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COOK COUNTY CLERK'S OFFICE  
112 N. LAUREL ST. CHICAGO, ILL. 60602  
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*J.C.*  
*(4)*

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Michael B. Johnson, Esq.  
Winstead Sechrest & Mitchell  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270

*(2)*

TO BE RECORDED IN THE  
REAL PROPERTY RECORDS OF  
COOK COUNTY, ILLINOIS

## MORTGAGE AND SECURITY AGREEMENT

Loan No. 20761

THIS MORTGAGE AND SECURITY AGREEMENT (his "Mortgage") is entered into between O.P., L.L.C., an Illinois limited liability company, as Mortgagor ("Mortgagor"), whose address is 430 West Erie, Suite 430, Chicago, Illinois 60610, to and COLUMN FINANCIAL, INC., a Delaware corporation, as Mortgagee ("Mortgagee"), whose address is 3414 Peachtree Road, N.E., Suite 1140, Atlanta, Georgia 30326-1113.

### WITNESSETH:

That for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor hereby irrevocably mortgages and warrants, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns, and grants a security interest, to Mortgagee and its successors and assigns all of the following described property, whether now owned or hereafter acquired (collectively, the "Property"):

ARTICLE (A) All that certain real property situated in the County of Cook, State of Illinois, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Land"), together with all of the easements, rights, privileges, franchises,

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*Bank Co., L.L.C.*

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tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Mortgagor therein or thereto, either at law or in equity, in possession or in expectancy, now owned or hereafter acquired;

ARTICLE (B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Land (the "Improvements");

ARTICLE (C) All furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Mortgagor and now or hereafter located on, attached to or used in and about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Mortgagor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Land or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

ARTICLE (D) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

ARTICLE (E) All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Land or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

ARTICLE (F) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

ARTICLE (G) All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Mortgagee pursuant to this Mortgage, the Cash Management Agreement of even date herewith between Mortgagor and Mortgagee (hereinafter, the "Cash Management Agreement") or any other of the Loan Documents (as hereinafter defined), including, without limitation, all funds now or hereafter on deposit in the Central Account, the Rent Account, the Security Deposit Sub-Account and all other Accounts and Sub-Accounts described or created by the Cash Management Agreement;

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ARTICLE (H) All leases, licenses, concessions and occupancy agreements of the Land or the Improvements now or hereafter entered into and all rents, royalties, issues, profits, bonus money, revenue, income, rights and other benefits (collectively, the "Rents and Profits") of the Land or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future lease (including, without limitation, oil, gas and mineral leases), license, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees or licensees, as applicable, of their obligations under any such leases, licenses, concessions or occupancy agreements, whether said cash or securities are to be held until the expiration of the terms of said leases, licenses, concessions or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject, however, to the provisions contained in Section 1.11 hereinbelow;

ARTICLE (I) All contracts and agreements now or hereafter entered into covering any part of the Land or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Land or the Improvements (including plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Land or the Improvements;

ARTICLE (J) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Land or the Improvements;

ARTICLE (K) All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including, without limitation, trademarks, trade names, service marks and symbols now or hereafter used in connection with any part of the Land or the Improvements, all names by which the Land or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Mortgagor has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Land or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Land or the Improvements (collectively, the "General Intangibles");

ARTICLE (L) All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Land or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Land or the Improvements;

ARTICLE (M) All building materials, supplies and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Land or the Improvements;

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ARTICLE (N) All right, title and interest of Mortgagor in any insurance policies or binders now or hereafter relating to the Property, including any unearned premiums thereon;

ARTICLE (O) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

ARTICLE (P) All other or greater rights and interests of every nature in the Land or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Mortgagor.

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FOR THE PURPOSE OF SECURING:

(1) The debt evidenced by that certain Promissory Note (such Promissory Note, together with any and all renewals, modifications, consolidations and extensions thereof, is hereinafter referred to as the "Note") of even date with this Mortgage, made by Mortgagor to the order of Mortgagee in the principal face amount of THIRTEEN MILLION AND NO/100 DOLLARS (\$13,000,000.00), together with interest at a rate of 7.95% and having a maturity date of December 1, 2007;

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the Note, this Mortgage, the Cash Management Agreement and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") and the payment of all other sums therein covenanted to be paid, including, without limitation, any applicable yield maintenance premiums;

(3) Any and all additional advances made by Mortgagee to protect or preserve the Property or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Mortgagor's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Mortgagor remains the owner of the Property at the time of such advances) together with interest as provided herein or in the other Loan Documents; and

(4) Any and all other indebtedness now owing or which may hereafter be owing by Mortgagor to Mortgagee, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof, it being contemplated by Mortgagor and Mortgagee that Mortgagor may hereafter become so indebted to Mortgagee.

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(All of the sums referred to in Paragraphs (1) through (4) above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby"). The principal amount of the indebtedness secured hereby shall not exceed the original principal amount of the Note.

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns forever, and Mortgagor does hereby bind itself, its successors and assigns, to **WARRANT AND FOREVER DEFEND** the title to the Property unto Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof;

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall have been paid and all other covenants contained in the Loan Documents shall have been performed, then, in such case, the liens, security interests, estates and rights granted by this Mortgage shall be satisfied and the estate, right, title and interest of Mortgagee in the Property shall cease, and upon payment to Mortgagee of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, Mortgagee shall satisfy and release this Mortgage and the lien hereof by proper instrument.

## ARTICLE I COVENANTS OF MORTGAGOR

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For the purpose of further securing the indebtedness secured hereby and for the protection of the security of this Mortgage, for so long as the indebtedness secured hereby or any part thereof remains unpaid, Mortgagor covenants and agrees as follows:

1.1 Warranties of Mortgagor. Mortgagor, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Mortgagee, its successors and assigns, that:

(a) Mortgagor has good and indefeasible fee simple title to the Property, subject only to those matters expressly set forth on Exhibit B attached hereto and by this reference incorporated herein (the "Permitted Exceptions"), and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer and encumber its interest in the Property in the manner and form hereby done or intended. Mortgagor will preserve its interest in and title to the Property and will forever warrant and defend the same to Mortgagee against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever, subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure of this Mortgage and shall inure to the benefit of and be enforceable by Mortgagee in the event Mortgagee acquires title to the Property pursuant to any foreclosure;

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(b) No bankruptcy or insolvency proceedings are pending or contemplated by Mortgagor or, to the best knowledge of Mortgagor, against Mortgagor or by or against any endorser, cosigner or guarantor of the Note;

(c) All reports, certificates, affidavits, statements and other data furnished by Mortgagor to Mortgagee in connection with the loan evidenced by the Note are true and correct as of the date hereof in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading in any material respect;

(d) The execution, delivery and performance of this Mortgage, the Note and all of the other Loan Documents have been duly authorized by all necessary action to be, and are, binding and enforceable against Mortgagor in accordance with the respective terms thereof (subject only to legal rights generally available to borrowers pursuant to equitable principles, insolvency statutes or bankruptcy law) and do not contravene, result in a breach of or constitute (upon the giving of notice or the passage of time or both) a default under the partnership agreement, articles of incorporation or other organizational documents of Mortgagor or any contract or agreement of any nature to which Mortgagor is a party or by which Mortgagor or any of its property may be bound and do not violate or contravene any law, order, decree, rule or regulation to which Mortgagor is subject;

(e) The Land and the Improvements and the intended use thereof by Mortgagor comply with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property; provided, however, certain aspects of the Improvements may be legal but non-conforming. The Land and Improvements constitute a separate tax parcel for purposes of ad valorem taxation. The Land and Improvements do not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements;

(f) All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or perpetual private easements approved by Mortgagee;

(g) All streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Land and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Land and the Improvements without further condition or cost to Mortgagor;

(h) All curb cuts, driveways and traffic signals, if any, shown on the survey delivered to Mortgagee prior to the execution and delivery of this Mortgage are existing and have been fully approved by the appropriate governmental authority;

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(i) There are no judicial, administrative, mediation or arbitration actions, suits or proceedings pending or threatened against or affecting Mortgagor, (and, if Mortgagor is a partnership, any of its general partners or if Mortgagor is a limited liability company, any member of Mortgagor) or the Property which, if adversely determined, would materially impair either the Property or Mortgagor's ability to perform the covenants or obligations required to be performed under the Loan Documents;

(j) The Property is free from delinquent water charges, sewer rents, taxes and assessments;

(k) As of the date of this Mortgage, the Property is free from unrepaired damage caused by fire, flood, accident or other casualty;

(l) As of the date of this Mortgage, no part of the Land or the Improvements has been taken in condemnation, eminent domain or like proceeding nor is any such proceeding pending or to Mortgagor's knowledge and belief, threatened or contemplated;

(m) To Mortgagor's best knowledge and belief, Mortgagor possesses all franchises, patents, copyrights, trademarks, trade names, licenses and permits adequate for the conduct of its business substantially as now conducted;

(n) The Improvements are structurally sound, in good repair and free of defects in materials and workmanship. To Mortgagor's best knowledge and belief, all major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition;

(o) Mortgagor has delivered to Mortgagee true, correct and complete copies of all Contracts and all amendments thereto or modifications thereof;

(p) Mortgagor and the Property are free from any past due obligations for sales and payroll taxes;

(q) There are no security agreements or financing statements affecting any of the Property other than (i) as disclosed in writing by Mortgagor to Mortgagee prior to the date hereof and (ii) the security agreements and financing statements created in favor of Mortgagee;

(r) The Property forms no part of any property owned, used or claimed by Mortgagor as a residence or business homestead and is not exempt from forced sale under the laws of the State of Illinois. Mortgagor hereby disclaims and renounces each and every claim to all or any portion of the Property as a homestead;

(s) Mortgagor has delivered a true, correct and complete schedule (the "Rent Roll") of all leases affecting the Property (collectively, "Leases") as of the date hereof, which accurately and completely sets forth in all material respects for each such Lease, the following:

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the name of the tenant, the lease expiration date, extension and renewal provisions, the base rent payable, and the security deposit held thereunder;

(t) Each Lease constitutes the legal, valid and binding obligation of Mortgagor and, to the best of Mortgagor's knowledge and belief, is enforceable against the tenant thereof. No default exists, or with the passing of time or the giving of notice would exist, under any Lease which would, in the aggregate, have a material adverse effect on Mortgagor or the Property;

(u) No tenant under any Lease has, as of the date hereof, paid rent more than thirty (30) days in advance, and the rents under such Leases have not been waived, released, or otherwise discharged or compromised;

(v) All work to be performed by Mortgagor under the Leases has been substantially performed; all contributions to be made by Mortgagor to the tenants thereunder have been made and all other conditions precedent to each such tenant's obligations thereunder have been satisfied;

(w) Each tenant under a Lease has entered into occupancy of the demised premises;

(x) Mortgagor has delivered to Mortgagee true, correct and complete copies of all Leases described in the Rent Roll;

(y) To the best of Mortgagor's knowledge and belief, each tenant is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors; and

(z) Without limitation to the tenants' rights of occupancy pursuant to the Leases, no Lease provides any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Mortgage.

1.2 Defense of Title. If, while this Mortgage is in force, the title to the Property or the interest of Mortgagee therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Mortgagor, at Mortgagor's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel approved by Mortgagee, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Mortgagee reasonably determines that Mortgagor is not adequately performing its obligations under this Section, Mortgagee may, without limiting or waiving any other rights or remedies of Mortgagee hereunder, take such steps with respect thereto as Mortgagee shall deem necessary or proper and any and all costs and expenses incurred by Mortgagee in connection therewith, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand

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and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.3 Performance of Obligations. Mortgagor shall pay when due the principal of and the interest on the indebtedness evidenced by the Note. Mortgagor shall also pay all charges, fees and other sums required to be paid by Mortgagor as provided in the Loan Documents, and shall observe, perform and discharge all obligations, covenants and agreements to be observed, performed or discharged by Mortgagor set forth in the Loan Documents in accordance with their terms. Further, Mortgagor shall promptly and strictly perform and comply with all covenants, conditions, obligations and prohibitions required of Mortgagor in connection with any other document or instrument affecting title to the Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Mortgage.

1.4 Insurance. Mortgagor shall, at Mortgagor's expense, maintain in force and effect on the Property at all times while this Mortgage continues in effect the following insurance:

(a) "All-risk" coverage insurance against loss or damage to the Property from all-risk perils. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Mortgagor from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Mortgagee's election, by reference to such indices, appraisals or information as Mortgagee determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Mortgagee's approval.

