

THIS INSTRUMENT WAS  
PREPARED BY AND UPON  
RECORDATION RETURN TO:

Charles J. Mack  
Wolin & Rosen, Ltd.  
2 N. LaSalle Street, Suite 1776  
Chicago, Illinois 60602  
W&R File No.: 198-9434  
Car Wash

98-11387

98-0102

(Space Above For Recorder's Use)

WASH DEPOT XIV, INC., as Borrower

to

FIRST SECURITY COMMERCIAL MORTGAGE, L.P., as Lender

1024243  
SUBORDINATE MORTGAGE,  
SECURITY AGREEMENT AND FIXTURE FILING

Dated: As of May 29, 1998  
Property Address: 2021 & 2031 North Rand Road  
Palatine, Illinois  
Section: [Section]  
Block: [Block]  
Lot: [Lot]  
Tax Parcel: 02-02-203-035 Vol. 148  
02-02-203-036 Vol. 148  
County: Cook  
Loan No.: 981-0089

THIS INSTRUMENT IS EXPRESSLY SUBJECT AND SUBORDINATE IN ALL RESPECT TO  
THE SUPERIOR INDEBTEDNESS TO THE EXTENT AND IN THE MANNER PROVIDED  
FURTHER HEREIN.

THIS SUBORDINATE MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of May 29, 1998, by WASH DEPOT XIV, INC., a Delaware corporation, having an address at 435 Eastern Avenue, Malden, Massachusetts 02148 ("Borrower"), to FIRST SECURITY COMMERCIAL MORTGAGE, L.P., a Delaware limited partnership, having an address at 150 S. Wacker Drive, Suite 1100, Chicago, Illinois 60606 ("Lender").

WITNESSETH:

WHEREAS, WASH DEPOT HOLDINGS, INC., a Delaware corporation ("Holdings"), has requested that Lender make a loan to Holdings in the aggregate principal amount of FOUR HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$475,000.00) (the "Loan") to be secured in part by the Property of Borrower (as defined below); and

WHEREAS, Holdings is the sole shareholder of Borrower; and

WHEREAS, Lender has agreed to make the Loan to Holdings upon, and subject to, the terms and conditions set forth herein and in the other Loan Documents (as hereinafter defined);

WHEREAS, concurrently herewith, Holdings has delivered to Lender its Promissory Note of even date herewith in the amount of the Loan (as the same may hereafter from time to time be modified, amended, replaced, restated, supplemented, renewed, or extended, and any note(s) issued in exchange therefor or in substitution thereof, collectively, the "Note") in evidence of the Loan, with interest from the date hereof at the rates set forth in the Note, such interest and the principal amount thereof to be payable in accordance with the terms and conditions provided in the Note;

WHEREAS, the Note is due and payable on the first day of June, 2001, if not sooner in accordance with the terms and conditions thereof;

WHEREAS, Borrower desires to secure the payment of the Debt (as hereinafter defined) and the performance of all of the Obligations (as hereinafter defined);

NOW THEREFORE, in consideration of the making of the Loan and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Borrower hereby agrees, covenants, represents and warrants with and to Lender as follows:

**Article 1 - GRANTS OF SECURITY**

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender, and grant a security interest to Lender in, with power of sale, all of Borrower's right, title and interest in and to the

following property, rights, interests and estates now owned or hereafter acquired by Borrower, whether now existing or hereafter created (collectively, the "Property"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. All buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land or the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land to the center line thereof, and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications, lifts (hydraulic and otherwise) and elevator fixtures), goods, inventory and articles of personal property and accessions thereof and renewals, replacements thereof and substitutions therefor (including, without limitation, chairs, display cases, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, stools, sofas, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, ice makers, radios, television sets, intercom and paging equipment, electric and electronic equipment, computers, printers, private telephone systems, cash registers, security systems, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, auto drying equipment, exhaust systems, fittings, plants, apparatus, refrigerators, laundry machines, tools, machinery, engines,

dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, garbage disposals, tools, pumps, compressors, buffers, towels, hoses, brushes, washers and dryers, uniforms, disposable inventory and supplies), other customary car wash and oil change equipment and other tangible property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land or the Improvements, or appurtenances thereto, or usable in connection with the present or future operation and occupancy of the Land or the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land or the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land or the Improvements (collectively, the "Personal Property"), and all proceeds and products of the above;

(1) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of all or any portion of the Land or the Improvements heretofore or hereafter entered into (the "Leases"), whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time or any successor statute thereto (the "Bankruptcy Code"), and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or other collateral deposited to secure the performance by the lessees of their obligations thereunder; and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, all income, rents, issues, profits, receipts, revenues, deposits, accounts, accounts receivable and other receivables and benefits from the operation of the car wash and oil change facility on the Land or the Improvements, including, without limitation, all revenues and credit card receipts, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Land or the Improvements, or personalty located thereon, or rendering of services by Borrower or any operator or manager of the car wash and oil change facility or the commercial space located in the Land or the Improvements or acquired from others including, without limitation, from the rental of any retail space, commercial space or other space, stores or food and beverage retail sales, telephone and television systems, fuel retail sales, oil change retail sales, the provision or sale of other goods and services, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land or the Improvements, and any other items of revenue, receipts

or other income, all regardless of whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents;

(g) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) Insurance Policies and Proceeds. All insurance policies covering the Property and proceeds of and any unearned premiums on any such policies, including, without limitation, the right to receive and apply the proceeds of any insurance judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction, whether arising or accruing before or after the date hereof;

(j) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(k) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereof, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(l) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records, brochures, advertising materials, telephone exchange numbers identified in such materials, and all other general intangibles relating to or used in connection with the operation of the Property;

(m) Accounts. All deposits and accounts of Borrower made with or for the benefit of Lender under any of the Loan Documents;

(n) Accounts Receivable. All right, title and interest of Borrower arising from the operation of the Property in and to all payments for goods or property sold or leased or for services rendered, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper, including, without limitation, all accounts arising from the operation of a mobile home park or manufactured housing community, if any, on the Property and all rights, if any, to payment from any consumer credit/charge card organization or entity; and

(o) Other Rights, Replacements and Conversions. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (n) above and all renewals, substitutions, improvements, accessions, attachments, additions, replacements and all proceeds (whether cash or non-cash, movable or immovable, tangible or intangible) to or of each of the items set forth in Subsections (a) through (n) above, and all conversions of the security constituted thereby (whether voluntary or involuntary and in whatever form) so that, immediately upon such renewal, substitution, improvement, accession, attachment, addition, replacement or conversion, as the case may be, and in each such case, the foregoing shall be deemed a part of the Property and shall automatically become subject to the lien of this Security Instrument as fully and completely and with the same priority and effect as though now owned by Borrower and specifically described herein, without any further mortgage or assignment or conveyance by Borrower.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 3.6, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold a sufficient portion of the Rents in trust for the benefit of Lender to discharge all current sums due on the Debt.

Section 1.3 SECURITY AGREEMENT; FIXTURE FILING. (a) This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code as adopted and enacted by the State or Commonwealth where the Property is located (as amended, modified or replaced from time to time, the "UCC"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that the Property may be subject to the UCC (said portion of the Property so subject to the UCC, the "UCC Collateral"). Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to file with the



appropriate public office on its behalf any financing, continuation or other statements signed only by Lender, as secured party, in connection with the UCC Collateral.

(b) From the date of its recording, this Security Instrument further constitutes a financing statement filed as a fixture filing and covers goods which are or are to become fixtures on the Property. For this purpose, Borrower is the "Debtor," and its name and mailing address are set forth in the preamble of this Security Instrument. Lender is the "Secured Party," and its name and mailing address also are set forth in the preamble of this Security Instrument. This document covers goods which are or are to become fixtures and personal property. The statement describing the portion of the Property comprising the fixtures and personal property secured hereby is set forth as Section 1.3(c) of this Security Instrument.

Section 1.4 PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Reserve Fund (as hereinafter defined), Net Proceeds (as hereinafter defined) and condemnation awards or payments in connection with the Property, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, WITH POWER OF SALE, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall well and truly perform the other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void.

Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made herein are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"):

- (a) the payment of the indebtedness evidenced by the Note;

(b) the payment of interest, default interest, late charges, prepayment consideration and all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument and the other Loan Documents;

(c) the payment of all sums advanced pursuant to this Security Instrument or any other Loan Document to protect and preserve the Property and the lien and security interests created hereby; and

(d) the payment of all sums advanced and costs and expenses incurred by Lender in connection with the Loan or any part thereof, any renewal, extension, increase, change of or substitution for the items set forth in Subsections (a) through (c) above or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender.

Section 2.2 OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made herein are also given for the purpose of securing the performance of all other obligations of Borrower contained herein and the performance of each obligation of Borrower contained in the other Loan Documents (all of such obligations, together with Borrower's obligations for the payment of the Debt, collectively, the "Obligations").

### Article 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note and the other Loan Documents.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note, and (b) any and all of the documents, instruments and agreements other than the Note and this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Debt (the "Other Security Documents"; the Note, any other instrument which from time to time may evidence any portion of the Debt, this Security Instrument and the Other Security Documents, as each of the same may be amended, modified, extended, renewed, restated, consolidated, substituted, supplemented or replaced from time to time, collectively, the "Loan Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.



Section 3.3 INSURANCE.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(1) Insurance against loss or damage by fire, casualty and other hazards as now are or subsequently may be covered by an "all risk" policy or a policy covering "special" causes of loss, with such endorsements as Lender may from time to time reasonably require and which are customarily required by institutional lenders of similar properties similarly situated, including, without limitation, building ordinance and law, lightning, windstorm, civil commotion, hail, riot, strike, water damage, sprinkler leakage, collapse, malicious mischief, explosion, smoke, aircraft, vehicles, vandalism, falling objects and weight of snow, ice or sleet, and covering the Improvements and Personal Property in an amount equal to one hundred percent (100%) of the full insurable replacement value of the Improvements and Personal Property (exclusive of footings and foundations below the lowest basement floor) without deduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing the coverage or, at Lender's election, by reference to such indexes, appraisals or information as Lender determines in its reasonable discretion, and, unless the insurance required by this paragraph shall be effected by blanket and/or umbrella policies in accordance with the requirements of this Security Instrument, the policy shall include inflation guard coverage that ensures that the policy limits will be increased over time to reflect the effect of inflation. Each policy shall, subject to Lender's approval, contain a replacement cost endorsement, without deduction for depreciation and either an agreed amount endorsement or a waiver of any co-insurance provisions, and shall provide for deductibles in such amounts as Lender may permit in its sole discretion.

(2) Commercial general liability insurance under a policy containing "Comprehensive General Liability Form" of coverage (or a comparably worded form of coverage) and the "Broad Form CGL" endorsement (or a policy which otherwise incorporates the language of such endorsement), providing coverage on an occurrence (not "claims made") basis, which policy shall include, without limitation, coverage against claims for personal injury, bodily injury, death and property damage liability with respect to the Property and the operations related thereto, whether on or off the Property, and the following coverages: Employee as Additional Insured, Product Liability/Completed Operations; Broad Form Contractual Liability, Independent Contractor, Personal Injury and Advertising Injury Protection, Medical Payment (with a minimum limit of Five Thousand Dollars (\$5,000) per person), Broad Form Cross Suits Liability Endorsement, where applicable, hired and non-owned automobile coverage (including rented and leased vehicles), and, if any alcoholic beverages shall be sold, manufactured or distributed on the Property, liquor liability coverage, all of which shall be in such amounts as Lender may from time to time reasonably require, but not less than One Million Dollars (\$1,000,000) per occurrence with a general

aggregate limit of Two Million Dollars (\$2,000,000). If such Policy shall cover more than one property, such limits shall apply on a "per location" basis. If any elevators, health club facilities or swimming pools are located on the Property, the foregoing amounts shall be increased to Three Million Dollars (\$3,000,000) and Six Million Dollars (\$6,000,000), respectively. Such liability policy shall delete the contractual exclusion under the personal injury coverage, if possible, and if available, shall include the following endorsements: Notice of Accident, Knowledge of Occurrence, and Unintentional Error and Omission.

(3) Rental insurance (which shall be deemed to include business income insurance where applicable) (i) with loss payable to Lender; (ii) covering all risks required to be covered by the insurance provided for in Section 3.3(a)(1); and (iii) in an amount equal to the greater of (x) not less than one hundred percent (100%) of the actual Rent for the preceding twelve (12) month period, or (y) the annualized rent based upon the most recent quarterly rent roll including, in either case, the total amount of all other charges which are the legal obligations of all tenants, lessees and sublessees of the Land and/or the Improvements under the Leases. The amount of such rental insurance shall be determined upon the execution of this Security Instrument and once each calendar year thereafter based on Borrower's reasonable estimate of rental income or projected gross revenues from operations, as the case may be, from the Property for the succeeding twelve (12) months as approved by Lender. The rental insurance shall include either an agreed amount endorsement or a waiver of any co-insurance provisions, so as to prevent Borrower, Lender and any other insured thereunder from being a co-insurer. If Lender shall require business income insurance in addition to the foregoing rental insurance, such business income shall (A) cover the same perils of loss as are required to be covered by the property insurance required under Section 3.3(a)(1), (B) be in an amount equal to the projected annual gross income from the Property, based upon Borrower's reasonable estimate thereof as approved by Lender, (C) include either an agreed amount endorsement or a waiver of any co-insurance provisions, so as to prevent Borrower, Lender and any other insured thereunder from being a co-insurer, and (D) and provide that any covered loss thereunder shall be payable to Lender.

(4) During the period of any new construction on the Land, a so-called "Builder's All-Risk Completed Value" or "Course of Construction" insurance policy in non-reporting form for any improvements under construction, including, without limitation, for demolition and increased cost of construction or renovation, in an amount equal to one hundred percent (100%) of the estimated replacement cost value on the date of completion, including "soft cost" coverage, and Worker's Compensation Insurance covering all persons engaged in such construction, in an amount at least equal to the minimum required by law. In addition, each contractor and subcontractor shall be required to provide Lender with a certificate of insurance for (i) Worker's Compensation Insurance covering all persons engaged by such contractor or subcontractor in such construction in an amount at least equal to the minimum required by law, and (ii) general liability insurance showing minimum limits of at least Five

Million Dollars (\$5,000,000), including coverage for products and completed operations. Each contractor and subcontractor also shall cover Borrower and Lender as an additional insured under such liability policy and shall indemnify and hold Borrower and Lender harmless from and against any and all claims, damages, liabilities, costs and expenses arising out of, relating to or otherwise in connection with its performance of such construction.

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

(6) Flood insurance with a deductible not to exceed Three Thousand Dollars (\$3,000), or such greater amount as may be satisfactory to Lender in its sole discretion, and in an amount equal to the full insurable value of the Property or the maximum amount available, whichever is less, if the Property is located in an area designated by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency as having special flood hazards.

(7) Worker's compensation insurance or other similar insurance which may be required by governmental authorities or applicable legal requirements in an amount at least equal to the minimum required by law.

(8) Environmental insurance in such amounts and such form, as may from time to time be required by Lender.

(9) Garage keepers insurance in such amounts and such form, as may from time to time be required by Lender.

(10) Such other insurance coverages, in such amounts, and such other forms and endorsements, as may from time to time be required pursuant to the Franchise Agreement (as hereinafter defined), if any.

(11) Such other insurance coverages, in such amounts, and such other forms and endorsements, as may from time to time be required by Lender and which are customarily required by institutional lenders to similar properties, similarly situated, including, without limitation, coverages against other insurable hazards (including, by way of example only, earthquake, sinkhole and mine subsidence), which at the time are commonly insured against and generally available.

(b) All insurance policies required under this Section 3.3 (each, a "Policy" and collectively, the "Policies") shall have a term of not less than one year and shall be in the form and amount and with deductibles as, from time to time, shall be reasonably acceptable to Lender, under valid and enforceable policies issued by financially responsible insurers either licensed to transact business in the State where the Property is located, or obtained through a duly authorized surplus line insurance agent or otherwise in conformity with the laws of such State, with (1) a rating of not less than the third (3rd) highest rating category by either Standard & Poor's Ratings Group, Duff & Phelps Credit Rating Co., Moody's Investors Service, Inc., Fitch Investors Service, Inc. or any successors thereto (each, a "Rating Agency"), or (2) an A.M. Best Company, Inc. general policy rating of A or higher and a financial size category of not less than X. Originals or certified copies of all Policies shall be delivered to and held by Lender.

