials and other articles of real or personal property of every kind and nature (other than consumable goods), whether or not physically attached or affixed to the Land and now or hereafter installed or placed thereon, and used in connection with any existing or future operation thereof (including, but not limited to, all apparatus and equipment used to provide or supply air-cooling, air-conditioning, heat, gas, water, light, power, laundry, garbage disposal, fire prevention and extinguishing equipment, elevators, antennas, pool equipment, window coverings, floor coverings, ranges, ovens, dishwashers, and water heaters), it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the Land that is conveyed hereby (all of the herein above described property called the "improvements"); (c) all water, water courses and water rights (whether or not appurtenant) and shares of stock pertaining to such water or water rights, ownership of which affects the Land; (d) all shrubs, trees, crops, and plants; (e) all adjacent lands included in enclosures or occupied by buildings located partly on the Land; and (f) all claims, demands and causes of action of every kind (including proceeds of settlements of any such claim, demand, or cause of action of any kind and which are subject to Paragraph 9 below) which Borrower now has or may hereafter acquire arising out of acquisition or ownership of the Land, including insurance proceeds of any kind whatsoever (whether or not from insurance specifically required by the Loan Documents), and any award of damages or compensation for injury to or in connection with any condemnation for public use of the Land or any part thereof (whether or not eminent domain proceedings have been instituted), subject however to the right, power and authority given to and conferred upon Lender by Paragraph 9 below, incorporated herein by reference, it being agreed, however, that Lender shall have no duty to prosecute any such claim, demand or cause of action; (g) all plans and specifications prepared for construction of any Improvements, and all contracts and agreements of Borrower relating to such plans and specifications or to the construction of the Improvements, provided that nothing herein shall be deemed to be an assumption by Lender of any obligation of Borrower with respect to such plans and specifications or such construction or under any agreement relating thereto, nor shall Lender otherwise incur any liability with respect thereto unless and until Lender, in its sole and absolute discretion, shall hereafter expressly agree in writing; (h) all sales agreements, deposits, escrow agreements, and other documents and agreements entered into by Borrower with respect to the sale of all or any part of the Land or any interest therein; (i) all accounts, deposit accounts, instruments, chattel paper, documents, letters of credit, letter of credit rights, supporting obligations, permits, governmental approvals and entitlements, licenses, management contracts, and other contracts and agreements in

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which Borrower now has or may hereafter have an interest arising out of, or relating to, the acquisition, development, ownership, management or use of the Land (but without Lender assuming or incurring any obligation or liability of Borrower arising thereunder or relating thereto), and all general intangibles arising out of or relating to the acquisition, development, ownership, management or use of the Land, including all software and names by which the Improvements or other property associated therewith may at any time be known or operated and all rights to carry on business under such names or any variant thereof and all trademarks and goodwill in any way relating to the Improvements or such other property; (j) all additions, substitutions and proceeds (cash and noncash) of the foregoing.

**ALSO TOGETHER WITH** all rights of Borrower, Borrower's bankruptcy trustee, and Borrower in the capacity of a debtor-in-possession to deal with the Lease or otherwise exercise any rights or remedies with respect thereto as provided in Paragraph 20 hereof;

**ALSO TOGETHER WITH** all profits, royalties, tolls, earnings, income and other benefits therefrom and installments of money payable pursuant to any agreement for sale of the Land or any part thereof or interest therein and any release, termination or "buy-out" consideration now or hereafter payable to Borrower with respect to any lease, rental, tenancy, occupancy or other agreement, subject to the terms and provisions of Paragraph 19 hereof;

**ALSO TOGETHER WITH** all right, title, and interest of Borrower in and to any and all leases and rental, tenancy and occupancy agreements now or hereafter on or affecting the Land or the Improvements and all books and records pertaining thereto, together with all rents, issues, profits, security deposits, royalties, tolls, earnings, income and other benefits payable thereunder, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Property, whether due now, past due, or to become due, and deposits forfeited by tenants (collectively, "**Rents and Profits**"), subject however to the right, power and authority given to and conferred upon Lender and Borrower by Paragraph 18 hereof. The immediately foregoing provision shall, to the extent permitted by applicable law, constitute an absolute, present and executed assignment of the Rents and Profits, subject, however, to the conditional license given to Borrower to collect, hold and use such Rents and Profits to the extent provided in Paragraph 18 hereof.

For the purpose of this Security Instrument, including all provisions incorporated by reference herein, all of the foregoing described real property, property rights, and interests shall be referred to as "**the Property**" or "**such Property**".

## **BORROWER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:**

**1. PERFORMANCE OF NOTE AND OTHER LOAN DOCUMENTS.** Borrower shall perform, observe and comply with all provisions hereof, of the Note, and of every other Loan Document in all material respects and will promptly pay to Lender the principal with interest thereon and all other sums required to be paid by Borrower under the Note and pursuant to the provisions of this Security Instrument and of every other Loan Document when payment shall become due, provided that nothing herein shall be construed to cause this Security Instrument to secure any covenant or other obligation of Borrower under any Loan Document which is expressly stated to be an unsecured obligation of Borrower or to be an obligation of Borrower which is not secured by this Security Instrument.

**2. GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES.** Borrower represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof: (a) Borrower is the lawful owner of fee simple title to the Property, subject to the exceptions stated in the title policy issued in favor of Lender with respect to the Loan (the foregoing, the "**Permitted Encumbrances**"), and has good right and authority to mortgage, grant, bargain, sell, convey, transfer, and assign the Property and is the owner of the Improvements hereby secured; (b) other than the Permitted Encumbrances and any other leases or liens hereafter granted in accordance with this Security Instrument, Borrower will warrant and forever defend the title to the Property against the claims of all



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persons whomsoever claiming the same or any part thereof, and this warranty of title shall survive the foreclosure of this Security Instrument and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to foreclosure; (c) Borrower is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities, no bankruptcy or insolvency proceedings are pending or, to Borrower's knowledge, contemplated by or against Borrower, no assignment to creditors has been made by Borrower and no portion of Borrower's assets are presently subject to any attachment, execution or judicial seizure, and Borrower covenants immediately to provide notice to Lender in the event that any change in any of the circumstances described in this sentence should occur; (d) all reports, statements and other data furnished by or on behalf of Borrower, or any partner, officer, employee or agent of Borrower or any guarantor in connection with the Loan are true, correct and complete in all material respects as of the date provided and do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading in any material respect; (e) Borrower is duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified and authorized to do business in the state where the Property is located, and has full power and authority to own its property, to carry on its business as presently being conducted and as contemplated to be conducted hereunder and to execute, deliver and perform its obligations under this Security Instrument, the Note and the other Loan Documents; the person(s) executing this Security Instrument, the Note and the other Loan Documents on behalf of Borrower have been duly authorized to execute and deliver this Security Instrument, the Note and other Loan Documents on behalf of Borrower; this Security Instrument, the Note and the other Loan Documents constitute legally valid and binding obligations of Borrower enforceable in accordance with their terms; and the execution, delivery and performance of this Security Instrument, the Note and the other Loan Documents by Borrower will not conflict with, or constitute a breach of, or default under, Borrower's governing instruments or any indenture, mortgage, deed of trust, note, lease, commitment, agreement or other instrument or obligation to which Borrower is a party or by which Borrower or its properties is bound; (f) there are no actions, suits or proceedings pending, or to the knowledge of Borrower, threatened, against or affecting Borrower or the Property of any nature which are not covered by insurance and would materially interfere with Borrower's ability to repay the Loan; (g) Borrower is not in default under the terms of any instrument evidencing or securing any indebtedness of Borrower and there has occurred no event which would, if incurred or uncorrected, constitute a default under any such instrument with the giving of notice, passage of time or both; (h) electric, gas, sewer, water facilities, and any other necessary utilities, are available in sufficient capacity to service the Property satisfactorily for its intended uses; and (i) the Property, including without limitation the Improvements thereon, comply in all material respects with all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health, disability and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations, including permits, licenses and/or certificates that may be necessary from time to time to comply with any of these requirements.

**3. SECURITY AGREEMENT AND FINANCING STATEMENTS.** Borrower (as Debtor) hereby grants to Lender (as Creditor and Secured Party) a security interest in all of the Property which is tangible or intangible personal property, including without limitation, fixtures, goods, accounts, deposit accounts, instruments, chattel paper, documents, letters of credit, letter of credit rights, supporting obligations, and general intangibles described hereinabove and all additions, substitutions and proceeds (cash and noncash) of the foregoing.