(b) Commercial general liability insurance for personal injury, bodily injury, death and property damage liability in amounts not less than \$2,000,000.00 per occurrence, \$3,000,000.00 (inclusive of umbrella coverage) or such lesser amount as Mortgagee may accept, in its sole discretion, for bodily injury, personal injury and property damage. This policy must contain, but not be limited to, coverage for premises and operations liability, products and completed operations liability, contractual liability, hired and non-owned automobile liability, personal injury liability and property damage liability. During any construction on the Land, Mortgagor's general contractor for such construction shall also provide (or cause its subcontractors to provide) the insurance required in this Subsection (b). Mortgagee hereby retains the right to periodically review the amount of said liability insurance being maintained by Mortgagor and to require an increase in the amount of said liability insurance should Mortgagee deem an increase to be reasonably prudent under then existing circumstances.

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(c) Insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, high pressure piping and machinery, elevators and escalators, if any, and other similar equipment installed in the Improvements, in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements which policies shall insure against physical damage to and loss of occupancy and use of the Improvements arising out of an accident or breakdown covered thereunder.

(d) If the Land or any part thereof is identified by the Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to one hundred (100%) of the replacement cost of the Improvements or the maximum amount of flood insurance available, whichever is the lesser.

(e) During the period of any construction on the Land or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value" or "Course of Construction" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount approved by Mortgagee and Worker's Compensation Insurance covering all persons engaged in such construction, renovation or alteration.

(f) Rental value or rental income insurance in amounts sufficient to compensate Mortgagor for all Rents and Profits during a period of not less than one year in which the Property may be damaged or destroyed.

(g) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Mortgagee against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (i) be with insurers authorized to do business in the state within which the Land is located and who have and maintain a rating of at least the third (3rd) highest rating category by Moody's, Duff & Phelps, Fitch Investors or Standard & Poors (or, at Mortgagee's election, a Best Insurance Reports rating of A-V or better), (ii) contain the complete address of the Land (or a complete legal description), (iii) be for terms of at least one year, (iv) contain deductibles no greater than \$10,000.00 or as otherwise required by Mortgagee, and (v) be subject to the approval of Mortgagee as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates.

Mortgagor shall as of the date hereof deliver to Mortgagee evidence that said insurance policies have been paid current as of the date hereof and certified copies of such insurance policies and original certificates of insurance signed by an authorized agent evidencing such insurance satisfactory to Mortgagee. Mortgagor shall renew all such insurance and deliver to Mortgagee certificates evidencing such renewals at least thirty (30) days before any such insurance shall expire. Without limiting the required endorsements to insurance policies,

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Mortgagor further agrees that all such policies shall provide that proceeds thereunder shall be payable to Mortgagee, its successors and assigns, pursuant and subject to a mortgagee clause (without contribution) of standard form attached to, or otherwise made a part of, the applicable policy and that Mortgagee, its successors and assigns, shall be named as an additional insured under all liability insurance policies. Mortgagor further agrees that all such insurance policies: (i) shall provide for at least thirty (30) days' prior written notice to Mortgagee prior to any cancellation or termination thereof and prior to any modification thereof which affects the interest of Mortgagee; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Mortgagee in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of such insurance; and (iii) shall either name Mortgagee as an additional insured or waive all rights of subrogation against Mortgagee. The delivery to Mortgagee of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies by Mortgagor to Mortgagee as further security for the indebtedness secured hereby. In the event of foreclosure of this Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Mortgagor in and to all proceeds payable under such policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Mortgagee or other transferee in the event of such other transfer of title. Approval of any insurance by Mortgagee shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Mortgage or evidence of their renewal as required herein, Mortgagee may, but shall not be obligated to, procure such insurance and Mortgagor shall pay all amounts advanced by Mortgagee, together with interest thereon at the Default Interest Rate from and after the date advanced by Mortgagee until actually repaid by Mortgagor, promptly upon demand by Mortgagee. Any amounts so advanced by Mortgagee, together with interest thereon, shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Mortgagee shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Mortgagee has caused the insurance to be placed with the insurer after failure of Mortgagor to furnish such insurance.

1.5 Payment of Taxes. Mortgagor shall pay or cause to be paid all Impositions (as such term is defined in the Cash Management Agreement). Except to the extent provision is otherwise made pursuant to Section 1.6 of this Mortgage, Mortgagor shall furnish Mortgagee with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such Impositions at least fifteen (15) days prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Mortgagor may in good faith, by appropriate proceedings and upon notice to Mortgagee, contest the validity, applicability or amount of any asserted Imposition so long as (a) such contest is diligently pursued, (b) Mortgagee determines, in its subjective opinion, that such contest suspends the obligation to pay the Imposition and that nonpayment of such Imposition will not result in the sale, loss, forfeiture or diminution of the Property or any part thereof or any interest of Mortgagee therein, and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted Imposition, Mortgagor

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deposits in the Impound Costs Sub-Account (as defined in the Cash Management Agreement) an amount determined by Mortgagee to be adequate to cover the payment of such Imposition and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Mortgagor shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the Imposition together with any interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

1.6 Tax and Insurance Impound Costs Sub-Account. Simultaneously with the execution hereof, Mortgagor shall deposit with Mortgagee the Initial Impound Costs Deposit (as such term is defined in the Cash Management Agreement) in an amount determined by Mortgagee to be necessary to ensure that there will be on deposit with Mortgagee an amount which, when added to the monthly payments subsequently required to be deposited with Mortgagee hereunder on account of real estate taxes, assessments and insurance premiums, will result in there being on deposit with Mortgagee in the Impound Costs Sub-Account an amount sufficient to pay the next due annual installment of real estate taxes and assessment on the Property at least one (1) month prior to the delinquency date thereof and the next due annual insurance premiums with respect to the Property at least one (1) month prior to the due date thereof. Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Mortgagor shall pay to Mortgagee by distribution from the Rent Account or otherwise as provided in the Cash Management Agreement, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, the Impound Costs Monthly Installment (as such term is defined in the Cash Management Agreement). So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Impound Account shall be held by Mortgagee in the Impound Costs Sub-Account to pay said taxes, assessments and insurance premiums in accordance with the terms of this Mortgage and Cash Management Agreement. Mortgagor shall be responsible for ensuring the receipt by Mortgagee, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Costs Sub-Account, and so long as no default hereunder or under the other Loan Documents has occurred and is continuing, Mortgagee shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Costs Sub-Account. In making any payment from the Impound Costs Sub-Account, Mortgagee shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof. The Impound Costs Sub-Account shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Mortgagee's option and in Mortgagee's discretion, may either be held in a separate account or be commingled by Mortgagee with the general funds of Mortgagee.

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1.7 TILC Reserve.

(a) TILC Reserve - Procedures.

(1) (i) As additional security for the indebtedness secured hereby, Mortgagor shall establish and maintain at all times while this Mortgage continues in effect a TILC Reserve Sub-Account (as defined in the Cash Management Agreement) with Mortgagee for the payment of costs and expenses incurred by Mortgagor for Tenant Improvements (hereinafter defined) and Leasing Commissions (hereinafter defined). All such sums, together with any interest thereon, are hereinafter collectively referred to as the "Funds".

(ii) As used herein, the term "Tenant Improvements" shall mean construction or modification of improvements on or installation of fixtures or equipment in the Property as required to be performed by Mortgagor pursuant to the terms of any lease which is hereafter approved or, if such lease does not require approval by Mortgagee, is hereafter entered into by Mortgagor and any tenant pursuant to Section 1.12 hereof ("Approved Lease"). As used herein, the term "Leasing Commissions" shall mean reasonable and customary commissions paid to a real estate broker licensed in the state where the Property is located in connection with an Approved Lease, pursuant to commission agreements containing such terms and provisions including, without limitation, as to the timing of the payment of the commission, as are then prevailing between third party, unaffiliated owners and brokers for comparable leases of space at properties similar to the Property in the market area in which the Property is located.

(2) Notwithstanding any provision of this Section 1.7(a) to the contrary, the Funds disbursed with respect to any particular tenant at the Property:

(i) for Tenant Improvements shall be an amount (the "Maximum Allowable TI") not to exceed, under any circumstances, the reasonable costs and expenses actually incurred by Mortgagor therefor; and

(ii) for Leasing Commissions shall be an amount (the "Maximum Allowable LC") not to exceed, under any circumstances, the commission actually incurred by Mortgagor therefor which is reasonable and customary for a licensed real estate broker in the market area in which the Property is located.

(3) (i) Mortgagor shall construct and complete all Tenant Improvements within the time periods and as required by, and in accordance with, the Approved Leases.

(ii) Mortgagor or tenant shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by all applicable

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laws with regard to the Tenant Improvements, whether necessary for commencement, completion, use or otherwise.

(iii) Mortgagor shall perform or cause to be performed all work in connection with the Tenant Improvements in a good and workmanlike manner, in compliance with all applicable laws (including, without limitation, any and all applicable life safety laws, environmental laws and laws for the handicapped and/or disabled) and, with respect only to those leases requiring Mortgagee approval, with the plans and specifications approved (in writing) by Mortgagee covering the same, which performance by Mortgagor shall be without regard to the sufficiency of the Funds.

(iv) Mortgagor covenants and agrees that Tenant Improvements shall be constructed, installed or completed, as applicable, free and clear of any and all liens (including mechanic's, materialman's or other liens), claims and encumbrances whatsoever.

(4) So long as no default hereunder or under the Loan Documents has occurred and is continuing Mortgagee shall, to the extent Funds are available for such purpose, disburse the Funds as herein provided upon satisfaction of the following conditions precedent and fulfillment of all requirements in the Cash Management Agreement:

(i) Upon receipt of a written request from Mortgagor specifying the amount requested and the applicable Tenant Improvements or Leasing Commissions to be paid for with the requested Funds ("Disbursement Request"), Mortgagee shall within ten (10) days after satisfaction of all conditions precedent set forth herein, release to Mortgagor the Funds requested in the Disbursement Request.

(ii) With respect to a Disbursement Request to pay for Tenant Improvements in excess of \$10,000, the following conditions also shall apply:

(a) Mortgagor shall provide evidence reasonably satisfactory to Mortgagee (including, without limitation, access to the Property to Mortgagee and an architect and/or engineer specified by Mortgagee for the purpose of an inspection of work done, at Mortgagor's expense, if requested by Mortgagee) that the Tenant Improvements, or such portion thereof, for which the Funds are being requested have been completed in full in a good and workmanlike manner and in accordance with Section 1.7(a):

(b) With respect to the final Disbursement Request relative to any Approved Lease, Mortgagor shall provide Mortgagee with an original estoppel certificate executed by the tenant under the Approved

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Lease for which such request relates, stating that such tenant has accepted the Tenant Improvements, and has occupied the space covered by the Tenant Improvements and that there are no defaults under such lease (nor does there exist any event or conditions, which with the passage of time or the giving of notice, or both, could result in such a default);

(c) Mortgagor shall submit to Mortgagee copies of invoices for which Funds are being requested under, any Request and if required by Mortgagee, also shall submit waivers of lien;

(d) Mortgagor shall execute and deliver to Mortgagee a certificate (in form and substance reasonably satisfactory to Mortgagee) that the Tenant Improvements covered by the applicable Disbursement Request comply with, and have fully satisfied, the terms and provisions of Section 1.7(a)(3) above; and

(e) Mortgagor shall provide Mortgagee with a copy of any and all applicable permanent certificates of occupancy and other governmental permits, if any be required, issued by applicable governmental authorities with respect to the Tenant Improvements, which certificates and permits allow the tenant pursuant to such Approved Lease, if applicable, to place merchandise in the premises under such lease in accordance with its layout design plan and to subsequently open for business as contemplated under such lease.

(iii) With respect to a Disbursement Request to pay any portion of the Leasing Commissions, Mortgagor shall provide evidence as reasonably requested by Mortgagee that such Leasing Commissions are then due and payable or have been properly paid.

(iv) With respect to each and every Disbursement Request the following terms and conditions shall apply:

(a) Mortgagor shall provide Mortgagee with such additional documents, certificates and affidavits as Mortgagee may reasonably request; and

(b) Mortgagee shall not be obligated to honor any Disbursement Request or release any of the Funds to Mortgagor:

(A) in the event of the occurrence of an Event of Default under any of the Loan Documents, or

(B) upon the occurrence of any act, event or condition that, with the giving of notice or the passage of time, or

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both, would constitute an Event of Default under any of the Loan Documents.

(5) (i) Mortgagee shall have the right (but no obligation) to enter onto the Property and perform any and all work and labor necessary to make or complete the Tenant Improvements and/or employ watchmen to protect the Property from damage. All sums so expended by Mortgagee shall be construed to have been paid to Mortgagor and shall be secured by this Mortgage. Mortgagor hereby constitutes and appoints Mortgagee its true and lawful attorney-in-fact with full power of substitution to complete or undertake the Tenant Improvements in the name of Mortgagor. This power of attorney shall be construed to be a power coupled with an interest which cannot be revoked.

