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WELLS HISTORIC ASSOCIATES,

as Mortgagor

to

TRANSATLANTIC CAPITAL COMPANY, L.L.C.

as Mortgagee

. DEPT-01 RECORDING	\$225.00
. T#0009 TRAN 0563 11/28/97 10:07:00	
. #7090 # CG *-97-889288	
. COOK COUNTY RECORDER	
. DEPT-10 PENALTY	\$222.00

## MORTGAGE AND SECURITY AGREEMENT

Date: November 20, 1997

Premises: 651 S. Wells  
Chicago, Illinois

PREPARED BY AND UPON RECORDATION RETURN TO:

Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, New York 10038

Attention: Robert F. McDonough, Esq.

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**BOX 333-677**

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## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is dated as of November 20, 1997 and is given by WELLS HISTORIC ASSOCIATES, a Pennsylvania limited partnership, as Mortgagor ("Mortgagor"), whose address is 237 Chestnut Street, Philadelphia, Pennsylvania 19106, to TRANSATLANTIC CAPITAL COMPANY, L.L.C., a Delaware limited liability company, as Mortgagee ("Mortgagee"), whose address is 31 West 52nd Street, 12th Floor, New York, New York 10019.

### WITNESSETH:

In order to secure:

(A) The debt evidenced by that certain Open-End Mortgage Note (such Open-End Mortgage Note, together with any and all renewals, amendments, modifications, consolidations and extensions thereof, is hereinafter referred to as the "Note") of even date with this Mortgage, made by Mortgagor and certain affiliates of Mortgagor (which affiliates, together with Mortgagor (each, for so long as the same shall be the owner of an Other Mortgaged Property or the Mortgaged Property, a "Borrower" and, collectively, the "Borrowers"), are listed on Schedule A annexed hereto and made a part hereof) payable to the order of Mortgagee in the principal face amount of SIXTY-ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$61,500,000), together with interest as therein provided;

(B) The full and prompt payment and performance by the Borrowers 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 Debt (the Note, this Mortgage, 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 herein or therein covenanted to be paid;

(C) Any and all additional advances made by Mortgagee to protect or preserve the Mortgaged Property or any of the Other Mortgaged Properties or the lien or security interest created hereby on the Mortgaged Property or under any Contemporaneous Mortgage on any Other Mortgaged Property, or for any other purpose provided herein or in the other Loan Documents (whether or not the original Mortgagor remains the owner of the Mortgaged Property at the time of such advances or any other of the Borrowers is the owner of the applicable Other Mortgaged Property); and

(D) Any and all other indebtedness now owing or which may hereafter be owing by Mortgagor or any of the other Borrowers to Mortgagee, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due.

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(All of the sums and covenants referred to in Paragraphs (A) through (D) above are herein referred to as the "Debt");

And in consideration of the Debt and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby irrevocably mortgages, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns to Mortgagee, with power of sale, and creates a security interest in, all of Mortgagor's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter acquired by Mortgagor (collectively, the "Mortgaged Property");

(1) All that certain real property described in Schedule B attached hereto (the "Premises"), together with all of the easements, rights and appurtenances now or hereafter in any way appertaining thereto, either at law or in equity, whether now owned or hereafter acquired by Mortgagor;

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

(3) 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 Premises or under or above the same or any part thereof, and all estates, rights, interests and appurtenances, reversions and remainders whatsoever, in any way belonging or appertaining to the Mortgaged Property or any part thereof, whether now owned or hereafter acquired by Mortgagor;

(4) 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 Premises or the Improvements, or any part thereof, whether now existing or hereafter created or acquired by Mortgagor;

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

(6) All building materials, supplies and equipment now or hereafter placed on the Premises or in the Improvements;

(7) 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 and all appliances, communication, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and sprinkler and fire and theft protection 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 Premises or Improvements, and all warranties and guaranties relating thereto, and all

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additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements except to the extent any of the same constitute fixtures) (collectively, the "Equipment"). To the extent any portion of the Equipment is not deemed real property or Fixtures under applicable law, it shall be deemed to be personal property, and this Mortgage shall be deemed to constitute a security agreement for the purposes of creating a security interest therein in favor of Lender under the Uniform Commercial Code of the state in which the Premises are located (the "UCC");

(8) All leases (including, without limitation, oil, gas and mineral leases), licenses, concessions and occupancy agreements of all or any part of the Premises or the Improvements (each, a "Lease" and collectively, "Leases"), whether written or oral, 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 Premises 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 or other agreement pertaining thereto or any of the General Intangibles and all cash or securities deposited to secure performance by the tenants, lessees or licensees (each, a "Tenant" and collectively, "Tenants"), as applicable, of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases 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 6.1 hereinbelow;

(9) All contracts and agreements now or hereafter entered into covering any part of the Premises 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 Premises or the Improvements (including all architectural renderings, models, specifications, plans, drawings, surveys, tests, reports, data, bonds and governmental approvals) or to the management or operation of any part of the Premises or the Improvements;

(10) 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 Premises 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 Premises or the Improvements;

(11) All present and future funds, accounts, instruments, accounts receivable, documents, claims, general intangibles (including, without limitation, trademarks, trade names, service marks and symbols now or hereafter used in connection with any part of the Premises or the Improvements, all names by which the Premises 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 Premises or the Improvements) (collectively, the "General Intangibles");

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

(13) 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 or any other of the Loan Documents, including, without limitation, all funds now or hereafter on deposit in the Impound Account, the Rent Account, the Payment Reserve, the Replacement Reserve and the Repair and Remediation Reserve and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Premises or the Improvements;

(14) All present and future monetary deposits given by Mortgagor to any public or private utility with respect to utility services furnished to any part of the Premises or the Improvements;

(15) 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

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

TO HAVE AND TO HOLD the Mortgaged 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 Mortgaged Property, subject only to the Permitted Encumbrances, to Mortgagee against every person whomsoever may lawfully claim the same or any part thereof;

PROVIDED, HOWEVER, that if the Debt shall have been paid and performed in full, 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 Mortgaged 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 promptly satisfy and release this Mortgage of record and the lien hereof by proper instrument.

For the purpose of further securing the Debt for so long as the Debt or any part thereof remains incomplete or unpaid, Mortgagor covenants and agrees as follows:

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## ARTICLE I. TAXES AND UTILITIES

1.1 Payment of Taxes. Mortgagor shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 1.2 below, all taxes and assessments which are or may become a lien on any portion of, or interest in, the Mortgaged Property or which are assessed against or imposed upon any portion of, or interest in the Mortgaged Property. 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 taxes and assessments 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 tax or assessment 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 tax and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Mortgaged 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 tax or assessment, Mortgagor deposits in the Impound Account an amount determined by Mortgagee to be adequate to cover the payment of such tax or assessment and an additional sum sufficient in the sole judgment of Mortgagee to cover possible interest, costs and penalties; provided, however, that taxes, assessments, interest, costs and penalties owing shall be paid by Mortgagor prior to the date any writ or order is issued under which the Mortgaged Property may be sold, lost or forfeited.

1.2 Tax and Insurance Impound Account. (a) Mortgagor shall establish and maintain at all times while this Mortgage continues in effect an impound account (the "Impound Account") with Mortgagee for payment of real estate taxes and assessments and insurance on the Mortgaged Property and as additional security for the Debt. Simultaneously with the execution hereof, Mortgagor shall deposit in the Impound Account an amount reasonably determined by Mortgagee. Commencing on the first Payment Date under the Note and continuing thereafter on each subsequent Payment Date, Mortgagor shall pay to Mortgagee, concurrently with and in addition to the monthly payment due under the Note and until the Debt is fully paid and performed, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Mortgaged Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which Mortgagor is required to maintain hereunder, each as estimated and determined by Mortgagee. So long as no Event of Default has occurred which has not been waived, and no event has occurred or failed to occur which with the passage of time, the giving of notice, or both would constitute an Event of Default (a "Default"), all sums in the Impound Account shall be held by Mortgagee in the Impound Account to pay said taxes, assessments and insurance premiums before the same become delinquent. 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

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from the Impound Account, and so long as no Event of Default has occurred and not been waived, Mortgagee shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. No interest on funds contained in the Impound Account, if any, shall be paid by Mortgagee to Mortgagor.

(b) Notwithstanding anything to the contrary contained in this Section 1.2, Mortgagee agrees to waive the requirement that Mortgagor make deposits to the Impound Account with respect to insurance payments for so long as Mortgagor maintains insurance policies with respect to the Mortgaged Property that are financed through a third party, provided that (i) such insurance shall comply with all the requirements of this Mortgage and shall provide that (A) Mortgagee shall receive written notice of any default by Mortgagor under such policy or any proposed cancellation thereof and (B) Mortgagee shall have a period of thirty (30) days from receipt of such notice within which to cure such default or cancellation (or fifteen (15) days from such notice within which to cure a default or cancellation due to nonpayment of premium), and said policy cannot be canceled unless Mortgagee fails to effect such cure within said thirty (30) or fifteen (15) day period, as applicable, and (ii) the Mortgagor named herein is the owner of the Mortgaged Property. In the event Mortgagee receives written notice of a default and/or cancellation under such insurance policy, (x) Mortgagor shall immediately deposit an amount equal to the annual premium for such insurance policy in an account controlled by Mortgagee at a financial institution acceptable to Mortgagee, provided, however, that if such amount is not so deposited, Mortgagee may immediately require Mortgagor to enter into a Disbursement Agreement which shall terminate after one year provided that (I) no Event of Default shall have occurred during such year and (II) Mortgagee is not then entitled to require a Disbursement Agreement under Section 12.6(b) below, and (y) the waiver contained in the previous sentence shall be null and void for the remaining term of this Mortgage.