Borrower authorizes Lender to prepare, execute and file, on Borrower's behalf and without Borrower's signature, any and all such documents as Lender may reasonably request, including without limitation, financing statements and continuation statements pursuant to the Uniform Commercial Code in the jurisdiction in which the Property is located or in which Borrower resides or is formed or organized, as applicable (the "**Uniform Commercial Code**"), to perfect, preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to Lender on demand any reasonable third-party expenses incurred by Lender in connection with the preparation, execution and filing of any such documents. Said financing statements shall be filed in the real estate records of the county in which the Property is located and such other offices as Lender deems advisable under the Uniform Commercial Code. Borrower hereby authorizes Lender to file all financing statements, refilings, continuations and amendments thereof as Lender deems necessary or

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advisable to create, preserve and protect said lien and security interest. Borrower shall cooperate with Lender in obtaining control of deposit accounts, letter of credit rights and any other collateral for which control is necessary for perfection under the Uniform Commercial Code. This Security Instrument constitutes a security agreement for any and all items of Property which are personal property and fixtures and which, under applicable law, may be subject to a security interest pursuant to the applicable Uniform Commercial Code and which are not herein effectively made part of the Land. Borrower hereby grants Lender a security interest in said property, and in all additions, substitutions and proceeds (cash and noncash) thereof, for the purpose of securing all indebtedness and obligations of Borrower now or hereafter secured by this Security Instrument. The remedies available to Lender for violations of the covenants, terms and conditions set forth in this security agreement shall be (i) as set forth in this Security Instrument and (ii) as permitted under applicable law, including the Uniform Commercial Code. Each of these remedies shall be distinct and cumulative as to all other rights or other remedies and may be exercised concurrently, independently or successively, as Lender may elect.

This Security Instrument constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Property is located with respect to any and all fixtures included within the term "Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

Borrower and Lender agree that neither the filing of a financing statement in the public records normally having to do with personal property nor the taking of any other action described in the above Paragraph shall be construed in any way as derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Security Instrument is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded, to the extent permitted by applicable law, as part of the real estate encumbered by this Security Instrument irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment or other items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease, rental agreement, tenancy agreement or occupancy agreement or right to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender as determined by this Security Instrument or impugning the priority of Lender's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Lender in the event any court or judge shall at any time hold with respect to clauses (1), (2), and (3) of this Paragraph 3 that notice of Lender's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in such public records.

Borrower represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof as follows: Borrower's full, correct and exact legal name is set forth at the end of this Security Instrument. If Borrower is not an individual, Borrower is an organization of the type and (if not an unregistered entity) is incorporated in, organized or formed under the laws of the state specified in the introductory paragraph to this Security Instrument. If Borrower is an unregistered entity (including, without limitation, a general partnership) it is organized or formed under the laws of the state specified in the introductory paragraph of this Security Instrument. In the event of any change in name or identity of Borrower, Borrower shall notify Lender in writing of such change at least 30 days prior to the effective date of such change and hereby authorizes Lender to file such Uniform Commercial Code forms as are necessary to maintain the priority of Lender's lien upon the Property which may be deemed personal property or fixtures, including future replacement thereof, which serves as collateral under this Security Instrument, and shall pay all expenses in connection with the filing and recording of such forms. If Borrower is not an individual, Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recording data of any kind and nature

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including, without limitation, software, writings, plans, specifications and schematics concerning the Property is the address of Borrower set forth in Paragraph 26 of this Security Instrument. Borrower will notify Lender of any change of the foregoing address in writing at least 15 days prior to the date of such change.

**4. REPAIR AND MAINTENANCE OF PROPERTY.** Borrower covenants and agrees with Lender to cause the Property to be managed in a commercially reasonable manner consistent with other properties of the type, class and geographic location of the Property; to keep the Property in good condition and repair, ordinary wear and tear excepted; not substantially to alter, remove or demolish any buildings or other Improvements except (i) when incident to the replacement of fixtures, machinery or appliances with items of like kind and of at least equivalent value, (ii) if such Improvements become obsolete or unnecessary to the operation of the Property, and (iii) with respect to the performance of tenant improvement work required pursuant to Leases permitted under this Security Instrument; to restore promptly and in a good and workmanlike manner to no less than the equivalent of its condition on origination of the Loan any buildings or other Improvements which may be damaged or destroyed, including, without restricting the generality of the foregoing, damage from termites and earth movement, subject to Lender's making insurance proceeds available to cover the cost of such restoration and repair; to pay when due all undisputed claims for labor performed and materials furnished in connection with the Property and not to permit any mechanic's or materialman's lien to be filed or remain against the Property, except to the extent Borrower is contesting or disputing such lien in good faith; to comply in all material respects with all laws affecting the Property or the operation or leasing thereof or requiring any alterations or improvements to be made thereon, including, without limitation, the Americans with Disabilities Act of 1990; to fully remedy any notice of violation or any other notice issued by any governmental entity having jurisdiction over the Property within thirty (30) days of the date of such notice or such longer period of time (but in any event, not to exceed ninety (90) days) as may be reasonably necessary to remedy such notice; not to commit or permit any intentional waste thereon; not to commit, knowingly suffer or knowingly permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate and prune all landscaping on the Property; and to do all other acts that from the character or use of the Property may be reasonably necessary to keep the Property in the same or better condition (reasonable wear and tear excepted) as at the date of this Security Instrument; to perform and keep each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of any instruments creating Borrower's interest in or defining Borrower's rights in respect to the Property. Without the prior written consent of Lender, not to be unreasonably withheld or delayed, Borrower shall not (i) initiate or acquiesce in a change in the zoning classification of and/or restrictive covenants affecting the Property or seek any variance under existing zoning ordinances, except to the extent necessary for the operation of the Property, as currently contemplated, (ii) use or permit the use of the Property in a manner which may result in the use of the Property becoming a non-conforming use under applicable zoning ordinances, or (iii) subject the Property to restrictive covenants.

**5. CONSTRUCTION OF IMPROVEMENTS.** If all or any part of the Loan secured hereby is used for land development and improvement or construction purposes, Borrower shall comply in all respects with any agreement between Borrower and Lender relating thereto.

**6. INSURANCE.** At all times, Borrower is to provide, and maintain in force, and pay the cost of property, commercial general liability, and other types and forms of insurance coverage with respect to such Property or the Loan as may be reasonably required by Lender in accordance with Lender's insurance requirements set forth in this Section 6. The requirements hereunder shall at all times be subject to the provisions in the final paragraph of this Section 6.

At the written request of Lender, Borrower shall deliver to Lender certificates of insurance, in a form reasonably satisfactory to Lender, of any insurance policy required to be obtained by Borrower hereunder. Borrower shall promptly pay all premiums when due on any such policies and renewals thereof and shall furnish Lender with written evidence of such payment. At least 7 days prior to the expiration of any such policies reasonably required by Lender, a certificate of insurance renewing or extending such expiring insurance shall be delivered to Lender if Lender requests delivery of such policies to it.



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In the event Borrower fails to provide any insurance complying with the provisions hereof, or fails to continue such insurance in force, Lender may at Borrower's expense, but without obligation so to do, without prior notice to Borrower, without demand upon Borrower, without releasing Borrower from any obligation hereof, and without curing any default of Borrower, obtain insurance, in amounts equal to the limits that were in effect as of the date hereof, through or from any insurance agency or insurer or insurance underwriter which is authorized to do business in the state in which the Property is located (or which is an eligible surplus lines insurer) and which is acceptable to Lender, and pay the premium therefor, and Lender by doing so shall not be chargeable with obtaining or maintaining such insurance or for the collection of any insurance monies or for any insolvency of any insurer or insurance company.

In the event that Borrower fails to provide insurance or evidence of insurance required hereunder and Lender obtains any such insurance, the insurance obtained by Lender shall be limited to protection against physical damage to the Property, up to the lesser of the unpaid balance of the Loan, or the value of the Property. In any case, any amount advanced by Lender to obtain such insurance policies shall become part of the indebtedness secured by the lien of this Security Instrument, shall bear interest at the "Default Rate" as defined in the Note and shall be due and payable immediately upon demand by Lender.

Lender, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Lender pursuant hereto and any information concerning the Loan, Borrower, or the Property. Such information shall be considered confidential and not used for any purpose other than to advise Lender of adequacy of limits or obtain insurance upon default of Borrower.

Borrower hereby assigns to Lender all insurance proceeds from each and every kind of insurance obtained by Borrower related to the Property (except for general liability or workers' compensation), including without limitation, all proceeds from insurance not specifically required by Lender at the origination of the Loan or thereafter but which may be carried by Borrower from time to time with respect to the Property or the ownership, operation or income thereof, including, without limitation, earthquake insurance. If at any time Borrower obtains insurance related to the Property or the ownership, operation or income thereof, which is not specifically required by Lender, including, without limitation, earthquake insurance, then Borrower shall nevertheless include Lender and its successors and assigns as additional insureds or additional loss payees thereto.