(c) All Policies shall name Lender as an insured or additional insured, shall provide for loss payable solely to Lender (Borrower agreeing to turn over to Lender any proceeds that it might otherwise receive for application as set forth herein) and shall contain: (i) standard "non-contributory mortgage" endorsement or its equivalent relating, inter alia, to recovery by Lender notwithstanding the negligent or willful acts or omissions of Borrower and notwithstanding (a) occupancy or use of the Property for purposes more hazardous than those permitted by the terms of such Policy, (b) any foreclosure or other action taken by Lender pursuant to this Security Instrument upon the occurrence of an Event of Default (as hereinafter defined), or (c) any change in title or ownership of the Property; and (ii) a provision that such Policies shall not be canceled or amended, including, without limitation, any amendment reducing the scope or limits of coverage, or failed to be renewed, without at least thirty (30) days prior written notice to Lender in each instance. With respect to Policies which require payment of premiums annually, not less than thirty (30) days prior to the expiration dates of such Policies, Borrower shall pay such amount, except to the extent Lender is reserving sums therefor pursuant to the Loan Documents. Not less than thirty (30) days prior to the expiration dates of the Policies, originals or certified copies of renewals of such Policies (or binders evidencing such renewals) bearing notation evidencing the payment of all premiums required thereunder (the "Insurance Premiums") or accompanied by other evidence satisfactory to Lender of such payment shall be delivered by Borrower to Lender. The Insurance Premiums shall not be paid by Borrower through or by any financing arrangement. Borrower shall not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required under this Section 3.3. If the limits of any Policy are reduced or eliminated due to a covered loss, Borrower shall pay the additional premium, if any, in order to have the original limits of insurance reinstated, or Borrower shall purchase new insurance in the same type and amount that existed immediately prior to the loss.

(d) If Borrower fails to maintain and deliver to Lender the original Policies required by this Security Instrument, Lender may, at its option, procure such insurance and Borrower shall pay or, as the case may be, reimburse Lender for, all premiums thereon promptly, upon demand by Lender, with interest thereon at the Default Rate (as hereinafter defined) from the date paid by

Lender to the date of repayment and such sum shall constitute a part of the Obligations secured by this Security Instrument.

(e) The insurance required by this Security Instrument may, at the option of Borrower, be effected by blanket and/or umbrella policies issued to Borrower or an Affiliate (as hereinafter defined) of Borrower covering the Property and the properties of such Affiliate, provided that, in each case, the policies otherwise comply with the provisions of this Security Instrument and allocate to the Property, from time to time, the coverage specified by this Security Instrument, without possibility of reduction or coinsurance by reason of, or damage to, any other property (real or personal) named therein. If the insurance required by this Security Instrument shall be effected by any such blanket or umbrella policies, Borrower shall furnish to Lender original policies or certified copies thereof, with schedules attached thereto showing the amount of the insurance provided under such policies which is applicable to the Property.

(f) Neither Lender nor its agents or employees shall be liable for any loss or damage insured by the Policies; it being understood that (i) Borrower shall look solely to its insurance company for the recovery of such loss or damage, (ii) such insurance company shall have no rights of subrogation against Lender, its agents or employees, and (iii) Borrower shall use its best efforts to procure from such insurance company a waiver of subrogation rights against Lender. If, however, any Policy does not provide for a waiver of subrogation rights against Lender (whether because such a waiver is unavailable or otherwise), then Borrower hereby agrees, to the extent permitted by law and to the extent not prohibited by such Policy, to waive its rights of recovery, if any, against Lender, its agents and employees, whether resulting from any damage to the Property, any liability claim in connection with the Property or otherwise. If any such Policy shall prohibit Borrower from waiving such claims, then Borrower must obtain from such insurance company a waiver of subrogation rights against Lender.

Section 3.4 PAYMENT OF TAXES, ETC. (a) Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall promptly pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property prior to the date upon which any fine, penalty, interest or cost for nonpayment is imposed, and furnish to Lender upon request receipted bills of the appropriate taxing authority or other documentation reasonably satisfactory to Lender evidencing the payment thereof. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property.



(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes or Other Charges or any claims or judgments of mechanics, materialmen, suppliers or vendors or any lien therefor, as described in Section 3.10, provided that (i) no Event of Default has occurred and is continuing hereunder or under any of the other Loan Documents, (ii) Borrower is not prohibited from doing so under the provisions of any other agreement affecting either Borrower or the Property, (iii) such proceeding shall suspend the collection of the disputed amount from Borrower and from the Property (and Borrower shall furnish such security as may be required in the proceeding for such purpose), or Borrower shall have paid all of the disputed amount under protest, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, and (v) Borrower shall have deposited with Lender adequate reserves for the payment of the disputed amount, together with all interest and penalties thereon, unless Borrower has paid all of the disputed amount under protest.

Section 3.5 RESERVE FUND. In addition to the initial deposits with respect to Taxes and Insurance Premiums made by Borrower to Lender on the date hereof to be held by Lender in reserve (the initial deposits, together with the subsequent payments made in accordance with this Section, collectively, the "Reserve Fund"), Borrower shall pay to Lender on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months, and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof. Borrower shall make such payments into the Reserve Fund, which payments shall be adjusted annually or more frequently if Lender requires, so that Lender shall hold an amount which, when added to the monthly payments subsequently required to be deposited with Lender hereunder on account of Taxes and Insurance Premiums, will result in there being on deposit with Lender an amount sufficient to pay the next due installment of Taxes at least one month prior to the delinquency date thereof and the next due Insurance Premiums at least one month prior to the due date thereof plus, in both cases, one-sixth of such amount. Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has or obtains knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Insurance Premiums directly from the appropriate taxing authority or insurance agent or provider, as applicable. The Reserve Fund and the payments of interest or principal or both payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Provided no Event of Default has occurred and is continuing hereunder, Lender will apply the Reserve Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4 hereof. If the amount of the Reserve Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4 hereof, Lender shall credit such excess against future payments to be made to the Reserve Fund. Upon the payment in full to Lender of the Debt and the performance of all other Obligations as set forth in this Security Instrument, any excess remaining in the Reserve Fund shall be paid to Borrower. If the Reserve



Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. The Reserve Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Reserve Fund shall be payable to Borrower.

Section 3.6 LEASES AND RENTS. (a) Except as otherwise consented to by Lender, all Leases shall be written on the standard form of lease which shall have been approved by Lender. Upon request, Borrower shall furnish Lender with executed copies of all Leases. No material changes may be made to the Lender-approved standard lease without the prior written consent of Lender. In addition, all renewals of Leases and all proposed leases shall provide for rental rates and terms comparable to existing local market rates and terms and shall be arms-length transactions with bona fide, independent third party tenants. All proposed commercial Leases and renewals of existing commercial Leases shall be subject to the prior approval of Lender, which approval shall not be unreasonably withheld or delayed. All Leases shall provide that they are subordinate to this Security Instrument and that the lessee agrees to attorn to Lender and shall not contain an option to purchase or a right of first refusal in favor of the tenant. Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; (vi) shall not alter, modify or change the economic terms of any commercial Lease or cancel or terminate any commercial Lease or accept a surrender thereof without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed, or convey or transfer or suffer or permit a conveyance or transfer of the Land or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; (vii) shall not alter, modify or change the terms of any guaranty, letter of credit or other credit support with respect to the Leases or cancel or terminate such lease guaranty without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed; and (viii) shall not consent to any assignment of or subletting under any commercial Lease not in accordance with its terms, without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.

(b) All security deposits of lessees, whether held in cash or any other form, shall be treated by Borrower as trust funds, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower at a federally insured institution reasonably satisfactory to Lender.

(c) Notwithstanding the provisions of Subsection 3.6(a) above, renewals of existing commercial Leases and proposed Leases for commercial space shall not be subject to the prior approval of Lender provided all of the following conditions are satisfied: (i) the rental income

pursuant to the renewal or proposed Lease is not more than ten percent (10%) of the total rental income for all of the space tenants at the Property, (ii) the renewal or proposed Lease covers less than ten percent (10%) of space at the Property, (iii) the renewal or proposed Lease shall be written in the standard form of Lease approved by Lender, (iv) no rent credits, free rents or concessions have been granted under the renewal or proposed Lease, (v) the renewal or proposed Lease shall provide for rental rates and terms comparable to existing local market rates and terms, and (vi) the renewal or proposed Lease shall be an arms-length transaction with a bona fide, independent third party tenant. Borrower shall deliver to Lender copies of all Leases which are entered into pursuant to this Subsection (c) together with Borrower's certification that it has satisfied all of the conditions of the preceding sentence within thirty (30) days after the execution of the Lease.