(ii) The TILC Reserve Sub-Account is solely for the protection of Mortgagee and entails no responsibility on Mortgagee's part beyond the payment of the costs and expenses described in this Section 1.7(a) in accordance with the terms hereof and the Cash Management Agreement and beyond the allowing of ~~the~~ credit for the sums actually received. In the event that the amounts on deposit or available in the TILC Reserve Sub-Account are inadequate to pay the cost of the Tenant Improvements or Leasing Commissions, Mortgagor shall pay the amount of such deficiency. In making any payment from the TILC Reserve Sub-Account, Mortgagee shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office, contractor, broker or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any cost, expense, commission, assessment, lien or title or claim thereof.

(b) Deposits to Tenant Improvements and Leasing Commissions Reserve. Commencing on the first monthly payment under the Note and continuing thereafter on each monthly payment date under the Note, Mortgagor shall pay to Mortgagee, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, a deposit to the TILC Reserve Sub-Account in a monthly amount equal to the TILC Monthly Installment, subject however to the terms and limitations described in the Cash Management Agreement. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the TILC Reserve Sub-Account shall be held by Mortgagee pursuant to the Cash Management Agreement in the TILC Reserve Sub-Account to pay and/or reimburse Mortgagor for the costs and expenses of Tenant Improvements and for paying Leasing Commissions as herein set forth.

1.8 Security Interest in Reserves. As additional security for the payment and performance by Mortgagor of all duties, responsibilities and obligations under the Note and the other Loan Documents, Mortgagor hereby unconditionally and irrevocably assigns, conveys, pledges, mortgages, transfers, delivers, deposits, sets over and confirms unto Mortgagee, and hereby grants to Mortgagee a security interest in, (i) the Impound Costs Sub-Account, the TILC

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Reserve Sub-Account, and all other Accounts and Sub-Accounts described in the Cash Management Agreement (collectively, the "Reserves"), (ii) the accounts into which the Reserves have been deposited, (iii) all insurance on said accounts, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or hereafter evidencing the Reserves or such accounts, (viii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom), and (ix) all proceeds of the foregoing. Mortgagor hereby authorizes and consents to the account into which the Reserves have been deposited being held in Mortgagee's name or the name of any entity servicing the Note for Mortgagee and hereby acknowledges and agrees that Mortgagee, or at Mortgagee's election, such servicing agent, shall have exclusive control over said account. Notice of the assignment and security interest granted to Mortgagee herein may be delivered by Mortgagee at any time to the financial institution wherein the Reserves have been established, and Mortgagee, or such servicing entity, shall have possession of all passbooks or other evidences of such accounts. Mortgagor hereby assumes all risk of loss with respect to amounts on deposit in the Reserves, except to the extent such loss is caused by the gross negligence or intentional misconduct of Mortgagee. Mortgagor hereby knowingly, voluntarily and intentionally stipulates, acknowledges and agrees that the advancement of the funds from the Reserves as set forth herein is at Mortgagor's direction and is not the exercise by Mortgagee of any right of set-off or other remedy upon a default. Mortgagor hereby waives all right to withdraw funds from the Reserves except as provided herein. If a default shall occur hereunder or under any other of the Loan Documents which is not cured within any applicable grace or cure period, then Mortgagee may, without notice or demand on Mortgagor, at its option: (A) withdraw any or all of the funds (including, without limitation, interest) then remaining in the Reserves and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, attorneys' fees, costs and expenses) to the indebtedness evidenced by the Note or any other obligations of Mortgagor under the other Loan Documents in such manner as Mortgagee shall deem appropriate in its sole discretion, and the excess, if any, shall be paid to Mortgagor, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, or (C) exercise any other remedies available at law or in equity. No such use or application of the funds contained in the Reserves shall be deemed to cure any default hereunder or under the other Loan Documents.

1.9 Casualty and Condemnation. Mortgagor shall give Mortgagee prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Mortgagee. Mortgagee may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries, and Mortgagee is hereby authorized, in its own name or in Mortgagor's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Mortgagor shall from time to time deliver to

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Mortgagee any instruments required to permit such participation; provided, however, that Mortgagee shall not have the right to participate in the adjustment of any loss which is not in excess of the lesser of (i) ten percent (10%) of the then outstanding principal balance of the Note, and (ii) \$250,000.00. Mortgagee shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

(a) In the event that less than sixty percent (60%) of the Improvements located on the Land have been taken or destroyed, then if:

(1) no default is then continuing hereunder or under any of the other Loan Documents and no event has occurred which, with the giving of notice or the passage of time or both, would constitute a default hereunder or under any of the other Loan Documents, and

(2) the Property can, in Mortgagee's judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage within the earlier to occur of (i) six (6) months after the receipt of insurance proceeds or condemnation awards by either Mortgagor or Mortgagee, and (ii) the stated maturity date of the Note, and

(3) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property as described in Section 1.9(a)(2) above, and

(4) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by Mortgagor, the full amount of which shall at Mortgagee's option have been deposited with Mortgagee) for such restoration or repair (including, without limitation, for any costs and expenses of Mortgagee to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Note during such restoration or repair, and

(5) the economic feasibility of the Improvements after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Property and debt service on the indebtedness secured hereby in full with the same coverage ratio considered by Mortgagee in its determination to make the loan secured hereby, and

(6) Mortgagor shall have delivered to Mortgagee, at Mortgagor's sole cost and expense, an appraisal report in form and substance satisfactory to Mortgagee appraising the value of the Property as so restored or repaired to be not less than the appraised value of the Property considered by Mortgagee in its determination to make the loan secured hereby, and

(7) Mortgagor so elects by written notice delivered to Mortgagee within five (5) days after settlement of the aforesaid insurance or condemnation claim,

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then, Mortgagee shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required for such restoration or repair, and any funds deposited by Mortgagor therefor, to Mortgagor in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Mortgagee of plans and specifications, contractors and form of construction contracts and the furnishing to Mortgagee of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Mortgagee in its discretion, with any remainder being applied by Mortgagee for payment of the indebtedness secured hereby as set forth in the Cash Management Agreement.

(b) In all other cases, namely, in the event that sixty percent (60%) or more of the Improvements located on the Land have been taken or destroyed or Mortgagor does not elect to restore or repair the Property pursuant to clause (a) above, or otherwise fails to meet the requirements of clause (a) above, then, in any of such events, Mortgagee shall elect, in Mortgagee's absolute discretion and without regard to the adequacy of Mortgagee's security, to do either of the following: (1) accelerate the maturity date of the Note and declare any and all indebtedness secured hereby to be immediately due and payable and apply the remainder of such sums received pursuant to this Section to the payment of the indebtedness secured hereby in whatever order Mortgagee directs in its absolute discretion, with any remainder being paid to Mortgagor, or (2) notwithstanding that Mortgagor may have elected not to restore or repair the Property pursuant to the provisions of Section 1.9(a)(7) above, require Mortgagor to restore or repair the Property in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the deposit by Mortgagor with Mortgagee, within thirty (30) days after demand therefor, of any deficiency necessary in order to assure the availability of sufficient funds to pay for such restoration or repair, including Mortgagee's costs and expenses to be incurred in connection therewith, the prior approval by Mortgagee of plans and specifications, contractors and form of construction contracts and the furnishing to Mortgagee of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Mortgagee in its discretion, and apply the remainder of such sums toward such restoration and repair, with any balance thereafter remaining being applied by Mortgagee for payment of the indebtedness secured hereby in whatever order Mortgagee directs in its absolute discretion; provided, however, that no such application shall be deemed to have been made by operation of law or otherwise until actually made by Mortgagee as provided herein or in the Cash Management Agreement. Should Mortgagee require Mortgagor to restore the Property pursuant to item (2) immediately preceding and Mortgagor satisfies all other conditions and requirements herein, Mortgagee shall advance the available insurance proceeds to Mortgagor for such purpose in accordance with the procedures described in Section 1.9(a) above.

Any reduction in the indebtedness secured hereby resulting from Mortgagee's application of any sums received by it hereunder shall take effect only when Mortgagee actually receives such sums and elects to apply such sums to the indebtedness secured hereby and, in any event, the unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Mortgagor shall not be excused in the payment thereof. Partial payments received by Mortgagee, as described in the preceding sentence, shall be applied first to the final payment due under the Note

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and thereafter to installments due under the Note in the inverse order of their due date. If Mortgagor elects or Mortgagee directs Mortgagor to restore or repair the Property after the occurrence of a casualty or partial taking of the Property as provided above, Mortgagor shall promptly and diligently, at Mortgagor's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and Mortgagor shall pay to Mortgagee all costs and expenses of Mortgagee incurred in administering said rebuilding, restoration or repair, provided that Mortgagee makes such proceeds or award available for such purpose as described herein. Mortgagor agrees to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the foregoing assignment to Mortgagee of any award, damage, insurance proceeds, payment or other compensation. Mortgagee is hereby irrevocably constituted and appointed the attorney-in-fact of Mortgagor (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Mortgagor and shall not be affected by any disability or incapacity suffered by Mortgagor subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor. Notwithstanding the immediately foregoing appointment of Mortgagee, Mortgagee shall not be entitled to act pursuant to such appointment absent Mortgagor's failure to itself timely and properly act in accordance with the terms of this Mortgage.

1.10 Construction Liens. Mortgagor shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Land or the Improvements; provided, however, that, Mortgagor shall have the right to contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Mortgagee and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Mortgagor shall contest any such claim or demand, Mortgagor shall promptly notify Mortgagee of such contest and thereafter shall, upon Mortgagee's request, promptly provide a bond, cash deposit or other security satisfactory to Mortgagee to protect Mortgagee's interest and security should the contest be unsuccessful. If Mortgagor shall fail to immediately discharge or provide security against any such claim or demand as aforesaid (of which it is provided written notice), Mortgagee may do so and any and all expenses incurred by Mortgagee, together with interest thereon at the Default Interest Rate from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.11 Rents and Profits. As additional and collateral security for the payment of the indebtedness secured hereby and cumulative of any and all rights and remedies herein provided for, Mortgagor hereby absolutely and presently assigns to Mortgagee all existing and future Rents

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and Profits. Mortgagor hereby grants to Mortgagee the sole, exclusive and immediate right, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Mortgagor does hereby irrevocably make, constitute and appoint Mortgagee its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Mortgagor and shall not be affected by any disability or incapacity suffered by Mortgagor subsequent to the date hereof). Mortgagee shall be without liability for any loss which may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of a default under this Mortgage which has not been cured within any applicable grace or cure period, Mortgagor shall have a license to collect and receive the Rents and Profits when due and prepayments thereof for not more than one (1) month prior to due date thereof. Upon the occurrence of a default hereunder which has not been cured within any applicable grace or cure period, Mortgagor's license shall automatically terminate without notice to Mortgagor and Mortgagee may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Mortgagor shall be the agent of Mortgagee in collection of the Rents and Profits, and all of the Rents and Profits so collected by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Mortgagee, and Mortgagor shall, within two (2) business days after receipt of any Rents and Profits, pay the same to Mortgagee to be applied by Mortgagee as hereinafter set forth. Neither the demand for or collection of Rents and Profits by Mortgagee shall constitute any assumption by Mortgagee of any obligations under any agreement relating thereto. Mortgagee is obligated to account only for such Rents and Profits as are actually collected or received by Mortgagee. Mortgagor irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Mortgagee of a default hereunder, pay said Rents and Profits to Mortgagee without liability to determine the actual existence of any default claimed by Mortgagee. Mortgagor hereby waives any right, claim or demand which Mortgagor may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Mortgagee, and any such payment shall discharge such payor's obligation to make such payment to Mortgagor. All Rents and Profits collected or received by Mortgagee may be applied against all expenses of collection, including, without limitation, attorneys' fees, against costs of operation and management of the Property and against the indebtedness secured hereby, in whatever order or priority as to any of the items so mentioned as Mortgagee directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Mortgagee of any rights under this Section nor the application of any Rents and Profits to the secured indebtedness shall cure or be deemed a waiver of any default hereunder. The assignment of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property. Mortgagor has executed an Assignment of Leases and Rents dated of even date herewith (the "Assignment") in favor of Mortgagee covering all of the right, title and interest of Mortgagor, as landlord, lessor or licensor, in and to any leases, licenses and occupancy agreements relating to all or portions of the Property. All rights and remedies granted to Mortgagee under the Assignment shall be in addition to and cumulative of all rights and remedies granted to Mortgagee hereunder.

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## 1.12 Leases and Licenses.