**PROPERTY ALL-RISK INSURANCE.** Borrower shall, at its sole expense, purchase and maintain property all risk extended coverage policies of insurance. Each policy of insurance shall be in an amount, for a term and in a form and content as may be reasonably satisfactory to Lender, shall insure against such risks of loss or damage as are commonly covered by all risk extended coverage policies of insurance, and shall be provided through such insurance companies, as may be reasonably satisfactory to Lender, with loss payable to Lender and shall, if required by Lender, be delivered to and remain in the possession of Lender as further security for the performance by Borrower under this Security Instrument. Such policy of insurance shall include a Lender's Loss Payable Endorsement or Mortgage Clause in favor of and in form reasonably acceptable to Lender. The amount of such insurance shall in no event be less than (i) the original amount of the Note and be in compliance with any co-insurance requirements of such insurance, or (ii) an amount equal to the highest insurable value of the Property, whichever is the lesser.

Borrower may provide coverage under a blanket insurance policy covering this and other properties the Borrower may own provided that the same protection would apply as would a separate insurance policy insuring only the Property in compliance with the provisions of this Paragraph 6. Borrower hereby assigns to Lender all unearned premiums on any such policy, and agrees that any and all unexpired insurance shall inure to the benefit of, and pass to, Lender upon acquisition by Lender of the Property through foreclosure proceedings or any purchaser of the Property pursuant to such foreclosure proceedings. Pursuant to its rights granted hereunder in all proceeds from any insurance policies, Lender is hereby authorized and empowered at its option to adjust or compromise any loss under any insurance



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policies on the Property and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender alone and not to Borrower and Lender jointly. So long as Borrower is not in default beyond applicable notice, grace and cure periods under the Loan Documents, Borrower shall be entitled to participate in the adjustment or compromise of any insurance loss.

Notwithstanding anything to the contrary contained in this Section 7 or any other provision of this Security Instrument, Borrower shall have the right to adjust and directly collect proceeds from any insurance policy or policies if the amount is equal to or less than 5% of the original principal amount of the Loan, such proceeds to be applied by Borrower first to any necessary restoration of the Property and any remaining balance to be retained by Borrower.

**COMMERCIAL GENERAL LIABILITY INSURANCE AND LOSS OF INCOME INSURANCE.** Borrower shall, at its sole expense, purchase and maintain commercial general liability insurance coverage for the ownership, maintenance and use of the Property. Lender may require such policies to: (a) be no less than a certain minimum amount; (b) insure against such risks of liability as are commonly covered by commercial general liability policies in general use for owners of properties similar to the Property; (c) be provided through such insurance companies as may be reasonably satisfactory to Lender; and (d) include Lender and its successors and assigns, as additional insureds.

Lender may further require that Borrower provide, and maintain in force, at Borrower's sole expense, loss of rental income insurance, loss of earnings insurance, business interruption insurance or other forms of coverage to protect the income or earnings of the Property, in form, coverage and liability amount reasonably acceptable to Lender.

**OTHER INSURANCE.** Borrower shall, at its sole expense, obtain and maintain such additional insurance coverages as Lender may from time to time reasonably require against other insurable hazards or risks, including but not limited to, environmental impairment liability coverage, provided that Lender may only require coverage for risks not required by Lender at origination of the Loan if such hazards or risks become those risks which are commonly insured against, and provided such insurance is commercially and reasonably available, for property similarly situated, due regard being given to the height and type of any buildings, their construction, use and occupancy. Notwithstanding the foregoing, should the Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Borrower agrees to obtain and maintain Federal Flood Insurance, if commercially and reasonably available, within 45 days after written notice is given by Lender that the Property is located in a special flood hazard area, up to the maximum policy limits set under the National Flood Insurance Program, but not more than the full unpaid balance of the Loan, and to maintain such insurance until the earlier of (i) the Maturity Date or (ii) the date when the area of the Property is no longer designated as a special flood hazard area.

Notwithstanding the foregoing or anything to the contrary contained in this Security Instrument, so long as Borrower continues to carry insurance coverages in the amounts and with insurance companies of equivalent credit rating as the coverages in effect as of the date hereof, Lender acknowledges and agrees that Borrower's obligations under this Paragraph 6 shall be deemed fully satisfied; provided, however, that, in the event any insurance coverage carried by Borrower as of the date hereof shall become commercially unavailable, Borrower shall not be required to maintain such insurance coverage, and Borrower shall be deemed to have satisfied its requirements under this Paragraph 6 notwithstanding Borrower's failure to carry such insurance coverage which has become commercially unavailable.

**7. DISPOSITION OF THE PROCEEDS OF ANY INSURANCE POLICY, CONDEMNATION OR OTHER RECOVERY.** The amount received by Lender pursuant to this Security Instrument under any insurance policy, or in connection with any condemnation for public use of the Property, or for injury or damage to the Property, or in connection with the transaction financed by the Loan secured hereby (collectively, the "**Proceeds**"), at the option and in the sole discretion of Lender, and without regard to the adequacy of Lender's security, may be (a) applied by Lender, without the imposition of any prepayment

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fee, upon any indebtedness secured hereby and in such order as Lender may determine, or (b) without reducing the indebtedness secured hereby, used by Lender or, with Lender's express prior written consent, by Borrower to replace, restore, or reconstruct the Property to a condition satisfactory to Lender, or (c) released by Lender to Borrower, or (d) divided by Lender in any manner among any such application, use or release. No such application, use or release shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice (or alter the amount of any payment provided under the Note, this Security Instrument, or any other Loan Document or postpone or extend the due date of any payment due under the Note, this Security Instrument or any other Loan Document).

Notwithstanding the foregoing provisions of this Paragraph 7, Lender shall permit Borrower to use the Proceeds to replace, restore or reconstruct the Property (herein "**Restoration**") following any injury or damage to the Property or condemnation of a portion of the Property for public use on the following terms and conditions, each of which must be satisfied as determined by Lender in its reasonable judgment:

(i) the Proceeds shall first be applied to reimburse Lender for all reasonable costs and expenses incurred by Lender in recovering the Proceeds and Restoration of the Property, including without limitation, reasonable attorneys' fees, and the balance of the Proceeds (herein "**Net Claims Proceeds**") shall be used by Borrower only to pay the actual reasonable costs of Restoration;

(ii) the Improvements affected by such injury, damage or condemnation shall be replaced, restored or reconstructed to substantially the condition as the Improvements in existence on the Property immediately prior to the injury, damage or condemnation, in full compliance with all applicable zoning, building, health and safety, and other laws, ordinances and governmental requirements applicable to the Restoration;

(iii) the plans, specifications, cost breakdown, architect and engineering agreements, construction contracts, construction schedule, contractors major subcontractors, and any payment and performance bonds required by Lender, shall be approved by Lender in its reasonable discretion;

(iv) if the Net Claims Proceeds are not sufficient, in the reasonable judgment of Lender, to fully pay for all costs of Restoration, Borrower shall deposit with Lender, within ten (10) days following written request, cash in such amount as Lender shall reasonably determine to be sufficient at such time for the full payment of all costs of Restoration, and Borrower shall make such additional cash deposits, within ten (10) days following written request, as Lender shall determine from time to time during the course of the Restoration are necessary to ensure that sufficient funds will be available at all times to pay for all costs of Restoration; all such sums deposited by Borrower with Lender shall be held by Lender in an interest bearing account at an office of Lender, and any interest earned shall be added to the Proceeds and applied as set forth herein, and Lender shall be granted a first priority security interest therein to secure Borrower's obligation to pay for all costs of Restoration;

(v) the Net Claims Proceeds and all funds deposited by Borrower to pay for the costs of Restoration as provided in clause (iv) above shall be disbursed by Lender in progress payments (less a ten percent (10%) retention, which shall be disbursed only upon full and final completion of Restoration as determined by Lender in its reasonable judgment) in accordance with and subject to Lender's standard construction loan disbursement procedures and requirements and such additional construction-related requirements as Lender may reasonably impose in connection with the Restoration;

(vi) Lender shall receive reasonably satisfactory evidence that (a) the proceeds of existing rental insurance payable on account of the damage or destruction together with the net cash flow from the undamaged portions of the Property will be sufficient to pay debt service on all indebtedness secured by the Property during the full period of Restoration, (b) the continued use of the Property upon completion of Restoration is economically feasible and will be in full compliance with all applicable laws and ordinances, except where failure to comply would not have a material adverse effect on Lender, and

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(c) Restoration will be completed within a reasonable time and in any event no less than six (6) months prior to the Final Payment Date (as defined in the Note); and

(vii) no default beyond applicable notice, grace and cure periods under the Note, this Security Instrument or any other Loan Document shall have occurred and be continuing.