Section 3.7 MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair and in the condition required under the Franchise Agreement, if any, and shall not commit or suffer any waste of the Property or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender, which consent shall not be unreasonably withheld or delayed. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender.

Section 3.8 COMPLIANCE WITH LAWS. (a) Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Property, any portion thereof, or the use thereof (collectively, the "Applicable Laws"). Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

(b) Borrower shall have the right, after prior written notice to Lender, to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Lender, the validity or application of any Applicable Law and to suspend compliance therewith if permitted under Applicable Laws, provided (i) failure to comply therewith may not subject Borrower or Lender to any civil or criminal liability, (ii) prior to and during such contest, Borrower shall furnish to Lender security reasonably satisfactory to Lender against loss or injury by reason of such contest or non-compliance with such Applicable Law, (iii) no Event of Default shall exist during such proceedings, and such contest shall not otherwise violate any of the provisions of any of the Loan Documents, and (iv) such contest shall not subject the Property to any lien or encumbrance the

enforcement of which is not suspended by such contest or otherwise affect the priority of the lien of this Security Instrument.

Section 3.9 BOOKS AND RECORDS. (a) Borrower, its Affiliates, any Person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (a "Guarantor"), if any, and WASH DEPOT HOLDINGS, INC. ("Indemnit"), shall keep adequate books and records of account in accordance with generally accepted accounting principles ("GAAP") or in accordance with other methods acceptable to Lender in its sole discretion, consistently applied and shall furnish to Lender the following, which shall be prepared, dated and certified by Borrower (or by Guarantor and/or Indemnit, to the extent such items relate to Guarantor and/or Indemnit) as true, correct and complete in the form required by Lender, unless otherwise specified below:

(i) quarterly operating statements of the Property, detailing the revenues received, the expenses incurred and the net operating income before and after debt service (principal and interest) and major capital improvements for that quarter and containing appropriate year to date information, within thirty (30) days after the end of each fiscal quarter;

(ii) annual rent rolls detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease and the term of each Lease, including the expiration date, and any other information reasonably required by Lender, together with an accounting of all security deposits held in connection with any Lease of any part of the Property, specifying the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to obtain information regarding such accounts directly from such financial institutions, within ninety (90) days after the end of each fiscal year;

(iii) an annual operating statement of the Property detailing the total revenues received, total expenses incurred, total cost of all capital improvements, total debt service and total cash flow, within ninety (90) days after the close of each fiscal year of Borrower;

(iv) an annual balance sheet and profit and loss statement of Borrower, any Guarantors and any Indemnitors within ninety (90) days after the close of each fiscal year of Borrower, Guarantors and Indemnitors, as the case may be;

(v) monthly operating statement for the Property detailing the monthly revenues received, monthly expenses incurred, monthly cost of all capital improvements, monthly debt service and monthly cash flow, within thirty (30) days after the end of each calendar month;

(vi) during each of the first six (6) months of the Loan term, a monthly rent roll for the Property and an operating statement for the Property for each immediately preceding twelve (12) month period, within fifteen (15) days after the end of each calendar month; and

(vii) such other financial statements, and such other information and reports as may, from time to time, be required by Lender.

(b) Borrower, its Affiliates, any Guarantor and any Indemnitee shall furnish Lender with such other additional financial or management information (including State and Federal tax returns) as may, from time to time, be reasonably required by Lender in form and substance satisfactory to Lender, including, without limitation, a property management report for the Property, showing the number of inquiries made and/or rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender, in reasonable detail and certified by Borrower as true, correct and complete.

(c) Following the occurrence of an Event of Default, or if Lender has reason to believe that any item furnished under this Section 3.9 is materially inaccurate or misleading, Lender shall have the right but not the obligation, to obtain any of the financial statements and other items required to be provided under this Section 3.9 by means of an audit by an independent certified public accountant selected by Lender. In the case of (i) an Event of Default or (ii) the audit discloses a material inaccuracy or the information provided is misleading, Borrower agrees to pay, or to reimburse Lender for, any expense of such audit. Borrower agrees to provide all necessary information to said accountant and otherwise to cooperate in the performance of such audit.

Section 3.10 MECHANICS' AND OTHER LIENS. Subject to the provisions of Section 3.4(b), Borrower will promptly pay when due all bills and costs of all mechanics, materialmen, suppliers, vendors and others for labor, materials and other property incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien, charge, encumbrance or security interest, even though inferior to the liens and the security interests hereof. Subject to the provisions of Section 3.4(b), Borrower will discharge or promptly cause to be bonded or discharged by bonding (in the form of cash or a letter of credit), payment, final order of a court of competent jurisdiction or otherwise, any other or additional lien, charge, encumbrance or security interest in respect of the Property or any part thereof, except for the Permitted Exceptions (as hereinafter defined).

Section 3.11 MANAGEMENT OF THE PROPERTY. The management of the Property shall be by either: (a) Borrower or an Affiliate of Borrower approved by Lender for so long as Borrower or said Affiliate is managing the Property in a commercially reasonable manner satisfactory to Lender; or (b) a professional property management company approved by Lender, which approval shall not be unreasonably withheld. Such management by an Affiliate or a professional property management company shall be pursuant to a written agreement approved by and collaterally assigned to Lender, which shall provide that all rights of the manager thereunder

shall be subject and subordinate to the lien of this Security Instrument and Lender's rights hereunder. In no event shall any manager be removed or replaced by Borrower or the terms of any management agreement modified or amended in any material respect or terminated by Borrower without the prior written consent of Lender. If an Event of Default shall occur, Lender shall have the right to terminate, or to direct Borrower to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Borrower to retain, a new bona-fide, independent third party management agent approved by Lender in its reasonable discretion to manage the Property. Borrower shall (i) diligently perform and observe all of the terms, covenants and conditions of any management agreement on the part of Borrower to be performed and observed and (ii) promptly deliver to Lender a copy of any notice of default either given or received by Borrower under any such management agreement.

Section 3.12 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to Borrower or the Property, or given by Borrower to Lender for the purpose of further securing an Obligation and any amendments, modifications or changes thereto.

Section 3.13 FRANCHISE AGREEMENT. Subject to the prior written consent of Lender, which shall not be unreasonably withheld, the Improvements may be operated under the terms and conditions of a franchise agreement, (as from time to time amended, modified, extended, restated, renewed, supplemented or replaced, the "Franchise Agreement"). Borrower, Franchisor and Lender shall enter into an assignment of the Franchise Agreement reasonably satisfactory to Lender. If a Franchise Agreement is entered into between Borrower and a franchisor (the "Franchisor"), Borrower shall (i) pay all sums required to be paid by Borrower under the Franchise Agreement, (ii) diligently perform and observe all of the terms, covenants and conditions of the Franchise Agreement on the part of Borrower to be performed and observed, and (iii) promptly notify Lender of the giving of any notice to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of the Franchise Agreement on the part of Borrower to be performed and observed and deliver to Lender a true copy of each such notice. Borrower shall not, without the prior consent of the Lender, surrender the Franchise Agreement or terminate or cancel the Franchise Agreement or modify, change, supplement, alter or amend the Franchise Agreement, in any respect, either orally or in writing, and Borrower hereby assigns to Lender as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Security Instrument, all the rights, privileges and prerogatives of Borrower to surrender the Franchise Agreement or to terminate, cancel, modify, change, supplement, alter or amend the Franchise Agreement in any respect, and any such surrender of the Franchise Agreement or termination, cancellation, modification, change, supplement, alteration or amendment of the Franchise Agreement without the prior consent of Lender shall be void and of no force and effect. If Borrower shall default in the performance or observance of any material term, covenant or condition of the Franchise Agreement on the part of Borrower to be performed or observed, then, without limitation to any of the other provisions of this Security Instrument, and without waiving



or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Franchise Agreement on the part of Borrower to be performed or observed to be promptly performed or observed on behalf of Borrower, and to the end that the rights of Borrower in, to and under the Franchise Agreement shall be kept unimpaired and free from default. Lender and any Person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If Franchisor shall deliver to Lender a copy of any notice sent to Borrower of default under the Franchise Agreement, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith in reliance thereon. Borrower shall use commercially reasonable efforts to obtain from Franchisor such certificates of estoppel with respect to compliance by Borrower with the terms of the Franchise Agreement as may be requested by Lender from time to time. Borrower shall exercise each individual option, if any, to extend or renew the term of the Franchise Agreement upon demand by Lender made at any time within one (1) year prior to the last day upon which any such option may be exercised, and Borrower hereby expressly authorizes and appoints Lender as its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

#### Article 4 - SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1 PROPERTY USE. The Property shall be used only as a car wash, oil change facility and ancillary activities, and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion.

