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LEASEHOLD MORTGAGE, SECURITY AGREEMENT
AND
FIXTURE FILING (FINANCING STATEMENT)

from

WIN REALTY HOLDINGS, INC.,

Mortgagor

to

FIFTH AVENUE CAPITAL TRUST,

Mortgagee

Dated as of December 1st, 1990

Drafted by and when recorded return to:

Rogers & Wells
200 Park Avenue
New York, New York 10166
Att'n: Lewis B. Stone, Esq.

Covers the property located at:

700 North Michigan Avenue
Chicago, Illinois

R&W#: 017
GD&C#: 2IL23L

TAX INDEX NO. 17-10-106-007

AAA1E040.WP5

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Schedules and Exhibits

Schedule 1	Schedule of the Mortgage Notes
Exhibit "A"	Legal Description
Exhibit "B"	Description of the Lease

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LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (FINANCING STATEMENT)

THIS LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (FINANCING STATEMENT) (this "Mortgage") dated as of the 31st day of December, 1990, from WIN REALTY HOLDINGS, INC., a Delaware corporation, having an office at Suite 1070, 1440 Broadway, New York, New York 10018 ("Mortgagor"), the successor by merger to WIN MERGER, INC., a Delaware corporation, to FIFTH AVENUE CAPITAL TRUST, a Delaware business trust, having an address c/o Wilmington Trust Company, Rodney Square North, Wilmington, Delaware 19890 ("Mortgagee").

W I T N E S S E T H :

A. Pursuant to a Loan and Security Agreement of even date herewith as the same may be hereafter amended from time to time (the "Loan Agreement"), among Mortgagee, Mortgagor and certain other borrowers named therein (such other borrowers being hereinafter collectively referred to as the "Other Borrowers"), Mortgagee has loaned to Mortgagor and the Other Borrowers the aggregate principal amount of FIVE HUNDRED TEN MILLION and 00/100 Dollars (\$510,000,000), consisting of: (i) a loan to Mortgagor as evidenced by a Mortgage Note of even date herewith (the "Note"), and (ii) other loans to Mortgagor (if any) and other loans to Other Borrowers, all evidenced by Mortgage Notes of even date herewith (the "Other Notes"). Schedule 1 attached hereto more fully describes all of the foregoing Mortgage Notes and identifies the respective borrowers. All other capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan Agreement, the terms and conditions of which are incorporated herein by reference.

B. Interest on the Note is payable at a rate as set forth in the Loan Agreement. The maturity date of the Note, and the Other Notes, is December 31, 1997 or at such earlier time as is provided in the Loan Agreement.

C. In order to induce Mortgagee to make the loan evidenced by the Note, Mortgagor, under and pursuant to Article III of the Loan Agreement, has guaranteed, among other things, the payment of the Mortgage Notes of the Other Borrowers (the "Guarantee").

D. The parties hereto now desire to secure the payment of the Note, the Other Notes and the performance of Mortgagor's obligations and liabilities arising under this Mortgage, the

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Guarantee, the Loan Agreement and the other Loan Documents, in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the indebtedness herein recited and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

TO SECURE the repayment of all principal and the payment of all interest, prepayment premiums, if any, and other charges, costs and expenses arising under, evidenced by or described in the Note (the terms of which are hereby made a part of this Mortgage), the Other Notes, and all other sums due or to become due under the Note, the Other Notes this Mortgage, the Guarantee, the Loan Agreement and the other Loan Documents and any renewals, extensions, modifications, amendments, substitutions, replacements and/or consolidations thereof, including any and all additional advances (of an amount which shall not exceed 50% of the initial loan amount described in paragraph A of the recital hereto) made by Mortgagee pursuant to the provisions of this Mortgage, the Loan Agreement or the other Loan Documents and the performance and observance of all obligations, covenants, agreements and conditions of Mortgagor under or pursuant to this Mortgage, the Loan Agreement and the other Loan Documents (including, without limitation, the Guarantee) (the foregoing together with all other amounts secured hereby as otherwise set forth herein being hereinafter collectively referred to as the "Obligations");

Mortgagor has warranted, bargained, sold, conveyed, granted, assigned, mortgaged, granted a security interest in, transferred and set over and by these presents does hereby warrant, bargain, sell, convey, grant, assign, mortgage, grant a security interest in, transfer and set over unto Mortgagee, its successors and assigns forever, for the benefit of Mortgagee, its successors and assigns, the following described property (collectively the "Mortgaged Property"):

(a) (i) all estate, right, title and interest of Mortgagor in and to all the buildings, structures and other improvements now or hereafter erected (collectively the "Improvements") on that certain parcel of real property more particularly described in Exhibit "A" attached hereto and made a part hereof (collectively the "Land") (the Land and the Improvements are hereinafter collectively referred to as the "Real Estate"), and (ii) all estate, right, title and interest of Mortgagor in, to and under that certain lease agreement more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Lease") and the leasehold estate created thereby, together with all right, title and interest of Mortgagor as the lessee under the Lease in and to (1) the Real Estate, (2) all modifications, extensions and renewals of

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the Lease and all rights to renew or extend the term of the Lease, and (3) all credits, deposits, options, rights of first refusal, privileges and other rights of Mortgagor under the Lease (for purposes of this Mortgage, the lessor under the Lease shall be referred to as the "Lessor");

(b) to the extent of Mortgagor's interest therein, all of Mortgagor's right, title and interest, in and to all present and future machinery and equipment (as defined in the Uniform Commercial Code as enacted in the state where the Real Estate is located [the "Code"]), apparatus and fixtures, non-moveable trade fixtures and accessions thereof and renewals, replacements thereof and substitutions therefor (including but not limited to heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, apparatus engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel conveyors), and other articles of tangible property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, on or hereafter located upon the Real Estate, or appurtenances thereto, or usable in connection with the present or future operation and occupancy of the Real Estate and all right, title and interest of Mortgagor in and to all signs and billboards, and any and all leases pertaining thereto, other than items owned by the Lessor or by tenants under Space Leases (hereinafter defined) or by public utilities or as separately disclosed in writing to Mortgagee prior to the date of this Mortgage (hereinafter collectively called the "Fixtures"); provided, however, Fixtures shall be deemed to include any item described in this paragraph (b) only to the extent such item (i) is affixed or attached to the Real Estate or (ii) constitutes real property under the laws of the state in which the Real Estate is located; and the right, title and interest of Mortgagor in and to any of the Fixtures which may be subject to any security agreements (as defined in the Code) or installment sales contracts or leases (all of the immediately above mentioned items of Fixtures being deemed to be a part of the Real Estate);

(c) to the extent assignable, all permits, zoning approvals, licenses, sewer and water permits, building permits, certificates of occupancy, demolition and excavation permits, curb-cut and right-of-way permits, drainage rights and all other similar or equivalent private or governmental documents pertaining, applicable to or in any manner connected with the ownership, occupancy, operation or improvement of the Real Estate;

(d) to the extent of Mortgagor's interest therein, each and all tenements, hereditaments, appurtenances, easements,

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riparian rights, permits, rights of way, licenses, agreements and privileges belonging or in anywise appertaining to the Real Estate, and the reversions, remainders, rents, issues, royalties, profits and revenue thereof; and also all the estate, right, title, interest, claim and demand whatsoever, both in law and at equity, of Mortgagor in and to the Real Estate and of, in and to every part thereof, with the appurtenances, at any time belonging or in anywise appertaining thereto;

(e) to the extent of Mortgagor's interest therein, all present and future written and oral licenses, leases, subleases, concessions or occupancy agreements of all or part of the Real Estate and all rents, royalties, income, receipts, revenue, fees, issues, moneys and profits arising therefrom (to the extent of Mortgagor's interest therein);

(f) except as otherwise provided in the Loan Agreement and the Lease, all unearned premiums, accrued, accruing or to accrue, under insurance policies now or hereafter obtained by Mortgagor and Mortgagor's interest in and to all proceeds of the conversion and the interest payable thereon, voluntary or involuntary, of the Mortgaged Property, or any part thereof, into cash or liquidated claims, including, without limiting the generality of the foregoing, proceeds of casualty insurance, title insurance or any other insurance maintained on the Real Estate and the Fixtures, and the right to collect and receive the same, and all awards and/or other compensation including the interest payable thereon and the right to collect and receive the same (in the alternative and collectively, "Awards"), heretofore and hereafter made by the United States, the state in which the Real Estate is located or any political subdivision thereof or any agency, department, bureau, board, commission, or instrumentality of any of them, or any redevelopment corporation or other entity with eminent domain powers, now existing or hereafter created for the taking by eminent domain, condemnation or otherwise, of all or any part of the Real Estate, the Fixtures or any easement or other right therein, including, without limiting the generality of the foregoing, Awards for any change or changes of grade or the widening of streets, roads or avenues affecting the Real Estate;

(g) to the extent of Mortgagor's interest therein, all right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Real Estate and/or the Fixtures, hereafter acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagor on the Real Estate, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by

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Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described herein;

(h) to the extent of Mortgagor's interest therein, any and all monies now or hereafter on deposit for the payment of real estate taxes or special assessments against the Real Estate or for the payment of premiums on policies of fire and other hazard insurance covering the Real Estate and the Fixtures;

(i) all estate, right, title and interest of Mortgagor in and to the Real Estate arising upon the acquisition of fee title to the Real Estate, or any part thereof, by Mortgagor during the term of the Loan; and

(j) all proceeds, both cash and noncash, of the foregoing which may be sold or otherwise disposed of.

TO HAVE AND TO HOLD the Mortgaged Property and the estate, rights, privileges and appurtenances hereby granted or intended to be, unto Mortgagee, its successors and assigns, forever, for the uses and purposes hereinafter set forth, and for the benefit of the Mortgagee, its successors and assigns, until the Obligations are fully paid and performed.