(a) Mortgagor covenants and agrees that it shall not enter into any lease affecting more than three and three-tenths percent (3.3%) of the total available rental space of the Property or any lease which requires annual payments of more than three and three-tenths percent (3.3%) of the combined annual rental payments for all tenants at the Property without the prior written approval of Mortgagee, which approval shall not be unreasonably withheld; provided, however, Mortgagor shall be entitled to extend any then existing Leases pursuant to their existing terms or more favorable terms from landlord's perspective, without the prior approval of Mortgagee, so long as: (i) Mortgagee is provided with a copy of such extension agreement once executed and (ii) if requested by Mortgagee, updated estoppel certificate as to such tenant. The request for approval of each such proposed new lease shall be made to Mortgagee in writing and shall state that, pursuant to the terms of this Mortgage, failure to approve or disapprove such proposed lease within ten (10) business days is deemed approval and Mortgagor shall furnish to Mortgagee (and any loan servicer specified from time to time by Mortgagee): (i) such biographical and financial information about the proposed tenant as Mortgagee may require in connection with its review, (ii) a copy of the proposed form of lease, and (iii) a summary of the material terms of such proposed lease (including, without limitation, rental terms and the term of the proposed lease and any options). It is acknowledged that Mortgagee intends to include among its criteria for approval of any such proposed lease the following: (1) such lease shall be with a bona-fide arm's-length tenant; (2) such lease shall not contain any rental or other concessions which are not then customary and reasonable for similar properties and leases in the market area of the Land; (3) such lease shall provide that the tenant pays for its expenses; (4) the rental shall be at least at the market rate then prevailing for similar properties and leases in the market areas of the Land; and (5) such lease shall contain subordination and attornment provisions in form and content acceptable to Mortgagee. Failure of Mortgagee to approve or disapprove any such proposed lease within ten (10) business days after receipt of such written request and all the documents and information required to be furnished to Mortgagor with such request shall be deemed approval, provided that the written request for approval specifically mentioned the same.

Prior to execution of any leases of space in the Improvements after the date hereof, Mortgagor shall submit to Mortgagee, for Mortgagee's prior approval, which approval shall not be unreasonably withheld, a copy of the form lease Mortgagor plans to use in leasing such space in the Improvements or at the Property. All leases of space in the Improvements or of any portion of the Property shall be on terms consistent with the terms for similar leases in the market area of the Land, shall provide for free rent only if the same is consistent with prevailing market conditions and shall provide for market rents then prevailing in the market area of the Land. Such leases shall also provide for security deposits in reasonable amounts. Mortgagor shall also submit to Mortgagee for Mortgagee's approval, which approval shall not be unreasonably withheld, prior to the execution thereof, any proposed lease, license or occupancy agreement of the Improvements or any portion thereof that differs materially and adversely from the aforementioned form lease.

Without limitation to the foregoing, Mortgagor shall not execute any lease, license or occupancy agreement for all or a substantial portion of the Property, except for an actual

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occupancy by the tenant, lessee or licensee thereunder, and shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases, licenses and occupancy agreements with respect to the Property, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. In addition to the requirements set forth in Section 1.18(c), Mortgagor shall furnish to Mortgagee, within ten (10) days after a request by Mortgagee to do so, a current rent roll, certified by Mortgagor as being true and correct, containing the names of all tenants, lessees and licensees with respect to the Property, the terms of their respective leases, licenses or occupancy agreements, the spaces occupied and the rentals or fees payable thereunder and the amount of each tenant's security deposit. Upon the request of Mortgagee, Mortgagor shall deliver to Mortgagee a copy of each such lease, license and occupancy agreement. Mortgagor shall not do or suffer to be done any act that might result in a default by the landlord, lessor or licensor under any such lease, license or occupancy agreement or allow the tenant, lessee or licensee thereunder to withhold payment of rent and, except as otherwise expressly permitted by the terms of Section 1.13 hereof, shall not further assign any such lease, license or occupancy agreement or any such rents. Mortgagor, at no cost or expense to Mortgagee, shall enforce, short of termination, the performance and observance of each and every condition and covenant of each of the parties under such leases. Mortgagor shall not, without the prior written consent of Mortgagee, modify any of the leases, terminate or accept the surrender of any leases, waive or release any other party from the performance or observance of any obligation or condition under such leases except with respect to (i) any extension of existing or renewal Leases on the same or more favorable terms (from the landlord's perspective) undertaken in compliance with the terms of this Mortgage, or (ii) leases affecting less than three and three-tenths percent (3.3%) of the total available rental space of the Property or any lease which requires annual payments of less than three and three-tenths percent (3.3%) of the combined annual rental payments for all tenants at the Property. Any action as to existing Leases by Mortgagor which does not require the prior written consent of Mortgagee shall nonetheless be undertaken, in the normal course of business in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Property is located. Mortgagor shall not permit the prepayment of any rents under any of the leases for more than one (1) month prior to the due date thereof.

(b) Each lease, license and occupancy agreement executed after the date hereof affecting any of the Land or the Improvements must provide, in a manner approved by Mortgagee, that the tenant, lessee or licensee, as appropriate, will recognize as its landlord, lessor or licensor and attorn to any person succeeding to the interest of Mortgagor upon any foreclosure of this Mortgage or deed in lieu of foreclosure. Each such lease, license and occupancy agreement shall also provide that, upon request of said successor in interest, the tenant, lessee or licensee shall execute and deliver an instrument or instruments confirming its attornment as provided for in this Section; provided, however, that neither Mortgagee nor any successor-in-interest shall be bound by any payment of rental for more than one (1) month in advance, or any amendment or modification of said lease or rental agreement made without the express written consent of Mortgagee or said successor-in-interest.

(c) Upon the occurrence of a default under this Mortgage which is not cured within any applicable grace period, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal

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proceedings to foreclose this Mortgage, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Property or any part thereof personally, or by its agent or attorneys. In such event, Mortgagee shall have, and Mortgagor hereby gives and grants to Mortgagee, the right, power and authority to make and enter into leases, licenses and occupancy agreements with respect to the Property or portions thereof for such rents and for such periods of occupancy and upon conditions and provisions as Mortgagee may deem desirable in its sole discretion, and Mortgagor expressly acknowledges and agrees that the term of such lease, license or occupancy agreement may extend beyond the date of any foreclosure sale of the Property; it being the intention of Mortgagor that in such event Mortgagee shall be deemed to be and shall be the attorney-in-fact of Mortgagor for the purpose of making and entering into leases, licenses or occupancy agreements of parts or portions of the Property for the rents and upon the terms, conditions and provisions deemed desirable to Mortgagee in its sole discretion and with like effect as if such leases, licenses or occupancy agreements had been made by Mortgagor as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Mortgage. The power and authority hereby given and granted by Mortgagor to Mortgagee shall be deemed to be coupled with an interest, shall not be revocable by Mortgagor so long as any indebtedness secured hereby is outstanding, shall survive the voluntary or involuntary dissolution of Mortgagor and shall not be affected by any disability or incapacity suffered by Mortgagor subsequent to the date hereof. In connection with any action taken by Mortgagee pursuant to this Section, Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Mortgagee in managing the Property, nor shall Mortgagee be obligated to perform or discharge any obligation, duty or liability under any lease, license or occupancy agreement covering the Property or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder. Mortgagor shall, and does hereby, indemnify Mortgagee for, and hold Mortgagee harmless from, any and all claims, actions, demands, liabilities, loss or damage which may or might be incurred by Mortgagee under any such lease, license or occupancy agreement or under this Mortgage or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such lease, license or occupancy agreement other than those finally determined to have resulted solely from the gross negligence or willful misconduct of Mortgagee. Should Mortgagee incur any such liability, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereon at the Default Interest Rate from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately due and payable to Mortgagee by Mortgagor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Nothing in this Section shall impose on Mortgagee any duty, obligation or responsibility for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such lease, license or occupancy agreement, nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property; provided, however, Mortgagee shall be responsible for its own gross negligence or willful misconduct. Mortgagor hereby assents to, ratifies and confirms any and all actions of Mortgagee with respect to the Property taken under this Section.

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## 1.13 Alienation and Further Encumbrances.

(a) Mortgagor acknowledges that Mortgagee has relied upon the principals of Mortgagor and their experience in owning and operating properties similar to the Property in connection with the closing of the loan evidenced by the Note. Accordingly, except as specifically allowed hereinbelow in this Section and notwithstanding anything to the contrary contained in Section 5.6 hereof, in the event that the Property or any part thereof or interest therein shall be sold, conveyed, disposed of, alienated, hypothecated, leased (except to tenants of space in the Improvements in accordance with the provisions of Section 1.12 hereof), assigned, pledged, mortgaged, further encumbered (subject to the provisions of Section 1.10 hereof) or otherwise transferred or Mortgagor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Mortgagee being first obtained, which consent may be withheld in Mortgagee's sole discretion, then the same shall constitute a default hereunder and Mortgagee shall have the right, at its option, to declare any or all of the indebtedness secured hereby, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article III hereof. If such acceleration is during any period when a prepayment fee is payable pursuant to the provisions set forth in the Note, then, in addition to all of the foregoing, such prepayment fee shall also then be immediately due and payable to the same end as though Mortgagor were prepaying the entire indebtedness secured hereby on the date of such acceleration. For the purposes of this Section: (i) in the event either Mortgagor or any of its general partners is a corporation or trust, the sale, conveyance, transfer or disposition of more than 10% of the issued and outstanding capital stock of Mortgagor or any of its general partners or of the beneficial interest of such trust (or the issuance of new shares of capital stock in Mortgagor or any of its general partners so that immediately after such issuance the total capital stock then issued and outstanding is more than 110% of the total immediately prior to such issuance) shall be deemed to be a transfer of an interest in the Property; and (ii) in the event Mortgagor or any general partner of Mortgagor is a limited or general partnership, a joint venture or a limited liability company, a change in the ownership interests in any general partner, any joint venturer or any member, either voluntarily, involuntarily or otherwise, or the sale, conveyance, transfer, disposition, alienation, hypothecation or encumbering of all or any portion of the interest of any such general partner, joint venturer or member in Mortgagor or such general partner (whether in the form of a beneficial or partnership interest or in the form of a power of direction, control or management, or otherwise), shall be deemed to be a transfer of an interest in the Property. Notwithstanding the foregoing, however, (i) membership interests in Mortgagor may be assigned without the consent of Mortgagee so long as (1) Mortgagee is provided written notice of such assignment, and (2) neither the managing member nor the ownership in the managing member of such limited liability company shall change in any manner whatsoever, and (ii) any involuntary transfer caused by the death, incompetence or dissolution of Mortgagor or any member thereof shall not be a default under this Mortgage so long as Mortgagor is reconstituted, if required, following such death, incompetence or dissolution and so long as those persons responsible for the management of the Property remain unchanged after such death, incompetence or dissolution or any replacement management is approved by Mortgagee.

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(b) In the event that Mortgagee shall consent, without in any way implying any obligation on the part of Mortgagee to so consent, to a further encumbrance of the Property, the documents evidencing or creating such encumbrance shall be subject to the prior approval of Mortgagee and shall expressly provide, in addition to any other items required by Mortgagee, that: (i) they are subordinate, secondary, junior and inferior in all respects to the lien of this Mortgage, to the security provided by the other Loan Documents and to any and all rights of Mortgagee set forth therein, including, without limitation, Mortgagee's right to payment under the Note and the rights of Mortgagee set forth herein with respect to any insurance proceeds and condemnation awards which are a part of the Property; and (ii) they shall remain subordinate, secondary, junior and inferior in all respects to any amendments, modifications, extensions or changes in this Mortgage and the other Loan Documents thereafter entered into by Mortgagee and Mortgagor or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby; and (iii) they are subordinate, secondary, junior and inferior in all respects to all existing and future leases of space in the Improvements, and the holder thereof shall, upon request of Mortgagee, specifically subordinate the lien of such encumbrance to all leases of space in the Improvements executed after the date of such encumbrance; and (iv) the holder of such subordinate deed of trust acknowledges and agrees that a conveyance of all or any portion of the Property to such holder by foreclosure, deed in lieu of foreclosure or otherwise shall constitute a default under this Mortgage.