Section 4.2 SINGLE-PURPOSE ENTITY. Borrower has not and shall not:

(a) dissolve, terminate or otherwise fail to do all things necessary to preserve its existence as a Single-Purpose Entity (as hereinafter defined), and will not, nor will any partner, limited or general, member or shareholder thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of organization, operating agreement, articles of incorporation or by-laws in a manner which adversely affects Borrower's existence as a Single-Purpose Entity;

(b) enter into any transaction of merger or consolidation, or liquidate or dissolve itself (or suffer any liquidation, dissolution or winding up, in whole or in part), or acquire by purchase or otherwise all or substantially all the business or assets of, or any Stock (as hereinafter defined) or other evidence of beneficial ownership of, any Person (as hereinafter defined);



(c) guarantee or otherwise become liable on or in connection with any obligation of any other Person;

(d) at any time own any asset other than (i) the Property, and (ii) incidental Personal Property necessary for the operation of the Property;

(e) at any time be engaged directly or indirectly, in any business other than the ownership, management and operation of the Property;

(f) enter into any contract or agreement with any general partner, principal, member or Affiliate of Borrower or any Affiliate of the general partner or member of Borrower except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with third parties other than an Affiliate;

(g) incur, create or assume any indebtedness, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Loan and (ii) indebtedness which represents trade payables or accrued expenses incurred in the ordinary course of business of owning and operating the Property, and deferred not more than thirty (30) days; no other debt will be secured (senior, subordinate or *pari passu*) by the Property;

(h) make any loans or advances to any third party (including any Affiliate);

(i) become insolvent or fail to pay its debt from its assets as the same shall become due;

(j) fail to conduct and operate its business in all material respects as presently conducted and operated;

(k) fail to maintain books and records and bank accounts separate from those of its Affiliates, including its members or general partners, as applicable;

(l) fail to at all times hold itself out to the public as a legal entity separate and distinct from any other entity (including any Affiliate thereof, including the general partner or any member of Borrower or any Affiliate of the general partner or any member of Borrower, as applicable), excluding any advertising or marketing of its tradename to the general public;

(m) fail to file its own tax returns;

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

(o) commingle the funds and other assets of Borrower with those of any general partner, any member, any Affiliate or any other Person;

(p) fail to 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; and

(q) hold itself out to be responsible for the debts or obligations of any other Person.

Section 4.3 CONDEMNATION AND CASUALTY. (a) Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument, and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. Lender may apply any award or payment to the reduction or discharge of the Debt whether or not then due and payable or to the Restoration (as hereinafter defined) of the Property in its sole and absolute discretion. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt.

(b) If the Property shall be damaged, destroyed or rendered unusable, in whole or in part, by fire or other casualty or become in need of repair or restoration because of any condemnation or similar proceeding, Borrower shall give prompt notice of such event to Lender and, subject to the following sentence, shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such casualty or condemnation (the "Restoration"), with such alterations as may be approved by Lender and otherwise in accordance with this Security Instrument. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance proceeds or condemnation awards, except to the extent, but only to the extent, that Lender elects to apply the condemnation award or Net Proceeds, as the case may be, to reduce the Debt in accordance with the provisions of this Security Instrument.

Section 4.4 RESTORATION. (a) In the event that each of the following conditions is satisfied, Lender shall make the net amount of all insurance proceeds actually received by Lender

pursuant to this Security Instrument as a result of any fire or other casualty, after deduction of its reasonable costs and expenses (including, without limitation, architects', attorneys', engineers' and other consultants' and professionals' fees and disbursements), if any, in connection therewith (the "Net Proceeds"), available to Borrower for the Restoration in accordance with the provisions of this Subsection 4.4(a):

(i) no Event of Default shall have occurred and be continuing under the Note, this Security Instrument or any of the other Loan Documents;

(ii) the Net Proceeds in connection with such casualty shall not exceed the outstanding amount of the Debt;

(iii) if the Net Proceeds shall exceed Fifty Thousand Dollars (\$50,000), a licensed engineer or architect acceptable to Lender shall have delivered to Lender a certificate estimating the cost of fully completing the Restoration and a schedule of the time required therefor, which schedule shall indicate that the Restoration can be completed prior to the earlier of (i) the date occurring twelve (12) months prior to the Maturity Date (as defined in the Note), and (ii) the date occurring twelve (12) months after the date of the casualty;

(iv) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than forty-five (45) days after such damage or destruction occurs) and shall diligently pursue the same to satisfactory completion in a good and workmanlike manner;

(v) Lender shall be satisfied that any operating deficits which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty, including a reasonable period thereafter for leasing the Property, will be covered out of (A) the Net Proceeds, (B) the rental or business income insurance coverage referred to in Section 3.3, or (C) other funds of Borrower;

(vi) Lender shall be satisfied in its sole discretion that, upon the completion of the Restoration, the gross cash flow and the net cash flow of the Property, taking into consideration any Leases which may be terminated as a result of such casualty, will be restored to a level sufficient to cover all carrying costs and operating expenses of the Property, including, without limitation, debt service on the Note at a coverage ratio (after deducting replacement reserve requirements and reserves for tenant improvements and leasing commissions, if applicable from net operating income) of at least 1.50 to 1.0, which coverage ratio shall be determined by Lender in its sole and absolute discretion on the basis of the Applicable Interest Rate (as defined in the Note);

(vii) the Restoration shall be performed and completed by Borrower in an expeditious and diligent fashion in a good and workmanlike manner in accordance with plans and specifications therefor approved by Lender (as provided in subsection (b) below) and in compliance with all Applicable Laws and in accordance with the terms and conditions of the Franchise Agreement, if any;

(viii) the Franchise Agreement, if any, shall not terminate as a result of such casualty or taking (or, if it shall terminate, it shall be replaced immediately with another franchise agreement wholly acceptable to Lender);

(ix) Borrower shall deliver to Lender evidence satisfactory to Lender (which may include certificates of governmental authorities, endorsements to Lender's title insurance policy and/or legal opinions) that, following the completion of the Restoration, the Property and the use thereof will be in compliance with and permitted under all Applicable Laws; and

(x) Lender shall have received from Borrower a certificate certifying that all applicable conditions contained in this Subsection 4.4(a) have been satisfied.

(b) The Net Proceeds shall be held by Lender and, until disbursed in accordance with the provisions of this Section 4.4, shall constitute additional security for the Obligations. Provided all of the conditions set forth in Subsection 4.4(a) have been and remain satisfied, then the following shall apply:

(i) The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company insuring the lien of this Security Instrument.

(ii) All plans and specifications in connection with the Restoration shall be subject to prior review and approval in all respects by Lender and by an independent consulting engineer selected by Lender (the "Casualty Consultant"), which approval shall not be unreasonably withheld or delayed. Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. All costs and expenses incurred by

Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iii) Until such time as the Restoration has been completed and Lender shall have received copies of any and all final certificates of occupancy or other certificates, licenses and permits required for the ownership, occupancy and operation of the Property in accordance with all Applicable Laws, Lender shall be entitled to retain, and not disburse, up to ten percent (10%) of the cost of the Restoration, as determined by the Casualty Consultant (the "Casualty Retainage"). Borrower hereby covenants diligently to seek to obtain any such certificates, licenses and permits. Promptly after the completion of the Restoration and delivery of such certificates, licenses and permits in accordance with the provisions hereof, provided no Event of Default shall then be continuing, Lender shall disburse the Casualty Retainage to or as directed by Borrower, subject, however, to Lender's right to apply any excess proceeds remaining after the completion of the Restoration to the payment of the Debt.