1.3 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 Mortgaged Property for gas, electricity, water and sewer services furnished to the Premises 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 Premises and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

1.4 Additional Taxes. In the event of the enactment after the date hereof of any law 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 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 Debt 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

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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 Debt to be and become due and payable in full ninety (90) days from the giving of such notice, and, in connection with the payment of such Debt, no prepayment premium or fee shall be due.

## ARTICLE II. INSURANCE

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

(a) Insurance against loss or damage to the Mortgaged Property by fire, windstorm, lightning, tornado and hail and against loss and damage by such other, additional risks as may be now or hereafter embraced by an "all-risk" form of insurance policy. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost (insurable value) of the Improvements (as reasonably determined by Mortgagee), without reduction for depreciation and with an Agreed Value Endorsement. 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 in order to reflect increased value due to inflation. In addition, each policy shall contain inflation guard coverage. 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. Mortgagor shall also maintain insurance against loss or damage to furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Mortgaged Property and owned by Mortgagor from time to time to the extent applicable.

(b) Commercial General Liability Insurance against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Premises or the Improvements in amounts not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate plus umbrella coverage in an amount not less than \$2,000,000. Mortgagee hereby retains the right to periodically review the amount of said liability insurance 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.

(c) Boiler and machinery insurance (including explosion coverage), if steam boilers or other pressure-fired vessels are in operation at the Premises. Minimum liability coverage per accident must equal the greater of the replacement cost (insurable value) of the Improvements housing such boiler or pressure-fired machinery or \$2,000,000. If one or more HVAC units is in operation at the Premises, "Systems Breakdowns" coverage shall be required, as determined by Mortgagee. Minimum liability coverage per accident must equal the replacement value of such unit(s).

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(d) If the Improvements or any part thereof is situated in an area designated by the Federal Emergency Management Agency ("FEMA") as a special flood hazard area (Zone A or Zone V), flood insurance in an amount equal to the lesser of: (a) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Debt if replacement cost coverage is not available for the type of building insured), or (b) the maximum insurance available under the appropriate National Flood Insurance Administration program. The maximum deductible shall be \$100,000 per building or a higher minimum amount as required by FEMA or other applicable law.

(e) During the period of any construction, renovation or alteration of the existing improvements which exceeds the lesser of 10% of the principal amount of the Note or \$500,000, at Mortgagee's request, a completed value, "All Risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount approved by Mortgagee, may be required. During the period of any construction of any addition to the existing Improvements, a completed value, "All Risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount approved by Mortgagee, shall be required.

(f) Worker's Compensation and Employer's Liability Insurance covering all appropriate persons.

(g) Business income (loss of rents) insurance in amounts sufficient to compensate Mortgagor for all Rents and Profits and other income during a period of not less than eighteen (18) months if the Improvements on the Mortgaged Property are any of a hotel, motel or office building and twelve (12) months for all other property types. The amount of coverage shall be adjusted annually to reflect the Rents and Profits or income payable during the succeeding twelve (12) month period.

(h) Such other insurance on the Mortgaged Property or on any replacements or substitutions thereof or additions thereto as may from time to time be reasonably required by Mortgagee against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, without limitation, sinkhole, mine subsidence, earthquake and environmental insurance, due regard being given to the height and type of improvements, their construction, location, use and occupancy.

All such insurance shall (i) be with insurers fully licensed and authorized to do business in the state within which the Premises is located and which have and maintain a rating of at least A from Standard & Poors, or equivalent, (ii) contain the complete address of the Premises (or a complete legal description), (iii) be for terms of at least one year, with premium paid in advance (provided that the current one year term may have commenced prior to the date hereof), and (iv) be subject to the approval of Mortgagee as to insurance companies, amounts, content, forms of policies and expiration dates, and (v) include a standard, non-contributory, mortgagee clause naming EXACTLY:

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TRANSATLANTIC CAPITAL COMPANY, L.L.C.  
its successors and assigns,  
31 West 52nd Street; 12th Floor  
New York, New York 10019  
Attention: Mr. James Howard

(a) as an additional named insured under all liability insurance policies, (b) as the first mortgagee and loss payee on all property insurance policies and (c) as the loss payee on all loss of rents or loss of business income insurance policies.

Mortgagor shall deliver to Mortgagee certificates and policies evidencing the insurance required to be maintained hereunder at least thirty (30) days before any such insurance shall expire. Mortgagor further agrees that each such insurance policy: (i) shall provide for at least thirty (30) days' prior written notice to Mortgagee prior to any policy reduction or cancellation for any reason other than non-payment of premium and at least ten (10) days' prior written notice to Mortgagee prior to any cancellation due to non-payment of premium; (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 or any other person which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of subrogation against Mortgagee; (iv) in the event that the Premises or the Improvements constitutes a legal non-conforming use under applicable building, zoning or land use laws or ordinances, shall include an ordinance and law coverage endorsement which will contain Coverage A: "Loss Due to Operation of Law" (with a minimum liability limit equal to Replacement Cost With Agreed Value Endorsement), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction" coverages, which Coverage B and Coverage C shall have a combined limit of at least \$1,000,000 and a deductible of not more than \$25,000; (v) unless otherwise specified above, shall have a maximum deductible of \$10,000; (vi) 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; and (vii) may be in the form of a blanket policy provided that, Mortgagor hereby acknowledges and agrees that upon (A) any failure to pay any portion of the premium for such blanket policy which is not allocable to the Mortgaged Property or (B) the occurrence of any other action not relating to the Mortgaged Property which would otherwise permit the issuer thereof to cancel the coverage thereof, the Mortgaged Property shall immediately be insured as if by a separate, single-property policy and the blanket policy must properly identify and, immediately upon the occurrence of any event described in the foregoing clauses (A) and (B), fully protect the Mortgaged Property as if a separate policy were issued for 100% of Replacement Cost at the time of loss and otherwise meet all of Mortgagee's applicable insurance requirements set forth in this Section 2.1. 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 relating to the Mortgaged Property by Mortgagor to Mortgagee as further security for the Debt. In the event of foreclosure of this Mortgage, or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Debt, all right, title and interest of Mortgagor in and to all proceeds payable under such policies then in force concerning the

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Mortgaged 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 replacement or renewal as required herein, Mortgagee may, but shall not be obligated to, procure such insurance and Mortgagor shall pay all amounts advanced by Mortgagee therefor, 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. Mortgagee shall not be responsible for nor incur any liability for the 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. Mortgagor shall not obtain insurance for the Mortgaged Property in addition to that required by Mortgagee without the prior written consent of Mortgagee, which consent will not be unreasonably withheld provided that (i) Mortgagee is named insured on such insurance, (ii) Mortgagee receives complete copies of all policies evidencing such insurance, and (iii) such insurance complies with all of the applicable requirements set forth herein.

## ARTICLE III. CASUALTY AND CONDEMNATION

3.1 Casualty and Condemnation. (a) 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 Mortgaged Property or any portion thereof. All insurance proceeds on the Mortgaged Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Mortgaged Property or for any diminution in value of the Mortgaged 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 Mortgagee any instruments required to permit such participation; provided, however, that, so long as no Default or Event of Default shall have occurred and not been waived, Mortgagee shall not have the right to participate in the adjustment of any loss which is not in excess of the lesser of (i) five percent (5%) of the then outstanding principal balance of the Note and (ii) \$100,000. 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, reasonable legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

In the event that less than fifty percent (50%) of the Improvements located on the Premises have been taken or destroyed, then if and so long as:

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(1) no Default or Event of Default has occurred and is continuing hereunder or under any of the other Loan Documents and has not been waived, and

(2) the Mortgaged 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) nine (9) months after the receipt of insurance proceeds or condemnation awards by either Mortgagor or Mortgagee, and (ii) sixty (60) days prior to the stated maturity date of the Note, and

(3) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Mortgaged Property as described in subsection (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 Mortgaged Property and debt service on the Debt in full with the same coverage ratio considered by Mortgagee in its determination to make the loan secured hereby and

(6) in the event that the insurance proceeds or condemnation awards received as a result of such casualty or partial taking exceed the lesser of (i) five percent (5%) of the then outstanding principal balance of the Note and (ii) \$150,000, Mortgagor shall have delivered to Mortgagee, at Mortgagor's sole cost and expense, an appraisal report from an appraiser satisfactory to Mortgagee in form and substance satisfactory to Mortgagee appraising the value of the Mortgaged Property as proposed to be restored or repaired to be not less than the appraised value of the Mortgaged 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,

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

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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 Debt in whatever order Mortgagee directs in its absolute discretion.