Borrower agrees that in no event shall Lender's consent to or approval of any Restoration be deemed to extend the due date of any payments owing under the Note or any other Loan Document, or otherwise be construed to cure or waive any default of Borrower under the Note, this Security Instrument or any other Loan Document. In the event that, prior to completion of Restoration, Borrower is in default beyond applicable notice, grace and cure periods under the Note, this Security Instrument or any other Loan Document, then without limiting any other rights and remedies of Lender, Lender shall have the right to apply any funds of Borrower held on deposit with Lender as provided in clause (iv) above against such obligations of Borrower under the Note, this Security Instrument or any other Loan Document as Lender may determine in its sole discretion.

Notwithstanding anything to the contrary contained in this Section 7 or any other provision of this Security Instrument, Borrower shall have the right to adjust and directly collect Proceeds if the amount thereof is equal to or less than 5% of the original principal amount of the Loan, such Proceeds to be applied first to any necessary restoration of the Property and any remaining balance to be retained by Borrower.

**8. TAXES, LIENS, AND OTHER SUMS DUE.** Borrower covenants and agrees with Lender to pay, satisfy and discharge: (a) except as hereinafter set forth, at least 10 days before delinquency, all general and special city and county taxes, and all assessments on water stock, affecting the Property, (b) except as hereinafter set forth, when due, all special assessments for public improvements on or benefiting the Property, (c) not later than the date such amounts and/or performance become due (1) all encumbrances, charges and liens (including, without limitation, income tax liens, or liens of a similar character, imposed or levied by the United States Government, the state in which the Property is located, any municipality or county, or an agency of any of them) on such Property, or any part thereof which are, or reasonably appear to Lender to be prior to or superior to this Security Instrument, (2) Lender's reasonable fees, charges and expenses for any other statement, information or services furnished by Lender in connection with the obligations secured hereby in response to a Borrower request therefor or to enforce or preserve its rights hereunder (said services may include, but shall not be limited to, the processing by Lender of assumptions, substitutions, modifications, extensions, renewals, subordinations, rescissions, changes of owners, recordation of maps, plats or records of survey, grants of easements, and full and partial reconveyances, and the obtaining by Lender of any policies of insurance pursuant to any of the provisions contained in this Security Instrument), (3) all payments and monetary obligations required of the owner of the Property under any declaration of covenants, conditions and restrictions pertaining to the Property or any modification thereof, and (4) any sums advanced or paid by Lender at Borrower's expense pursuant to any clause or provision of this Security Instrument. Should Borrower fail to make any such payment, unless such payment is being contested in accordance with the next paragraph, Lender, without contesting the validity or amount, may elect, but without obligation to do so, to make or advance such payment together with any costs, expenses, fees, or charges relating thereto, including employing counsel and paying reasonable attorneys' fees. Any such sum, until so repaid, shall be secured hereby and bear interest from the date it was advanced or paid at the **Default Rate** (as defined in the Note) and shall be secured by this Security Instrument; provided, however, that no interest shall accrue against such sums or otherwise be payable by Borrower unless Borrower fails to pay such sums within five (5) days after the date such payment is due. Borrower agrees to notify Lender immediately upon receipt by Borrower of notice of any increase in the assessed value of the Property. Borrower will notify Lender prior to permitting any issuance of any improvement bond for unpaid special assessments.

Notwithstanding the foregoing, Borrower shall have the right to contest diligently and in good faith the validity or amount of any tax, assessment or charge affecting the Property or any part thereof, and, so long as the validity or amount thereof is being contested diligently and in good faith, Borrower may, to the extent permitted by law, defer payment of such tax, assessment or charge, provided

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Borrower protects the Property against any lien arising out of any such tax, assessment or charge or out of any such contest by either (a) depositing with Lender, in a non-interest bearing account, as additional security for the Loan, a letter of credit or a cash amount equal to 105% of the amount of the tax, assessment or charge being contested, in which event Lender shall refund such amount to Borrower immediately upon Lender's receipt of evidence that such tax, assessment or charge has been paid or (b) a surety bond in form and substance reasonably satisfactory to Lender and issued by a corporate surety reasonably satisfactory to Lender, in which event Lender shall cooperate in releasing and terminating such surety bond upon Lender's receipt of evidence that such tax, assessment or charge has been paid.

On the date hereof, Borrower will pay all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, reasonable third party attorneys' fees, fees of inspecting architect(s) and engineer(s), fees of environmental engineers and consultants, and all other costs and expenses of every character which have been reasonably incurred by Lender in connection with the issuance of its commitment for the Loan, the preparation and execution of Loan Documents and the funding of the Loan. Borrower shall also be obligated to pay all expenses of Lender which are incurred hereafter in connection the enforcement of this Security Instrument, the Note and the other Loan Documents after a default by Borrower beyond applicable notice, grace and cure periods or which are otherwise authorized to be incurred at Borrower's expense pursuant to specific provisions in the Loan Documents. During the term of the Loan, Borrower will, upon demand by Lender, reimburse Lender for all such expenses, together with accrued interest at the Default Rate (provided, however, that interest shall only become due if such expenses are not paid within ten (10) days after Borrower's receipt of written notice or demand from Lender), which have been incurred or which shall be incurred by Lender, and Borrower will defend, indemnify and hold harmless Lender from and against, and reimburse them for, all claims, demands, liabilities, losses, damages (but excluding any special, incidental, consequential, punitive or other similarly speculative damages), judgments, penalties, costs, and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property, or with this Security Instrument or any of the indebtedness evidenced by the Note. Nothing herein shall require Borrower to indemnify Lender for the gross negligence or willful misconduct of Lender or its agents.

**9. CLAIMS, DEMANDS AND ACTIONS.** Borrower covenants and agrees with Lender: (a) to give Lender prompt notice of any claim, demand, action or proceeding known to Borrower purporting to affect the Property (including, without limitation, loan funds, whether or not disbursed) or purporting to affect the security hereof (whether or not it affects the security hereof) or the condition and integrity of the Improvements constructed thereon or purporting to affect the rights or powers of Lender or which are Commercial Tort Claims (as defined in the Uniform Commercial Code) arising in favor of Borrower, (b) to defend any such action or proceeding; and (c) to file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Property, and enforce against others each and every material obligation to be performed by them under any declaration of covenants, conditions, and restrictions pertaining to the Property. Lender is hereby authorized, without obligation so to do, to commence, appear in, and defend any action or proceeding, whether or not brought by or against Borrower to exercise or enforce any other right, remedy, or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding. Lender may appear or intervene in any action or proceeding, and retain counsel therein, and take such action therein as either may deem reasonably advisable, and may settle, compromise or pay the same or any other claims and, for any of said purposes, may expend and advance such sums of money as either may deem reasonably necessary. Notwithstanding the foregoing, unless a default beyond applicable notice, grace and cure periods has occurred and is continuing: (a) Lender shall be responsible for its own legal expenses in connection with any separate counsel retained by Lender; and (b) Borrower shall control the settlement or, compromise and/or payment of any claim, subject to Lender's approval, not to be unreasonably withheld, conditioned or delayed.

**10. RESERVED.**



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**11. ACCUMULATION ACCOUNT.** After and during the continuance of a Tax Escrow Trigger Event (as defined in the Loan Agreement dated the date hereof between Borrower and Lender), Borrower covenants and agrees with Lender to pay to Lender as required under and pursuant to the terms of the Loan Agreement, monthly advance installments for the purpose of establishing the Accumulation Account (as defined in the Loan Agreement) for payment of any or all taxes and assessments required to be paid with respect to the Property (hereafter in this Paragraph referred to as "Impositions") in accordance with and subject to the terms and conditions in the Loan Agreement. In the event of a default beyond applicable notice, grace and cure periods in the payment of any note secured by this Security Instrument, default beyond applicable notice, grace and cure periods of any obligation secured hereby, or default beyond applicable notice, grace and cure periods in the performance of any of the covenants and obligations of this Security Instrument, then any balance remaining from monies paid Lender under the provisions of this Paragraph may, at the option of Lender, be applied to the payment of principal, interest, or obligations secured hereby in lieu of being applied to any of the purposes for which the Accumulation Account is established. At all times, any negative balance in the Accumulation Account shall constitute a secured advance made by Lender to protect its security under this Security Instrument and shall accrue interest at the Default Rate defined in the Note, and Lender shall promptly advise Borrower thereof. Lender will make such reports of the Accumulation Account as are required by law.