(c) Notwithstanding the foregoing provisions of this Section, Mortgagee shall consent to a one time sale, conveyance or transfer of the Property in its entirety (hereinafter, "Sale") to any person or entity provided that each of the following terms and conditions are satisfied:

(1) No default is then continuing hereunder or under any of the other Loan Documents;

(2) Mortgagor gives Mortgagee written notice of the terms of such prospective Sale not less than forty-five (45) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Mortgagee all such information concerning the proposed transferee of the Property (hereinafter, "Buyer") as Mortgagee would require in evaluating an initial extension of credit to a borrower and pays to Mortgagee a non-refundable application fee in the amount of \$2,500.00. Mortgagee shall have the right to approve or disapprove the proposed Buyer. In determining whether to give or withhold its approval of the proposed Buyer, Mortgagee shall consider the Buyer's experience and track record in owning and operating facilities similar to the Property, the Buyer's entity structure, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, that, notwithstanding Mortgagee's agreement to consider the foregoing factors in determining whether to give or withhold such approval, such approval shall be given or withheld based on what Mortgagee determines to be commercially reasonable in Mortgagee's sole discretion and, if given, may be given subject to such conditions as Mortgagee may deem appropriate;

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(3) Mortgagor pays Mortgagee, concurrently with the closing of such Sale, a non-refundable assumption fee in an amount equal to all out-of-pocket costs and expenses, including, without limitation, attorneys' fees, incurred by Mortgagee in connection with the Sale, plus either (i) if the closing of such Sale occurs prior to the assignment of this Mortgage to any party other than a shareholder of Mortgagee, or any affiliate of such shareholder, an amount equal to one percent (1.0%) of the then outstanding principal balance of the Note, or (ii) if the closing of such Sale occurs on or subsequent to such assignment, the amount of \$7,500.00;

(4) The Buyer assumes and agrees to pay the indebtedness secured hereby subject to the provisions of Section 5.26 hereof and, prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Mortgagee, such documents and agreements as Mortgagee shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions as Mortgagee may require;

(5) Mortgagor and the Buyer execute, without any cost or expense to Mortgagee, new financing statements or financing statement amendments and any additional documents reasonably requested by Mortgagee;

(6) Mortgagor delivers to Mortgagee, without any cost or expense to Mortgagee, such endorsements to Mortgagee's title insurance policy, hazard insurance endorsements or certificates and other similar materials as Mortgagee may deem necessary at the time of the Sale, all in form and substance satisfactory to Mortgagee, including, without limitation, an endorsement or endorsements to Mortgagee's title insurance policy insuring the lien of this Mortgage, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in subparagraph (4) of this Section, with no additional exceptions added to such policy, and insuring that fee simple title to the Property is vested in the Buyer;

(7) Mortgagor executes and delivers to Mortgagee, without any cost or expense to Mortgagee, a release of Mortgagee, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents, through and including the date of the closing of the Sale, which agreement shall be in form and substance satisfactory to Mortgagee and shall be binding upon the Buyer;

(8) Subject to the provisions of Section 5.26 hereof, such Sale is not construed so as to relieve Mortgagor of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations accruing prior to or simultaneously with the closing of such Sale, and Mortgagor executes, without any cost or expense to Mortgagee, such documents and agreements as Mortgagee shall reasonably require to evidence and effectuate the ratification of said personal liability;

(9) Such Sale is not construed so as to relieve any guarantor or indemnitor of its obligations under any guaranty or indemnity agreement executed in

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connection with the loan secured hereby and each such current guarantor and indemnitor executes, without any cost or expense to Mortgagee, such documents and agreements as Mortgagee shall reasonably require to evidence and effectuate the ratification of each such guaranty and indemnity agreement, provided that if the Buyer or a party associated with the Buyer approved by Mortgagee in its sole discretion assumes the obligations of the current guarantor or indemnitor under its guaranty or indemnity agreement and the Buyer or such party associated with the Buyer, as applicable, executes, without any cost or expense to Mortgagee, a new guaranty or indemnity agreement in form and substance satisfactory to Mortgagee, then Mortgagee shall release the current guarantor or indemnitor from all obligations arising under its guaranty or indemnity agreement after the closing of such Sale; and

(10) The Buyer shall furnish, if the Buyer is a corporation, partnership, limited liability company or other entity, all appropriate papers evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the indebtedness secured hereby, which papers shall include certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are general partners or managing members of the Buyer. The Buyer and the Buyer's general partners or managing members shall be single purpose, "bankruptcy remote" entities, whose formation documents shall be approved by counsel to Mortgagee.

(11) The Buyer shall furnish an opinion of counsel (i) that the Buyer's formation documents provide for the matters described in Section 1.13(c)(10) of this Section, (ii) that the assumption of the indebtedness evidenced hereby has been duly authorized, executed and delivered, and that the Loan Documents are valid, binding and enforceable against the Buyer in accordance with their terms, (iii) that the Buyer and any entity which is a managing member or general partner of Buyer, have been duly organized, and are in existence and good standing, and (iv) with respect to such other matters, as Mortgagee may reasonably request.

1.14 Payment of Utilities, Assessments, Charges, Etc. Mortgagor shall pay when due all utility charges which are incurred by Mortgagor or which may become a charge or lien against any portion of the Property for gas, electricity, water and sewer services furnished to the Land and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Land and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

1.15 Access Privileges and Inspections. Mortgagee and the agents, representatives and employees of Mortgagee shall, subject to the rights of tenants, have full and free access to the Land and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Mortgagor relating to the Property. Mortgagor shall lend assistance to all such agents, representatives and employees of Mortgagee.

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1.16 Waste; Alteration of Improvements. Mortgagor shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Mortgagor shall maintain the Property in good condition and repair. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Mortgagee. Without the prior written consent of Mortgagee, Mortgagor shall not commence construction of any improvements on the Land other than improvements required for the maintenance or repair of the Property or for tenant finish obligations under Leases approved by Mortgagee (to the extent approval is required hereunder).

1.17 Zoning. Without the prior written consent of Mortgagee, Mortgagor shall not seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Land or the Improvements. Mortgagor shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Land or the Improvements. Mortgagor shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property. Mortgagor shall keep all licenses, permits, franchises and other approvals necessary for the operation of the Property in full force and effect. Mortgagor shall operate the Property as an office building/retail shopping center for so long as the indebtedness secured hereby is outstanding. If, under applicable zoning provisions, the use of all or any part of the Land or the Improvements is or becomes a nonconforming use, Mortgagor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Mortgagee. Further, without Mortgagee's prior written consent, Mortgagor shall not file or subject any part of the Land or the Improvements to any declaration of condominium or co-operative or convert any part of the Land or the Improvements to a condominium, co-operative or other form of multiple ownership and governance.

1.18 Financial Statements and Books and Records.

(a) Mortgagor will keep and maintain or will cause to be kept and maintained on a fiscal year basis, in accordance with generally accepted accounting principles in the United States of America ("GAAP") (or such other accounting basis reasonably acceptable to Mortgagee) consistently applied, proper and accurate books, records and accounts reflecting (i) all of the financial affairs of Mortgagor and (ii) all items of income and expense in connection with the operation of the Property or in connection with any services, equipment or furnishings provided in connection with the operation thereof whether such income or expense may be realized by Mortgagor or by any other person whatsoever, excepting lessees unrelated to and unaffiliated with Mortgagor who have leased from Mortgagor portions of the Property for the purpose of occupying same. Mortgagee shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Mortgagor or other person maintaining such books, records and accounts and to make such copies or extracts thereof as Mortgagee shall desire. After the occurrence of a default, Mortgagor shall pay any costs and expenses incurred by Mortgagee to examine Mortgagor's accounting records with respect to the Property, as Mortgagee shall determine to be necessary or appropriate in the protection of Mortgagee's interest.

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(b) Mortgagor will furnish Mortgagee annually, within one hundred twenty (120) days following the end of each Fiscal Year of Mortgagor, with a complete copy of Mortgagor's financial statement prepared in accordance with GAAP (or such other accounting basis reasonably acceptable to Mortgagee) consistently applied covering (i) all of the financial affairs of Mortgagor and (ii) the operation of the Property for such Fiscal Year and containing a statement of revenues and expenses, a statement of assets and liabilities and a statement of Mortgagor's equity. Together with Mortgagor's annual financial statements, Mortgagor shall furnish to Mortgagee an Officer's Certificate (as such term is defined in the Cash Management Agreement) certifying as of the date thereof (i) that the annual financial statements accurately represent the results of operation and financial condition of Mortgagor and the Property all in accordance with GAAP (or other acceptable accounting system) consistently applied and (ii) whether there exists an event or circumstance which constitutes, or which upon notice or lapse of time or both would constitute a Default under the Note or any other Loan Document executed and delivered by Mortgagor and if such event or circumstance exists, the nature thereof, the period of time it has existed and the action then being taken to remedy such event or circumstance.

(c) Mortgagee will furnish Mortgagor monthly, within twenty (20) business days following the end of each month, with a true, complete and correct cash flow statement with respect to the Property in the form attached as Exhibit C to the Cash Management Agreement, showing (i) all cash receipts of any kind whatsoever and all cash payments and disbursements, and (ii) year-to-date summaries of such cash receipts, payments and disbursements together with a certification of the Manager stating that such cash flow statement is true, complete and correct.

(d) Mortgagor will furnish Mortgagee monthly, within thirty (30) days following the end of each month, with a certification of the Manager stating that all Operating Expenses (as such term is defined in the Cash Management Agreement) with respect to the Property which had accrued as of the last day of the month preceding the delivery of the cash flow statement referred to in clause (c) above have been fully paid or otherwise reserved or provided for by the Manager (any such certification or any certification furnished by a Manager pursuant to clause (c) above, a "Manager Certification").

(e) Mortgagor will furnish Mortgagee, upon request by Mortgagee therefor, within ten (10) business days following receipt of such request, with a true, complete and correct rent roll for the Property, including a list of which tenants are in default under their respective leases, dated as of the date of Mortgagee's request, identifying each tenant of each apartment, the monthly rent and additional rent if any payable such tenant, the expiration date of such tenant's lease, the security deposit if any held by Mortgagor, under the lease, the space covered by the lease, and the arrearages for such tenant, if any, and such rent roll shall be accompanied by an Officer's Certificate, dated as of the date of the delivery of such rent roll, certifying that such rent roll is true, correct and complete in all material respects as of its date.

(f) Mortgagor shall furnish to Mortgagee, within ten (10) days after Mortgagee's request therefor, with such further detailed information with respect to the operation

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of the Property and the financial affairs of Mortgagor as may be reasonably requested by Mortgagee.

(g) Mortgagor shall cause the Manager to furnish to Mortgagee, within fifteen (15) business days after the end of each month, a schedule of tenant security deposits showing any activity in the Security Deposit Account (as such term is defined in the Cash Management Agreement) for such month, together with a certification of the Manager as to the balance in such Security Deposit Account and that such tenant security deposits are being held in accordance with all legal requirements.

(h) Mortgagor will furnish Mortgagee annually, within ninety (90) days after the end of each Fiscal Year, with a report setting forth (i) the Net Operating Income (as such term is defined in the Cash Management Agreement) for such fiscal year, (ii) the average occupancy rate of the Property during such fiscal year, (iii) the capital repair, replacements and improvements performed at the Property during such fiscal year and the aggregate Capital Improvement Expenditures (as such term is defined in the Cash Management Agreement) made in connection therewith, and (iv) the balance contained in each of the Sub-Accounts (as such term is defined in the Cash Management Agreement) as of the end of such fiscal year (which balance Mortgagee shall provide upon Mortgagor's written request therefor).

If any of the aforementioned materials are not furnished to Mortgagee within the applicable time periods or Mortgagee is dissatisfied with the contents of any of the foregoing, in addition to any other rights and remedies of Mortgagee contained herein, Mortgagee shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Mortgagee, in which event Mortgagor agrees to pay, or to reimburse Mortgagee for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit. Mortgagor agrees that any and all materials furnished hereunder are the property of Mortgagee (and Mortgagee's servicer) and may be released to such parties as Mortgagee or its servicer deem appropriate, including FNMA, FHLMC, DLJ Mortgage Acceptance Corp., Donaldson, Lufkin & Jenrette Securities Corporation and any affiliates, any issuer, underwriter, certificate holder or trustee with respect to any securities issued in connection with the sale of this Mortgage and Security Agreement or any rating agency responsible for rating such securities from time to time.

1.19 Further Documentation. Mortgagor shall, on the request of Mortgagee and at the expense of Mortgagor: (a) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the contents of any of the other Loan Documents; (b) promptly execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (c) promptly

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execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Mortgagee to protect, continue or perfect the liens or the security interests hereunder against the rights or interests of third persons; and (d) promptly furnish to Mortgagee, upon Mortgagee's request, a duly acknowledged written statement and estoppel certificate addressed to such party or parties as directed by Mortgagee and in form and substance supplied by Mortgagee, setting forth all amounts due under the Note, stating whether any event has occurred which, with the passage of time or the giving of notice or both, would constitute an event of default hereunder, stating whether any offsets or defenses exist against the indebtedness secured hereby and containing such other matters as Mortgagee may reasonably require.