(b) In all other cases, namely, in the event that fifty percent (50%) or more of the Improvements located on the Premises have been taken or destroyed or Mortgagor does not elect to restore or repair the Mortgaged Property pursuant to clause (a) above or otherwise fails to meet the requirements of clause (a) above, then, in any of such events, Mortgagee may elect, in Mortgagee's absolute discretion and without regard to the adequacy of Mortgagee's security, to do either of the following: (i) apply the remainder of such sums received pursuant to this Section to the payment of the Debt in whatever order Mortgagee directs in its absolute discretion (provided that any portion of such sums applied in reduction of the outstanding principal amount of the Debt shall be applied first to reduce the Allocated Loan Amount), with any remainder being paid to Mortgagor; in which event, (A) Mortgagor shall not be required to repair or restore the Mortgaged Property as set forth above, provided that Mortgagor shall take, at its own expense, such steps as may be reasonably required to put and maintain the Improvements in a safe and secure condition; (B) Mortgagor may, at its own expense, make such alterations and repairs to the Improvements as Mortgagor may desire to restore the Improvements to a functioning multifamily residential property, in compliance with all applicable laws; (C) Mortgagee shall waive any defaults hereunder based on the physical condition of the Improvements unless and until Mortgagor shall restore the same as set forth in the foregoing clause (B); (D) Mortgagor's obligation to make deposits into the Replacement Reserve under Section 5.2 shall be (I) suspended for so long as the Mortgaged Property is vacant and (II) recalculated in Mortgagee's discretion to reflect any decrease in Rents and Profits caused by such casualty or condemnation; (E) Mortgagor may obtain a release of the Mortgaged Property from the lien of this Mortgage pursuant to Section 12.7(a) and (F) the amount of the Monthly Payment shall be recalculated by Mortgagee to reflect the amortization of the remaining Allocated Loan Amount, through constant payments, as determined by Mortgagee on each Payment Date from the date of application of such sums by Mortgagee through the Maturity Date, or (ii) notwithstanding that Mortgagor may have elected not to restore or repair the Mortgaged Property pursuant to the provisions of Section 5.1(a)(7) above, require Mortgagor to restore or repair the Mortgaged 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 reasonably determined by Mortgagee to be 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 Debt in whatever order Mortgagee directs in its absolute discretion.

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(c) Any reduction in the Debt 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 Debt and, in any event, the unpaid portion of the Debt 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 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 Mortgaged Property after the occurrence of a casualty or partial taking of the Mortgaged 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 Mortgaged 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. Mortgagor agrees to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the 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, 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.

## ARTICLE IV. ENVIRONMENTAL MATTERS

### 4.1 Hazardous Waste and Other Substances

(a) Mortgagor hereby represents and warrants to Mortgagee that, as of the date hereof, except as may be set forth in the Section entitled Executive Summary (Summary of Findings and Recommendations and Conclusions) (the "Report Section") of the Engineering Evaluation of Property Condition and Phase I Environmental Assessment prepared by Edward H. Kaljian Associates, Inc. dated as set forth with respect to Mortgagor on Schedule C annexed hereto (the "Property Report"): (i) to the best of Mortgagor's knowledge, information and belief, none of Mortgagor nor the Mortgaged Property nor any Tenant at the Premises nor the operations conducted thereon has at any time been or presently is in direct or indirect violation of or otherwise exposed to any liability under any local, state or federal law, rule or regulation or common law duty pertaining to human health, natural resources or the environment (collectively, "Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) ("CERCLA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Emergency Planning and Community-Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Endangered Species Act (16 U.S.C. § 1531 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Occupational Safety

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and Health Act (29 U.S.C. § 651 et seq.) and the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), regulations promulgated pursuant to said laws, all as amended from time to time; (ii) no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos or asbestos-containing materials, lead based paint, polychlorinated biphenyls, petroleum or petroleum products or byproducts, 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, in or under or have been handled, generated, stored, processed or disposed of on or released or discharged from the Mortgaged Property (including underground contamination), except for those substances used by Mortgagor or any Tenant in the ordinary course of their respective businesses and in compliance with all Environmental Laws and where such could not reasonably be expected to give rise to liability under Environmental Laws ("Permitted Materials"); (iii) the Mortgaged Property is not subject to any private or governmental lien arising under Environmental Laws; (iv) there is no pending, nor, to Mortgagor's knowledge, information or belief, threatened litigation arising under Environmental Laws affecting Mortgagor or the Mortgaged Property; there are no and have been no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances or landfills or dumps on the Mortgaged 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 Mortgaged Property, nor does Mortgagor know of any basis for such an investigation, action, proceeding or 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 Mortgaged 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 an investigation, action, proceeding or claim.

(b) Mortgagor has not received nor to the best of Mortgagor's knowledge, information and belief has there been issued, any notice, notification, demand, request for information, citation, summons, or order in any way relating to any actual, alleged or potential violation or liability arising under Environmental Laws.

(c) Neither the Mortgaged Property, nor to the best of Mortgagor's knowledge, information and belief, any property to which Mortgagor has, in connection with the maintenance or operation of the Mortgaged Property, directly or indirectly transported or arranged for the transportation of any Hazardous Substances is listed or, to the best of Mortgagor's knowledge, information and belief, proposed for listing on the National Priorities List promulgated pursuant to CERCLA, on CERCLIS (as defined in CERCLA) or on any similar federal or state list of sites requiring environmental investigation or clean-up.

(d) Mortgagor shall comply with all applicable Environmental Laws. Mortgagor shall keep or cause the Mortgaged Property to be kept free from Hazardous

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Substances (except Permitted Materials and Hazardous Substances identified in the Report Section and treated by Mortgagor in accordance with all applicable Environmental Laws and the other provisions of this Mortgage).

(e) Mortgagor shall promptly notify Mortgagee of (i) the actual or potential existence of any Hazardous Substances on the Mortgaged Property other than Permitted Materials, (ii) any direct or indirect violation of, or other exposure to liability under, any Environmental Laws, (iii) any lien, action or notice affecting the Mortgaged Property or Mortgagor resulting from any violation or alleged violation of or liability or alleged liability under any Environmental Laws arising from any condition or activity on the Mortgaged Property, (iv) the institution of any investigation, inquiry or proceeding concerning Mortgagor or the Mortgaged Property pursuant to any Environmental Laws or otherwise relating to Hazardous Substances, or (v) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Mortgage incorrect in any respect if made at the time of such discovery. Immediately upon receipt of same, Mortgagor, shall deliver to Mortgagee copies of any and all requests for information, complaints, citations, summonses, orders, notices, reports or other communications, documents or instruments in any way relating to any actual, alleged or potential violation or liability of any nature whatsoever arising under Environmental Laws and relating to the Mortgaged Property or to Mortgagor. Mortgagor shall remedy or cause to be remedied in a timely manner (and in any event within the time period permitted by applicable Environmental Laws) any violation of Environmental Laws or any condition that could give rise to liability under Environmental Laws. Without limiting the foregoing, Mortgagor shall, promptly and regardless of the source of the contamination or threat to the environment or human health, at its own expense, take all actions as shall be necessary or prudent, for the clean-up of any and all portions of the Mortgaged Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment and 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 Mortgaged Property. In the event Mortgagor fails to do so, Mortgagee may, but shall not be obligated to, cause the Mortgaged Property or other affected property to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws. Mortgagor hereby grants to Mortgagee and its agents and employees access to the Mortgaged 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 Mortgaged Property into conformance with Environmental Laws.

(f) 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 (including without limitation, punitive or exemplary damages), losses, liabilities (including, without limitation, strict liability), obligations, settlement payments, penalties, fines, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever

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(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 Mortgaged Property, and arising directly or indirectly from or out of: (i) any violation or alleged violation of, or liability or alleged liability under, any Environmental Law; (ii) the presence, release or threat of release of or exposure to any Hazardous Substances on, in, under or affecting all or any portion of the Mortgaged Property or any surrounding areas, regardless of whether or not caused by or within the control of Mortgagor; (iii) any transport, treatment, recycling, storage, disposal or arrangement therefor of Hazardous Substances whether on the Mortgaged Property, originating from the Mortgaged Property, or otherwise associated with Mortgagor or any operations conducted on the Mortgaged Property at any time; (iv) the failure by Mortgagor to comply fully with the terms and conditions of this Section 4.1; (v) the breach of any representation or warranty contained in this Section 4.1; (vi) the enforcement of this Section 4.1. The indemnity set forth in this Section 4.1 shall also include any diminution in the value of the security afforded by the Mortgaged Property or any future reduction in the sales price of the Mortgaged Property by reason of any matter set forth in this Section 4.1. Mortgagee's rights under this Section shall survive payment in full of the Debt and shall be in addition to all other rights of Mortgagee under this Mortgage, the Note and the other Loan Documents.

(g) Upon Mortgagee's request, at any time after the occurrence of an Event of Default which is continuing and has not been waived 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 the Mortgaged Property, or on property affecting the Mortgaged Property, or that the Mortgaged Property may be in violation of the Environmental Laws, Mortgagor shall perform or cause to be performed, at Mortgagor's sole cost and expense and in scope, form and substance satisfactory to Mortgagee, an inspection or audit of the Mortgaged 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 Mortgaged Property, the compliance or non-compliance status of the Mortgaged Property and the operations conducted thereon with applicable Environmental Laws, or an inspection or audit of the Mortgaged Property prepared by an engineering or consulting firm approved by Mortgagee indicating the presence or absence of friable asbestos or substances containing asbestos or lead or substances containing lead or lead based paint ("Lead Based Paint") on the Mortgaged Property. If Mortgagor fails to provide reports of such inspection or audit within thirty (30) days after such request, Mortgagee may order the same at Mortgagor's expense, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and an irrevocable license to undertake such inspection or audit.

(h) Reference is made to that certain Environmental Indemnity Agreement of even date herewith by the Borrowers and Stephen E. Solms in favor of Mortgagee (the "Environmental Indemnity Agreement"). The provisions of this Mortgage and the Environmental Indemnity Agreement shall be read together to maximize the coverage with respect to the subject matter thereof, as determined by Mortgagee.