Mortgagor represents, warrants, covenants and agrees as follows:

1. Warranty of Title. Mortgagor represents and warrants to Mortgagee (i) that it, subject to the terms of the Lease, is lawfully seized of the Improvements as a good and indefeasible estate in fee simple, until the expiration or earlier termination of the Lease, (ii) that, pursuant to the Lease, it is lawfully seized and possessed of a valid and insurable leasehold estate in the Real Estate and the Fixtures free and clear of all liens, charges, encumbrances, covenants, restrictions, reservations, conditions and easements except those set forth in Schedule B of the title insurance policy issued by First American Title Insurance Company of the Mid-West to Mortgagee, insuring the lien of this Mortgage (the "Permitted Exceptions"), (iii) that it has the right, power and lawful authority in law and at equity to convey, encumber and mortgage the Mortgaged Property to Mortgagee for the uses and purposes set forth in this Mortgage, subject to the Permitted Exceptions, and (iv) that this Mortgage creates a valid first lien on the Mortgaged Property, subject only to the Permitted Exceptions. Mortgagor shall warrant and defend the title to such Mortgaged Property against the claims of all persons whomsoever, subject only to the Permitted Exceptions. Mortgagor covenants (x) to preserve, at its sole expense, such title to its leasehold estate in the Real Estate and the Fixtures and the validity and priority of the lien and security interest granted by this Mortgage, and (y) subject to Section 14 hereof, to make, execute, acknowledge and deliver, at its sole expense, all such

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further or other deeds, assignments, conveyances, documents, instruments or assurances, and cause to be done all such further acts and things as may at any time hereafter be reasonably requested by Mortgagee to fully perfect the lien and security interest granted by this Mortgage or to better assure, convey, assign, transfer and confirm unto Mortgagee the property and rights hereby mortgaged, conveyed or assigned or intended now or hereafter so to be.

2. Payment of Obligations. Mortgagor shall duly and punctually pay, or cause to be paid, the Obligations in accordance with the provisions of the Note, this Mortgage, the Loan Agreement and the other Loan Documents and shall perform and observe each and every of the Obligations on the part of Mortgagor to be performed or observed hereunder or thereunder.

3. Care and Use of the Mortgaged Property.

(a) With respect to the Real Estate and subject to the terms and provisions of the Lease, Mortgagor shall:

(i) not abandon the Real Estate or the Fixtures during the term of the Lease;

(ii) maintain, or cause to be maintained, the Real Estate and the abutting grounds, sidewalks, roads, parking and landscape areas in good repair, order and condition (to the extent required of the lessee under the Lease [or as otherwise required in its capacity as lessor/sublessor under leases/subleases affecting the Real Estate]);

(iii) promptly make, or cause to be made, all necessary or appropriate repairs, renewals, replacements and additions to the Real Estate and the Fixtures (to the extent required of the lessee under the Lease [or as otherwise required in its capacity as lessor/sublessor under leases/subleases affecting the Real Estate]);

(iv) not commit or suffer any waste, impairment or deterioration of the Real Estate or the Fixtures or any part thereof, ordinary wear and tear excepted;

(v) promptly complete, or cause to be completed, in a good and workmanlike manner, free and clear of all liens, any new improvements or additions constructed on the Land;

(vi) subject to the terms and conditions of the Loan Agreement, refrain from impairing or diminishing the value or integrity of the Mortgaged Property or the security value of this Mortgage;

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(vii) subject to the terms and conditions of the Loan Agreement not remove, demolish or in any structural respect alter any of the Improvements or the Fixtures without the prior written consent of the Mortgagee, except (A) Mortgagor may remove or demolish Fixtures in the ordinary course of business provided that such Fixtures are promptly replaced with similar Fixtures of at least comparable quality and capability as that removed or demolished and free and clear of any security interest or encumbrance and (B) as expressly permitted in the Loan Agreement;

(viii) not make, suffer or permit any nuisance to exist on any of the Real Estate;

(ix) not construct, install or permit to be constructed or installed, any structural extensions or additions to the Improvements without the prior written consent of Mortgagee, except as expressly permitted in the Loan Agreement;

(x) subject to and in accordance with the terms and provisions of Section 6.36 of the Loan Agreement, at its sole cost and expense, perform and complete, or cause to be performed and completed, in a good and workmanlike manner and free of any security interest or encumbrance, the Deferred Maintenance, if any, relating to the Mortgaged Property; and

(xi) promptly make or cause to be made, all repairs and perform all maintenance to the Real Estate required of the lessee under the lease.

(b) Mortgagee (by any of its officers, employees and/or agents) shall have the right, as may be reasonably necessary, at any time or times during normal business hours and upon reasonable advance notice to Mortgagor, to enter upon and inspect the Mortgaged Property (including all books and records of Mortgagor located thereat) in a manner so as to not unreasonably disrupt the business of Mortgagor. If any such inspection shows the reasonable or appropriate need for restoration, repairs or replacements required of Mortgagor hereunder, and Mortgagee makes demand therefor, Mortgagor shall proceed diligently to complete the same. Upon the occurrence and during the continuance of an Event of Default, all costs, fees and expenses incurred by Mortgagee, or for which Mortgagee has become obligated, in connection with such inspection, together with interest thereon at the Default Rate, shall be payable by Mortgagor to Mortgagee upon demand.

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4. Compliance.

(a) To the extent required of the lessee under the Lease or as otherwise arising from Mortgagor's use, occupancy, possession, maintenance, alteration, repair, reconstruction or operation of the Real Estate, Mortgagor, at Mortgagor's sole cost and expense, shall promptly and faithfully comply with, or cause to be complied with, and conform to, all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements pertaining to the Mortgaged Property, including, without limitation, any applicable environmental protection, zoning, building, architectural barriers to the handicapped, fire safety and parking laws, ordinances, rules or regulations, together with all applicable regulations of every Board of Fire Underwriters having jurisdiction over the Real Estate, and all covenants, restrictions and conditions now or hereafter of record, which may be applicable to any part of the Mortgaged Property, or to the use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any part of the Mortgaged Property (collectively the "Requirements"). Without limiting the generality of the foregoing, the term "Requirements" shall include, without limitation, the Environmental Regulations applicable to the Real Estate, including, without limitation, the following: the Illinois Responsible Property Transfer Act of 1988 (Chapter 30, Section 901 et seq., Illinois Revised Statutes). Mortgagor shall have the right, at Mortgagor's sole cost and expense and acting in good faith, to contest or object to the validity of any Requirement by appropriate legal proceedings, but such right shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to comply therewith as provided in this Article 4.

(b) Without limiting the generality of the foregoing, and subject to the provisions of this paragraph (b). Mortgagor shall not use or permit the Real Estate or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Materials, except and only to the extent, if necessary, to maintain the improvements on the Real Estate and then only in compliance with all applicable Environmental Regulations including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. § 9601, et seq.) (together, with the regulations promulgated thereunder, "CERCLA"), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901, et seq.) (together, with the regulations promulgated thereunder, "RCRA"), the Emergency Planning and Community Right-To-Know Act, as amended (together, with the regulations promulgated thereunder, "Title III") (42 U.S.C. § 11001, et seq.), the Clean Water Act, as amended (33 U.S.C. § 1321 et seq.) (together with the regulations promulgated thereunder), the Clean Air Act, as amended

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(42 U.S.C. § 7401 et seq.) (together with the regulations promulgated thereunder), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 et seq.) (together with the regulations promulgated thereunder), any so-called local, state or federal "superfund" or "superlien" law now or hereafter enacted, including, without limitation, Section 22.2 of the Illinois Environmental Protection Act, Illinois Revised Statutes, ch. 111 $\frac{1}{2}$, Par. 1022.2 (collectively "Superlien Law"), and any state equivalent laws and regulations, nor shall Mortgagor permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant, employee, agent, contractor, invitee, guest or licensee, the storage, transportation, disposal or use of Hazardous Materials at the Real Estate or the Release or threat of Release, of Hazardous Materials on, from or beneath the Real Estate or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of or used in the maintenance of a first class retail clothing store or distribution center, as the case may be, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Environmental Regulations. Upon the occurrence of any such Release or threat of Release of Hazardous Materials, Mortgagor shall promptly commence and perform, or cause to be promptly commenced and performed, without cost to Mortgagee, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Real Estate or other property, in strict compliance with the requirements of all Environmental Regulations. Mortgagor shall comply with, and shall cause all of its agents, tenants, subtenants, employees, contractors, licensees, guests and invitees to comply with all Environmental Regulations and shall keep the Real Estate free and clear of any liens imposed pursuant thereto; provided, however, that any such Liens, if not discharged within thirty (30) days, may be bonded. Mortgagor shall cause its tenants, and use its best efforts to cause such tenants' subtenants, guests, agents, licensees, employees, contractors and invitees, to comply with all Environmental Regulations, provided, however, that notwithstanding that a portion of this covenant is limited to Mortgagor's use of its best efforts, Mortgagor shall remain solely responsible for ensuring such compliance and such limitation shall not diminish or affect in any way Mortgagor's obligation to indemnify Mortgagee as provided in this Article 4. In the event that Mortgagor receives any notice from any Person with regard to the Release of Hazardous Materials on, from or beneath the Real Estate, Mortgagor shall give prompt written notice thereof to Mortgagee (and, in any event, prior to the expiration of any period in which to respond to such notice under any Environmental Regulation). Notwithstanding anything contained in this paragraph (b) to the contrary, underground storage tanks shall be permitted subject to paragraph (f) and only to

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the extent, if necessary, to maintain the Improvements on the Real Estate.

(c) Mortgagor shall, at its sole cost and expense, perform and complete, or cause to be performed or completed, the Environmental Remedial Action relating to the Mortgaged Property, if any, pursuant to provisions of Section 6.35 of the Loan Agreement.

(d) Mortgagor shall defend, indemnify and hold harmless Mortgagee, its partners, depositors, and each of its and their employees, agents, officers, directors, trustees, shareholders, successors and assigns from and against any claims, demands, penalties, fines, attorneys' fees (including attorneys' fees incurred to enforce the indemnification contained in this Article), consultants' fees, investigation and laboratory fees, losses, liabilities, settlements (five (5) Business Days' prior notice of which Mortgagee shall have delivered to Mortgagor), court costs, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, occurring in whole or in part, arising out of, or in any way related to, (i) the presence, disposal, Release, threat of Release, removal, discharge, storage or transportation of any Hazardous Materials on, from or beneath the Real Estate; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or threatened, settlement reached (five (5) Business Days' prior notice of which Mortgagee shall have delivered to the Mortgagor), or governmental order relating to Hazardous Materials on, from or beneath the Real Estate; (iv) any violation of Environmental Regulations by Mortgagor or any of its agents, tenants, subtenants, guests, licensees, employees, contractors, or invitees; and (v) the imposition of any governmental lien for the recovery of environmental cleanup costs. To the extent that Mortgagor is strictly liable under any Environmental Regulation, Mortgagor's obligation to Mortgagee and the other indemnitees under the foregoing indemnification shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of an Environmental Regulation that results in liability to Mortgagee and/or such other indemnitees. The obligations and liabilities of Mortgagor under this Article 4 shall survive any foreclosure of the Mortgage or the delivery of any instruments in lieu of foreclosure, and the satisfaction of the Obligations.