**12. SALES, TRANSFERS, FURTHER ENCUMBRANCES AND OTHER EVENTS.** Lender shall have the right, at its option, to declare all sums secured hereby immediately due and payable, if (a) Borrower or any successor in interest to Borrower conveys, transfers or assigns the Property or any part thereof, or interest therein, or agrees to do so, whether by deed, contract of sale, lease with option to buy, or otherwise and whether such conveyance, transfer or assignment is to an unrelated third-party or a related entity, including without limitation an entity that shares a common ownership with Borrower or an entity that is a subsidiary of Borrower, other than leases or encumbrances permitted under the Loan Documents; or (b) Borrower or any successor in interest to Borrower further encumbers or alienates the Property or any part thereof, or interest therein other than leases or encumbrances permitted under the Loan Documents; or (c) in the event that the Property is rental property, Borrower or any successor in interest to Borrower leases the Property or any part thereof without the prior written consent of Lender; or (d) in the event that the Property is rental property, Borrower or any successor in interest to Borrower enters into any lease, rental agreements, tenancy agreement, or occupancy agreement in violation of any of the terms or conditions under this Security Instrument or any other Loan Document; or (e) Borrower suffers its title or any interest therein to be divested, whether voluntarily or involuntarily; or (f) without the written consent of Lender, Borrower or any successor in interest to Borrower changes or permits to be changed the character or use of the Property from the character or use contemplated by Borrower and Lender upon execution of this Security Instrument, as specified in Borrower's application to Lender and other documents executed by Borrower in connection with the Loan, including, without limitation, drilling or extracting oil, gas, or other hydrocarbon substances, or any mineral of any kind or character; or (g) suit be commenced to condemn the Property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon (and Lender reasonably believes that its security under this Security Instrument may be impaired by such suit or the activities or conditions which are the subject of such suit) or for the partition or sale of the Property, unless such suit is dismissed within 90 days; or (h) any of the members' interests in Borrower or any portion thereof are sold, transferred or assigned, whether voluntarily or involuntarily, other than as permitted by and in accordance with the terms and restrictions set forth in Section 6.8 of the Loan Agreement; or (i) Borrower or any successor in interest to Borrower has made any oral or written material misrepresentations or failed to disclose any material fact, in order to induce Lender to enter into the transaction evidenced by the Note or any agreements which this Security Instrument secures; or (j) Borrower or any successor in interest to Borrower has disbursed funds collected from Rents and Profits to itself or its equity owners for personal use without first applying such funds to currently owing expenses for the maintenance, protection, or preservation of the Property, and Borrower fails to correct such situation within 10 Business Days notice from Lender thereof. Lender shall not unreasonably withhold, condition or delay its consent to a request by Borrower to consent to and subordinate this Security Instrument to easements which are desirable or beneficial to the operation of the Property. If any event described in this Paragraph 12 occurs and if Lender does not give its written consent to same but fails to exercise its right to declare all sums secured hereby due and payable, such

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failure shall not be deemed or construed as a waiver of any of Lender's rights or as a cure of any default of Borrower pertaining to the occurrence of such event or any subsequent occurrences of any event described in this Paragraph 12. The right of Lender to declare all sums secured hereby immediately due and payable if any of the events described in this Paragraph 12 occur shall not be construed or deemed to be exclusive of any other rights of Lender set forth in this Security Instrument or the Loan Documents, or any rights at law or in equity now or hereafter existing, to declare all sums secured hereby immediately due and payable, but all such rights shall be cumulative.

**13. PREPAYMENT FEE.** Should the Note or any other obligation secured hereby provide any fee for prepayment of any of the indebtedness secured hereby, whether such prepayment is made prior to or following the occurrence of any default of Borrower or the institution of any foreclosure proceedings by Lender, Borrower covenants and agrees with Lender to promptly pay said fee notwithstanding Borrower shall have defaulted in any obligation secured hereby and Lender, by reason thereof, shall have declared all sums secured hereby immediately due and payable.

**14. WAIVERS AND CONSENTS PERTAINING TO NOTE.** Borrower waives presentment, demand, protest and notice of nonpayment of the Note, and consents to delays, changes in time of payment, and the amount of installments due under the Note, and, to the extent provided in the Note, to the reduction or increase of the interest rate thereof.

**15. WAIVER OF STATUTE OF LIMITATIONS.** Time is of the essence in all Borrower's obligations hereunder, and to the fullest extent permitted by law, Borrower waives the right to assert any present or future statute of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this Security Instrument, the Note or any other Loan Document or any rights or remedies hereunder.

**16. INSPECTION AND BUSINESS RECORDS.** Lender or any authorized representative or agent of Lender shall have such rights to enter upon and inspect the Property as are set forth in Paragraph 6.9 of the Loan Agreement.

**17. ESTOPPEL CERTIFICATES.** Borrower, within 10 business days after written request from Lender, shall furnish a written statement, duly acknowledged to Lender, setting forth, to Borrower's knowledge, the unpaid principal and interest and any other sums and charges due under the Note, this Security Instrument and the other Loan Documents and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such principal and interest or other sums or charges and stating that the Note, Security Instrument and other Loan Documents have not been modified or stating that the Note, Security Instrument or other Loan Documents have been modified and specifying such modifications, and that the Note, Security Instrument and other Loan Documents, as unmodified or modified, as applicable, remain in full force and effect; provided, however, that Borrower shall not be required to furnish such statement more than twice in any calendar year if Borrower is not in default beyond applicable notice, grace and cure periods under the Note, the Security Instrument or any of the other Loan Documents. If Borrower fails to execute and deliver such estoppel certificate within such 10-business day period, Borrower shall conclusively be deemed to have constituted and appointed Lender as Borrower's special attorney-in-fact to execute and deliver any such estoppel certificate to any third-party and shall be deemed to have certified that the Note, Security Instrument and other Loan Documents remain in full force and effect, either unmodified or modified in the manner specified by Lender, whichever Lender reasonably may represent. Borrower and Lender expressly agree that any such certificate may be relied on by any prospective purchaser of the Loan or any portion thereof or interest therein without independent investigation or examination.

**18. RIGHT TO COLLECT AND RECEIVE RENTS AND PROFITS.** The assignment of Rents and Profits set forth hereinabove shall be fully operative without any further action on the part of either party. Notwithstanding that Borrower has made a present, absolute and executed assignment of the Rents and Profits to Lender, Lender hereby grants a revocable license (the "**License**") to Borrower to collect, hold, apply and retain the Rents and Profits of the Property as they become due and payable, so long as Borrower is not in default beyond applicable notice, grace and cure periods under the Note, this

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Security Instrument or any of the other Loan Documents. The License given to Borrower hereunder to collect, apply and retain such Rents and Profits shall be automatically revoked and terminated, without notice or demand of any kind, upon and during a default beyond applicable notice, grace and cure periods by Borrower under the Note, the Security Instrument or any of the other Loan Documents. Borrower shall immediately turn over to Lender upon receipt or collection any Rents and Profits collected or received by Borrower after the termination of said License or after and during the continuance of a default beyond applicable notice, grace and cure periods by Borrower under the Note, this Security Instrument or any of the other Loan Documents. Any such Rents and Profits not turned over by Borrower to Lender as required hereby shall be held by Borrower in trust for Lender. After and during the continuance of Borrower's default beyond applicable notice, grace and cure periods under the Note, this Security Instrument or any of the other Loan Documents, Lender, in addition to all other rights and remedies set forth in this Security Instrument, shall be entitled to exercise such rights and remedies as are more specifically set forth in the Absolute Assignment of Rents and Landlord's Interest in Leases dated the date hereof executed by Borrower in favor of Lender.

**19. LEASES AFFECTING THE PROPERTY.** Borrower warrants, represents and covenants as to each lease between Borrower and its tenant (the "**Tenant Lease**") now or hereafter covering all or any part of the Property, that except as otherwise set forth in the rent roll provided by Borrower to Lender with respect to the Property or in the tenant or landlord estoppel certificates provided by Borrower to Lender: (i) each Tenant Lease is in full force and effect, valid and enforceable in accordance with its terms and has not been modified, amended or altered, whether in writing or orally; (ii) to Borrower's knowledge, no default exists on the part of the tenant under the Tenant Lease or Borrower thereunder and no event has occurred and is continuing which would result in default but for the requirement that notice be given in accordance with the terms of the Tenant Lease; (iii) except for security deposits under Tenant Leases, no rent has been collected more than one (1) month in advance; (iv) no Tenant Lease, or any interest therein, nor Rents and Profits arising therefrom, is subject to any previous assignment or pledge; (v) to Borrower's knowledge, no tenant has any defense, setoff or counterclaim against Borrower under any Tenant Lease; (vi) all rent due under each Tenant Lease has been collected and no concession has been granted which is still in effect to any tenant under a Tenant Lease in the form of a waiver, release, reduction, discount or other alteration of rent due or to become due thereunder; (vii) no Tenant Lease grants to the tenant thereunder, or anyone else, an option to purchase, or a right of first refusal to purchase, any part of the Property; (viii) Borrower is the sole owner of the entire landlord's interest in all Tenant Leases and it has not and will not perform any acts or execute any other instruments which might prevent Lender from fully exercising its rights under the terms, covenants and conditions of this Security Instrument; and (ix) Borrower has full right, power and authority to assign the Tenant Leases and the Rents and Profits to Lender and Borrower has not done any act which might prevent Lender from exercising its rights under this Security Instrument.