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(i) Mortgagor covenants and agrees to institute, within thirty (30) days after the later of (i) the date hereof and (ii) the initial discovery of asbestos-containing materials ("ACM's") at the Mortgaged Property, an operations and maintenance program (the "Maintenance Program") designed by an environmental consultant, satisfactory to Mortgagee, with respect to ACM's, consistent with "Guidelines for Controlling Asbestos-Containing Materials in Buildings" (USEPA, 1985) and other relevant guidelines, and such Maintenance Program will hereafter continuously remain in effect until the Debt secured hereby is repaid in full. In furtherance of the foregoing, Mortgagor shall inspect and maintain all ACM's on a regular basis and ensure that all ACM's shall be maintained in a condition that prevents exposure of occupants to ACM's at all times. 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 circumstances, laws or other matters, (iii) at Mortgagor's sole expense, supplemental examination of the Mortgaged Property by consultants specified by Mortgagee, and (iv) variation of the operations and maintenance program in response to the reports provided by any such consultants.

(j) If, prior to the date hereof, it was determined that the Mortgaged Property contains Lead Based Paint, Mortgagor had prepared an assessment report describing the location and condition of the Lead Based Paint (a "Lead Based Paint Report"). If, at any time hereafter, Lead Based Paint is suspected of being present on the Mortgaged Property, Mortgagor agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, acceptable to Mortgagee.

(k) Mortgagor agrees that if it has been, or if at any time hereafter it is, determined that the Mortgaged Property contains Lead Based Paint, on or before thirty (30) days following (i) the date hereof, if such determination was made prior to the date hereof or (ii) such determination, if such determination is hereafter made, as applicable, Mortgagor shall, at its sole cost and expenses, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an operations, abatement and maintenance plan for the Lead Based Paint on the Mortgaged Property, which plan shall be prepared by an expert, and be in form, scope and substance, acceptable to Mortgagee (together with any Lead Based Paint Report, the "O&M Plan"). If an O&M Plan has been prepared prior to the date hereof, Mortgagor agrees to diligently and continually carry out (or cause to be carried out) the provisions thereof. Compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Laws.

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## ARTICLE V. RESERVES

### 5.1 Intentionally Deleted.

5.2 Replacement Reserve. As additional security for the Debt, Mortgagor shall establish and maintain at all times while this Mortgage continues in effect a capital improvement reserve (the "Replacement Reserve") with Mortgagee for payment of costs and expenses incurred by Mortgagor in connection with the performance of work which would normally be treated as a capital improvement under generally accepted accounting principles (collectively the "Replacements"). Commencing on the first Payment Date under the Note and continuing on each Payment Date thereafter until the Debt is fully paid and performed, Mortgagor shall pay to Mortgagee, in addition to the monthly payment due under the Note, a deposit to the Replacement Reserve in an amount equal to the monthly Replacement Reserve Deposit identified with respect to Mortgagor on Schedule C annexed hereto. So long as no Default or Event of Default has occurred and has not been waived, Mortgagee shall, to the extent funds are available for such purpose in the Replacement Reserve, disburse to Mortgagor the amount paid or incurred by Mortgagor in performing Replacements within ten (10) days following: (a) the receipt by Mortgagee of a written request from Mortgagor for disbursement from the Replacement Reserve and a certification by Mortgagor in a form approved in writing by Mortgagee that the applicable item of Replacement has been completed; (b) the delivery to Mortgagee of invoices, receipts or other evidence satisfactory to Mortgagee, verifying the cost of performing the Replacements; (c) for disbursement requests in excess of \$15,000, the delivery to Mortgagee of affidavits, lien waivers or other evidence reasonably satisfactory to Mortgagee showing that all parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Mortgaged Property have been paid all amounts due for labor and materials furnished to the Mortgaged Property; (d) for disbursement requests in excess of \$25,000, delivery to Mortgagee of a certification from an inspecting architect or other third party acceptable to Mortgagee describing the completed Replacements and verifying the completion of the Replacements and the value of the completed Replacements; and (e) for disbursement requests in excess of \$50,000, delivery to Mortgagee of a new certificate of occupancy for the portion of the Improvements covered by such Replacements, if said new certificate of occupancy is required by law, or a certification by Mortgagor that no new certificate of occupancy is required. Mortgagee shall not be required to make advances from the Replacement Reserve more frequently than once in any thirty (30) day period and six (6) times in any calendar year. In making any payment from the Replacement Reserve, Mortgagee shall be entitled to rely on such request from Mortgagor without any inquiry into the accuracy, validity or contestability of any such amount. Mortgagee may, at Mortgagor's expense, make or cause to be made during the term of this Mortgage an annual inspection of the Mortgaged Property to determine the need, as determined by Mortgagee in its reasonable judgment, for further Replacements of the Mortgaged Property; such inspection to be no more frequent than once in any calendar year unless a Default or an Event of Default shall have occurred and not been waived. In the event that such inspection reveals that further Replacements of the Mortgaged Property are required, Mortgagee shall provide Mortgagor with a written description of the required Replacements and Mortgagor

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shall complete such Replacements to the reasonable satisfaction of Mortgagee within ninety (90) days after the receipt of such description from Mortgagee, or such later date as may be approved by Mortgagee in its sole discretion.

5.3 Repair and Remediation Reserve. Prior to the execution of this Mortgage, Mortgagee has caused the Mortgaged Property to be inspected and such inspection has revealed that the Mortgaged Property is in need of certain maintenance, repairs and/or remedial or corrective work. Contemporaneously with the execution hereof, Mortgagor has established with the Mortgagee a reserve in the amount identified as such with respect to Mortgagor on Schedule C annexed hereto (the "Repair and Remediation Reserve") by depositing such amount with Mortgagee. Mortgagor shall cause each of the items described in the Property Report (the "Deferred Maintenance") to be completed, performed, remediated and corrected to the satisfaction of Mortgagee and as necessary to bring the Mortgaged Property into compliance with all applicable laws, ordinances, rules and regulations on or before the expiration of six (6) months after the effective date hereof, as such time period may be extended by Mortgagee in its sole discretion. So long as no Event of Default has occurred, all sums in the Repair and Remediation Reserve shall be held by Mortgagee in the Repair and Remediation Reserve to pay the costs and expenses of completing the Deferred Maintenance. So long as no Event of Default has occurred, Mortgagee shall, to the extent funds are available for such purpose in the Repair and Remediation Reserve, disburse to Mortgagor the amount paid or incurred by Mortgagor in completing, performing, remediating or correcting the Deferred Maintenance upon (a) the receipt by Mortgagee of a written request from Mortgagor for disbursement from the Repair and Remediation Reserve and a certification by Mortgagor in a form as may be required by Mortgagee that the applicable item of Deferred Maintenance has been completed in accordance with the terms of this Mortgage, (b) delivery to Mortgagee of invoices, receipts or other evidence satisfactory to Mortgagee verifying the costs of the Deferred Maintenance to be reimbursed, (c) delivery to Mortgagee of a certification from an inspecting architect, engineer or other consultant reasonably acceptable to Mortgagee describing the completed work, verifying the completion of the work and the value of the completed work and, if applicable, certifying that the Mortgaged Property is, as a result of such work, in compliance with all applicable laws, ordinances, rules and regulations relating to the Deferred Maintenance so performed, and (d) delivery to Mortgagee of affidavits, lien waivers or other evidence reasonably satisfactory to Mortgagee showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished materials or labor to the Mortgaged Property have been paid all amounts due for such labor and materials furnished to the Mortgaged Property. Mortgagee shall not be required to make advances from the Repair and Remediation Reserve more frequently than once in any thirty (30) day period and six (6) times in any calendar year. In making any payment from the Repair and Remediation Reserve, Mortgagee shall be entitled to rely on such request from Mortgagor without any inquiry into the accuracy, validity or contestability of any such amount. Mortgagor hereby grants to Mortgagee a power-of-attorney, coupled with an interest, to cause the Deferred Maintenance to be completed, performed, remediated and corrected to the satisfaction of Mortgagee upon Mortgagor's failure to do so in accordance with the terms and conditions of this Section 5.3, and to apply the amounts on deposit in the Repair and Remediation Reserve to the costs associated therewith,

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all as Mortgagee may determine in its sole and absolute discretion but without obligation to do so.

5.4 Intentionally deleted.

5.5 Reserves Generally; Security Interest.

(a) Mortgagee shall cause funds in the Replacement Reserve and the Repair and Remediation Reserve to be deposited into interest bearing accounts of the type customarily maintained by Mortgagee or its servicing agent for the investment of similar reserves, which accounts may not yield the highest interest rate then available. Interest payable on such amounts shall be computed based on the daily outstanding balance in the Replacement Reserve and the Repair and Remediation Reserve. Such interest shall be calculated on a simple, non-compounded interest basis based solely on contributions made to the Replacement Reserve and the Repair and Remediation Reserve by Mortgagor. All interest earned on amounts contributed to the Replacement Reserve and the Repair and Remediation Reserve shall be retained by Mortgagee and accumulated for the benefit of Mortgagor and added to the balance in the Replacement Reserve and the Repair and Remediation Reserve and shall be disbursed for payment of the items for which other funds in the Replacement Reserve and the Repair and Remediation Reserve, as the case may be, are to be disbursed.