(e) Notwithstanding the provisions of subparagraph (a) of this Article 4, the right to contest or object to the validity of any Requirement shall be deemed to suspend Mortgagor's covenant to comply therewith, pending a final determination of the legal proceedings initiated by Mortgagor, if all of the following conditions are satisfied: (i) contemporaneously with the commencement of such

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proceedings, Mortgagor shall give written notice thereof to Mortgagee, (ii) any such proceedings shall be diligently commenced and prosecuted by Mortgagor, (iii) if under applicable law the Mortgaged Property or any part thereof is subject to sale or forfeiture for failure to comply with any such Requirement prior to a final determination of such legal proceedings, such proceedings must operate conclusively to prevent such sale or forfeiture, (iv) if during such proceedings a lien or any other matter adversely affecting title to the Mortgaged Property shall exist with respect to any of the Mortgaged Property, or any part thereof, for failure to comply with any such Requirement, prior to final determination of such proceedings Mortgagor shall provide Mortgagee with good and sufficient bond or other security satisfactory to Mortgagee in an amount equal to the aforesaid lien or matter adversely affecting title (including any additional interest, charges or penalty arising from such proceedings), or if the amount thereof is uncertain, in an amount reasonably satisfactory to Mortgagee or as may be required under law to release the Mortgaged Property from such lien, (v) Mortgagee shall not be subject to civil or criminal liability for any failure by Mortgagor to comply with such Requirement during the pendency of such proceedings, (vi) such proceeding shall not materially diminish the value of the Mortgaged Property, (vii) Mortgagor shall bear all costs, expense, fines, penalties, interest, and attorneys' fees in connection with such proceeding and (viii) Mortgagor shall defend, indemnify and hold harmless Mortgagee and the other indemnittees referred to in Section 4(d) above from and against all loss, cost or expense in connection with such proceedings, including, without limitation, all attorneys' fees.

(f) To the extent required under Section 6.35(f) of the Loan Agreement, Mortgagor shall conform to and carry out a reasonable program of maintenance and inspection of all underground storage tanks located on the Real Estate, and shall maintain, repair, and replace such tanks only in accordance with Laws and Regulations, including but not limited to Environmental Regulations. All such tanks are in good condition and repair and comply with all Laws and Regulations, including Environmental Regulations, except as set forth on the Loan Agreement.

5. Payment of Impositions.

(a) To the extent required of the lessee under the Lease, Mortgagor shall pay and discharge, or cause to be paid and discharged, before the same shall become delinquent, all real estate and personal property taxes, and other fees, assessments, charges, liens or encumbrances, including, without limitation, water and sewer rents and charges and all other governmental or non-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever, which at any time prior to

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or after the execution of this Mortgage may be assessed, levied, confirmed or imposed upon all or any part of the Mortgaged Property, or any use or occupancy thereof, and other taxes, assessments, fees and governmental or non-governmental charges levied, imposed or assessed upon or against Mortgagor with respect to the Mortgaged Property, together with any interest or penalties on any of the foregoing (all of the foregoing are hereinafter collectively referred to as the "Impositions"). Mortgagor shall have the right, at Mortgagor's sole cost and expense and acting in good faith, to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings (but such right shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Imposition at the time and in the manner provided in this Article 5). Notwithstanding the foregoing, such right to contest or object to the validity of any Imposition shall be deemed to suspend Mortgagor's covenant to pay the same, pending a final determination of the legal proceedings initiated by Mortgagor, if all of the following conditions are satisfied: (i) contemporaneously with the commencement of such proceedings, Mortgagor shall give written notice thereof to Mortgagee, (ii) such proceeding shall be diligently commenced and prosecuted by Mortgagor at its sole cost and expense, (iii) if under applicable law the Mortgaged Property or any part thereof is subject to sale or forfeiture for failure to satisfy such Impositions prior to a final determination of the legal proceedings, such proceedings must operate conclusively to prevent such sale or forfeiture, (iv) Mortgagor shall furnish a good and sufficient bond, surety or other security reasonably satisfactory to Mortgagee in the amount of the Impositions which are being contested plus any interest and penalty which may be imposed thereon and which could become a lien against the Real Estate or any part of the Mortgaged Property and (v) Mortgagor shall defend, indemnify and hold harmless Mortgagee from and against all loss, cost or expense in connection with such proceeding, including, without limitation, all attorneys' fees. If, at any time or from time to time, the payment of the Impositions being contested shall become necessary to prevent the delivery of an instrument conveying the Real Estate or any portion thereof because of non-payment, then if Mortgagor is required under the Lease to pay Impositions Mortgagor shall pay the same in sufficient time to prevent the delivery of such instrument. Subject to the foregoing, Mortgagor shall submit to Mortgagee, promptly after payment thereof, appropriate evidence of the due and punctual payment of all such Impositions required to be paid by the lessee under the Lease.

(b) In the event Mortgagor fails to pay any Imposition required to be paid by the lessee under the Lease by the last date upon which payment of such Imposition may be made without imposition of interest or a penalty (the "Interest Date") (subject to Mortgagor's right to contest such Imposition as

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hereinbefore provided), Mortgagee shall have the right, upon five (5) Business Days' notice to Mortgagor, to pay any such Imposition and to add to the Obligations the amount so paid, together with all attorneys' fees and together with interest thereon from the date of such payment at the Default Rate and nothing herein contained shall affect such right and such remedy. Any sums paid by Mortgagee in discharge of any Impositions shall be secured by this Mortgage and shall be payable on demand.

(c) Notwithstanding the foregoing, upon Mortgagor's failure to pay any Imposition by the Interest Date or upon the occurrence and continuance of any Event of Default under the Note, this Mortgage, the Loan Agreement or the other Loan Documents, Mortgagor, at Mortgagee's option, shall deposit with Mortgagee such sums as required pursuant to Section 2.10 or elsewhere in the Loan Agreement.

6. Insurance. Mortgagor shall, at its sole cost and expense, continuously keep and maintain insurance in respect to the Mortgaged Property and Mortgagor's operations thereat, of the type and in the form and with insurers, all as provided in Section 6.38 of the Loan Agreement. All insurance proceeds to which Mortgagor may be entitled resulting from damage to or destruction of the Mortgaged Property or any part thereof by fire or any other casualty shall be distributed and applied towards restoration of the Real Estate or repayment of the Obligations in accordance with the provisions of Section 6.38 of the Loan Agreement.

7. Condemnation/Eminent Domain. All Awards to which Mortgagor may be entitled as the lessee under the Lease resulting from the taking of the Mortgaged Property or any part thereof or interest therein by eminent domain, condemnation or otherwise or injury to the Mortgaged Property or any part thereof in connection with any such taking shall be distributed and applied towards restoration of the Real Estate or repayment of the Obligations in accordance with the provisions of Section 2.10 of the Loan Agreement.

8. Discharge of Liens: Utilities.

(a) Except for the Permitted Exceptions and except as otherwise expressly permitted in the Loan Agreement, Mortgagor shall not, without the prior written consent of Mortgagee, create, consent to or suffer the creation of any liens, charges or encumbrances (each, a "Prohibited Lien") on any of the Mortgaged Property, whether or not such Prohibited Lien is subordinate to this Mortgage, or fail to have any Prohibited Lien which may be imposed against any of the Mortgaged Property discharged and satisfied of record within thirty (30) days after it is imposed, except those liens bonded in full. Without limiting the generality of the foregoing, the term "Prohibited Lien" shall include any lien filed under any Superlien Law. Mortgagor shall pay when due all lawful claims

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and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of a Prohibited Lien, except that Mortgagor shall have the right to contest such claims or demands in good faith, provided that Mortgagor shall furnish a good and sufficient bond, surety or other security as may be necessary under applicable law to cause a stay of levy or execution or to discharge such claim or demand.

(b) To the extent required of the lessee under each Lease, Mortgagor shall pay when due all utility charges which are incurred by it for gas, electricity, water or sewer services and all other assessments or charges of a similar nature, whether public or private and whether or not such taxes, assessments or charges are liens on the Mortgaged Property.

(c) Except as expressly permitted in the Loan Agreement, Mortgagor shall not, without Mortgagee's express written consent, modify, amend or terminate any Reciprocal Easement Agreement or enter into any similar easement, construction, development or operating agreement affecting the Mortgaged Property.

9. Estoppel Certificates. From time to time, within ten (10) days after receipt of a written request by Mortgagee, Mortgagor shall furnish a written statement, signed and, if requested, acknowledged, certifying the amount then owing on the Obligations and whether or not any offsets or defenses are claimed to exist against the Obligations, and, at Mortgagee's request, such other matters as may be reasonably requested.

10. Books and Records. Mortgagor shall at all times keep and maintain records and books of account with respect to the Mortgaged Property as required by the Loan Agreement.

11. Expenses. Mortgagor shall pay, together with any interest or penalties imposed in connection therewith, all expenses incident to the preparation, execution, acknowledgment, delivery and/or recording of this Mortgage, including all filing, registration or mortgage recording fees or taxes (whether recurring or non-recurring), tangible or intangible taxes (whether recurring or non-recurring) and all federal, state, county and municipal, internal revenue or other stamp taxes and other taxes, duties, imposts, assessments and charges now or hereafter required by the federal, state, county or municipal government except any corporate, franchise or income taxes imposed upon Mortgagee.

12. Mortgagee's Costs and Expenses. Upon the occurrence and continuance of any Event of Default or the exercise by Mortgagee of any of its rights hereunder, or if any action or proceeding be commenced, to which action or proceeding Mortgagee is or becomes a party or in which it becomes necessary or desirable to defend or maintain the priority of the lien of this Mortgage, or if

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the taking, holding or servicing of this Mortgage by Mortgagee is alleged to subject Mortgagee to any civil fine, or if Mortgagee's review and approval of any document is requested by Mortgagor or required by Mortgagee, all costs, expenses and fees incurred by Mortgagee in connection therewith (including any civil fines, court costs, attorneys' fees and disbursements actually incurred) shall, on notice and demand, be paid by Mortgagor, together with interest thereon at the Default Rate and shall be a lien on the Mortgaged Property and shall be secured by this Mortgage; and, in any action to foreclose this Mortgage, or to recover or collect the Obligations, the provisions of this Article 12 with respect to the recovery of costs, disbursements and allowances shall prevail unaffected by the provisions of any law with respect to the same to the extent that the provisions of this Article 12 are not inconsistent therewith or violative thereof.

13. Mortgagee's Right To Perform. If Mortgagor shall fail to make any payment or perform or observe any act required to be made, performed or observed by Mortgagor under this Mortgage, the Loan Agreement or the other Loan Documents, within the applicable grace or notice periods, if any, then, at any time, and without waiving or releasing any such failure by Mortgagor, Mortgagee may, upon five Business Days' prior notice (or such longer period as provided in this Mortgage), but shall not be obligated to, make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter upon the Mortgaged Property for such purpose to take all such action thereon as Mortgagee may deem necessary or appropriate for such purpose to the extent permissible under applicable law. All sums so paid by Mortgagee and all costs and expenses, including, without limitation, attorneys' fees, so incurred, together with interest thereon at the Default Rate, shall immediately be due from Mortgagor upon demand by Mortgagee and the same shall be secured by this Mortgage.