The assignment of leases set forth hereinabove shall not be deemed to impose upon Lender any of the obligations or duties of Borrower provided in any such lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease), and Borrower shall comply with and observe its obligations as landlord under all leases affecting the Property or any part thereof.

Without the prior written consent of Lender, Borrower shall not (i) amend, modify cancel, terminate (except following a default by the tenant thereunder which has not been cured within the period, if any, expressly provided for such cure in the Tenant Lease) any Tenant Lease, (ii) waive, excuse, or in any manner release or discharge any tenant or guarantors from their material obligations with respect to any Tenant Lease, (iii) extend the term of any Tenant Lease on the Property entered prior to the date hereof, or (iv) enter into any new Tenant Lease on the Property after the date hereof. Notwithstanding the foregoing, with respect to any Tenant Lease which covers 10,000 square feet or less of the total rentable square footage of the Property, Lender hereby grants permission to Borrower, revocable at any time immediately upon written notice from Lender to Borrower, without regard to the due and faithful performance of Borrower under this Security Instrument, the Note and the other Loan Documents, to take any of the foregoing actions if in the judgment of Borrower, reasonably exercised, such actions do not adversely affect Lender's security interest in the Property, the Tenant Leases or the Rents and Profits



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therefrom. Borrower shall not accept payment of rent more than one (1) month in advance without the prior written consent of Lender. Lender shall have the right to require at any time and from time to time that Borrower promptly furnish to Lender original or certified copies of all Tenant Leases now existing or hereafter created. Upon request of Borrower, Lender shall cooperate and consider, but shall not be obligated to enter into any SNDA's, with tenants whose leases are entered into in accordance with the provisions hereof.

Borrower will immediately notify Lender when any release, termination or "buy-out" consideration is due and payable to Borrower by any tenants or guarantors with respect to any lease, rental, tenancy or occupancy agreement. Notwithstanding anything to the contrary set forth in this Security Instrument or any of the Loan Documents, Lender may, in its sole and absolute discretion, require that any such release, termination or "buy-out" consideration be paid immediately to Lender as proceeds of its collateral; provided however, that Lender shall only be entitled to receive such release, termination or "buy-out" consideration during the continuance of any default by Borrower beyond applicable notice, grace and cure periods under the Note, this Security Instrument or any other Loan Document. In its absolute and sole discretion and without regard to the adequacy of Lender's security, Lender may apply such payments to reduce the unpaid principal balance of the Loan or deposit such payments in a non-interest bearing account established with Lender which account shall be held as additional security for the Loan.

With respect to the assignment of leases hereinabove set forth, Borrower shall, from time to time upon request of Lender, execute one or more separate specific lease assignment or assignments in such form as may be approved by Lender, assigning to Lender all right, title and interest of Borrower in and to any and all leases now or hereafter on or affecting the Property, together with all security therefor and all monies payable thereunder, subject to the conditional License hereinabove given to Borrower to collect the Rents and Profits under any such lease. Borrower shall also execute and deliver to Lender any notification, financing statement or other document reasonably required by Lender to perfect the foregoing assignment as to any such leases. Lender shall have the right, at any time and from time to time, to notify any tenant of the rights of Lender as provided in the assignment by Borrower to Lender of all leases relating to the Property and to the Rents and Profits.

In the event of the occurrence of any default by Borrower under any Loan Document and the institution by Lender of any foreclosure, receivership or other proceeding for the enforcement of Lender's rights or remedies under this Security Instrument, Lender may elect at any time prior to consummation of a foreclosure sale of the Property, and the purchaser at such foreclosure sale (including Lender) may elect at any time within thirty (30) days following the consummation of such foreclosure sale, to declare any or all Tenant Leases to be prior and superior to the lien of this Security Instrument and to recognize the rights of the tenant(s) thereunder, in which event such Tenant Lease(s) shall survive such foreclosure sale and shall be and remain in full force and effect, and the tenant(s) thereunder shall be obligated to attorn to Lender or such purchaser and to execute and deliver such instruments of attornment as Lender or such purchaser shall require. Any such election shall be in the sole discretion of Lender or such purchaser, and shall be evidenced by written notice from Lender to Borrower and/or to the applicable tenant(s) delivered either prior to or within thirty (30) days following such foreclosure sale, by a statement of such election contained in the notice of the foreclosure sale, and/or by announcement at such foreclosure sale.

**20. FAILURE OF BORROWER TO COMPLY WITH SECURITY INSTRUMENT.** (A) Should Borrower fail to make (i) the Monthly Payment (as defined in the Note) when due and such failure continues for five (5) Business Days after notice thereof from Lender, except that Borrower shall be entitled to no more than two (2) such notices in any 24 month period, or (ii) any other payment required under the Note or any of the other Loan Documents and should such failure continue for ten (10) Business Days after written notice thereof from Lender, or (B) should Borrower fail to do any act as provided in this Security Instrument, the Note, or any other Loan Document or fail to perform any obligation secured by this Security Instrument, or should Borrower do any act Borrower agreed not to do, and in each instance should Borrower fail to remedy such failure or action within thirty (30) days after written notice thereof from Lender to Borrower, provided, however, that if such failure or action is not



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reasonably capable of being cured within thirty (30) days, such thirty (30) day period shall be extended for up to an additional ninety (90) days, provided Borrower is using diligent efforts to effectuate such cure, for such period as is reasonably necessary in order to effectuate such cure; or (C) should any of the representations and warranties made by Borrower have been untrue in any material respect when made and, should Borrower fail to cure same within ten (10) Business Days after notice thereof from Lender if curable by the payment of money, or to cure same within the period set forth in clause (B) above if such failure is curable other than by the payment of money, or (D) if (i) a petition is filed by Borrower, or any guarantor, co-maker or endorser of the Note seeking or acquiescing to any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency or an involuntary petition under such law is filed against Borrower and is still in effect 60 days from the date of such filing; or (ii) a receiver, trustee, master or liquidator is appointed with respect to the Property or the rents, issues, profits, security deposits, royalties, tolls, earnings, income and other benefits therefrom, provided, however, if same was involuntary and not consented to by Borrower, Borrower shall have 120 days to cause same to be discharged, stayed or dismissed; or (iii) Borrower makes an assignment for Borrower's creditor's; or (v) any significant portion of Borrower's assets is attached, executed upon or judicially seized in any manner and such attachment, execution or seizure is not discharged within 60 days, Borrower shall be in default under this Security Instrument, and Lender (but without obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, and without contesting the validity or amount of the same) shall have the right, at its option, to declare all sums secured hereby immediately due and payable, and may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Lender being authorized to enter upon the Property for such purposes, provided that any such entry is subject to compliance with all applicable laws, and in exercising any such power, pay necessary expenses, employ counsel and pay reasonable third-party attorneys' fees. Furthermore, at any time after a default by Borrower beyond applicable notice, grace and cure periods, Lender shall have the following rights and remedies, all of such rights and remedies together with the rights and remedies set forth in the previous sentence, shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies: (a) Lender may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property; (b) Lender may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code; (c) to the extent permitted under applicable law, Lender may choose, in its sole and absolute discretion, to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Section 9604 of the Uniform Commercial Code, and Borrower agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property; and/or (d) Lender may institute an action of mortgage foreclosure pursuant to applicable law and proceed to final judgment and execution thereon for the amount of the Loan (as of the date of such judgment) and may exercise any other right or remedy which is set forth in this Security Instrument or any other Loan Document or which is otherwise available at law or in equity. Any person, including Borrower or Lender may purchase at the foreclosure sale. After deducting all reasonable third-party costs, fees and expenses of Lender including cost of evidence of title in connection with such sale, Lender first shall apply the proceeds of sale to payments of all sums expended under the terms hereof not then repaid, with accrued interest at the rate then payable under the Note or other obligations secured hereby, then to payment of all other sums secured hereby in such order as Lender may direct, provided that, unless Lender expressly directs otherwise in writing, no proceeds of sale shall be applied to payment of any obligations of Borrower owing to Lender pursuant to Paragraphs 33 through 37 of this Security Instrument unless and until all other sums secured by this Security Instrument shall have been paid in full, and if thereafter there be any proceeds remaining, distribute them to the person or persons legally entitled thereto. Notwithstanding the foregoing, but to the extent not otherwise waived by Borrower, application and distribution of the proceeds of any foreclosure sale shall be subject to the applicable provisions of the Act (as such term is defined in Section 42 hereof). Borrower and all persons dealing with the Property through or under Borrower and their successors and assigns, including, without limitation all subsequent purchasers of all or any portion of the Property and all persons holding or obtaining an interest in the Property which is junior and subordinate to this Security Instrument, by taking and accepting their respective conveyances, encumbrances, security interests, mortgages, or liens do hereby acknowledge, covenant and agree with Lender that (i) in the event of any default beyond applicable notice, grace and cure periods in the repayment of the indebtedness secured