(b) 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 and pledges to Mortgagee, and hereby grants to Mortgagee a security interest in, (i) the Impound Account, the Rent Account, the Payment Reserve, the Replacement Reserve and the Repair and Remediation Reserve and any other reserve or escrow account established pursuant to the terms hereof or of any other Loan Document (collectively, the "Reserves"), (ii) all insurance on said accounts, (iii) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (iv) all replacements, substitutions or proceeds thereof, (v) all instruments and documents now or hereafter evidencing the Reserves or such accounts, (vi) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom), and (vii) all replacements, substitutions and all proceeds of the foregoing. Mortgagor hereby authorizes and consents to each 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 each 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; unless such loss is caused by Mortgagee's willful misconduct. 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

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remedy upon a Default or an Event of Default. Mortgagor hereby waives all right to withdraw funds from the Reserves except as provided for in this Mortgage. If an Event of Default shall occur hereunder or under any other of the Loan Documents, 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, reasonable attorneys' fees, costs and expenses) to the Debt 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 or Event of Default.

(c) The Reserves 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. Upon assignment of this Mortgage by Mortgagee, any funds in the Reserves shall be turned over to the assignee and any responsibility of Mortgagee, as assignor, with respect thereto shall terminate. If the funds in the applicable Reserve shall exceed the amount of payments actually applied by Mortgagee for the purposes and items for which the applicable Reserve is held, such excess may be credited by Mortgagee on subsequent payments to be made hereunder or, at the option of Mortgagee, refunded to Mortgagor. If, however, the applicable Reserve shall not contain sufficient funds to pay the sums required by the dates on which such sums are required to be on deposit in such account, Mortgagor shall, within ten (10) days after receipt of written notice thereof, deposit with Mortgagee the full amount of any such deficiency. If Mortgagor shall fail to deposit with Mortgagee the full amount of such deficiency as provided above, Mortgagee shall have the option, but not the obligation, to make such deposit.

## ARTICLE VI.

### RENTS; LEASES; ALIENATION

6.1 Rents and Profits. As additional and collateral security for the payment of the Debt 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 and Profits. Mortgagor hereby grants to Mortgagee the sole, exclusive and immediate right, without taking possession of the Mortgaged 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. 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 an Event of Default under this Mortgage or under any other of the Loan Documents, Mortgagor shall have a license to collect, receive, use and enjoy the Rents and Profits when due and prepayments

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thereof for not more than one (1) month prior to due date thereof; provided that with respect to residential leases, Mortgagor may collect the last two (2) months' rent at the signing of the Lease in accordance with the Rent Grow Applicant Selection Policy delivered by Mortgagor to Mortgagee (the "Policy Requirements"). 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 Mortgaged Property. Mortgagor has executed an Assignment of Leases and Rents and Profits 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. 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.

## 6.2 Leases.

(a) Mortgagor covenants and agrees that, except as permitted under paragraph (b) below, it shall not enter into any Lease without the prior written approval of Mortgagee, which approval shall not be unreasonably withheld. The request for approval of each such proposed new Lease shall be made to Mortgagee in writing 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 conjunction 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: (i) such Lease shall be with a bona-fide arm's-length Tenant; (ii) the terms of such Lease shall comply with the requirements set forth in paragraphs (b) and (c) below; and (iii) such Lease shall provide that the Tenant pays for its expenses. Failure of Mortgagee to approve or disapprove any such proposed Lease within fifteen (15) business days after receipt of such written request and all the documents and information required to be furnished to Mortgagee with such request shall be deemed approved, provided that the written request for approval specifically mentioned the same.

(b) 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 Leases Mortgagor plans to use in leasing residential or commercial space, respectively, in the Improvements or at the Mortgaged Property. Mortgagor may, without the prior approval of Mortgagee, enter into any Leases of space at the Mortgaged Property which shall be entered into substantially on such residential or commercial form, as applicable, and shall be at a rental and on terms consistent with the terms for similar leases in the market area of the Premises. Mortgagor shall, however, submit to Mortgagee for Mortgagee's approval, which approval shall not be unreasonably withheld, prior to the execution thereof, any proposed Lease of the Improvements or any portion thereof that differs materially and adversely from the applicable aforementioned form Lease. Mortgagor shall not execute any Lease for all or a substantial portion of the Mortgaged Property, except for an actual occupancy by the Tenant, lessee or licensee thereunder, and shall at all times promptly and faithfully perform, or cause to be

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performed, all of the covenants, conditions and agreements contained in all Leases with respect to the Mortgaged Property, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. Mortgagor shall furnish to Mortgagee, within ten (10) days after a request by Mortgagee to do so, but in any event by January 1 of each year, a current Rent Roll, certified by Mortgagor as being true and correct, containing the names of all Tenants with respect to the Mortgaged Property, the terms of their respective Leases, 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. Mortgagor shall not do or suffer to be done any act, or omit to take any action, that might result in a default by the landlord, lessor or licensor under any such Lease or allow the Tenant thereunder to withhold payment of rent or cancel or terminate same and shall not further assign any such Lease or any such Rents and Profits. 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 and Mortgagor shall not anticipate, discount, release, waive, compromise or otherwise discharge any rent payable under any of the Leases. Mortgagor shall not, without the prior written consent of Mortgagee (which shall not be unreasonably withheld or delayed), 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 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 Mortgaged 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, provided that with respect to residential Leases, Mortgagor may collect the last two (2) months' rent at the signing of the Lease in accordance with the Policy Requirements.

(c) Each Lease executed after the date hereof affecting any of the Premises or the Improvements must provide, in a manner approved by Mortgagee, that the Lease is subordinate to the lien of this Mortgage and that Tenant will recognize as its landlord, lessor or licensor, as applicable, 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 shall also provide that, upon request of said successor-in-interest, the Tenant 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 rent for more than one (1) month in advance (except to the extent Mortgagor shall have collected the last two (2) months' rent at the signing of a residential Lease as permitted hereunder), or any amendment or modification of said Lease made without the express written consent of Mortgagee or said successor-in-interest.

## 6.3 Alienation and Further Encumbrances.

(a) Mortgagor acknowledges that Mortgagee has relied upon the principals of Mortgagor and their experience in owning and operating the Mortgaged Property and properties similar to the Mortgaged Property in connection with the closing of the loan evidenced by the Note. Accordingly, except as specifically allowed hereinbelow in this

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Section and notwithstanding anything to the contrary contained in Section 16.4 hereof, in the event that the Mortgaged 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 6.2 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Mortgagor shall be divested of its title to the Mortgaged 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 an Event of Default and Mortgagee shall have the right, at its option, to declare any or all of the Debt, 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 XIV hereof. For the purposes of this Section: (i) in the event either Mortgagor or any of its general partners or members is a corporation or trust, the sale, conveyance, transfer or disposition of more than 10% (in one or more related transactions) of the issued and outstanding capital stock of Mortgagor or any of its general partners or members 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 or managing members so that immediately after such issuance (in one or a series of transactions) 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 Mortgaged Property; provided that the sale, conveyance, transfer or disposition of up to 49% of such issued and outstanding capital stock or of the beneficial interests of such trust (or the issuance of new capital stock in any such entity so that immediately after such issuance, the total capital stock then issued and outstanding is less than or equal to 149% of the total immediately prior to such issuance) shall not require the prior written consent of Mortgagee if the persons In Control of such entity are not changed by such sale, conveyance, transfer, disposition or conveyance; and (ii) in the event Mortgagor or any general partner or managing member of Mortgagor is a limited or general partnership, a joint venture or a limited liability company, a direct or indirect change in the ownership interests in any general partner, any joint venturer or any managing 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 managing member in Mortgagor or such general partner or managing member (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 Mortgaged Property; provided that the transfer of up to 49% of such interests in any entity shall not require the prior written consent of Mortgagee if the persons In Control of such entity are not changed by such transfer. Notwithstanding the foregoing, however, (i) limited partnership interests in Mortgagor or in any general partner or member of Mortgagor shall be freely transferable without the consent of Mortgagee, (ii) any involuntary transfer caused by the death of Mortgagor or any general partner, shareholder, joint venturer, or member of Mortgagor or any general partner or member of Mortgagor or beneficial owner of a trust shall not be an Event of Default under this Mortgage so long as Mortgagor is reconstituted, if required, following such death and so long as those persons responsible for the management of the Mortgaged Property and Mortgagor remain unchanged as a result of such death or any replacement management company is approved by Mortgagee (and for the purposes of this provision, any replacement management

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company shall be deemed approved by Mortgagee for so long as Randy Kessler and/or Peter Weiss is employed by such company in a decision-making capacity with respect to the Mortgaged Property), and (iii) gifts for estate planning purposes of any individual's interests in Mortgagor or in any of Mortgagor's general partners, managing members or joint venturers to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, shall not be an Event of Default under this Mortgage so long as Mortgagor is reconstituted, if required, following such gift and so long as those persons responsible for the management of the Mortgaged Property and Mortgagor remain unchanged following such gift or any replacement management company is approved by Mortgagee (and for the purposes of this provision, any replacement management company shall be deemed approved by Mortgagee for so long as Randy Kessler and/or Peter Weiss is employed by such company in a decision-making capacity with respect to the Mortgaged Property); provided that no transfer of any interest in Mortgagor, directly or indirectly, shall be permitted hereunder that results in any entity or group of related entities owning, directly or indirectly, more than 49% of the ownership interests in Mortgagor or any general partner or managing member of Mortgagor that did not own more than 49% of such ownership interests prior to such transfer unless, prior to such transfer, Mortgagor and the transferee of such interest shall have delivered a substantive nonconsolidation opinion in form and substance satisfactory to Mortgagee.