14. Further Assurances. At any time and from time to time, upon written request by Mortgagee, Mortgagor will, within fifteen (15) days of such request, make, execute and deliver or cause to be made, executed and delivered to Mortgagee, any and all other further instruments, certificates and other documents as may be necessary in order to effectuate, complete, reaffirm or perfect or to continue and preserve the obligation of Mortgagor under the Note, the Loan Agreement and/or the other Loan Documents and the lien of this Mortgage. Upon any failure by Mortgagor to comply with its obligations hereunder (including, without limitation, the filings required under Article 25), Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of Mortgagor and Mortgagor irrevocably makes, constitutes and appoints Mortgagee (and all officers, employees or agents designated by Mortgagee) as Mortgagor's true and lawful attorney (and agent-in-fact) for such purpose.

15. Assignment of Subleases and Rents. As of the date of this Mortgage, as security in addition to the property described

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in this Mortgage, Mortgagor has executed that certain Assignment of Subleases and Rents whereby Mortgagor assigned to Mortgagee all of its right, title and interest in and to all Leases (the "Space Leases") and Rents as defined therein. All of the terms and conditions of the Assignment of Subleases and Rents are hereby incorporated by reference.

16. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default by Mortgagor hereunder:

(a) the occurrence of any Event of Default under the Loan Agreement; or

(b) if Mortgagor fails to make any payment of interest and/or principal under the Note when due; or

(c) if Mortgagor defaults in the payment of any sum due under this Mortgage (not including any principal, interest or other sums required to be paid by Mortgagor pursuant to the Note) and such default is not cured within the applicable period set forth in this Mortgage, or if no period is set forth in this Mortgage, thirty (30) days, and following such grace period, such default is not cured within ten (10) days after written notice thereof is given to Mortgagor; or

(d) if Mortgagor fails to perform or observe any term, provision, condition, covenant, warranty or representation contained in this Mortgage, which is required to be performed, observed or kept by Mortgagor within the time period required by specific provisions of this Mortgage, or, if no such time period is provided, and the default is susceptible of cure and any delay in exercising Mortgagee's remedies hereunder could not have a material adverse effect on the enforceability of this Mortgage or the value of the security provided under the Mortgage, then within thirty (30) days after Mortgagor's receipt of written notice thereof; provided, however, that (A) there shall be no grace or notice period applicable to any such default which is willfully and knowingly committed, and (B) in the case of any such default which is susceptible of cure but not within the applicable time period provided, any delay in exercising Mortgagee's remedies hereunder beyond such applicable time period would not have a material adverse effect on the enforceability of this Mortgage or the value of the security provided under this Mortgage, no Event of Default shall be deemed to occur so long as Mortgagor promptly commences to cure such default within the applicable time period and thereafter diligently and continuously pursues such cure to completion; or

(e) except as expressly permitted hereunder or in the Loan Agreement, if Mortgagor sells, conveys, assigns, leases or subleases or transfers the Mortgaged Property (any sale,

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conveyance, assignment or transfer of a controlling interest in Mortgagor being deemed a sale, conveyance, assignment or transfer of the Mortgaged Property), or any part thereof or any interest therein or if the same are further mortgaged, pledged or otherwise encumbered, including rents, royalties, issues, profits, income and revenue arising therefrom, whether superior or inferior to the lien of this Mortgage, whether recourse or nonrecourse; or

(f) the occurrence of any event of default (including the expiration of any applicable grace and/or notice period) under the Lease.

17. Remedies. Subject to the provisions of Article 49E hereof, upon the occurrence and continuance of any Event of Default hereunder, Mortgagee, by written notice given to Mortgagor, may, at its option, declare the Obligations in whole or in part at the discretion of Mortgagee as provided in the Loan Agreement to be immediately due and payable, and upon such declaration the Obligations shall become and be immediately due and payable without any presentment, demand, protest or notice of any kind or any suretyship defenses generally (except as may be required by law), all of which are hereby waived by Mortgagor, anything in the Note, the Loan Agreement, this Mortgage or the other Loan Documents to the contrary notwithstanding, and Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce Mortgagee's rights against Mortgagor in and to the Mortgaged Property, including, but not limited to, the exercise of any or all of the following actions:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, and exclude Mortgagor, its agents, servants and employees wholly therefrom, and Mortgagee may do any acts which it deems necessary to preserve the value, marketability, condition or rentability of the Mortgaged Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents, issues, profits and other income thereof and therefrom, including those past due and unpaid, and apply the same, less costs and expenses of operations and collection including attorneys' fees and expenses actually incurred, upon the Obligations secured hereby, as provided in the Loan Documents. Upon every such entry, Mortgagee, at the expense of Mortgagor, from time to time, either by purchase, repairs or construction, may maintain, restore and insure the Mortgaged Property; and likewise, from time to time, at the expense of Mortgagor, Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto as Mortgagee may deem advisable. Without limiting the

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generality of the foregoing, Mortgagee shall have the right to use, operate, manage and control the Mortgaged Property and to carry on the business and exercise all rights and powers of Mortgagor, either in the name of Mortgagor, or otherwise, as Mortgagee shall deem advisable. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in the Note, the Loan Agreement, the other Loan Documents, this Mortgage or by law upon occurrence of any Event of Default.

(b) Commence an action to foreclose this Mortgage as a lien, appoint a receiver or specifically enforce any of the covenants hereof, and sell the Mortgaged Property under the judgment or decree of a court or courts of competent jurisdiction in accordance with and in the manner prescribed by applicable law.

(c) Elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Land or the Improvements without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with Article 18 below, separate and apart from the sale of real property. The election by Mortgagee to sell any part of the Mortgaged Property pursuant to Article 18 shall not preclude it from exercising any of its other rights pursuant to the Note, the Loan Agreement, the other Loan Documents or this Mortgage or by law upon the occurrence and continuance of an Event of Default, including, but not limited to, the right to commence an action to foreclose this Mortgage as a lien.

(d) In the event of any sale of the Mortgaged Property pursuant to subparagraph (b) above or (e) below, Mortgagee shall apply the purchase money, proceeds or avails of such sale as provided in the Loan Agreement. In the event foreclosure is commenced but not completed, Mortgagor shall pay all costs and expenses of the proceeding, including attorneys' fees. Except as may be otherwise provided by applicable law, no purchaser of all or any part of the Mortgaged Property shall be required to see to the proper application of the purchase money, proceeds or avails of any such sale of the Mortgaged Property.

(e) Elect to exercise any and all other rights and remedies against Mortgagor and the Mortgaged Property as are permitted under the laws of the state in which the Real Estate is located.

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18. Power to Sell Mortgaged Property Treated as Personal Property. Pursuant to Article 25 below, this Mortgage shall constitute a Security Agreement under Article 9 of the Code. Should Mortgagee elect to cause any of the Mortgaged Property to be disposed of as personal property as permitted by subparagraph (c) of Article 17 above, it may dispose of any part thereof in any manner now or hereafter permitted by the Code or in accordance with any other remedy provided by applicable law. Any such disposition may be conducted by an employee or agent of Mortgagee. Both Mortgagee and Mortgagor shall be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Mortgagee may so elect, subject to the provisions of the Code. Expenses of retaking, holding, preparing for sale, selling or the like shall include Mortgagee's attorneys' fees and legal expenses, and upon an Event of Default and delivery of notice by Mortgagee of its intention to exercise its rights under this Section 18, Mortgagor shall assemble such personal property and make it available to Mortgagee. Mortgagee shall give Mortgagor at least ten (10) Business Days' prior written notice of the time and place of any public or private sale or other disposition of such property and if such notice is sent to Mortgagor in the manner provided herein for the mailing of notices, and in compliance with the time requirements provided above, it shall constitute reasonable notice to Mortgagor.

19. Proceeds of Sale Made Pursuant to Security Agreement. The purchase money, proceeds or avails of any sale made pursuant to any security agreement contained in this Mortgage shall be distributed according to the applicable provisions of the Uniform Commercial Code of the state in which the Real Estate is located.

20. Right of Mortgagee to Credit Sale. Upon any sales made hereunder, whether made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Obligations the net sales price after deducting therefrom the expenses of sale and the cost of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage, and, in such event, this Mortgage, the Note and documents evidencing expenditures secured hereby shall be presented to the person or persons conducting the sale in order that the amount so used or applied may be credited upon the Obligations as having been paid.

21. Appointment of Receiver. If an Event of Default shall have occurred and be continuing, Mortgagee as a matter of right and without notice to Mortgagor, and without regard to the then value of the Mortgaged Property or any other collateral securing the Obligations or the interest of Mortgagor therein, or the solvency or insolvency of Mortgagor or any person or entity, if any, which might be liable for the payment of all or any part of the Obligations, shall have the right to apply to any court having

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jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Mortgagor hereby irrevocably waives notice of any application therefor (except as may be required by law). Any such receiver or receivers shall have all the usual powers and duties of receivers which may be necessary or usual in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in Article 17(a) and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated. The court may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of the Obligations in accordance with the provisions of the Loan Agreement.

22. Extension, Release, etc. Without affecting the lien or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid Obligations, Mortgagee may, from time to time and without notice, agree to (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such Obligations, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (v) take or release any other or additional security for any Obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

23. Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of the Obligations secured hereby and to exercise all rights and powers under this Mortgage or any other Loan Document or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce, or cause to be enforced, this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein, in any other Loan Document or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in any other Loan Document or at law or in equity or by statute. Every power or remedy given to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee.

24. Successor Mortgagor. In the event ownership of the Mortgaged Property or any portion thereof becomes vested in a person other than the Mortgagor herein named, Mortgagee may,

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without notice to the Mortgagor herein named, whether or not Mortgagee has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Mortgage and the Obligations and in the same manner as with Mortgagor herein named, without in any way vitiating or discharging Mortgagor's liability hereunder or under the Obligations or in any way, by waiver or otherwise, impairing or affecting Mortgagee's right to accelerate the Obligations.