(iv) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency with Lender, which shall thereafter be treated as Net Proceeds, before any further disbursement of the Net Proceeds shall be made.

(v) The excess, if any, of the Net Proceeds remaining after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 4.4, and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper.

(e) Notwithstanding any provision of this Security Instrument to the contrary, all Net Proceeds not required to be made available for the Restoration may be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall designate, in its sole discretion. If Lender shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt.

## Article 5 - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to and covenants with Lender:

Section 5.1 WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same. Borrower possesses a good, marketable and insurable fee simple absolute estate in the Land and the Improvements and owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those shown in the title insurance policy accepted by Lender insuring the lien of this Security Instrument (the "Permitted Exceptions"). The Permitted Exceptions do not materially interfere with the security intended to be provided by this Security Instrument or the current use of the Property. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

Section 5.2 AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3 LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State or Commonwealth where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have the full right, power and authority to operate and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Loan Documents.

Section 5.4 VALIDITY OF DOCUMENTS. (a) The execution, delivery and performance of the Loan Documents and the borrowing evidenced by the Note (i) are within the power of Borrower; (ii) have been authorized by all requisite action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership, operating or trust agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this Security Instrument



and any other Loan Document intended to be recorded in the appropriate land records in the State or Commonwealth where the Property is located and except for UCC filings relating to the security interest created hereby); and (b) the Loan Documents constitute the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as may be limited by (i) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally, and (ii) general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 5.5 LITIGATION. There is no material action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower's knowledge, threatened or contemplated against, or affecting, Borrower, any Guarantor, or any Indemnitor, or against or affecting the Property.

Section 5.6 STATUS OF PROPERTY. (a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof.

(b) Borrower has obtained all necessary certificates, licenses, permits and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use and environmental laws and other similar laws. None of the Improvements lies outside of the boundaries of the Land or the applicable building restriction lines. No improvements on adjoining properties materially encroach upon the Land.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service. The Property is served by public water and sewer systems.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

(f) The Property is free from damage caused by fire or other casualty.

(g) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full. Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(h) All liquid and solid waste disposal, septic and sewer systems, and water treatment systems, located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

Section 5.7 NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

Section 5.8 SEPARATE TAX LOT. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.9 ERISA COMPLIANCE. As of the date hereof and throughout the term of the Loan, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA, (iii) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

Section 5.10 LEASES. (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid, enforceable and in full force and effect; (c) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified occupancy statement delivered to and approved by Lender; (d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (e) none of the Rents have been collected for more than one (1) month in advance; (f) except as previously disclosed by Borrower to Lender in writing, the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (g) except as previously disclosed by Borrower to Lender in writing, there exist no offsets or defenses to the payment of any portion of the Rents; (h) except as previously disclosed by Borrower to Lender in writing, Borrower has received no notice from any tenant challenging the validity or enforceability of any Lease; (i) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease; (j) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (k) no Person has any possessory interest in, or right to

occupy, the Property except under and pursuant to a Lease; (l) each Lease is subordinate to this Security Instrument, either pursuant to its terms or a subordination agreement; (m) no brokerage commissions or finders fees are due and payable regarding any Lease.

Section 5.11 FINANCIAL CONDITION. (a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (b) it has received reasonably equivalent value for the granting of this Security Instrument.

Section 5.12 BUSINESS PURPOSES. The proceeds of the Loan will be used by Borrower solely for business purposes and not for personal, family, household or agricultural purposes. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulations G, T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulations G, T, U or X or any other Regulations of such Board of Governors, or for any purposes prohibited by legal requirements or by the terms and conditions of the Loan Documents.

Section 5.13 TAXES. Borrower, any Guarantor and any Indemitor have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower, any Guarantor nor any Indemitor knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14 MAILING ADDRESS. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.15 NO CHANGE IN FACTS OR CIRCUMSTANCES. All information in the application for the Loan submitted to Lender and in all financing statements, rent rolls, reports, certificates and other documents submitted in connection with the such loan application or in satisfaction of the terms thereof, are accurate, complete and correct in all material respects. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise materially misleading.

Section 5.16 DISCLOSURE. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.17 THIRD PARTY REPRESENTATIONS. Each of the representations and the warranties made by each Guarantor and Indemitor herein or in any of the other Loan Documents is true and correct in all material respects.

Borrower recognizes and acknowledges that in accepting the Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in this Article 5 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Loan Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in this Article 5.

Section 5.18 FRANCHISE AGREEMENT. The Franchise Agreement, if any, is in full force and effect, all franchise fees, reservation fees, royalties and other sums due thereunder have been paid in full to date, and neither Borrower nor Franchisor is in default thereunder.

#### Article 6 - FURTHER ASSURANCES

Section 6.1 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the Property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, operating the Property pursuant to a franchise agreement or for complying with all Applicable Laws. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such loss, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section 6.1. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Loan Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security

instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 6.2 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable. Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(b) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to any of the Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 6.3 ESTOPPEL CERTIFICATES. (a) After request by Lender, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (v) that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Note or this Security Instrument, (vi) that the Note and this Security Instrument have not been modified, or, if modified, giving particulars of such modification, (vii) whether any of sets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (viii) that all Leases are in full force and effect and have not been modified (or if modified, setting forth all modifications), (ix) the date to which the Rents thereunder have been paid pursuant to the Leases, (x) whether or not, to the best knowledge of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xi) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.



(b) Borrower shall use commercially reasonable efforts to deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may reasonably require.

**Article 7 - DUE ON TRANSFER/ENCUMBRANCE**

Section 7.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, principals, members and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the other Obligations, Lender can recover the Debt by a sale of the Property.

Section 7.2 NO TRANSFER/ENCUMBRANCE. (a) Except as otherwise permitted under this Section 7.2, Transfers (as hereinafter defined) shall not be permitted. Any Transfer made in violation of this Section 7.2 shall constitute an Event of Default. Notwithstanding any provision of this Section 7.2 to the contrary, in no event shall a Transfer resulting in a change in control of Borrower or the Property be permitted without Lender's prior written consent, which may be granted or denied in Lender's sole, absolute and unreviewable discretion. In addition, in no event shall any transfer resulting in a change in control of Borrower or a transfer of Borrower's fee or leasehold interest in the Property, as the case may be, be permitted during the first twelve (12) months of the Loan term.

(b) Subject to the provisions of Section 7.2(c) below, the following Transfers shall be permitted, subject to Lender's prior written consent, which consent shall not be unreasonably withheld or delayed, provided that (1) no such Transfer (in a series of one or more transactions) shall result in a change in control of Borrower, (2) in no event shall Borrower or, if Borrower is a limited partnership, the general partner of Borrower (or the general partner of the general partner of Borrower) or, if Borrower is a limited liability company, any corporate member of Borrower which is a Single-Purpose Entity, cease to be a Single-Purpose Entity, and (3) in no event shall any such Transfer result in the dissolution or termination of Borrower, any general partner of Borrower or any general partner of any general partner of Borrower, if applicable, or, if Borrower is a limited liability company, any corporate member of Borrower:

i) Transfers of Stock in any corporation which is Borrower, any general or limited partner or member of Borrower or any Person holding an interest therein;

ii) Transfers of limited partnership interests in any limited partnership which is Borrower, any general or limited partner or member of Borrower or any Person holding an interest therein; and

iii) Transfers of membership interests in any limited liability company which is Borrower, any general or limited partner or member of Borrower or any Person holding an interest therein.