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hereby, or in the event of any default beyond applicable notice, grace and cure periods under the terms of this Security Instrument, or under any other mortgage or security agreement securing the same indebtedness as is secured by this Security Instrument, whether directly or by virtue of a cross-collateralization agreement or under any other Loan Document, Lender may proceed to seek foreclosure or any other relief available at law or in equity in any order which Lender may determine, in Lender's sole discretion, and Lender may proceed against any property or collateral securing said indebtedness in any order which Lender elects without regard to any matters which could or might be raised by any subsequent purchaser or by any junior lienor or encumbrancer under those certain equitable doctrines known as the doctrine of "marshalling of assets" and the doctrine of "inverse order of alienation", (ii) they will not assert, and they do hereby waive any right to assert, the doctrine of marshalling of assets or any similar equitable doctrines, and (iii) they will not assert, and they do hereby waive any right to assert, the doctrine of inverse order of alienation or any similar equitable doctrines.

**21. NO WAIVER OR MODIFICATION UNLESS IN WRITING.** No modification or waiver by Lender of any right under this Security Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Security Instrument or under any provision of this Security Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Borrower that Borrower was obligated hereunder but failed to make or perform, or by adding any payment so made by Lender to the indebtedness secured hereby, or by exercising Lender's rights to receive and collect the rents, issues, profits, security deposits, royalties, tolls, earnings, income and other benefits therefrom, Lender does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all acts required hereunder, or to declare a default for failure so to pay or perform.

**22. REMEDIES.** No remedy herein provided shall be exclusive of any other remedy herein, or now or hereafter existing by law or in equity, but shall be cumulative. Every power or remedy hereby given to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. If Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Borrower, Lender may, at its option, offset against any indebtedness owing by it to Borrower, the whole or any part of the indebtedness secured hereby, and Lender is hereby authorized and empowered, at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness secured hereby and of Borrower to Lender, any and all sums of money which Lender may have in its possession or under its control, including, without limiting the generality of the foregoing, the indebtedness evidenced by an investment certificate or any escrow or trust funds. In order to assure the definiteness and certainty of the rights and obligations herein provided, Borrower waives any and all rights of offset of claims and no offset shall relieve Borrower from paying installments on the obligations secured hereby as they become due.

**23. GENERAL PROVISIONS.** (a) As and when used herein, the term "**Borrower**" shall mean and include Borrower above-named and its successors and permitted assigns and the term "**Lender**" shall mean and include Lender hereinabove named and its successors and assigns; (b) wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and vice-versa; (c) captions and Paragraph headings used herein are for convenience only, are not a part of this Security Instrument, and shall not be used in construing it; (d) Lender shall have the right at any time and from time to time to provide any information it has in its possession relating to Borrower, or any guarantor of the Loan, or any other person or entity now or hereafter liable with respect to the Loan, or the Property to any party interested in acquiring all or any part of the Loan or any interest therein; provided that (i) Lender shall instruct any person or entity and such person or entity shall expressly agree to keep such information strictly confidential and not disclose such confidential information to any person unless disclosure is required by applicable law, regulation or legal process and (ii) so long as Borrower is not in default under the Loan Documents beyond applicable notice, grace and cure periods, Borrower shall have the right to approve any party acquiring an interest in the Loan, such approval not to be unreasonably withheld, delayed or conditioned; (e) in exercising any right or remedy or taking any action provided herein, Lender may act through its employees, agents,

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counsel, or independent contractors, as authorized by Lender; (f) as and when used herein, the word "including" shall be deemed to mean "including without limitation"; and (g) if more than one person is named as Borrower, each obligation of Borrower hereunder shall be the joint and several obligation of each such person.

**24. FURTHER ASSURANCES.** At any time and from time to time, upon Lender's request, Borrower shall make, execute and deliver, or cause to be made, executed and delivered, to Lender and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such further acts, deeds, conveyances, instruments of further assurance, certificates, agreements and other documents as Lender may consider reasonably necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve the obligations of Borrower under the Note, this Security Instrument or any other Loan Document and the lien of this Security Instrument or any other lien upon or security interest in all of the Property or any other property securing the indebtedness evidenced by the Note, whether now owned or hereafter acquired by Borrower and unto all and every person or persons deriving any estate, right, title or interest under this Security Instrument or the power of sale herein contained. Upon any failure by Borrower to do so, Borrower hereby authorizes Lender to make, execute, record, file, re-record or refile any and all such deeds of trust, instruments, certificates and documents for and in the name of Borrower and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower to do so.

**25. GOVERNING LAW; SEVERABILITY.** This Security Instrument shall be governed by and construed and enforced in accordance with the laws of the state where the Property is located without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than such state. In the event that any provision or clause of this Security Instrument, the Note or any other Loan Document is construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall not affect other provisions of this Security Instrument or the Note or the other Loan Documents which can be given effect without the void, invalid or unenforceable provision, and to this end the provisions of the Note, this Security Instrument and all other Loan Documents are declared to be severable.

**26. NOTICES.** Except for any notice required by applicable law to be given in another manner, all notices provided pursuant to the Note, this Security Instrument or any other Loan Document shall be in writing and shall be deemed to have been duly given if sent by United States certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or other comparable national and reputable overnight courier service to the parties at the address set forth herein or such other address as the recipient party may have designated by notice given in the manner specified above. Each such notice shall be deemed received upon the earlier of (i) when received in person by the recipient party or (ii) two business days following the mailing of such notice, certified mail, postage prepaid, return receipt requested to the address set forth herein.

Notices to Borrower shall be sent to Borrower at its address set forth below:

Orleans Hubbard LLC  
c/o Merchandise Mart Properties, Inc.  
222 Merchandise Mart Plaza, Suite 470  
Chicago, Illinois 60654  
Attention: President

With copies to:

Merchandise Mart Properties, Inc.  
222 Merchandise Mart Plaza, Suite 470  
Chicago, Illinois 60654  
Attn: Legal Department

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With copies to:

Vornado Realty Trust  
210 Route 4 East  
Paramus, New Jersey 07652  
Attn: Chief Financial Officer

With copies to:

Winston & Strawn LLP  
200 Park Avenue  
New York, New York 10166-4193  
Attn: Patricia M. Dineen, Esq.

Notices to Lender shall be sent to Lender at its address set forth below:

TCF National Bank  
500 W. Brown Deer Road  
Milwaukee, Wisconsin 53217  
Attn: Russ McMinis

**27. LOST INSTRUMENTS.** In the event that following execution, the Note, Security Instrument, or any other Loan Document should be lost, destroyed or mutilated, Borrower agrees, at no cost to Borrower, to execute another original of such Note, Security Instrument or Loan Document. In such event, Lender agrees to execute a lost note affidavit and indemnity.

**28. RESERVED.**

**29. POWER OF LENDER TO CONSENT.** Without affecting the liability of any person, including Borrower, for the payment of any indebtedness secured hereby, or the lien of this Security Instrument upon any remainder of the Property for the full amount of any indebtedness then or thereafter secured hereby, or the rights or powers of Lender with respect to the remainder of the Property (other than any person or property specifically released by Lender), Lender may do any one or more of the following: (1) release any indebtedness; (2) extend the time or otherwise alter the terms of payment of such indebtedness; (3) accept additional security; (4) substitute or release any property securing such indebtedness; (5) consent to the making of any map or plat thereof; (6) join in granting any easement thereon; or (7) join in any extension agreement or any agreement subordinating or otherwise affecting the lien or charge hereof.

**30. RESERVED.**

**31. INTENTIONALLY DELETED.**

**32. RELEASE UPON PAYMENT AND DISCHARGE OF BORROWER'S OBLIGATIONS.**

Upon payment of all sums secured by this Security Instrument, including, but not limited to any prepayment premiums or fees due and payable under the Note and payment of a reasonable fee to Lender for the preparation and execution of such release, Lender shall release this Security Instrument and the lien thereof by proper instrument.