25. Security Agreement Under Uniform Commercial Code.

It is the intention and agreement of the parties hereto that this Mortgage shall constitute a Security Agreement within the meaning of Article 9 of the Code, and Mortgagor hereby grants to Mortgagee a security interest in the Mortgaged Property and the proceeds therefrom. For purposes of the Code, Mortgagor is a "debtor" and Mortgagee is a "secured party" and the respective addresses for notice to Mortgagor, as debtor, and Mortgagee, as secured party, are as set forth in Article 30 hereof. Upon the occurrence and continuance of an Event of Default under this Mortgage, Mortgagee shall have all rights and remedies of a secured party under the Code. Notwithstanding the filing of a financing statement covering any of the Mortgaged Property in the records normally pertaining to personal property, all of the Mortgaged Property, for purposes of establishing a security interest in all proceedings, legal or equitable, shall be regarded at Mortgagee's option (to the extent permitted by law), as part of the Real Estate whether or not any such item is physically attached to the Real Estate or serial numbers are used for the better identification of certain items. The mention in any such financing statement of any of the Mortgaged Property shall never be construed as in any way derogating from or impairing this declaration and it is the hereby stated intention of the parties that such mention in the financing statement is hereby declared to be for the protection of Mortgagee in the event any court shall at any time hold that notice of Mortgagee's priority of interest, to be effective against any third party, including the federal government and any authority or agency thereof, must be filed in the Code records. Mortgagor hereby agrees that it shall execute and hereby authorizes Mortgagee to file any financing and continuation statements which Mortgagee shall determine in its sole discretion are necessary or advisable in order to perfect its security interest granted herein covered by this Mortgage, and Mortgagor shall pay to Mortgagee, on demand, any expenses incurred by Mortgagee in connection with the preparation, execution, and filing of such statements.

26. Indemnification; Waiver of Claim. If Mortgagee is made a party defendant to any litigation concerning this Mortgage or the Mortgaged Property or any part thereof or interest therein, or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify, defend and hold Mortgagee harmless from all liability by reason of such litigation (other than that arising from Mortgagee's own willful misconduct or negligence), including attorneys' fees and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to judgment. If Mortgagee

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commences an action against Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof, or for the recovery of any sum secured hereby, Mortgagor shall pay Mortgagee's attorneys' fees and the expenses actually incurred, together with interest thereon at the Default Rate from the date the same are paid by Mortgagee to the date of reimbursement by Mortgagor, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, shall be enforceable whether or not such action is prosecuted to judgment, and shall be secured by this Mortgage. If an Event of Default shall have occurred and is continuing, Mortgagee may engage an attorney or attorneys to protect its rights hereunder, and in the event of such engagement, Mortgagor shall pay Mortgagee's attorneys' fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of breach.

27. No Waivers, etc. Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the security held for the Obligations without, as to the remainder of the security, in anywise impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Mortgagee may resort for the payment of the Obligations to any other security therefor held by Mortgagee as provided in the Loan Agreement and/or the other Loan Documents.

28. Waivers by Mortgagor. Upon the happening and continuation of an Event of Default hereunder, Mortgagor hereby waives, to the extent permitted by applicable law, any right to any notices of an Event of Default (except as may be required pursuant to the terms hereof) or of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under this Mortgage and all benefit of any present or future statute of limitations or moratorium law or any other present or future law, regulation or judicial decision, and Mortgagor shall not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of any statute, law, regulation or judicial decision which (i) exempts any of the Mortgaged Property or any other property, real or personal, or any part of the proceeds arising from any sale thereof from attachment, levy or sale under execution, (ii) provides for any stay of execution, moratorium, marshalling of assets, exemption from civil process, redemption, extension of time for payment or valuation or appraisal of any of the Mortgaged Property, (iii) requires Mortgagee to institute proceedings in mortgage foreclosure against the Mortgaged Property before exercising any other remedy afforded

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Mortgagee hereunder upon the occurrence of an Event of Default, or (iv) conflicts with or may affect, adverse to Mortgagee, any provision, covenant or term of this Mortgage. No action for the enforcement of the lien or any provisions of this Mortgage shall be subject to any defenses which would not be good and available to the party interposing the same in any action at law upon the Obligations secured thereby.

29. Notices. All notices, requests, consents and demands hereunder shall be in writing and shall be effective and deemed given to Mortgagor or Mortgagee, as the case may be, (i) five (5) Business Days after deposit in the U.S. mails, registered or certified mail, return receipt requested, postage prepaid, or (ii) on the date personally delivered to the party to which sent (upon an officer, general partner or officer of a general partner of the other party if such party is not an individual), or (iii) on the date transmitted by a legible telecopier transmission, or (iv) one (1) Business Day after delivery to an overnight courier, such as Federal Express, in all cases addressed to the respective party at the address set forth below:

If to Mortgagor:

Win Realty Holdings, Inc.
Suite 1070
1440 Broadway
New York, New York 10018
Attention: Walter F. Loeb
Facsimile No.: (212) 575-2993

with copies to:

Gibson, Dunn & Crutcher
200 Park Avenue
New York, New York 10166
Attention: Charles K. Margulis, Esq.
Facsimile No.: (212) 351-4036

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If to Mortgagee:

Fifth Avenue Capital Trust
c/o Wilmington Trust Company
Rodney Square North
Wilmington, Delaware 19890
Attention: Corporate Trust Administrator
Facsimile No.: (302) 651-8882

with copies to:

Financial Security Assurance Inc.
350 Park Avenue
New York, New York 10022
Attention: Surveillance Department
Facsimile No.: (212) 755-5165

with copies to:

Rogers & Wells
200 Park Avenue
New York, New York 10166
Attention: Lewis B. Stone, Esq.
Facsimile No.: (212) 878-8160

In the event notice is given by more than one of the methods described above, such notice shall be deemed effective on the earliest of the applicable delivery dates. Any party may change the address to which notices are to be sent by notice of such change to the other parties given as provided herein.

30. Taxes on Mortgage. In the event of the imposition after the date of this Mortgage of any law of the United States of America, the state in which the Real Estate is located, or any municipality, or of any government, domestic or foreign, claiming to have jurisdiction hereof, which imposes a tax, either directly or indirectly, on this Mortgage, the Note or the Loan Agreement, Mortgagee shall have the right to declare all sums outstanding secured by this Mortgage immediately due and payable, provided, however, that such election shall be ineffective if Mortgagee is exempt from such tax or if Mortgagor is permitted by law to pay the whole of such tax (or to provide funds to Mortgagee to pay such tax) in addition to all other payments required hereunder and if Mortgagor pays such tax (or provides funds to Mortgagee to pay such tax) when the same is due and payable and agrees in writing to pay such tax when thereafter levied or assessed against the Real Estate.

31. No Modification. This Mortgage may not be modified, amended, discharged or waived in whole or in part except by operation of law, or an agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

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32. Miscellaneous.

(a) As used in this Mortgage, the singular shall include the plural and the use of any gender shall include all genders, as the context requires and the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (iii) "lien" shall mean "lien, charge, encumbrance, security interest, mortgage and/or deed of trust"; (iv) "obligation" shall mean "obligation, duty, covenant and/or condition"; (v) "any of the Mortgaged Property" shall mean "the Mortgaged Property or any part thereof or interest therein"; and (vi) "attorneys' fees" shall mean any amounts required or permitted to be paid hereunder regardless of whether an action is commenced, prosecuted, settled or compromised through all appellate proceedings and shall also be deemed to include the value of Mortgagee's in-house counsel, if any, the reasonable costs of printing, the cost of appeal bonds and the attorneys' fees, costs and disbursements actually incurred in collecting attorneys' fees allowed to any party under this Mortgage, the Note, the Loan Agreement and/or the other Loan Documents;

(b) For purposes of this Mortgage (i) the term "Loan Agreement" shall mean and refer to the Loan Agreement and all subsequent amendments, modifications, extensions and renewals thereof and (ii) the term "Note" shall mean and refer to the Note and all subsequent renewals, extensions, modifications or amendments thereof;

(c) Any act which Mortgagee is permitted to perform hereunder may be performed at any time and from time to time by Mortgagee or any person or entity designated by Mortgagee. Any act which is prohibited to Mortgagor hereunder is also prohibited to all lessees or sublessees of any of the Mortgaged Property;

(d) Each appointment of Mortgagee as attorney-in-fact for Mortgagor under this Mortgage is irrevocable and coupled with an interest; and

(e) This Mortgage has been fully discussed and negotiated among the parties and their respective attorneys, and shall be construed without regard to any rule, canon, presumption or aid requiring construction against the party causing this Mortgage to be drafted.

33. Captions. The captions or headings at the beginning of each Article hereof are for the convenience of the parties and are not a part of this Mortgage.

34. Successors and Assigns. The covenants contained herein shall run with the land and bind the Mortgagor, its successors and assigns, and all subsequent owners, encumbrancers,

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tenants, subtenants and licensees of the Mortgaged Property, and shall inure to the benefit of Mortgagee and its successors, assigns and endorsees; provided, however, that, except as otherwise expressly provided in the Loan Agreement, Mortgagor shall have no right to assign its interests or obligations hereunder without the prior written consent of Mortgagee. Mortgagor acknowledges and agrees that (i) Mortgagee intends to assign all of its estate, right, title and interest under this Mortgage to the Collateral Agent as agent for Financial Security Assurance, Inc. ("Financial Security") and Bankers Trust Company Limited, as Note Trustee ("Bankers Limited") pursuant to a certain Collateral Assignment Agreement of even date herewith and a Collateral Assignment of Security Documents of even date herewith to be recorded in the appropriate Recorder's Office immediately after the recordation of this Mortgage in such office; (ii) Financial Security, Bankers Limited, and Bankers Trust Company, as Collateral Agent, have entered into a certain Intercreditor Agreement of even date herewith which designates which of Financial Security and Bankers Limited will control actions taken with respect to this Mortgage (the "Controlling Person" or the "Controlling Party"), (iii) upon such assignment of this Mortgage, all references in this Mortgage to rights, remedies, powers and privileges of, and duties and reimbursement obligations to, Mortgagee shall be deemed to be references to rights, remedies, powers and privileges of, and duties and reimbursement obligations to, the Collateral Agent, (subject to the control of the Controlling Party), and all payments and deposits to be made to Mortgagee hereunder shall be made to the Collateral Agent or, with respect to certain deposits under the Loan Agreement, to such other party as the Collateral Agent may designate in writing (subject to the control of the Controlling Party), and (iv) all powers of attorney granted from Mortgagor to Mortgagee herein shall include a full right of substitution, including successors and assigns. Mortgagor further acknowledges and agrees that, upon the assignment of the Note, the Other Notes, this Mortgage and the other Security Documents from Mortgagee to the Collateral Agent as agent for Financial Security and Bankers Limited pursuant to the Collateral Assignment Agreement, the Note, the Other Notes and this Mortgage will be transferred to and delivered to the Collateral Agent as agent for Bankers Limited and for Financial Security, as their interests may appear under the Collateral Assignment Agreement.