(c) Notwithstanding any provision herein to the contrary, no Transfer otherwise permitted under this Section 7.2 shall occur unless Borrower shall have given Lender not less than ten (10) Business Days (as hereinafter defined) prior notice of the intended Transfer together with a certificate of the Chief Financial Officer of Borrower (or comparable individual) stating (i) the nature and size of the interest to be the subject of the Transfer, (ii) the name and address of the Person to which such interest shall be conveyed, sold or transferred unless such interest is to be conveyed, sold or transferred pursuant to a registered public sale pursuant to applicable securities laws, and (iii) that the proposed transaction is a bona fide sale, transfer or conveyance solely for cash or equivalent consideration, if applicable. Lender reserves the right to condition any consent required pursuant to this Section 7.2 with respect to a Transfer upon (A) the payment of all expenses incurred by Lender as set forth below and, in connection with the Transfer of any fee interest in the Property, an assumption fee equal to one percent (1.0%) of the outstanding balance of the Loan, (B) Lender's approval of the financial condition, credit history, managerial capabilities and ownership structure of the proposed transferee, including requiring that the transferee of any fee interest in the Property be a Single-Purpose Entity, (C) if the Transfer shall result in a change in control of Borrower or the Property, execution of an assumption agreement by the proposed transferee, in form and content acceptable to Lender, (D) the Loan being in good standing and free from any default, (E) if required by Lender, receipt of an opinion of counsel reasonably satisfactory to Lender stating that if effected, the proposed Transfer would have no effect on the enforceability of the Security Instrument or the other Loan Documents, would not result in the substantive consolidation by a bankruptcy court of the assets and liabilities of the transferee with the assets and liabilities of Borrower and such other entities as Lender may specify, and would not result in the dissolution or termination of Borrower, any general partner of Borrower or any general partner of any general partner of Borrower, if applicable, (F) the approval by a Rating Agency of the qualifications of the proposed transferee, and (G) such other conditions as Lender shall determine in its sole discretion. Borrower agrees to pay on demand all expenses (including, without limitation, reasonable attorney's fees and disbursements, title search costs and title insurance endorsement premium(s)) incurred by Lender in connection with the review, approval and documentation of any Transfer. In no event shall any Transfer otherwise permitted under this Section occur if such Transfer is required to be registered under the Securities Act of 1933, as amended or offered pursuant to Rule 144A under such Act, or registered under any state securities or Blue Sky laws.

(d) Notwithstanding any other provision of this Section 7.2 to the contrary, Transfers of partnership interests, membership interests or corporate shares in Borrower or any Person holding

an interest in Borrower between or among partners, members or shareholders existing as such on the date hereof, or Transfers of such interests to immediate family members of existing partners, members or shareholders or to trusts for estate planning purposes for the benefit of existing partners, members or shareholders or members of the transferor's immediate family shall be permitted without Lender's consent, provided that in no event shall Borrower and any Person holding an interest in Borrower who is a Single-Purpose Entity cease to be a Single-Purpose Entity and provided no such Transfer results in a change of control of Borrower.

#### Article 8 - DEFAULT

Section 8.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "Event of Default":

- (a) if any portion of the Debt is not paid prior to the tenth (10th) day after the same is due or if the entire Debt is not paid on or before the Maturity Date;
- (b) if any of the Taxes or Other Charges is not paid at least five (5) days prior to the date upon which any fine, penalty, interest or cost for nonpayment is imposed, except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;
- (c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within ten (10) Business Days of written request;
- (d) if the Property is subject to actual waste or hazardous nuisance;
- (e) if Borrower violates or does not comply with any of the provisions of Section 4.2 or Articles 7, 10 or 11;
- (f) if any representation or warranty of Borrower, Indemnitor or any Guarantor, or otherwise contained in any guaranty, certificate, report, financial statement or other instrument or document furnished to Lender in connection with the Loan, shall have been materially false or misleading when made;
- (g) if (i) Borrower or any general partner of Borrower, or any Guarantor or Indemnitor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its

assets, or the Borrower or any general partner of Borrower, or any Guarantor or Indemnitor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any general partner of Borrower, or any Guarantor or Indemnitor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Borrower or any general partner of Borrower, or any Guarantor or Indemnitor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) Borrower or any general partner of Borrower, or any Guarantor or Indemnitor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or any general partner of Borrower, or any Guarantor or Indemnitor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(h) if Borrower shall be in default beyond any applicable cure period under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to this Security Instrument;

(i) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days, except to the extent being contested in accordance with the provisions of Section 3.4(b) hereof;

(j) if any federal tax lien is filed against Borrower, any general partner of Borrower, any Guarantor, any Indemnitor or the Property and same is not discharged of record within thirty (30) days after same is filed;

(k) if Borrower fails to cure promptly any violations of Applicable Laws, except to the extent being contested in accordance with the provisions of Section 3.8(b) hereof;

(l) if any condemnation proceeding is instituted which would, in Lender's reasonable judgment, materially impair the use and enjoyment of the Property for its intended purposes;

(m) if Borrower shall fail to reimburse Lender on demand, with interest calculated at the Default Rate, for all Insurance Premiums, Taxes or Other Charges, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument;

(n) if Borrower shall fail to deliver to Lender, within ten (10) days following request by Lender, the statements referred to in Section 3.9 in accordance with the terms thereof;

(o) if a default has occurred and continues beyond any applicable cure period under the Franchise Agreement, if any, if such default permits a party to terminate or cancel the Franchise Agreement;

(p) if a default occurs under the Assignment of Franchise Agreement, if any, by Borrower and Franchisor in favor of Lender;

(q) if Borrower ceases to operate a car wash and oil change facility on the Property, or terminates such business for any reason whatsoever (other than temporary cessation in connection with any renovations to the Property or restoration of the Property after casualty or condemnation);

(r) if Borrower terminates or cancels the Franchise Agreement, if any, or operates the Property under the name of any chain or system other than that permitted under the Franchise Agreement, without Lender's prior written consent; or

(s) if for more than ten (10) days after notice from Lender, Borrower, Indemnitor or Guarantor shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or any of the other Loan Documents in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from Lender in the case of any other default (unless, in either case, a shorter period is specified therein), provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower, Indemnitor or Guarantor, as the case may be, shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower, Indemnitor or Guarantor, as the case may be, in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days.

Section 8.2 LATE PAYMENT CHARGE. If any payment required hereunder is not paid prior to the tenth (10th) day after the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the outstanding monthly installment of principal and interest then due or the maximum amount permitted by applicable law, to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Security Instrument and the Other Security Documents.



Section 8.3 DEFAULT INTEREST. Borrower will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum rate equal to the lesser of (a) the sum of the Applicable Interest Rate (as defined in the Note) and five percent (5%) and (b) the maximum interest rate which Borrower may by law pay or Lender may charge and collect (the "Default Rate").

Section 8.4 ADDITIONAL ADMINISTRATIVE FEE. In addition to the Default Rate provided for in Section 8.3 above, upon the failure of Borrower, Indemnitor or any Guarantor to deliver any of the reports, statements or other items required to be delivered to Lender as provided in Section 8.9 above upon their due dates, if any such failure shall continue for ten (10) days following written notice thereof from Lender, Borrower shall pay to Lender together with the scheduled monthly payments of principal and interest on the Note, for each month or portion thereof that any such report, statement or other item remains undelivered, an administrative fee in the amount of Two Hundred Fifty and 00/100 Dollars (\$250.00) (if there are more than three (3) such failures in a twelve (12) month period, the administrative fee shall increase to One Thousand and 00/100 Dollars (\$1,000.00) multiplied by the number of such undelivered reports, statements or other items. Borrower agrees that such administrative fee is a fair and reasonable fee necessary to compensate Lender for its additional administrative costs under the circumstances and is not a penalty.

#### Article 9 - RIGHTS AND REMEDIES

Section 9.1 REMEDIES. Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest

of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority:

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor, Indemnitor or of any person, firm or other entity liable for the payment of the Debt;

(h) subject to any applicable law, the license granted to Borrower under Section 1.2 shall automatically be revoked and Lender may, but without any obligation to do so, enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto, and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, negotiate, execute, cancel, enforce, extend, renew or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in the possession of Borrower or any Affiliate of Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the

payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees:

(i) exercise immediately and without demand any and all rights and remedies granted to a secured party upon default under the UCC, including, without limitation, to the extent permitted by applicable law: (i) the right to take possession of the UCC Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the UCC Collateral, and (ii) request Borrower at its expense to assemble the UCC Collateral and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the UCC Collateral sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action shall constitute commercially reasonable notice to Borrower. Any disposition pursuant to the UCC of so much of the Property as may constitute UCC Collateral shall be considered commercially reasonable if made pursuant to a public sale which is advertised at least twice in a newspaper in which sheriffs' sales are advertised in the county where the Land is located. The proceeds of any disposition of the UCC Collateral, or any part thereof, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper;

(j) apply any sums then deposited in the Reserve Fund and any other sums held in reserve or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document, together with interest thereon, to the payment of the following items in any order in its uncontrolled discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) interest on the unpaid principal balance of the Note;
- (iv) amortization of the unpaid principal balance of the Note;
- (v) all other sums payable pursuant to any of the Loan Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument;