(b) Notwithstanding the foregoing provisions of this Section, Mortgagee shall not unreasonably withhold its consent to a one time sale, conveyance or transfer of the Mortgaged 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 and no Event of Default has occurred hereunder or under any of the other Loan Documents which has not been waived;

(2) Mortgagor gives Mortgagee written notice of the terms of such prospective Sale not less than sixty (60) 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 Mortgaged 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 \$5,000, which application fee shall be credited against any assumption fee that may become payable in connection with such Sale. 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 Mortgaged Property, 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

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commercially reasonable in Mortgagee's sole discretion and, if given, may be given subject to such conditions as Mortgagee may deem appropriate;

(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, reasonable attorneys' fees, incurred by Mortgagee in connection with the Sale, plus an amount equal to one percent (1.0%) of the then outstanding principal balance of the Note;

(4) Buyer executes, without any cost or expense to Mortgagee, such documents and agreements as Mortgagee shall reasonably require in connection with the Sale, including, but not limited to, an assumption agreement, financing statements, and guaranties or indemnities from guarantors and indemnitors acceptable to Mortgagee, all in form and substance satisfactory to Mortgagee. The Buyer shall also deliver to Mortgagee such insurance policies and other documents and certificates as the Mortgagee may require;

(5) If such Sale is made in conjunction with the simultaneous Sale of all of the Other Mortgaged Properties to the same Buyer, (A) the Debt Service Coverage Ratio as of the date of such Sale shall be at least 1.25/1.0 and (B) the ratio of the outstanding principal balance of the Debt to the aggregate fair market value of the Mortgaged Property and the Other Mortgaged Properties (the "Loan-to-Value Ratio"), determined based on appraisals of the Mortgaged Property and the Other Mortgaged Properties prepared, at Mortgagor's sole cost and expense, by an appraiser, and in form and substance, satisfactory to Mortgagee, shall be not more than 75%; and

(6) If such Sale shall involve a transfer of less than all of the Mortgaged Property and the Other Mortgaged Properties to the same Buyer, (A) (I) the Debt Service Coverage Ratio, determined for the purposes of this clause (A)(I) with respect only to the Mortgaged Property and such Other Mortgaged Properties, if any, as are transferred to the Buyer in the same Sale (the "Conveyed Properties"), shall be at least equal to 1.3/1.0 and (II) the Loan-to-Value Ratio for the Conveyed Properties, determined based on the aggregate Allocated Loan Amounts (as defined herein and in the Contemporaneous Mortgages) for the Conveyed Properties and on the fair market value of the Conveyed Properties as established by appraisals of the Conveyed Properties prepared, at Mortgagor's sole cost and expense, by an appraiser, and in form and substance, satisfactory to Mortgagee, shall be not more than 70%, (B) (I) the Debt Service Coverage Ratio, determined for the purposes of this clause (B)(I) with respect to all of the Other Mortgaged Properties not transferred to the Buyer as part of such Sale (the "Retained Properties") shall be at least 1.3/1.0 and (II) the Loan-to-Value Ratio for the Retained Properties, determined based on the aggregate Allocated Loan Amounts for the Retained Properties and the fair market value of the Retained Properties as established by (x) Mortgagee based on the "net underwritten income" for the Retained Properties (determined in accordance with Mortgagee's standard underwriting practices and procedures) capitalized at a rate reasonably determined by

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Mortgagee or (y), at Mortgagor's election, appraisals of the Retained Properties prepared, at Mortgagor's sole cost and expense, by an appraiser, and in form and substance, satisfactory to Mortgagee, shall be not more than 70% and (C) Buyer, Mortgagor and Mortgagee, as applicable, shall execute and deliver (I) replacement notes (the "Replacement Notes"), in the same form as the Note with a principal amount, for the Replacement Note executed by Buyer, equal to the then aggregate Allocated Loan Amounts for the Conveyed Properties and, for the Replacement Note executed by Mortgagor, equal to the then aggregate Allocated Loan Amounts for the Retained Properties, (II) releases of the Retained Properties as security for the obligations of Buyer under the Replacement Note executed by Buyer and releases of the Conveyed Properties as security for the obligations of Mortgagor under the Replacement Note executed by Mortgagor and (III) such other releases and modifications, amendments and replacements of the Loan Documents as are reasonably deemed necessary or desirable by Mortgagee so that Mortgagor shall be obligated to Mortgagee for an indebtedness in a principal amount equal to the aggregate of the Allocated Loan Amounts for the Retained Properties, secured by liens on the Retained Properties and all related collateral under the Loan Documents, all on the terms and conditions set forth in the Loan Documents, and Buyer shall be obligated to Mortgagee for an indebtedness in a principal amount equal to the aggregate of the Allocated Loan Amounts for the Conveyed Properties, secured by liens on the Conveyed Properties and all related collateral under the Loan Documents, all on the terms and conditions set forth in the Loan Documents, except that the mortgages securing the Replacement Note executed by Buyer shall not include a provision regarding transfers of the Mortgaged Property similar to this Section 6.3(b).

(c) Such Sale shall not be construed so as to relieve Mortgagor or Indemnitor of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale, whether or not same is discovered prior or subsequent to the closing of such Sale. Mortgagor and Indemnitor shall be released from and relieved of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising after the closing of such Sale which are not caused by or arising out of any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale.

6.4 Easements and Rights-of-Way. Mortgagor shall not grant any easement or right-of-way with respect to all or any portion of the Premises 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 Mortgaged 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 other than expenses, including, without limitation, reasonable attorneys' fees, incurred by Mortgagee in the review of Mortgagor's request and in the preparation of documents effecting the subordination.

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6.5 Optional Prepayment Date Provisions. On or before the Optional Prepayment Date or within ten (10) business days of request by Mortgagee if the DSCR Trap Date or the Initial Default Date shall have occurred, Mortgagor shall deliver to Mortgagee for delivery, at Mortgagor's expense, by certified mail, return receipt requested, to all tenants of the Mortgaged Property an irrevocable written notice in the form attached hereto as Exhibit A directing such tenants to pay their rent and other amounts due under their leases to the depository under the Disbursement Agreement for deposit into the Rent Account. Additionally, each lease, license and occupancy agreement executed after the Optional Prepayment Date or the DSCR Trap Date affecting any of the Premises or Improvements must provide, in a manner approved by Mortgagee, that the tenant, lessee or licensee, as appropriate, is required to make all payments due to Mortgagor under the terms of such lease, license or occupancy agreement to the depository of the Rent Account by check, cashier's check or money order made payable to Mortgagee or its successors or assigns. Upon the occurrence of any default under this Mortgage, Mortgagee may apply any sums then held pursuant to the Disbursement Agreement to the payment of the Debt in any order in its sole discretion. Until expended or applied, amounts held in the Rent Account pursuant to the Disbursement Agreement shall constitute additional security for the Debt. The Disbursement Agreement when and if executed shall be a "Loan Document" for all purposes under the Note, this Mortgage and the other Loan Documents. Mortgagor hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor, coupled with an interest, to, upon Mortgagor's failure to do so in accordance with the terms hereof, without notice to Mortgagor, execute and deliver the notices to tenants described in this Section 6.5 and to take any other action necessary or desirable in Mortgagee's judgment to carry out the intention of this Section 6.5.

## ARTICLE VII. PROPERTY MANAGEMENT

7.1 Management. The management of the Mortgaged 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 Mortgaged Property in a first class manner; or (b) a professional property management company approved by Mortgagee. Such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Mortgagee, such approval not to be unreasonably withheld or delayed. Agreement Real Estate Companies, Inc., a Pennsylvania corporation, shall be deemed approved by Mortgagee for so long as Stephen E. Solms is employed by Agreement Real Estate Companies, Inc. in a decision-making capacity with respect to the Mortgaged Property. Mortgagor shall give Mortgagee prompt written notice of the occurrence of a default under any management contract then in effect. In no event shall any manager be removed or replaced or the terms of any management agreement be modified or amended without the prior written consent of Mortgagee. After an Event of Default or a default 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

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Mortgagor to retain, a new management agent approved by Mortgagee. All Rents and Profits generated by or derived from the Mortgaged Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Mortgaged 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 Mortgaged 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 Mortgaged Property have been fully paid and satisfied.

## ARTICLE VIII. INDEMNIFICATION

### 8.1 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 Mortgaged Property or the Debt, and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including Mortgagee's reasonable attorneys' fees and expenses) of whatever kind or nature which may be asserted against, imposed on or incurred by Mortgagee in connection with the Debt, this Mortgage and any other Loan Document, the Mortgaged 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 to the extent enacted against, imposed on or incurred by Mortgagee solely by reason of Mortgagee's willful misconduct as finally determined by a court of competent jurisdiction.

(b) Mortgagor hereby indemnifies and holds Mortgagee harmless from and against all loss, cost and expenses with respect to any Event of Default hereof, any liens (i.e., judgments, mechanics' and materialmen's liens, or otherwise), charges and encumbrances filed against the Mortgaged 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 Premises or the Improvements or any nuisance made or suffered thereon, except to the extent due to Mortgagee's willful misconduct as finally determined by a court of competent jurisdiction, including, without limitation, in any case, reasonable attorneys' fees, costs and expenses as aforesaid, whether at pretrial, trial or appellate level, and such indemnity shall survive payment in full of the Debt. This Section shall not be construed to require Mortgagee to incur any expenses, make any appearances or take any actions.