1.20. Payment of Costs; Reimbursement to Mortgagee. Mortgagor shall pay all costs and expenses of every character incurred in connection with the closing of the loan evidenced by the Note and secured hereby or otherwise attributable or chargeable to Mortgagor as the owner of the Property, including, without limitation, appraisal fees, recording fees, documentary, stamp, mortgage or intangible taxes, brokerage fees and commissions, title policy premiums and title search fees, uniform commercial code/tax lien/litigation search fees, escrow fees and attorneys' fees. If Mortgagor defaults in any such payment, which default is not cured within any applicable grace or cure period, Mortgagee may pay the same and Mortgagor shall reimburse Mortgagee on demand for all such costs and expenses incurred or paid by Mortgagee, together with such interest thereon at the Default Interest Rate from and after the date of Mortgagee's making such payment until reimbursement thereof by Mortgagor. Any such sums disbursed by Mortgagee, together with such interest thereon, shall be additional indebtedness of Mortgagor secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Further, Mortgagor shall promptly notify Mortgagee in writing of any litigation or threatened litigation affecting the Property, or any other demand or claim which, if enforced, could impair or threaten to impair Mortgagee's security hereunder. Without limiting or waiving any other rights and remedies of Mortgagee hereunder, if Mortgagor fails to perform any of its covenants or agreements contained in this Mortgage or in any of the other Loan Documents and such failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Mortgagee's interest in the Property or Mortgagee's right to enforce its security, then Mortgagee may, at its option, with or without notice to Mortgagor, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage or to remedy the failure of Mortgagor to perform its covenants and agreements (without, however, waiving any default of Mortgagor). Mortgagor agrees to pay on demand all expenses of Mortgagee incurred with respect to the foregoing (including, but not limited to, fees and disbursements of counsel), together with interest thereon at the Default Interest Rate from and after the date on which Mortgagee incurs such expenses until reimbursement thereof by Mortgagor. Any such expenses so incurred by Mortgagee, together with interest thereon as provided above, shall be additional indebtedness of Mortgagor secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The necessity for any such actions and of the amounts to be paid shall be determined by Mortgagee in its discretion. Mortgagee is hereby empowered to

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enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Mortgagor hereby acknowledges and agrees that the remedies set forth in this Section 1.20 shall be exercisable by Mortgagee, and any and all payments made or costs or expenses incurred by Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor with interest thereon at the Default Interest Rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Mortgagee after the filing by Mortgagor of a voluntary case or the filing against Mortgagor of an involuntary case pursuant to or within the meaning of the Bankruptcy Reform Act of 1978, as amended, Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Mortgagor, Mortgagee, any guarantor or indemnitor, the secured indebtedness or any of the Loan Documents. Mortgagor hereby indemnifies and holds Mortgagee harmless from and against all loss, cost and expenses with respect to any default hereof, any liens (i.e., judgments, mechanics' and materialmen's liens, or otherwise), charges and encumbrances filed against the Property, and from any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Land or the Improvements or any nuisance made or suffered thereon, including, in any case, attorneys' fees, costs and expenses as aforesaid, whether at pretrial, trial or appellate level, and such indemnity shall survive payment in full of the indebtedness secured hereby. This Section shall not be construed to require Mortgagee to incur any expenses, make any appearances or take any actions.

1.21 Security Interest. This Mortgage is also intended to encumber and create a security interest in, and Mortgagor hereby grants to Mortgagee a security interest in all sums on deposit with Mortgagee pursuant to the provisions of Section 1.6 and Section 1.8 hereof or any other Section hereof and, pursuant to the Cash Management Agreement, all fixtures, chattels, accounts, equipment, inventory, contract rights, general intangibles and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Land or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Land and the Improvements. The foregoing security interest shall also cover Mortgagor's leasehold interest in any of the foregoing property which is leased by Mortgagor. Notwithstanding the foregoing, all of the foregoing property shall be owned by Mortgagor and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Mortgagee. Mortgagor shall, from time to time upon the request of Mortgagee, supply Mortgagee with a current inventory of all of the property in which Mortgagee is granted a security interest hereunder, in such detail as Mortgagee may require. Mortgagor shall promptly replace all of the Collateral subject to the lien or security interest of this Mortgage when worn out or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of

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Mortgagee, remove from the Land or the Improvements any of the Collateral subject to the lien or security interest of this Mortgage except such as is replaced by an article of equal suitability and value as above provided, owned by Mortgagor free and clear of any lien or security interest except that created by this Mortgage and the other Loan Documents and except as otherwise expressly permitted by the terms of Section 1.13 of this Mortgage. All of the Collateral shall be kept at the location of the Land except as otherwise required by the terms of the Loan Documents. Mortgagor shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

1.22 Security Agreement. This Mortgage constitutes a security agreement between Mortgagor and Mortgagee with respect to the Collateral in which Mortgagee is granted a security interest hereunder, and, cumulative of all other rights and remedies of Mortgagee hereunder, Mortgagee shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Mortgagor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Mortgagee may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Except with respect to Rents and Profits to the extent specifically provided herein to the contrary, Mortgagee shall have the right of possession of all cash, securities, instruments, negotiable instruments, documents, certificates and any other evidences of cash or other property or evidences of rights to cash rather than property, which are now or hereafter a part of the Property, and Mortgagor shall promptly deliver the same to Mortgagee, endorsed to Mortgagee, without further notice from Mortgagor. Mortgagor agrees to furnish Mortgagee with notice of any change in the name, identity, corporate structure, residence, or principal place of business or mailing address of Mortgagor within ten (10) days of the effective date of any such change. Upon the occurrence of any default hereunder not cured within any applicable grace or cure period, Mortgagee shall have the rights and remedies as prescribed in this Mortgage, or as prescribed by general law, or as prescribed by any applicable Uniform Commercial Code, all at Mortgagee's election. Any disposition of the Collateral may be conducted by an employee or agent of Mortgagee. Any person, including both Mortgagor and Mortgagee, shall be eligible to purchase any part or all of the Collateral at any such disposition. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Mortgagee's attorneys' fees and legal expenses), together with interest thereon at the Default Interest Rate from the date incurred by Mortgagee until actually paid by Mortgagor, shall be paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Mortgagee shall have the right to enter upon the Land and the Improvements or any real property where any of the property which is the subject of the security interest granted herein is located to take possession of, assemble and collect the same or to render it unusable, or Mortgagor, upon demand of Mortgagee, shall assemble such property and make it available to Mortgagee at the Land, or at a place which is hereby deemed to be reasonably convenient to Mortgagee and Mortgagor. If notice is required by law, Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be

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made, and if such notice is sent to Mortgagor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Mortgagor. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the foreclosure sale as provided in Section 3.1(e) hereof upon giving the same notice with respect to the sale of the Property hereunder as is required under said Section 3.1(e). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Mortgagee pursuant to any applicable Uniform Commercial Code:

(a) In the event of a foreclosure sale, the Property may, at the option of Mortgagee, be sold as a whole; and

(b) It shall not be necessary that Mortgagee take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and

(c) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee.

The name and address of Mortgagor (as Debtor under any applicable Uniform Commercial Code) are:

O.P., L.L.C., an Illinois limited liability company  
430 West Erie, Suite 430  
Chicago, Illinois 60610

The name and address of Mortgagee (as Secured Party under any applicable Uniform Commercial Code) are:

Column Financial, Inc.  
3414 Peachtree Road, N.E.  
Suite 1140  
Atlanta, Georgia 30326-1113

1.23 Easements and Rights-of-Way. Mortgagor shall not grant any easement or right-of-way with respect to all or any portion of the Land or the Improvements without the prior written consent of Mortgagee. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Mortgage and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Mortgagee consents to the grant of an easement or right-of-way, Mortgagee agrees to grant such consent without charge to Mortgagor

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other than expenses, including, without limitation, attorneys' fees, incurred by Mortgagee in the review of Mortgagor's request and in the preparation of documents effecting the subordination.

1.24 Compliance with Laws. Mortgagor shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property; provided, however, that, Mortgagor may, upon providing Mortgagee with security satisfactory to Mortgagee, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Mortgagor shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any lease of or any other agreement applicable to the Property or any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

1.25 Additional Taxes. In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust, mortgages or security agreements or debts secured by deeds of trust, mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Mortgage or the indebtedness secured hereby or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable in full thirty (30) days from the giving of such notice.

1.26 Secured Indebtedness. It is understood and agreed that this Mortgage shall secure payment of not only the indebtedness evidenced by the Note but also any and all substitutions, replacements, renewals and extensions of the Note, any and all indebtedness and obligations arising pursuant to the terms hereof and any and all indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents, all of which indebtedness is equally secured with and has the same priority as any amounts advanced as of the date hereof. It is agreed that this Mortgage is given to secure any future advances made by Mortgagee to or for the benefit of Mortgagor from time to time under this Mortgage or the other Loan Documents and, therefore, secures not only present indebtedness but also future advances, whether such future advances are

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obligatory or are to be made at the option of Mortgagee, or otherwise, as are to be made within twenty (20) years of the date hereof. The amount of indebtedness secured hereby may increase or decrease from time to time; however, the principal amount of such indebtedness shall not at one time exceed three times the original principal amount of the Note plus interest thereon, and other costs, amounts and disbursements as provided herein and in the other Loan Documents. It is further agreed that all such future advances shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage.

1.27 Mortgagor's Waivers. To the full extent permitted by law, Mortgagor agrees that Mortgagor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the indebtedness secured hereby prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. Mortgagor, for Mortgagor and Mortgagor's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily with and upon the advice of competent counsel: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the secured indebtedness (except such notices as are specifically provided for herein); (b) waives, releases, relinquishes and forever forgoes all right to a marshalling of the assets of Mortgagor, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; and (c) waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under applicable law. To the full extent permitted by law, Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Property, for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Mortgagee under the terms of this Mortgage to the payment of the indebtedness secured hereby out of the proceeds of sale of the Property in preference to every other claimant whatever. Further, Mortgagor hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Mortgage or to collect any of the indebtedness secured hereby to the fullest extent permitted by law. Mortgagor covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Mortgagor, Mortgagor shall not seek a supplemental stay or otherwise shall not seek pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the

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ability of Mortgagee to enforce any rights of Mortgagee against any guarantor or indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

1.28 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) MORTGAGOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (I) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF ILLINOIS OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS MORTGAGE OR ANY OTHER OF THE LOAN DOCUMENTS, (II) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION PRESIDING OVER COOK COUNTY, ILLINOIS, (III) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (IV) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF MORTGAGEE TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). MORTGAGOR FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE MORTGAGOR AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 5.5 HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(b) MORTGAGOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE INDEBTEDNESS SECURED HEREBY OR ANY CONDUCT, ACT OR OMISSION OF MORTGAGEE OR MORTGAGOR, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH MORTGAGEE OR MORTGAGOR, IN EACH OR THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

1.29 Contractual Statute of Limitations. Mortgagor hereby agrees that any claim or cause of action by Mortgagor against Mortgagee, or any of Mortgagee's directors, officers, employees, agents, accountants or attorneys, based upon, arising from or relating to the indebtedness secured hereby, or any other matter, cause or thing whatsoever, whether or not relating thereto, occurred, done, omitted or suffered to be done by Mortgagee or by Mortgagee's

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directors, officers, employees, agents, accountants or attorneys, whether sounding in contract or in tort or otherwise, shall be barred unless asserted by Mortgagor by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within two (2) years after Mortgagor first acquires or reasonably should have acquired knowledge of the first act, occurrence or omission upon which such claim or cause of action, or any part thereof, is based and service of a summons and complaint on an officer of Mortgagee or any other person authorized to accept service of process on behalf of Mortgagee, within thirty (30) days thereafter. Mortgagor agrees that such two (2) year period of time is reasonable and sufficient time for a borrower to investigate and act upon any such claim or cause of action. The two (2) year period provided herein shall not be waived, tolled or extended except by the specific written agreement of Mortgagee. This provision shall survive any termination of this Mortgage or any of the other Loan Documents.

1.30 Management. The management of the Property shall be by either: (a) Mortgagor or an entity affiliated with Mortgagor approved by Mortgagee for so long as Mortgagor or said affiliated entity is managing the Property in a first class manner; or (b) a professional property management company approved by Mortgagee in its reasonable discretion. Each and any manager approved by Mortgagee (whether such manager is an entity affiliated with Mortgagor or is a professional property management company) shall enter into a written agreement in recordable form with Mortgagee subordinating any liens in favor of such manager to the lien of this Mortgage. Such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Mortgagee in its sole discretion. In no event shall any manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Mortgagee. In the event of default hereunder or under any management contract then in effect, which default is not cured within any applicable grace or cure period, Mortgagee shall have the right to terminate, or to direct Mortgagor to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Mortgagor to retain, a new management agent approved by Mortgagee. All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Mortgagor's liabilities and obligations with respect to this Mortgage and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Mortgagor and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied.