35. Enforceability; Severability. The creation of this Mortgage, the perfection of the lien or security interest in the Mortgaged Property, and the rights and remedies of Mortgagee with respect to the Mortgaged Property, as provided herein and by the laws of the state in which the Real Estate is located, shall be governed by and construed in accordance with the internal laws of the state in which the Real Estate is located without regard to principles of conflict of law. Otherwise, to the extent permitted by applicable law, this Mortgage, the Note and the Loan Agreement (including the liability of Mortgagor for any deficiency following a foreclosure of all or any part of the Mortgaged Property) shall be governed by and construed in accordance with the internal laws

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of the state of New York without regard to principles of conflicts of laws, such state being the state where such documents were negotiated, executed and delivered. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Mortgage. Nothing in this Mortgage shall require Mortgagor to pay, or Mortgagee to accept, interest or other payments in an amount which would subject Mortgagee to penalty under applicable law. In the event that the payment of any interest or other amounts due hereunder would or could be deemed in excess of the maximum amount allowed by applicable law, then ipso facto the obligation of Mortgagor to make such payment shall be reduced to the highest rate authorized under such law. To the extent any interest paid by Mortgagor is in excess of the maximum amount permitted by applicable law, such excess shall be deemed paid in reduction of the unpaid principal balance of the Note.

36. Receipt of Copy. Mortgagor acknowledges that it has received a true copy of this Mortgage.

37. Conflicts. In the event of any ambiguity or inconsistency in the provisions hereof, which could be clarified by the Loan Agreement, reference shall be made to the provisions of the Loan Agreement. The provisions of this Mortgage shall not be construed to require any action by Mortgagor that would violate the terms of the Loan Agreement.

38. Intentionally Deleted.

39. Multisite Real Estate Transaction. Mortgagor acknowledges that this Mortgage is one of a number of cross-defaulted and cross collateralized mortgages, deeds of trust and other security documents (for purposes of this article, collectively the "Other Security Documents") which collectively secure the Obligations. Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by Mortgagee of any security for or guarantors upon any of the Obligations or by any failure, neglect or omission on the part of the Mortgagee to realize upon or protect any of the Obligations or any collateral security therefor including the Other Security Documents. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or any disposition of any of the Obligations or of any of the collateral security therefor, including the Other Security Documents or of any guarantee thereof. To the extent not prohibited by applicable law, Mortgagee may, at its discretion, foreclose, or exercise any other

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remedy available to it under any or all of the Other Security Documents without first exercising or enforcing any of its rights and remedies hereunder, or may foreclose, or exercise any other right available under this Mortgage without first exercising or enforcing any of its rights or remedies under any or all of the Other Security Documents. Such exercise of Mortgagee's rights and remedies under any or all of the Other Security Documents shall not in any manner impair the Obligations or the lien of this Mortgage, and any exercise of the rights or remedies of the Mortgagee hereunder shall not impair the lien of any of the Other Security Documents or any of Mortgagee's rights and remedies thereunder. Mortgagor specifically consents and agrees that Mortgagee may exercise its rights and remedies hereunder and under the Other Security Documents separately or concurrently and in any order that it may deem appropriate.

40. Satisfaction and Cancellation. If Mortgagor shall pay the Obligations in full in accordance with their terms, and if Mortgagor performs and complies with the agreements, conditions, covenants and stipulations contained in this Mortgage and the Loan Documents, then, upon the request of either Mortgagor or Mortgagee under applicable law, this Mortgage shall become null and void and shall be canceled of record at the expense of Mortgagor in accordance with the terms of the Loan Agreement.

41. Fixture Filing. Part of the Mortgaged Property constituting Fixtures are or may become fixtures related to the Mortgaged Property as contemplated by the Code. It is intended that, as to such fixtures, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of the filing of the Mortgage for record with the office of the Recorder of Deeds for Cook County, Illinois. The information provided in this Article 41 is provided in order that this Mortgage shall comply with the requirements of the Code for a mortgage instrument to be filed as a financing statement. The Mortgagor is the "Debtor" and its name and mailing address are set forth in Article 29 hereof. The "Secured Party" is the Mortgagee and its name and mailing address from which information concerning the security interest granted herein may be obtained are as set forth in Article 29 hereof. A statement describing the items comprising the fixtures hereby secured is set forth hereinabove within the definition of the term "Mortgaged Property."

42. Declaration of Subordination. At the sole and exclusive option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation proceeds), to any one, or more, leases, or subleases, of all or any part of the Real Estate upon the execution by Mortgagee and recording thereof, at any time hereafter in the appropriate official records of the County wherein the Real Estate is situated, of a unilateral declaration to that effect.

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43. Lease Covenants. With respect to the Lease:

(a) Except as expressly permitted in the Loan Agreement, Mortgagor shall not (i) cancel, release, terminate or surrender the Lease, or permit any cancellation, release, termination or surrender of the Lease, or (ii) amend, modify or alter the terms of the Lease, or (iii) waive, excuse, condone or in any way release or discharge in any material respect the Lessor thereunder of or from the obligations, covenants, conditions and agreements by such Lessor to be performed under the Lease, or (iv) further assign or transfer the interest of the lessee under the Lease. For purposes of this Article 43, the term "terminate" shall also refer to any right of termination afforded to Mortgagor as lessee under the Lease pursuant to any applicable federal or state law relating to bankruptcy, reorganization or other relief for debtors, whether now or hereafter in effect, including the right under Section 365(h) of the Bankruptcy Code to treat the Lease as terminated in the event of a rejection of the Lease by a trustee in bankruptcy of the Lessor. Subject to the terms and conditions of the Loan Agreement, Mortgagor does by these presents expressly release, relinquish and assign unto Mortgagee all its right, power and authority to cancel, release, terminate or surrender the Lease.

(b) Mortgagor shall at all times promptly and faithfully keep, perform and comply with, or cause to be kept, performed and complied with, and prior to the expiration of the applicable grace period, if any, all of the terms, provisions, covenants, conditions and agreements contained in the Lease to be kept, performed and complied with by the lessee therein, including, but not limited to, the covenant to pay all rent and other charges.

(c) Mortgagor shall give Mortgagee prompt notice in writing of any notice of default given by Mortgagor to, or received by Mortgagor from, the Lessor under the Lease, by providing to Mortgagee a photostatic copy of any such notice given or received by Mortgagor and this shall be done without regard to the fact that Mortgagee may be entitled to such notice directly from the Lessor. Mortgagor shall promptly furnish to Mortgagee upon Mortgagee's reasonable request any and all information concerning the performance by Mortgagor of the provisions of the Lease and shall permit Mortgagee or its representative at all reasonable times to make investigations or examinations concerning the performance by Mortgagor of the provisions of the Lease. Within fifteen (15) days after receipt of a written request from Mortgagee, Mortgagor shall deposit with Mortgagee any and all documentary evidence received by Mortgagor showing compliance by it with the provisions of the Lease and shall deposit with Mortgagee an exact copy of any notice, communication, plan, specification or other instrument or document received or given by Mortgagor in any way relating to or affecting the Lease which may

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concern or affect the estate of the Lessor or the lessee in or under the Lease or the property leased thereby.

(d) If any action or proceeding shall be instituted to evict Mortgagor or to terminate the Lease or for any other purpose affecting the Lease or this Mortgage, Mortgagor will, immediately upon service thereof on or to Mortgagor, deliver to Mortgagee a true copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings and papers, however designated, served in any such action or proceeding. Mortgagor shall consult with Mortgagee prior to instituting any action or proceeding against the Lessor in connection with the Lease, but nothing contained herein shall obligate Mortgagee to become a party to or participate in any such action or proceeding.

(e) Notwithstanding any other provision of this Mortgage or the Lease, if Mortgagor shall fail so to do, Mortgagee may (but shall not be obligated to) take any such action Mortgagee deems reasonably necessary to prevent, mitigate or cure, in whole or in part, any default by Mortgagor under the Lease; provided that Mortgagee shall have first given Mortgagor notice of Mortgagee's intent so to act and a reasonable time for Mortgagor to act to prevent or cure such default and Mortgagor fails so to act, unless Mortgagee, in its reasonable judgment determines that there is inadequate time for either such notice or delay for Mortgagor's action if none were taken, in order to protect Mortgagee's interest in its security in the Lease; and upon the receipt by Mortgagee from Mortgagor or the Lessor under the Lease of any written notice of default by Mortgagor as the lessee thereunder, Mortgagee may rely thereon, and such notice shall constitute full authority and protection to Mortgagee for any action taken by Mortgagee or its agents in good faith reliance thereon. All sums, including reasonable attorneys' fees, so expended by the Mortgagee to prevent, mitigate, or cure any such default, or expended to sustain the lien of this Mortgage or its priority, together with interest thereon (i) at the Default Rate, if an Event of Default has occurred, or (ii) at the Note Rate, if no Event of Default has occurred, shall be deemed secured by this Mortgage and shall be payable within ten (10) days after demand. Nothing in this paragraph (e) shall limit Mortgagor's rights under the Lease to contest requirements of law or other similar matters to the fullest extent permitted by the Lease. Mortgagor hereby expressly grants to Mortgagee, and agrees that Mortgagee, upon ten (10) days' notice (except in the event of an emergency), shall have the absolute and immediate right to enter in and upon the Real Estate or any part thereof to such extent and as often as Mortgagee, in its reasonable judgment, deems necessary to prevent or cure any such default or condition reasonably believed by Mortgagee to constitute a default.

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(f) Mortgagor shall give Mortgagee prompt written notice of the commencement of any arbitration or appraisal proceeding under and pursuant to the provisions of the Lease.

(g) So long as this Mortgage is in effect, there shall be no merger of the Lease or any interest therein, or of the leasehold estate created thereby, with the fee estate in the Real Estate or any portion thereof by reason of the fact that the Lease or such interest therein or such leasehold estate may be held directly or indirectly by or for the account of any person who shall hold the fee estate in the Real Estate or any portion thereof or any interest of the Lessor under the Lease. In the event Mortgagor acquires the fee title to the Real Estate, this Mortgage shall attach to and cover and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, mortgage or conveyance, become and be subject to the lien of and covered by this Mortgage. Mortgagor shall notify Mortgagee of any such acquisition, and, on written request by Mortgagee, shall cause to be executed and recorded all such other and further assurances or other instruments in writing as may in the opinion of Mortgagee be necessary or appropriate to effect the intent and meaning hereof and shall deliver to Mortgagee a loan title insurance policy insuring that such fee title or other estate is subject to the lien of this Mortgage.