**33. ENVIRONMENTAL MATTERS:** All obligations, representations, warranties, covenants, rights and liabilities of the parties hereto with respect to environmental matters are set forth in the Environmental Indemnity Agreement entered into simultaneously with the execution of this Agreement, and all of such obligations, representations, warranties, covenants, rights and liabilities and other provisions of the Environmental Indemnity Agreement are hereby incorporated by reference into this



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Security Instrument. To the extent that any provision of this Security Instrument could be interpreted to conflict with the Environmental Indemnity Agreement, the Lender, in its sole and absolute discretion shall determine which provisions shall govern.

34. INTENTIONALLY DELETED.

35. INTENTIONALLY DELETED.

36. INTENTIONALLY DELETED.

37. INTENTIONALLY DELETED.

38. **WAIVER OF JURY TRIAL.** To the fullest extent permitted by law, Borrower and Lender HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, the Note, this Security Instrument or any of the Loan Documents, or the enforcement of any remedy under any law, statute, or regulation. Neither party will seek to consolidate any such action in which a jury has been waived, with any other action in which a jury trial cannot or has not been waived. Each party acknowledges that it has received the advice of counsel with respect to this waiver.

39. **FINAL AGREEMENT.** The Note, this Security Instrument and the other Loan Documents collectively represent the final agreements between Lender and Borrower and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten agreements between Lender and Borrower.

40. **PATRIOT ACT.** Borrower represents and warrants that as of the date hereof and covenants that at all times hereafter during the term hereof:

(a) (i) None of the funds or other assets of Borrower or of any affiliate of Borrower constitute property of, or are beneficially owned, directly or, to Borrower's knowledge, indirectly, by, any person subject to trade restrictions under the laws of the United States, including those who are covered by the International Emergency Economic Powers Act, 50 U.S.C. §§1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any executive orders or regulations promulgated thereunder (an "Embargoed Person") with the result that Lender Exposure (as hereinafter defined) will occur; (ii) no Embargoed Person has any interest of any nature whatsoever (whether directly or indirectly) in Borrower with the result that Lender Exposure will occur; and (iii) none of the funds of Borrower have been derived from any unlawful activity with the result that Lender Exposure will occur. For the purposes hereof, "Lender Exposure" shall mean any one or more of the following: (w) the Loan is in violation of applicable law, or (x) the Property or any other collateral for the Loan or any portion thereof (including, without limitation, the Rents and Profits or other income to be derived therefrom) is subject to forfeiture or to being frozen, seized, sequestered or otherwise materially impaired by any governmental authority, or (y) the Loan or any payments made or to be made in respect thereof (including, without limitation, principal and interest) is subject to forfeiture or to being frozen, seized, sequestered or otherwise impaired by a governmental authority or Lender or any of Lender's collateral for the Loan or the lien priority thereof or any of Lenders' rights or remedies in respect of the Loan or the collateral therefor is otherwise materially impaired or adversely affected, or (z) Lender is subject to criminal or civil liability or penalty.

(b) Neither Borrower nor any of its direct or, to Borrower's knowledge, indirect owners is in violation of the U.S. Federal Bank Secrecy Act, as amended, and its implementing regulations (31 CFR part 103), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 and the regulations promulgated thereunder (collectively, the "Patriot Act"), any order issued with respect to anti-money laundering by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), or any other anti-money laundering Law with the result that Lender Exposure will occur.

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(c) Neither Borrower nor any of its direct or indirect owners is a person with whom people of the United States are restricted from doing business with under (a) regulations issued by OFAC (including those persons and entities named on OFAC's Specially Designated Nationals and Blocked persons list) or under any law of the United States (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or (b) any other law, if, with respect to either clause (a) or (b), Lender Exposure will occur. Without limiting the foregoing, Borrower is not presently funding Borrower's obligations hereunder with funds from any of the persons referred to in this paragraph (c) if Lender Exposure will occur.

## 41. WAIVER OF STATUTORY RIGHTS.

**A. WAIVER OF MORATORIUM LAWS.** Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, but hereby waives the benefit of such laws to the extent permitted under applicable law. Borrower for itself and all who may claim through or under it waives to the extent permitted under applicable law any and all right to have the property and estates comprising the mortgaged property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the mortgaged property sold as an entirety to the extent permitted under applicable law. **THE BORROWER HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION UNDER ANY STATUTE, ORDER OR JUDGMENT OF FORECLOSURE, PURSUANT TO RIGHTS HEREIN GRANTED, ON BEHALF OF THE BORROWER, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE PREMISES DESCRIBED HEREIN SUBSEQUENT TO THE DATE OF THIS SECURITY INSTRUMENT, AND ON BEHALF OF ALL OTHER PERSONS, AS ALLOWED AND TO THE EXTENT PERMITTED BY 735 ILCS 5/15-1601(b) AND THE PROVISIONS OF OTHER APPLICABLE ILLINOIS STATUTES.**

**B. WAIVER OF HOMESTEAD.** Borrower hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all indebtedness secured by this Security Instrument.

**C. WAIVER OF RIGHT OF REDEMPTION.** NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS SECURITY INSTRUMENT, BORROWER HEREBY WAIVES, TO THE EXTENT PERMITTED UNDER 735 ILCS 5/15-1601(b) OR ANY SIMILAR APPLICABLE LAW EXISTING AFTER THE DATE OF THIS SECURITY INSTRUMENT, ANY AND ALL RIGHTS OF REDEMPTION ON BORROWER'S BEHALF AND ON BEHALF OF ANY OTHER PERSONS PERMITTED TO REDEEM THE PROPERTY. Borrower acknowledges that the transaction of which this Security Instrument is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1202 of the Act) or residential real estate (as defined in Section 15-1219 of the Act). Borrower further acknowledges that the Loan evidenced by this Security Instrument, the Note, the Loan Agreement and the other Loan Documents constitutes a business loan which comes within the purview of Subparagraph 1(c) of Section 4 of the Interest Act, as amended (815 ILCS 205/0.01 et seq.).

**42. FORECLOSURE.** Notwithstanding the provisions of Section 20 of this Security Instrument or any other provision herein to the contrary, any foreclosure of all or any portion of the lien of this Security Instrument shall be in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq., as from time to time amended (the "Act"). In the event that any provision in this Security Instrument shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. Mortgagee and Mortgagor shall have the benefit of all the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existed prior to such repeal, as though the same were incorporated herein by express reference.

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**43. MATURITY DATE.** The latest maturity date of the indebtedness secured by Note is December 17, 2013, or any later date that may be specified as the maturity date under the terms of the Loan Agreement.

**44. BUSINESS LOAN.** Borrower stipulates, represents, warrants, affirms and agrees that each of the loans and other credit obligations secured hereby are constitute a "business loan" within the meaning of Sections 205/4(a) or (c) of Chapter 815 of the Illinois Compiled Statutes, as amended.

[SIGNATURE ON NEXT PAGE]

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IN WITNESS WHEREOF, Borrower has executed this Security Instrument on the day in the year first written above.

**BORROWER:**

**ORLEANS HUBBARD LLC, a**  
Delaware limited liability company

By: Merchandise Mart Properties, Inc.  
a Delaware corporation, its manager

By: *[Signature]*  
Its: Christopher G. Kennedy, President  
Merchandise Mart Properties, Inc.

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**ACKNOWLEDGEMENT**

STATE OF Illinois  
COUNTY OF Cook

On this 1<sup>st</sup> day of December, 2008 before me, Karla Pineda a Notary Public in and for said State, personally appeared Chris G. Kennedy, the President of Merchandise Mart Properties, Inc., the Manager of Orleans Hubbard LLC, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



*[Signature]*  
Notary Public  
My Commission expires: 7/20/09

**DOCUMENT IS NOT TO BE EXECUTED IN COUNTERPARTS**  
**OR UNDER A POWER OF ATTORNEY**  
**ALL SIGNATURES MUST BE ACKNOWLEDGED**

[SIGNATURE PAGE FOR ORLEANS HUBBARD LLC MORTGAGE]



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## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

The Property is located in the City of Chicago, County of Cook, State of Illinois and is described as follows:

Lots 14 through 23, both inclusive, in Block 4 in Butler, Wright and Webster's Addition to Chicago, said addition being a subdivision of the West 1/2 of the West 1/2 of the North East 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Address: 431 N. Orleans Street, Chicago, Illinois

Tax Parcel Numbers: 17-09-250-007-0000; 17-09-250-010-0000; 17-09-250-016-0000; 17-09-250-017-0000;  
17-09-250-019-0000

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