## 1.31 Hazardous Waste and Other Substances.

(a) Mortgagor hereby represents and warrants to Mortgagee that, as of the date hereof: (i) to the best of Mortgagor's knowledge, information and belief, the Property is not in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up (collectively, "Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq. and 40 CFR §302.1 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), The Federal Water Pollution

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Control Act (33 U.S.C. §1251 *et seq.* and 40 CFR §116.1 *et seq.*), and the Hazardous Materials Transportation Act (49 U.S.C. §1801 *et seq.*), and the regulations promulgated pursuant to said laws, all as amended; (ii) to the best of Mortgagor's knowledge, information and belief, no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, generated, stored, processed or disposed of on or released or discharged from the Property (including underground contamination), except for those substances used by Mortgagor in the ordinary course of its business and in compliance with all Environmental Laws; (iii) the Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances; (iv) there are no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances on the Property; (v) Mortgagor has received no notice of, and to the best of Mortgagor's knowledge and belief, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Mortgagor know of any basis for such a claim; and (vi) Mortgagor has received no notice of and, to the best of Mortgagor's knowledge and belief, there has been no claim by any party that any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property, nor does Mortgagor know of any basis for such a claim.

(b) Mortgagor shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Mortgagor in the ordinary course of its business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all tenants of space in the Improvements (except usage by tenants in the ordinary course of its business and in compliance with all Environmental Laws), and, without limiting the generality of the foregoing, during the term of this Mortgage, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos.

(c) Mortgagor shall promptly notify Mortgagee if Mortgagor shall become aware of the possible existence of any Hazardous Substances on the Property or if Mortgagor shall become aware that the Property is or may be in direct or indirect violation of any Environmental Laws. Further, immediately upon receipt of the same, Mortgagor shall deliver to Mortgagee copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential presence or existence of any Hazardous Substances at, on, about, under, within, near or in connection with the Property. Mortgagor shall, promptly and when and as required by Mortgagee, at Mortgagor's sole cost and expense, take all actions as shall be necessary or advisable, in Mortgagee's reasonable discretion, for the clean-up of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment and

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remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Mortgagee), and shall further pay or cause to be paid, at no expense to Mortgagee, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Mortgagor fails to do so, Mortgagee may, but shall not be obligated to, cause the Property or other affected property (to the extent such other property affects the Property) to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws and any and all costs and expenses incurred by Mortgagee in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Mortgagor hereby grants to Mortgagee and its agents and employees access to the Property and a license to remove any items deemed by Mortgagee to be Hazardous Substances and to do all things Mortgagee shall deem necessary to bring the Property in conformance with Environmental Laws. **MORTGAGOR COVENANTS AND AGREES, AT MORTGAGOR'S SOLE COST AND EXPENSE, TO INDEMNIFY, DEFEND (AT TRIAL AND APPELLATE LEVELS, AND WITH ATTORNEYS, CONSULTANTS AND EXPERTS ACCEPTABLE TO MORTGAGEE), AND HOLD MORTGAGEE HARMLESS FROM AND AGAINST ANY AND ALL LIENS, DAMAGES, LOSSES, LIABILITIES, OBLIGATIONS, SETTLEMENT PAYMENTS, PENALTIES, ASSESSMENTS, CITATIONS, DIRECTIVES, CLAIMS, LITIGATION, DEMANDS, DEFENSES, JUDGMENTS, SUITS, PROCEEDINGS, COSTS, DISBURSEMENTS OR EXPENSES OF ANY KIND OR OF ANY NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS', CONSULTANTS' AND EXPERTS' FEES AND DISBURSEMENTS ACTUALLY INCURRED IN INVESTIGATING, DEFENDING, SETTLING OR PROSECUTING ANY CLAIM, LITIGATION OR PROCEEDING) WHICH MAY AT ANY TIME BE IMPOSED UPON, INCURRED BY OR ASSERTED OR AWARDED AGAINST MORTGAGEE OR THE PROPERTY, AND ARISING DIRECTLY OR INDIRECTLY FROM OR OUT OF: (i) THE PRESENCE, RELEASE OR THREAT OF RELEASE OF ANY HAZARDOUS SUBSTANCES ON, IN, UNDER OR AFFECTING ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS (BUT AFFECTING THE PROPERTY), REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF MORTGAGOR; (ii) THE VIOLATION OF ANY ENVIRONMENTAL LAWS RELATING TO OR AFFECTING THE PROPERTY, WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF MORTGAGOR; (iii) THE FAILURE BY MORTGAGOR TO COMPLY FULLY WITH THE TERMS AND CONDITIONS OF THIS SECTION 1.31; (iv) THE BREACH OF ANY REPRESENTATION OR WARRANTY CONTAINED IN THIS SECTION 1.31; OR (v) THE ENFORCEMENT OF THIS SECTION 1.31, INCLUDING, WITHOUT LIMITATION, THE COST OF ASSESSMENT, CONTAINMENT AND/OR REMOVAL OF ANY AND ALL HAZARDOUS SUBSTANCES FROM ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS (BUT AFFECTING THE PROPERTY), THE COST OF ANY ACTIONS TAKEN IN RESPONSE TO THE PRESENCE, RELEASE OR THREAT OF RELEASE OF ANY HAZARDOUS SUBSTANCES ON, IN, UNDER OR AFFECTING ANY PORTION OF THE PROPERTY**

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OR ANY SURROUNDING AREAS (BUT AFFECTING THE PROPERTY) TO PREVENT OR MINIMIZE SUCH RELEASE OR THREAT OF RELEASE SO THAT IT DOES NOT MIGRATE OR OTHERWISE CAUSE OR THREATEN DANGER TO PRESENT OR FUTURE PUBLIC HEALTH, SAFETY, WELFARE OR THE ENVIRONMENT, AND COSTS INCURRED TO COMPLY WITH THE ENVIRONMENTAL LAWS IN CONNECTION WITH ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS (BUT AFFECTING THE PROPERTY). THE INDEMNITY SET FORTH IN THIS SECTION 1.31(c) SHALL ALSO INCLUDE ANY DIMINUTION IN THE VALUE OF THE SECURITY AFFORDED BY THE PROPERTY OR ANY FUTURE REDUCTION IN THE SALES PRICE OF THE PROPERTY BY REASON OF ANY MATTER SET FORTH IN THIS SECTION 1.31(c). MORTGAGEE'S RIGHTS UNDER THIS SECTION SHALL SURVIVE PAYMENT IN FULL OF THE INDEBTEDNESS SECURED HEREBY AND SHALL BE IN ADDITION TO ALL OTHER RIGHTS OF MORTGAGEE UNDER THIS MORTGAGE, THE NOTE AND THE OTHER LOAN DOCUMENTS. THE FOREGOING INDEMNITY SHALL SPECIFICALLY NOT INCLUDE ANY SUCH COSTS RELATING TO HAZARDOUS SUBSTANCES WHICH ARE INITIALLY PLACED ON, IN OR UNDER THE PROPERTY AFTER FORECLOSURE OR OTHER TAKING OF TITLE OR EXCLUSIVE POSSESSION OF THE PROPERTY BY MORTGAGEE.

(d) Upon Mortgagee's request, at any time after the occurrence of a default hereunder or at such other time as Mortgagee has reasonable grounds to believe that Hazardous Substances are or have been released, stored or disposed of on or around the Property or that the Property may be in violation of the Environmental Laws, Mortgagor shall provide, at Mortgagor's sole cost and expense, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Mortgagee indicating the presence or absence of Hazardous Substances on the Property or an inspection or audit of the Improvements prepared by an engineering or consulting firm approved by Mortgagee indicating the presence or absence of friable asbestos or substances containing asbestos on the Property. If Mortgagor fails to provide such inspection or audit within thirty (30) days after such request, Mortgagee may order the same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Property and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Interest Rate from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(e) To the extent Mortgagee deems such advisable, Mortgagor shall establish and comply with an operations and maintenance program relative to the Property, in form and substance acceptable to Mortgagee, prepared by an environmental consultant acceptable to Mortgagee, which program shall address any Hazardous Substances (including, without limitation, asbestos containing material or lead based paint) that may now or in the future be detected on the Property. Without limiting the generality of the preceding sentence, Mortgagee may require (i) periodic notices or reports to Mortgagee in form, substance and at such intervals as Mortgagee may specify, (ii) an amendment to such operations and maintenance program to address changing

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circumstances, laws or other matters, (iii) at Mortgagor's sole expense, supplemental examination of the Property by consultants specified by Mortgagee, (iv) access to the Property by Mortgagee, its agent or servicer, to review and assess the environmental condition of the Property and Mortgagor's compliance with any operations and maintenance program, and (v) variation of the operations and maintenance program in response to the reports provided by any such consultants.

(f) Mortgagor hereby represents, warrants and certifies that: (i) the execution and delivery of this Mortgage is not a transfer of "real property" under and as defined in the Illinois Responsible Property Transfer Act (765 ILCS 90/1 et seq.), as amended from time to time ("RPTA"); (ii) there are no underground storage tanks located on, under or about the Property which are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as now or hereafter amended (42 U.S.C. § 6991); and (iii) there is no facility located on or at the Property which is subject to the reporting requirements of Section 312 of the federal Emergency Planning and Community Right to Know Act of 1986 and the federal regulations promulgated thereunder (42 U.S.C. § 11022), as "facility" is defined in RPTA.

**1.32 INDEMNIFICATION; SUBROGATION.**

(a) **MORTGAGOR SHALL INDEMNIFY, DEFEND AND HOLD MORTGAGEE HARMLESS AGAINST (i) ANY AND ALL CLAIMS FOR BROKERAGE, LEASING, FINDERS OR SIMILAR FEES WHICH MAY BE MADE RELATING TO THE PROPERTY OR THE SECURED INDEBTEDNESS, AND (ii) ANY AND ALL LIABILITY, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, ACTIONS, SUITS, COSTS AND EXPENSES (INCLUDING MORTGAGEE'S REASONABLE ATTORNEYS' FEES, TOGETHER WITH REASONABLE APPELLATE COUNSEL FEES, IF ANY) OF WHATEVER KIND OR NATURE WHICH MAY BE ASSERTED AGAINST, IMPOSED ON OR INCURRED BY MORTGAGEE IN CONNECTION WITH THE SECURED INDEBTEDNESS, THIS MORTGAGE, THE PROPERTY, OR ANY PART THEREOF, OR THE EXERCISE BY MORTGAGEE OF ANY RIGHTS OR REMEDIES GRANTED TO IT UNDER THIS MORTGAGE; PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL BE CONSTRUED TO OBLIGATE MORTGAGOR TO INDEMNIFY, DEFEND AND HOLD HARMLESS MORTGAGEE FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, ACTIONS, SUITS, COSTS AND EXPENSES ENACTED AGAINST, IMPOSED ON OR INCURRED BY MORTGAGEE BY REASON OF (1) MORTGAGEE'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, OR (2) MORTGAGEE'S EXCLUSIVE CONTRACT, AGREEMENT OR ACTION WITHOUT KNOWLEDGE OR INVOLVEMENT OF MORTGAGOR.**

(b) **IF MORTGAGEE IS MADE A PARTY DEFENDANT TO ANY LITIGATION OR ANY CLAIM IS THREATENED OR BROUGHT AGAINST MORTGAGEE CONCERNING THE SECURED INDEBTEDNESS, THIS MORTGAGE, THE PROPERTY, OR ANY PART THEREOF, OR ANY INTEREST THEREIN, OR THE CONSTRUCTION, MAINTENANCE, OPERATION OR OCCUPANCY OR USE THEREOF, THEN MORTGAGOR SHALL INDEMNIFY, DEFEND AND HOLD**