(c) If Mortgagee is made a party defendant to any litigation or any claim is threatened or brought against Mortgagee concerning the Debt, this Mortgage, the Mortgaged Property, or any part thereof, or any interest therein, or the construction, maintenance, operation or occupancy or use thereof, then Mortgagor shall indemnify, defend

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and hold Mortgagee harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' fees 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 the reasonable attorneys' fees and expenses incurred by Mortgagee in connection therewith. The right to such attorneys' fees 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 and any other Loan Document, 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 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, any appellate counsel fees, if applicable, and any allocation charges and allocation costs of Mortgagee's in-house counsel.

(d) 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 Mortgaged 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.

## ARTICLE IX. REPORTING

9.1 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 Premises and the Improvements and any other location where books and records concerning the Mortgaged Property are kept at all reasonable times and, except in the event of an emergency, upon not less than 48 hours prior notice (which notice may be telephonic) for the purposes of inspecting the Mortgaged Property and of examining, copying and making extracts from the books and records of Mortgagor relating to the Mortgaged Property. Mortgagor shall lend assistance to all such agents, representatives and employees of Mortgagee.

9.2 Financial Statements and Books and Records. Mortgagor shall keep accurate books and records of account of the Mortgaged Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles (as applied to real estate), consistently applied. Mortgagee and its duly authorized representatives shall have the right to examine, copy and

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audit Mortgagor's records and books of account at all reasonable times. So long as this Mortgage continues in effect, Mortgagor shall provide to Mortgagee, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which shall be in the form and substance reasonably acceptable to Mortgagee and all of which must be certified to Mortgagee as being true and correct by Mortgagor or the person or entity to which they pertain, as applicable:

(a) copies of all tax returns filed by Mortgagor, within thirty (30) days after the date of filing;

(b) monthly operating statements for the Mortgaged Property, within thirty (30) days after the end of each calendar month;

(c) year-to-date operating statements for the Mortgaged Property, within thirty (30) days after the end of each March, June, September and December commencing with the first (1st) of such months to occur following the first (1st) anniversary of the date hereof;

(d) annual balance sheets for the Mortgaged Property and annual financial statements for Mortgagor and each general partner in Mortgagor, within one hundred twenty (120) days after the end of each calendar year; and

(e) such other information with respect to the Mortgaged Property, Mortgagor, and the general partners in Mortgagor, which may be reasonably requested from time to time by Mortgagee, within a reasonable time after the applicable request.

In the event of any failure to provide any of the statements or other materials referred to above in this Section 9.2 on the date required to be delivered hereunder, which failure continues for fifteen (15) days after written notice thereof (or, if the information or records required to compile such statements or other materials are destroyed by casualty beyond the control of Mortgagor, for such reasonable period as may be determined by Mortgagee), or in the event any such statements or other materials shall be materially inaccurate or false, or in the event of the failure of Mortgagor to permit Mortgagee or its representatives to inspect the said books and records upon request, an Event of Default shall automatically exist hereunder without any notice to, or right to cure by, Mortgagor. In addition to the provisions of the immediately preceding sentence, upon each failure of Mortgagor to provide any of the statements or other materials referred to above in this Section 9.2 on the due date thereof without regard to any notice requirement or grace period, Mortgagor shall, in Mortgagee's sole and absolute discretion, be subject to a charge in the amount of \$500 (provided that the aggregate amount payable by the Borrowers hereunder and under Section 9.2 of the Contemporaneous Mortgages with respect to any month shall not exceed \$2,500), which amount shall be paid to Mortgagee, together with interest thereon at the Default Interest Rate from the date that the applicable statement or other material was required to be delivered to Mortgagee until the date such amount is paid to it, immediately on demand by Mortgagee.

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## ARTICLE X. WARRANTIES AND COVENANTS

10.1 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, marketable and indefeasible fee simple title to the Mortgaged Property, subject only to those matters expressly set forth as exceptions to title or subordinate matters in the title insurance policy insuring the lien of this Mortgage which Mortgagee has agreed to accept, (such items being the "Permitted Encumbrances"), and has full power and lawful authority to mortgage its interest in the Mortgaged Property in the manner and form hereby done or intended. Mortgagor will preserve its interest in and title to the Mortgaged 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 Encumbrances. 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 Mortgaged Property by foreclosure or otherwise;

(b) No bankruptcy, reorganization or insolvency proceedings are pending or contemplated either by Mortgagor or, to the best knowledge of Mortgagor, against Mortgagor (or, if Mortgagor is a partnership or a limited liability company, any of its general partners or members) or by or against any endorser or cosigner of the Note or of any portion of the Debt, or any guarantor or indemnitor under any guaranty or indemnity agreement executed in connection with the Note or the loan evidenced thereby and secured hereby (an "Indemnitor");

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

(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 and do not (i) contravene, result in a breach of or constitute a default (nor upon the giving of notice or the passage of time or both will the same constitute a default) under the 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 or (ii) violate or contravene any law, order, decree, rule or regulation to which Mortgagor is subject;

(e) There are no judicial, administrative, mediation or arbitration actions, suits or proceedings pending or threatened against or affecting Mortgagor (or, if Mortgagor is a partnership or a limited liability company, any of its general partners or

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members) or the Mortgaged Property which, if adversely determined, would materially impair either the Mortgaged Property or Mortgagor's ability to perform the covenants or obligations required to be performed under the Loan Documents;

(f) Mortgagor possesses all franchises, patents, copyrights, trademarks, trade names, licenses and permits (the "Licenses") necessary for the conduct of its business substantially as now conducted, all fees due and payable in connection with such Licenses have been paid and Mortgagor's operation of the Premises complies with such Licenses;

(g) Mortgagor is not a "foreign person" within the meaning of §1445(f)(3) of the Internal Revenue Code of 1986, as amended, and the related Treasury Department regulations, including temporary regulations;

(h) The Premises and the Improvements and the current intended use thereof by Mortgagor comply in all material respects with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, 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 Mortgaged Property. The Premises and Improvements constitute one or more separate tax parcels for purposes of ad valorem taxation. The Premises 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;

(i) All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Premises and the Improvements for their intended purposes are available to the Mortgaged 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;

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

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

(l) As of the date of this Mortgage, the Mortgaged Property is free from unrepaired damage caused by fire, flood, accident or other casualty (except as disclosed in the Property Report); all insurance required by the terms of this Mortgage is in full force and effect and none of the premiums payable therefor have been, nor at any time in the future will be financed;

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(m) As of the date of this Mortgage, no part of the Premises 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;

(n) Except as may otherwise be disclosed in the Property Report, the Improvements are structurally sound, in good repair and free of defects in materials and workmanship. Except as may otherwise be disclosed in the Property Report, 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) Each Contract constitutes the legal, valid and binding obligation of Mortgagor and, to the best of Mortgagor's knowledge and belief, is enforceable against all other parties thereto. No default exists, or with the passing of time or the giving of notice or both would exist, under any Contract or Contracts which would, individually or in the aggregate, have a material adverse effect on Mortgagor or the Mortgaged Property;

(q) No Contract or Lease provides any party with the right to obtain a lien or encumbrance upon the Mortgaged Property superior to the lien of this Mortgage;

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

(s) There are no security agreements or financing statements affecting all or any portion of the Mortgaged 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;

(t) Mortgagor has delivered a true, correct and complete schedule (the "Rent Roll") of all Leases affecting the Mortgaged Property as of the date hereof, which accurately and completely sets forth in all material respects for each such Lease the name of the Tenant, the Lease expiration date, extension and renewal provisions, the base rent payable, the security deposit held thereunder and any other material provisions of such Lease and a true, correct and complete copy of the most recent Rental Activity Report for the Mortgaged Property (the "Rental Activity Report"); and Mortgagor has delivered to Mortgagee true, correct and complete copies of all Leases described in the Rent Roll;

(u) 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 thereunder. No default has been asserted or exists, or with the passing of time or the giving of notice or both would exist, under any Lease which would, in the aggregate, have a material adverse effect on Mortgagor or the Mortgaged Property;

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(v) No Tenant under any Lease has, as of the date hereof, paid rent more than thirty (30) days in advance, except for residential tenants that have paid the last month's rent in advance as set forth in the Rent Roll and/or the Rental Activity Report, and the rents under such Leases have not been waived, released, or otherwise discharged or compromised;

(w) 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;

(x) Each Tenant under any Lease has entered into occupancy of the demised premises; and

(y) To the best of Mortgagor's knowledge and belief, each commercial Tenant (if any) is free from bankruptcy, reorganization, insolvency or arrangement proceedings or a general assignment for the benefit of creditors.

10.2 Waste; Alteration of Improvements. Mortgagor shall not commit, suffer or permit any waste on the Mortgaged Property nor take or fail to take any actions that might invalidate any insurance carried on the Mortgaged Property. Mortgagor shall maintain the Mortgaged 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 Premises other than improvements required for the maintenance or repair of the Mortgaged Property.

10.3 Zoning. Without the prior written consent of Mortgagee, Mortgagor shall not make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Premises or the Improvements. Mortgagor shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Premises or the Improvements. Mortgagor shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Mortgaged Property. Mortgagor shall keep all licenses, permits, franchises and other approvals necessary for the operation of the Mortgaged Property in full force and effect. Mortgagor shall operate the Mortgaged Property as a multi-family apartment complex for so long as the Debt is outstanding. If, under applicable zoning provisions, the use of all or any part of the Premises 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, after the date hereof, file or subject any part of the Premises or the Improvements to any declaration of condominium or co-operative or convert any part of the Premises or the Improvements to a condominium, co-operative or other form of multiple ownership and governance.