(h) In the event that Mortgagor as lessee under the Lease exercises any option or right to purchase any parcel of land and/or improvements located thereon which option or right is granted under the Lease, then upon the vesting of the title of such parcel in Mortgagor, this Mortgage shall attach to and cover and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, mortgage or conveyance, become and be subject to the lien of and covered by this Mortgage.

(i) In the event that Mortgagor intends to acquire fee title to the leasehold estate as described in paragraph (g) above or exercise any option or right as described in paragraph (h) above, Mortgagor shall provide Mortgagee with written notice of its intent to so acquire or its decision to exercise its option or right not less than 10 days prior to such acquisition or the exercise of such right or option.

(j) Mortgagor shall do, or cause to be done, all things necessary to preserve and keep unimpaired the rights of Mortgagor as lessee under the Lease. Mortgagor will enforce the obligations of the Lessor under the Lease to the end that Mortgagor may enjoy all of the rights granted to it under the Lease.

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44. Provisions Required by the Lease:

(a) This Mortgage conveys to Mortgagee no rights in the premises demised under the Lease greater than or extending beyond the rights of Mortgagor under the Lease. This Mortgage is subject to all and each of the rights of the Lessor and to all and each of the conditions, covenants, agreements and obligations contained in the Lease.

(b) The Lessor shall be entitled to notice of an Event of Default under this Mortgage and shall be entitled to a period of sixty (60) days after such notice to cure such Event of Default (or, if such Event of Default is not reasonably curable within such sixty (60) day period, such additional period as the Lessor may reasonably require to cure such Event of Default with due diligence).

(c) If an Event of Default occurs that is not curable by the Lessor, or if Lessor elects not to cure such Event of Default, the Lessor shall have the right to pay the entire amount of the indebtedness secured hereby, including accrued interest, attorneys' fees and any other costs and expenses which under the terms of this Mortgage may be added to the indebtedness and, upon such payment, the Lessor shall be entitled to receive from Mortgagee an assignment of all Mortgagee's right, title and interest in this Mortgage.

45. Marshalling. Upon any foreclosure sale of the Mortgaged Property, the same may be sold either as a whole or in parcels, as Mortgagee may elect, and if in parcels, the same may be divided as Mortgagee may elect, and at the election of Mortgagee, may be offered first in parcels and then as a whole, that offer producing the highest price for the entire property to prevail. Any law, statutory or otherwise, to the contrary notwithstanding, Mortgagor hereby waives the right to require any such sale to be made in parcels or the right to select such parcels.

46. Mortgagee-in-Possession. It is understood and agreed that (to the extent not prohibited by law) neither the Assignment of Subleases and Rents referred to in Article 15 above nor the exercise by Mortgagee of any of its rights or remedies under this Mortgage shall be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof, nor shall appointment of a receiver for the Mortgaged Property by any court at the request of Mortgagee or by agreement with Mortgagor or the entering into possession of the Mortgaged Property or any part thereof by such receiver be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

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47. WAIVER OF TRIAL BY JURY. IT IS MUTUALLY AGREED BY AND BETWEEN MORTGAGOR AND MORTGAGEE THAT THE RESPECTIVE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, CLAIM, SUIT, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS MORTGAGE AND/OR THE CONDUCT OF THE RELATIONSHIP BETWEEN MORTGAGOR AND MORTGAGEE.

48. Bankruptcy Code. The lien of this Mortgage includes and attaches to all of lessee's rights and remedies at any time arising under or pursuant to section 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), including, without limitation, all of lessee's rights to remain in possession of the Mortgaged Property thereunder.

49. Additional Provisions.

A. Loan to a Corporation.

Mortgagor covenants that the proceeds of the loan secured by this Mortgage will be disbursed to a corporation as specified in Paragraph 1(a) of Section 6404, Chapter 17 of the Illinois Revised Statutes, as amended, and that the principal obligation secured hereby comes within the purview of said paragraph.

B. Waiver of Right of Redemption.

Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate or residential real estate. Mortgagor hereby voluntarily and knowingly releases and waives any and all rights to retain possession of the Mortgaged Property after the occurrence of an Event of Default hereunder, and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to the rights therein granted, as allowed under Section 15-1601(b) of the Illinois Mortgage Foreclosure Law (Chapter 110, Sections 15-1101, et seq., Illinois Revised Statutes), as amended from time to time, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and all such other persons are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law or replacement statute. Mortgagor shall not invoke or utilize any such law or laws or otherwise hinder, delay, or impede the execution of any right, power and remedy herein or otherwise granted or delegated to the Mortgagee, but shall permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

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C. Rights of Tenants.

Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior and superior to that of Mortgagee. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Obligations secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

D. Relationship of the Mortgagee and Mortgagor.

Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any beneficiary, tenant, subtenant, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a "mortgagee in possession" or exercising any rights pursuant to this Mortgage, the Loan Agreement, any of the Other Loan Documents, or otherwise.

E. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 110, Sections 15-1101 et seq., Illinois Revised Statutes), as amended from time to time (herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Article 12 or elsewhere in this Mortgage, shall be added to the Obligations secured by this Mortgage or by the judgment of foreclosure.

F. No Merger.

It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple or leasehold title to the Mortgaged Property, it is hereby understood and agreed that should Mortgagee acquire any additional

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or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple or leasehold title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple or leasehold title.

WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed by its duly authorized representative as of the day and year first above written.

WIN REALTY HOLDINGS, INC., a
Delaware corporation

By: 

Name:

Title:

DUNCAN D. MACAULAY
Vice President

Attest: 

Name:

Title:

DAMIEN ABBOTT
Assistant Secretary

[SEAL]

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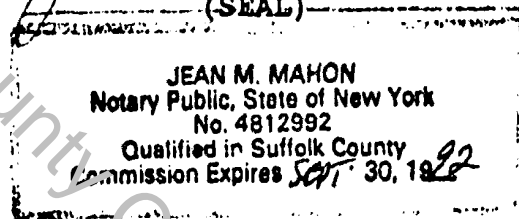
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, JEAN M. MAHON, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Duncan Macaulay, the Vice President of WIN REALTY HOLDINGS, INC., a Delaware corporation (the "Corporation"), and Damien Abbott, the Assistant Secretary of the Corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Duncan Macaulay and Damien Abbott, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument pursuant to authority given by the Board of Directors of the Corporation as their own free and voluntary act and as the free and voluntary act of the Corporation, for the uses and purposes therein set forth.

GIVEN under by hand and notarial seal, this 31st day of December, 1990.

Jean M. Mahon
Notary Public

(SEAL)



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COOK COUNTY CLERK'S OFFICE
100 NORTH LAKE STREET
CHICAGO, ILLINOIS 60601
TEL: 312.603.1000 FAX: 312.603.1001
WWW.COOKCOUNTYCLERK.IL.GOV

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R&W NO. 017

SCHEDULE 1

12/29/90

RELEASE PRICE: \$15,000,000.00

Description of Mortgage Notes

1

PROPERTY NUMBER(S):	NOTE AMOUNT:	MAKER(S):	MORTGAGED PROPERTY(IES) ADDRESS:	TYPE OF NOTE:
001	\$3,243,184.00	Win Realty Holdings, Inc.	2500 East Camelback Road Phoenix, Arizona	Other Note
002	\$34,807,500.00	Calwin Realty, Inc.	9600 Wilshire Boulevard Beverly Hills, California	Other Note
003	\$0.00	Calwin Realty, Inc.	1750 Camino Del Rio North San Diego, California	Other Note
004	\$1,739,472.00	Calwin Realty, Inc.	211 North Palm Canyon Drive Palm Springs, California	Other Note
005	\$2,358,606.00	Calwin Realty, Inc.	500 Stanford Shopping Center Palo Alto, California	Other Note
006	\$23,868,000.00	Calwin Realty, Inc.	384 Post Street at Powell San Francisco, California	Other Note
007	\$4,510,834.00	Calwin Realty, Inc.	333 Bristol Street Costa Mesa, California	Other Note

*Aggregate indebtedness evidenced by single consolidated note in the amount of \$27,249,300.00.

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R&W NO. 017

SCHEDULE 1

12/29/90

RELEASE PRICE: \$15,000,000.00

Description of Mortgage Notes

2

PROPERTY NUMBER(S):	NOTE AMOUNT:	MAKER(S):	MORTGAGED PROPERTY(IES) ADDRESS:	TYPE OF NOTE:
008	\$6,762,600.00	Calwin Realty, Inc.	30 Woodland Hills Promen Woodland Hills, California	Other Note
009	\$3,390,496.00	Win Realty Holdings, Inc.	2900 East First Avenue Denver, Colorado	Other Note
010	\$4,481,352.00	Win Realty Holdings, Inc.	140 Atlantic Street Stamford, Connecticut	Other Note
011	\$4,157,043.00	Win Realty Holdings, Inc.	9700 Collins Avenue Bal Harbour, Florida	Other Note
012	\$6,869,441.00	Win Realty Holdings, Inc.	5820 Glades Road Boca Raton, Florida	Other Note
013	\$6,780,993.00	Win Realty Holdings, Inc.	7687 North Kendall Avenue Dadeland, Florida	Other Note
014	\$2,358,606.00	Win Realty Holdings, Inc.	2598 East Sunrise Boulevard Fort Lauderdale, Florida	Other Note

*Aggregate indebtedness evidenced by single consolidated note in the amount of \$27,249,300.00.

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R&W NO. 017

SCHEDULE 1

12/29/90

RELEASE PRICE: \$15,000,000.00

Description of Mortgage Notes

3

PROPERTY NUMBER(S):	NOTE AMOUNT:	MAKER(S):	MORTGAGED PROPERTY(IES) ADDRESS:	TYPE OF NOTE:
015	\$7,567,540.00	Win Realty Holdings, Inc.	172 Worth Avenue Palm Beach, Florida	Other Note
016	\$7,193,749.00	Win Realty Holdings, Inc.	3440 Peach Tree Road Atlanta, Georgia	Other Note
017	\$12,972,334.00	Win Realty Holdings, Inc.	700 North Michigan Avenue Chicago, Illinois	Note
018	\$4,540,317.00	Win Realty Holdings, Inc.	4 Oakbrook Center Oakbrook, Illinois	Other Note
019	\$1,491,750.00	Win Realty Holdings, Inc.	150 East Huron Chicago, Illinois	Other Note
020	\$5,778,585.00	Or. Win, Inc.	301 Canal Street New Orleans, Louisiana	Other Note
022	\$7,889,700.00	Win Realty Holdings, Inc.	5555 Wisconsin Avenue Chevy Chase, Maryland	Other Note

*Aggregate indebtedness evidenced by single consolidated note in the amount of \$27,249,300.00.