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MORTGAGEE HARMLESS FROM AND AGAINST ALL LIABILITY BY REASON OF SAID LITIGATION OR CLAIMS, INCLUDING REASONABLE ATTORNEYS' FEES (TOGETHER WITH REASONABLE APPELLATE COUNSEL FEES, IF ANY) AND EXPENSES INCURRED BY MORTGAGEE IN ANY SUCH LITIGATION OR CLAIM, WHETHER OR NOT ANY SUCH LITIGATION OR CLAIM IS PROSECUTED TO JUDGMENT. IF MORTGAGEE COMMENCES AN ACTION AGAINST MORTGAGOR TO ENFORCE ANY OF THE TERMS HEREOF OR TO PROSECUTE ANY BREACH BY MORTGAGOR OF ANY OF THE TERMS HEREOF OR TO RECOVER ANY SUM SECURED HEREBY, MORTGAGOR SHALL PAY TO MORTGAGEE ITS REASONABLE ATTORNEYS' FEES (TOGETHER WITH REASONABLE APPELLATE COUNSEL FEES, IF ANY) AND EXPENSES; PROVIDED, HOWEVER, TO THE EXTENT MORTGAGOR IS ULTIMATELY DETERMINED TO BE THE PREVAILING PARTY WITH RESPECT TO ANY SUCH ACTION, MORTGAGEE SHALL REFUND TO MORTGAGOR ANY SUCH REASONABLE ATTORNEYS' FEES OR EXPENSES PREVIOUSLY PAID BY MORTGAGOR PURSUANT TO THIS SENTENCE. THE RIGHT TO SUCH ATTORNEYS' FEES (TOGETHER WITH REASONABLE APPELLATE COUNSEL FEES, IF ANY) AND EXPENSES SHALL BE DEEMED TO HAVE ACCRUED ON THE COMMENCEMENT OF SUCH ACTION, AND SHALL BE ENFORCEABLE WHETHER OR NOT SUCH ACTION IS PROSECUTED TO JUDGMENT. IF MORTGAGOR BREACHES ANY TERM OF THIS MORTGAGE, MORTGAGEE MAY ENGAGE THE SERVICES OF AN ATTORNEY OR ATTORNEYS TO PROTECT ITS RIGHTS HEREUNDER, AND IN THE EVENT OF SUCH ENGAGEMENT FOLLOWING ANY BREACH BY MORTGAGOR, MORTGAGOR SHALL PAY MORTGAGEE REASONABLE ATTORNEYS' FEES (TOGETHER WITH REASONABLE APPELLATE COUNSEL FEES, IF ANY) AND EXPENSES INCURRED BY MORTGAGEE, WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED AGAINST MORTGAGOR BY REASON OF SUCH BREACH. ALL REFERENCES TO "ATTORNEYS" IN THIS SUBSECTION AND ELSEWHERE IN THIS MORTGAGE SHALL INCLUDE, WITHOUT LIMITATION, ANY ATTORNEY OR LAW FIRM ENGAGED BY MORTGAGEE AND MORTGAGEE'S IN-HOUSE COUNSEL, AND ALL REFERENCES TO "FEES AND EXPENSES" IN THIS SUBSECTION AND ELSEWHERE IN THIS MORTGAGE SHALL INCLUDE, WITHOUT LIMITATION, ANY FEES OF SUCH ATTORNEY OR LAW FIRM AND ANY ALLOCATION CHARGES AND ALLOCATION COSTS OF MORTGAGEE'S IN-HOUSE COUNSEL.

(c) A waiver of subrogation shall be obtained by Mortgagor from its insurance carrier and, consequently, Mortgagor waives any and all right to claim or recover against

Mortgagee, its officers, employees, agents and representatives, for loss of or damage to Mortgagor, the Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

1.33 Covenants with Respect to Indebtedness, Operations, Fundamental Changes of Mortgagor. Mortgagor represents, warrants and covenants as of the date hereof and until such time as the indebtedness secured hereby is paid in full, that Mortgagor:

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(a) does not own and will not own any encumbered asset other than (i) the Property, and (ii) incidental personal property necessary for the operation of the Property;

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

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

(d) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the secured indebtedness, and (ii) trade payables or accrued expenses incurred in the ordinary course of business of operating the Property; no debt of Mortgagor whatsoever may be secured (senior, subordinate or pari passu) by the Property except the Indebtedness;

(e) has not made and will not make any loans or advances to any third party (including any affiliate of Mortgagor, any general partner of Mortgagor or any indemnitor or guarantor);

(f) is solvent and pay its debts and liabilities (including employment and overhead expenses) from its assets as the same shall become due;

(g) has done or caused to be done and will do all things necessary to preserve its existence, and will not, nor will any partner, limited or general, shareholder or member thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation, by-laws, articles of organization or operating agreement in a manner which adversely affects Mortgagor's existence as a single purpose entity;

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

(i) will maintain books and records and bank accounts separate from those of its affiliates, including its general partners or members;

(j) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate, any general partner or member of Mortgagor or any affiliate of the general partner or member of the Mortgagor or any indemnitor or guarantor) and shall maintain and use separate stationery, invoices and checks;

(k) will file its own tax returns;

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(l) will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(m) will not seek the dissolution or winding up, in whole or in part, of Mortgagor;

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

(o) will not commingle the funds and other assets of Mortgagor with those of any general partner, member or affiliate or any other person;

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

(q) does not and will not hold itself out to be responsible for the debts or obligations of any other person;

(r) has caused, and at all times shall cause, there to be at least one duly appointed member of the board of directors (an "Independent Director") of Mortgagor or any general partner of Mortgagor who has not been at the time of such individual's appointment, and may not have been at any time during the preceding two years (A) a stockholder of, or an officer, director (other than with respect to such Independent Director's service as director of Mortgagor or such general partner) or employee of, Mortgagor or any of its affiliates, or such general partner or any of its affiliates, (B) a person or other entity controlling any such stockholder, officer or director, or (C) a member of the immediate family of any such stockholder, officer, employee, supplier or customer or any other director of Mortgagor or such general partner. As used in this Subsection (r), the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise;

(s) has not caused and shall not cause, the board of directors of Mortgagor or any general partner of Mortgagor to take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to Mortgagor's or any general partner's common stock, requires the unanimous affirmative vote of one hundred percent (100%) of the members of the board of directors, unless at the time of such action there shall be at least one member who is an Independent Director; and

(t) shall comply with the provisions of its articles of incorporation, articles of organization, by-laws, operating agreement or partnership agreement, as applicable.

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## 1.34 Handicapped Access.

(a) Mortgagor agrees that the Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the American with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively, "Access Laws").

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

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

1.35 Expense Reimbursement. Mortgagor shall reimburse Mortgagee for any and all costs and expenses incurred by Mortgagee with respect to the administration of the indebtedness secured hereby including, without limitation, the fees of Mortgagee's legal counsel, but excluding Mortgagor's ordinary day-to-day internal overhead expenses. Without limiting the generality of the foregoing sentence, it is expressly agreed that Mortgagor shall reimburse Mortgagee with respect to any fees or expenses incurred by Mortgagee with respect to the administration of the Reserves, ad valorem tax disputes, insurance concerns or the evaluation of any proposed Sale pursuant to Section 1.13 hereof or other assignment or conveyance.

## 1.36 Defeasance.

(a) Notwithstanding anything to the contrary contained in the Note, this Mortgage or the Loan Documents, at any time after the second (2nd) anniversary of the date hereof, and provided no Event of Default has occurred and is continuing (unless Mortgagee shall otherwise consent, in its sole discretion), Mortgagor shall have the right to obtain the release of the Property from the lien of this Mortgage and the other Loan Documents upon the satisfaction of the following conditions precedent:

(1) not less than thirty (30) days' prior written notice to the Mortgagee specifying a regular payment date under the Note (the "Defeasance Election Date") on which the Defeasance Deposit (hereinafter defined) is to be made;

(2) the remittance to the Mortgagee on the related Defeasance Election Date of interest accrued and unpaid on the outstanding principal amount of the Note to

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and including the Defeasance Election Date and the scheduled amortization payment due on such Defeasance Election Date, together with all other amounts then due and payable under the Note, this Mortgage and the other Loan Documents;

(3) the irrevocable deposit with the Mortgagee of an amount (the "Defeasance Deposit") of U.S. Government Securities (hereinafter defined), determined by Mortgagee, which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, cash in an amount sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Mortgagee, to pay and discharge the Scheduled Defeasance Payments (hereinafter defined);

(4) the delivery on or prior to the Defeasance Election Date to the Mortgagee of:

(a) a security agreement, in form and substance satisfactory to the Mortgagee, creating a first priority lien on the Defeasance Deposit (the "Defeasance Security Agreement");

(b) a release of the Property from the lien of this Mortgage, the Assignment of Leases and Rents dated as of the date hereof made by Mortgagor to Mortgagee (the "Assignment of Leases") and any UCC Financing Statements relating thereto (for execution by the Mortgagee) in a form appropriate for cancellation of such documents in the jurisdiction in which the Property is located;

(c) certificate of an officer of the general partner of Mortgagor certifying that the requirements set forth in this subparagraph (a) have been satisfied;

(d) an opinion of counsel for Mortgagor in form and substance satisfactory to the Mortgagee to the effect that (i) the Mortgagee has a perfected first priority security interest in the Defeasance Deposit, and (ii) the holder of the Note will not recognize income, gain or loss for United States federal income tax purposes as a result of the Defeasance and will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if the Defeasance had not occurred;

(e) such other certificates, document or instruments as the Mortgagee may reasonably request; and

(5) the payment by Mortgagor to Mortgagee of all reasonable out-of-pocket costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred or anticipated to be incurred by Mortgagee in connection with the release of the Property from the lien of this Mortgage and the other Loan Documents



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pursuant to this Section 1.36 including, without limitation, Mortgagee's determination of whether Mortgagor has satisfied all of the related conditions and requirements set forth in this Section 1.36.

(b) Upon completion with the requirements of subparagraph (a) above, the Property shall be released from the lien of this Mortgage, the Assignment of Leases and any UCC Financing Statements related thereto, the obligations hereunder and under the other Loan Documents, including the Indemnity and Guaranty Agreement, with respect to the Property shall no longer be applicable and the Defeasance Deposit shall be the sole source of collateral securing the Note. The Mortgagee shall apply the Defeasance Deposit and the payments received therefrom to the payment of all scheduled principal and interest payments (the "Scheduled Defeasance Payments") due on all successive payment dates under the Note after the Defeasance Election Date, including the payment due on the Maturity Date (as defined in the Note). Mortgagor, pursuant to the Defeasance Security Agreement or other appropriate document, shall direct that the payments received from the Defeasance Deposit shall be made directly to Mortgagee and applied to satisfy the obligations of Mortgagor under the Note. In connection with such release, if Mortgagor shall continue to own any assets other than the Defeasance Deposit, Mortgagor shall establish or designate a single-purpose, bankruptcy-remote successor entity acceptable to Mortgagee (the "Successor Mortgagor"), with respect to which a nonconsolidation opinion satisfactory in form and substance to Mortgagee has been delivered to Mortgagee (if such nonconsolidation opinion was required of Mortgagor in connection with the origination of the indebtedness secured hereby) in which case Mortgagor shall transfer and assign to the Successor Mortgagor all obligations, rights and duties under the Note and the Defeasance Security Agreement, together with the pledged Defeasance Deposit. The Successor Mortgagor shall assume the obligations of Mortgagor under the Note and the Defeasance Security Agreement, and Mortgagor shall be relieved of its obligations hereunder and thereunder. Mortgagor shall pay One Thousand and No/100 Dollars (\$1,000.00) to the Successor Mortgagor as consideration for assuming such Mortgagor obligations.

(c) As used herein, the term "U.S. Government Securities" shall mean securities that are (i) direct obligations of the United States of America for the full and timely payment of which its full faith and credit is pledged or (ii) obligations of an entity controlled or supervised by and acting as an agency or instrumentality and guaranteed as a full faith and credit obligation which shall be fully and timely paid by the United States of America, which in either case are not callable or redeemable at the option of the issuer thereof (including a depository receipt issued by a bank (as defined in Section 3(a)(2) of the United States Securities Act)) as custodian with respect to any such U.S. Governmental Securities or a specific payment of principal of or interest on any such U.S. Governmental Securities held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the securities or the specific payment of principal of or interest on the securities evidenced by such depository receipt.

## ARTICLE II

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## EVENTS OF DEFAULT

2.1 Events of Default. The occurrence of any of the following events shall be a default hereunder:

(a) Mortgagor fails to punctually perform any covenant, agreement, obligation, term or condition hereof which requires payment of any money to Mortgagee (except those regarding payments to be made under the Note, which failure is subject to any grace periods set forth in the Note).

(b) Mortgagor fails to provide insurance as required by Section 1.4 hereof or fails to perform any covenant, agreement, obligation, term or condition set forth in Section 1.15 or Section 1.31 hereof.

(c) Mortgagor fails to perform any other covenant, agreement, obligation, term or condition set forth herein, other than those otherwise described in this Section 2.1, and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Mortgagee to Mortgagor; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Mortgagor commences to cure such default promptly after receipt of notice thereof from Mortgagee, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.

(d) Any representation or warranty made herein, in or in connection with any application or commitment relating to the loan evidenced by the Note, or in any of the other Loan Documents to Mortgagee by Mortgagor, by any principal, general partner or member in Mortgagor or by any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby is determined by Mortgagee to have been false or misleading in any material respect at the time made.

(e) There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbrancing of the Property, Mortgagor, its general partners or members or any portion thereof or any interest therein, in violation of Section 1.13 hereof.

(f) A default occurs under any of the other Loan Documents, including, without limitation, the Cash Management Agreement, which has not been cured within any applicable grace or cure period therein provided.

(g) Mortgagor, any principal, member or general partner in Mortgagor or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be