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

(a) will not, nor will any partner, limited or general, member or shareholder thereof, as applicable, amend, modify or otherwise change Mortgagor's or Mortgagor's general partner's or managing member's, as applicable, partnership certificate, partnership agreement, articles of incorporation, by-laws, operating agreement, articles of organization, or other formation agreement or document, as applicable, in any material term or manner, or in a manner which adversely affects Mortgagor's existence as a single purpose entity;

(b) will not liquidate or dissolve (or suffer any liquidation or dissolution), or enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all or any part of the business or assets of, or any stock or other evidence of beneficial ownership of, or make any investment in, any entity;

(c) has not and will not guarantee, pledge its assets for the benefit of, or otherwise become liable on or in connection with, any obligation of any other person or entity;

(d) does not own and will not own any asset other than (i) the Mortgaged Property and any Other Mortgaged Properties, and (ii) incidental personal property necessary for the operation of the Mortgaged Property or any Other Mortgaged Property owned by Mortgagor;

(e) is not engaged and will not engage, either directly or indirectly, in any business other than the ownership, management and operation of the Mortgaged Property and any Other Mortgaged Property owned by Mortgagor;

(f) will not enter into any contract or agreement with any general partner, principal, affiliate or member of Mortgagor, as applicable, or any affiliate of any general partner, principal or member 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 unrelated third parties;

(g) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Debt, and (ii) trade payables or accrued expenses incurred in the ordinary course of business of operating the Mortgaged Property and any Other Mortgaged Property owned by Mortgagor (including indebtedness related to the financing of insurance policies as referenced in Section 1.2(b)), and no debt other than the Debt will be secured (senior, subordinate or pari passu) by the Mortgaged Property;

(h) has not made and will not make any loans or advances to any third party (including any affiliate);

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(i) is and will be solvent and pay its debts from its assets as the same shall become due;

(j) has done or caused to be done and will do all things necessary to preserve its existence, and will observe all formalities applicable to it;

(k) will conduct and operate its business in its own name and as presently conducted and operated;

(l) will maintain financial statements, books and records and bank accounts separate from those of its affiliates, including, without limitation, its general partners or members, as applicable;

(m) 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, without limitation, any affiliate, general partner, or member, as applicable, or any affiliate of any general partner or member of Mortgagor, as applicable);

(n) will file its own tax returns;

(o) 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;

(p) will establish and maintain an office through which its business will be conducted separate and apart from those of its affiliates or if it shares office space with its affiliates, shall allocate fairly and reasonably any overhead and expense for shared office space;

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

(r) 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;

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

(t) will pay any liabilities including salaries of its employees, out of its own funds and not funds of any affiliate (provided that such funds may be held and disbursed by Mortgagor's management company, as agent for Mortgagor);

(u) will use stationery, invoices, and checks separate from its affiliates;

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(v) will at all times during which any portion of the Debt remains outstanding have, or if Mortgagor is a limited liability company or partnership have a managing member or general partner that is a corporation with, at least one independent director as set forth in the charter documents of Mortgagor;

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

(x) shall conduct itself and operate its business so that all of the assumptions made in that certain legal opinion delivered in connection with this Mortgage with respect to nonconsolidation issues shall be true at all times.

## ARTICLE XI FURTHER ASSURANCES

11.1 Defense of Title. If the title to the Mortgaged Property or the interest of Mortgagee therein shall be directly or indirectly 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 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 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 Debt.

11.2 Performance of Obligations. Mortgagor shall pay when due the principal of and the interest on the Debt in accordance with the terms of the Note. Mortgagor shall also pay all charges, fees and other sums required to be paid by Mortgagor as provided in the Loan Documents, in accordance with the terms of 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 Mortgaged Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Mortgage.

11.3 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 Premises or the Improvements; provided, however, that Mortgagor shall have

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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 Mortgaged 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, 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 Debt.

11.4 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 Mortgaged Property; (c) promptly execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically, without limitation, 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 Default or Event of Default has occurred hereunder, stating whether any offsets or defenses exist against the Debt and containing such other matters as Mortgagee may reasonably require.

11.5 Payment of Costs; Mortgagee's Right to Cure. Mortgagor shall pay all costs and expenses of every character reasonably 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 Mortgaged 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 reasonable attorneys' fees and disbursements. If Mortgagor defaults in any such payment, which default is not cured within any applicable grace or cure period, Mortgagee may, at its option, pay the same and Mortgagor shall

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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 Debt. Further, Mortgagor shall promptly notify Mortgagee in writing of any litigation or threatened litigation affecting the Mortgaged 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 Mortgaged 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, reasonable 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 Debt. The necessity for any such actions and of the amounts to be paid shall be determined by Mortgagee in its sole discretion. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged 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 11.5 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 Indemnitor, the Debt or any of the Loan Documents.

11.6 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

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operation of the Mortgaged Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Mortgaged Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Mortgaged 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 Mortgaged 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 Mortgaged Property in any manner which violates any Lease of or any other agreement applicable to the Mortgaged 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.

11.7 Attorney-in-Fact Provisions. With respect to any provision of this Mortgage or any other Loan Document whereby Mortgagor grants to Mortgagee a power-of-attorney, (i) such power shall be deemed to be coupled with an interest, shall not be revocable by Mortgagor so long as any portion of the Debt 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 and (ii) provided no Event of Default has occurred and is continuing under this Mortgage, Mortgagee shall first give Mortgagor written notice at least three (3) days prior to acting under such power, which notice shall demand that Mortgagor first take the proposed action within such period and advising Mortgagor that if it fails to do so, Mortgagee will so act under the power; provided, however, that, in the event that an Event of Default has occurred and is continuing, or if necessary to prevent imminent death, serious injury, damage, loss, forfeiture or diminution in value to the Mortgaged Property or any surrounding property or to prevent any adverse effect on Mortgagee's interest in the Mortgaged Property, Mortgagee may act immediately and without first giving such notice. In such event, Mortgagee will give Mortgagor notice of such action as soon thereafter as reasonably practical.

## ARTICLE XII.

### PAYMENT; DEFEASANCE; PREPAYMENT

12.1 Payment of the Note. The Mortgagor shall duly and punctually pay or cause to be paid, the principal of and the interest and premium, if any, on the Note in accordance with the respective terms hereof and thereof, without demand therefor or presentation of the Note, in lawful money of the United States of America.

12.2 Computation of Interest. Interest shall be computed hereunder and under the Note based on a 360-day year comprised of twelve 30-day months except that interest due and payable for a period less than a full month shall be calculated by multiplying the actual number of days elapsed in such period by a daily rate based on said 360 day year. Interest shall accrue from the date on which funds are advanced hereunder (regardless of the time of day) through and including the day on which funds are credited in accordance with the terms of

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the Note. Interest shall be payable hereunder and under the Note (i) at the Initial Interest Rate (as defined in the Note) until the Optional Prepayment Date and (ii) from and after the Optional Prepayment Date through and including the date this Note is paid in full, at a rate per annum equal to the sum of the Initial Interest Rate plus two percent (2%) (the "Revised Interest Rate").

12.3 Application of Payments. So long as no Event of Default exists hereunder which has not been waived, each Monthly Payment shall be applied, prior to the Optional Prepayment Date, first, to any amounts hereafter advanced by Mortgagee under any Loan Document, second, to any late fees and other amounts payable to Mortgagee, third, to the payment of accrued interest and last to reduction of principal, and from and after the Optional Prepayment Date, as provided in Section 12.5 hereof.

## 12.4 Prepayment.

(a) The Note may not be prepaid in whole or in part at the option of the Mortgagor except as provided in Section 12.6 and Section 12.7 below.

(b) Partial prepayments of the Note shall not be permitted, except (i) for partial prepayments resulting from Mortgagee's election to apply insurance or condemnation proceeds to reduce the outstanding principal balance of the Note as provided in Section 3.1(b) hereof, in which event no prepayment fee or premium shall be due unless, at the time of either Mortgagee's receipt of such proceeds or the application of such proceeds to the outstanding principal balance of the Note, an Event of Default shall have occurred and not been waived, in which case, the provisions of Section 15.2 hereof shall be controlling and (ii) as otherwise provided herein.

(c) If the indebtedness evidenced by the Note shall have been declared due and payable by Mortgagor due to a default by Mortgagor hereunder or under any other Loan Document prior to the date which is five (5) years after the date hereof, then there shall also then be immediately due and payable, a prepayment fee in an amount equal to the greater of (A) two percent (2%) of the then outstanding principal balance of the Note on the date of acceleration, and (B) an amount which would be sufficient to purchase the Defeasance Collateral less the then-outstanding principal balance of the Note on the date of acceleration. In the event that any prepayment fee is due hereunder, Mortgagee shall deliver to Mortgagor a statement setting forth the amount and determination of the prepayment fee, and provided that Mortgagee shall have in good faith applied the formula described above, Mortgagor shall not have the right to challenge the calculation or the method of calculation set forth in any such statement in the absence of manifest error.

## 12.5 Defeasance.

(a) Notwithstanding any provision of this Mortgage to the contrary, at any time after the date which is five (5) years after the date hereof, and provided no Event of Default has occurred, Mortgagor may cause the release of the Mortgaged Property from the

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