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R&W NO. 017

SCHEDULE 1

12/29/90

RELEASE PRICE: \$15,000,000.00

Description of Mortgage Notes

4

PROPERTY NUMBER(S):	NOTE AMOUNT:	MAKER(S):	MORTGAGED PROPERTY(IES) ADDRESS:	TYPE OF NOTE:
023	\$6,000,157.00	Win Realty Holdings, Inc.	10400 Mill Run Circle Owings Mills, Maryland	Other Note
024	\$3,978,000.00	Win Realty Holdings, Inc.	Fairlane Town Center Dearborn, Michigan	Other Note
025	\$13,027,950.00	Win Realty Holdings, Inc.	2901 West Big Beaver Road Troy, Michigan	Other Note
026	\$4,009,631.00	Win Realty Holdings, Inc.	65 Nicollet Mall Minneapolis, Minnesota	Other Note
027	\$4,835,143.00	Win Realty Holdings, Inc.	One Plaza Frontenac Frontenac, Missouri	Other Note
028	\$3,243,084.00	Win Realty Holdings, Inc.	444 Nichols Road Kansas City, Missouri	Other Note
029	\$7,429,610.00	Win Realty Holdings, Inc.	380 Hackensack Avenue Hackensack, New Jersey	Other Note

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SCHEDULE 1

12/29/90

RELEASE PRICE: \$15,000,000.00

Description of Mortgage Notes

5

PROPERTY NUMBER(S):	NOTE AMOUNT:	MAKER(S):	MORTGAGED PROPERTY(IES) ADDRESS:	TYPE OF NOTE:
031	\$7,651,650.00	Win Realty Holdings, Inc.	Milburn and Short Hills Avenue Springfield, New Jersey	Other Note
032	\$4,717,212.00	Win Realty Holdings, Inc.	3200 Las Vegas Boulevard South Las Vegas, Nevada	Other Note
033	\$5,370,300.00	York Win Realty, Inc.	1300 Franklin Avenue Garden City, New York	Other Note*
034	\$9,282,000.00	Fifteenth Win, Inc.	425-450 West 15th Street New York, New York	Other Note
035	\$222,436,500.00	Fifth Win, Inc.	611-615 Fifth Avenue New York, New York	Other Note
036	\$6,961,500.00	York Win Realty, Inc.	85-137 Bloomingdale Avenue White Plains, New York	Other Note*
037	\$14,917,500.00	York Win Realty, Inc.	555 Tuckahoe Road Yonkers, New York	Other Note*

*Aggregate indebtedness evidenced by single consolidated note in the amount of \$27,249,300.00.

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R&W NO. 017

SCHEDULE 1

12/29/90

RELEASE PRICE: \$15,000,000.00

Description of Mortgage Notes

6

PROPERTY NUMBER(S):	NOTE AMOUNT:	MAKER(S):	MORTGAGED PROPERTY(IES) ADDRESS:	TYPE OF NOTE:
038	\$6,721,049.00	Ohio Win, Inc.	26100 Cedar Road Beachwood, Ohio	Other Note
039	\$4,805,660.00	Ohio Win, Inc.	Fifth and Race Streets Cincinnati, Ohio	Other Note
040	\$0.00	Win Realty Holdings, Inc.	1780 Utica Square Tulsa, Oklahoma	Other Note
041	\$2,388,089.00	Win Realty Holdings, Inc.	250 South West Fifth Avenue Portland, Oregon	Other Note
042	\$5,896,516.00	Win Realty Holdings, Inc.	2 Bala Plaza Bala Cynwyd, Pennsylvania	Other Note
043	\$1,886,885.00	Win Realty Holdings, Inc.	513 Smithfield Street Pittsburgh, Pennsylvania	Other Note
044	\$6,309,272.00	Tex Win, Inc.	13250 Dallas Parkway Dallas, Texas	Other Note

*Aggregate indebtedness evidenced by single consolidated note in the amount of \$27,249,300.00.

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R&W NO. 017

SCHEDULE 1

12/29/90

RELEASE PRICE: \$15,000,000.00

Description of Mortgage Notes

7

PROPERTY NUMBER(S):	NOTE AMOUNT:	MAKER(S):	MORTGAGED PROPERTY(IES) ADDRESS:	TYPE OF NOTE:
045	\$3,184,118.00	Tex Win, Inc.	1800 Post Oak Boulevard Houston, Texas	Other Note
046	\$4,707,300.00	Tex Win, Inc.	650 North Star Mall San Antonio, Texas	Other Note
047	\$7,491,900.00	Vir. Win, Inc.	2051 International Drive McLean, Virginia	Other Note

*Aggregate indebtedness evidenced by single consolidated note in the amount of \$27,249,300.00.

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R&W #17 GD&C #IL23L

Chicago, Illinois

Exhibit A

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF ILLINOIS, COUNTY OF COOK AND IS DESCRIBED AS FOLLOWS:

Parcel One

Lots 3 and 4 in Chicago Place Subdivision, being a resubdivision of the land property and space within Block 46 (Except the 75.00 feet thereof) in Kinzie's Addition to Chicago in the North 1/2 of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, according to the plat thereof recorded September 7, 1990 as Document 90435974.

Parcel Two

THE BENEFIT OF THE EASEMENTS CONTAINED IN EASEMENT AND OPERATING AGREEMENT EXECUTED BETWEEN FRANKEL/FORBES-COHEN ASSOCIATES, SAKS & COMPANY AND BEVERLY PROPERTIES, INC., DATED AUGUST 9, 1990 AND RECORDED ON OCTOBER 15, 1990 AS DOCUMENT NO. 90487310.

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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated as of December 31, 1990 (this "Agreement") is by and among the corporations listed on Schedule 1 (the "Borrowers"), each a Delaware corporation, and FIFTH AVENUE CAPITAL TRUST, a Delaware business trust (the "Issuer").

RECITALS

A. Pursuant to the Indenture (the "Indenture"), dated as of the date hereof between the Note Trustee (as hereinafter defined), the Principal Paying Agent (as hereinafter defined) and the Issuer, the Issuer is issuing certain notes in an aggregate original principal amount of \$500 million (the "Notes").

B. Repayment of the Notes is irrevocably guaranteed pursuant to a financial guaranty insurance policy (the "Note Policy") issued by Financial Security.

C. The Issuer desires to lend and the Borrowers desire to borrow the proceeds from the sale of the Notes together with additional funds of the Issuer, subject to and in accordance with the terms and conditions of this Agreement and secured as provided herein.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the loans hereunder and other mutual promises and agreements contained herein, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I.

DEFINITIONS

For the purposes of this Agreement, capitalised terms not otherwise defined herein shall have the following meanings:

"Accrual Period" for any Interest Payment Date shall mean the period that commences on and includes the day (the "Accrual Period Commencement Date") six (6) Business Days after the immediately preceding Interest Payment Date and ends on and includes the day (the "Accrual Period End Date") three (3) calendar months after the Accrual Period Commencement Date, unless the Accrual Period End Date would fall on a day that is not a Eurodollar Business Day, in which case the Accrual Period End Date shall be the next succeeding Eurodollar Business Day, provided

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Rider P. 2

"Alternate Adjustment Factor" shall mean for each Borrower for any month the percentage that, when added or subtracted from a Mortgage Note Rate of 12.25%, will result in such Borrower's income from Saks Leases in the month of calculation, after deducting FSA Premium Expense, Other Expenses and the Liquidity Fee, being equal to the total amount of interest payable on such Borrower's Mortgage Notes. Notwithstanding the foregoing, if the weighted average of all Alternate Mortgage Rates calculated using an Alternate Adjustment Factor determined as described in the preceding sentence exceeds 12.25%, then each Borrower's Alternate Rate shall be reduced proportionately so that such weighted average Alternate Rate will equal 12.25%.

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that, if such succeeding Eurodollar Business Day is in the next succeeding calendar month, such Accrual Period End Date instead shall be the Eurodollar Business Day immediately preceding the day three (3) months after the preceding Accrual Period End Date, and each subsequent Accrual Period End Date shall be the last Eurodollar Business Day of the third calendar month after the calendar month in which the preceding Accrual Period End Date shall have fallen, provided, further, that the first Accrual Period shall commence on December 31, 1990 and end on January 14, 1991 and the second Accrual Period shall commence on January 14, 1991 and end on March 14, 1991.

"Additional Amounts" shall have the meaning set forth in the Indenture.

Under → "Alternate Rate" for any ~~Accrual Period~~ ^{Month} shall mean for any Borrower the higher of (a) the Mortgage Note Rate for such Accrual Period and (b) a per annum rate equal to the sum of (i) twelve and one-quarter percent (12.25%) ^{plus} ~~less~~ the Adjustment Factor for such Borrower, (ii) if any Interest Rate Cap Counterparty is in default under its Interest Rate Cap Agreement, the increase in such Borrower's Blended Cap Rate caused by such default, and (iii) the product (converted to a percentage) of (A) a fraction, the numerator of which is the sum of (1) any Additional Amounts payable by the Issuer for the related Accrual Period and the denominator of which is the aggregate principal amount of the Mortgage Notes outstanding on the Accrual Period Commencement Date for the related Accrual Period multiplied by (B) a fraction, the numerator of which is 360 and the denominator of which is the number of days in such Accrual Period, including the first day but excluding the last day thereof; provided, however, if interest calculated at the Alternate Rate, together with all additional interest payable in respect of any Mortgage Note pursuant to

Alternate →

on to
Accrual
Period
Commencement
Date
shall be
Adjusted

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Section 2.2 and all other consideration which would constitute interest under applicable law, results in a rate of interest for any Accrual Period which exceeds the maximum rate of interest permitted by law applicable to any Mortgage Note (after giving effect to any adjustment permitted by law to the) applicable to such Mortgage Note for any Accrual Periods other than such Accrual Period), the Alternate Rate for such Accrual Period for such Mortgage Note shall be limited to a rate of interest which would not cause the total interest consideration to exceed the maximum legal rate, and the Alternate Rate for all other Mortgage Notes shall be increased in a manner such that (i) the aggregate interest payment due on all Mortgage Notes after such adjustments shall be equal to the aggregate interest payment due on all Mortgage Notes had no adjustments been necessary, and (ii) the amount of interest accrued on all such other Mortgage Notes is increased pro rata based upon the outstanding principal balances thereof, but shall not be increased to a rate in excess of the maximum rate of interest permitted by law applicable to such other Mortgage Notes.

"Base Rate" shall mean, for the first Accrual Period, 9.125% per annum and, for any Accrual Period thereafter, the rate of interest per annum notified by the Issuer to the Borrowers no later than the Accrual Period Commencement Date for such Accrual Period and determined as follows (any such determination to be made