(k) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority

and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and irrevocable) for Borrower to collect such Insurance Premiums:

(l) apply the undisbursed balance of any Net Proceeds, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its sole discretion; or

(m) pursue such other remedies as Lender may have under applicable law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 9.1 to the contrary, if any Event of Default as described in clause (i) or (ii) of Subsection 8.1(g) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 9.2 APPLICATION OF PROCEEDS. The proceeds of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 9.3 RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 9.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period from that the incurrence of such cost or expense by Lender to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 9.4 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and

without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 9.5 EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right to examine and audit the records, books, management and other papers of Borrower or of any Guarantor or Indemnitor which reflect upon their financial condition or which pertain to the income, expenses and operation of the Property, at the Property or at any office regularly maintained by Borrower, or any Guarantor or Indemnitor where the books and records are located at all reasonable times and, except during an emergency or following the occurrence and during the continuance of an Event of Default, upon reasonable advance notice (which may, for such purpose alone, be given orally). Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers and, at Borrower's expense, the right to prepare any of the statements and reports that Borrower, each Guarantor and each Indemnitor shall be required to deliver hereunder upon any failure to do so. Borrower, each Guarantor and each Indemnitor shall furnish to Lender and its agents convenient facilities for the examination and audit of such books and records.

Section 9.6 OTHER RIGHTS, ETC. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower, any Guarantor or any Indemnitor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the date of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to



the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 9.7 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 9.8 VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection therewith including, without limitation, monetary reserves or financial equivalents.

Section 9.9 RECOURSE AND CHOICE OF REMEDIES. Notwithstanding any other provision of this Security Instrument, Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Borrower, Guarantor and Indemnitor contained in Section 11.2 without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower, Guarantor and Indemnitor. The provisions of Section 11.2 are exceptions to any non-recourse or exculpation provisions in the Note, this Security Instrument or the other Loan Documents, and Borrower, Guarantor and Indemnitor are fully and personally liable for the obligations pursuant to Section 11.2. The liability of Borrower, Guarantor and Indemnitor are not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing pursuant to this Security Instrument or exercising any other rights and remedies pursuant to the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article 10 or Section 11.2.

Section 9.10 RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times and, except during an emergency or following the occurrence and during the continuance of an Event of Default, upon reasonable advance notice (which may, for such purpose alone, be given orally).

**Article 10 - ENVIRONMENTAL HAZARDS**

Section 10.1 ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants, based upon an environmental assessment of the Property and information that Borrower knows or reasonably should have known, that: (a) there are no Hazardous Substances (as hereinafter defined) or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with all applicable Environmental Laws (as hereinafter defined) and, if required, with permits issued pursuant thereto, and (ii) either fully disclosed to Lender in writing pursuant to the written report(s) resulting from the environmental assessment(s) of the Property delivered to Lender (collectively, the "Environmental Report") or are used by Borrower or tenants of the Property in the ordinary course of their business; (b) there are no past, present or threatened Releases (as hereinafter defined) of Hazardous Substances in, on, under or from the Property except as described in the Environmental Report; (c) there is no threat of any Release of Hazardous Substances migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person (including, without limitation, a governmental entity) relating to Hazardous Substances or Remediation (as hereinafter defined) thereof, of possible liability of any Person pursuant to any Environmental Law, of environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under or from the Property that is known to Borrower and that is contained in Borrower's files and records, including, without limitation, any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

"Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including, without limitation, Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; the River and Harbors Appropriation Act and the Residential Lead-Based

Paint Hazard Reduction Act. "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other Person, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

"Hazardous Substances" include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including, without limitation, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, materials containing lead based paint, radon, radioactive materials, flammables and explosives.

"Release" of any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

"Remediation" includes but is not limited to any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article 10.

Section 10.2 ENVIRONMENTAL COVENANTS. Borrower covenants and agrees that: (a) all uses and operations on or of the Property, whether by Borrower or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances in, on, under or from the Property; (c) there shall be no Hazardous Substances in, on, or under the Property, except those that are both (i) in compliance with all Environmental Laws and, if required, with permits issued pursuant thereto, and (ii) fully disclosed to Lender in writing or are used by Borrower or tenants of the Property in the ordinary course of their business; (d) Borrower shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person (the "Environmental Liens"); (e) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection

with the Property, pursuant to any reasonable written request of Lender if Lender has reason to suspect that a Release of a Hazardous Substance might have occurred (including, without limitation, sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (f) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate Remediation of any condition (including, without limitation, a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (g) Borrower shall not do or allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any Person (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (h) Borrower immediately upon becoming aware of the same shall notify Lender in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including, without limitation, a governmental entity) relating in any way to Hazardous Substances or Remediation thereof, possible liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article 10.

Section 10.3 LENDER'S RIGHTS. Lender and any other Person designated by Lender, including, without limitation, any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including, without limitation, conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and taking samples of soil, groundwater or other water, air or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such Person designated by Lender.

Section 10.4 RELEASE. At Lender's selection, from time to time, Borrower shall accept a release from the lien of this Security Instrument of any portion of the Property with respect to which Lender believes in good faith Hazardous Substances have been discovered on, at, in, under, or above and have or are or reasonably likely to have a material adverse effect on the Property, Borrower, Lender or the lien or priority of this Security Instrument, or with respect to which Lender believes in good faith an Environmental Law has been or may have been violated which has or is

reasonably likely to have a material adverse effect on the Property, Borrower, Lender or the lien or priority of this Security Instrument. Borrower shall, at Borrower's expense, cause any consents, agreements and instruments to be entered into that may be reasonably required by Lender in connection with such release, including, without limitation, subdivision consents, appropriate surveys, appraisals of the subdivisions, consents of tenants, access agreements, easement agreements, consents of parties to existing agreements and consents of subordinate lienors. Borrower shall pay for any new title insurance policy or endorsement required by Lender in connection with any such release.

Section 10.5 ADDITIONAL ENVIRONMENTAL REQUIREMENTS. If the Property is not in compliance with Environmental Laws or Borrower is unable to obtain environmental insurance in such amounts and such form as may be required by Lender, Lender may impose additional requirements upon Borrower in connection therewith including, without limitation, monetary reserves (which reserves may be deposited with and held by Lender) or financial equivalents. Borrower hereby agrees to fully comply with any such additional requirements imposed by Lender including, without limitation, depositing with Lender, in full or in installments, such sums as Lender may reasonably determine. In the event funds are so deposited, they shall not constitute a trust fund and may be commingled with funds of Lender and may be used for, or applied in accordance with the provisions of, any matter as set forth in Article 10 hereof. Borrower hereby assigns to Lender all of Borrower's interest in such deposit and grants to Lender a first priority security interest therein. If an Event of Default shall occur, Borrower shall lose all rights to such deposit and Lender may apply such fund for any purpose, including, without limitation, repayment of the Debt in such order and manner as Lender may elect in its sole discretion.

#### Article 11 - INDEMNIFICATION

Section 11.1 GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including, without limitation, attorneys' fees and other costs of defense) (collectively, "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt and any of the Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any Guarantor or Indemnitor and/or any partner, joint venturer, member or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage



to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) any failure of the Property to be in compliance with any Applicable Laws; (i) the enforcement by any Indemnified Party of the provisions of this Article 11; (j) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (k) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Security Instrument; (l) any misrepresentation made to Lender in this Security Instrument or any other Loan Document; or (m) any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents. Any amounts payable to Lender by reason of the application of this Section 11.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date the Loss is sustained by Lender until paid. For purposes of this Article 11, the term "Indemnified Parties" means Lender and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan, any Person in whose name the encumbrance created by this Security Instrument is or will have been recorded, any Person who may hold or acquire or will have held a full or partial interest in the Loan (including, without limitation, any investor in the Securities (as hereinafter defined) and custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, without limitation, any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Property, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

Section 11.2 ENVIRONMENTAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including, without limitation, sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) any presence of any Hazardous Substances in, on, above, or under the Property; (ii) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (iii) any activity by Borrower, any Affiliate of Borrower or any tenant or other user of the

Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (iv) any activity by Borrower, any Affiliate of Borrower or any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including, without limitation, any removal, remedial or corrective action; (v) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including, without limitation, any failure by Borrower, any Affiliate of Borrower or any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (vi) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (vii) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Article 10 and this Section 11.2; (viii) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including, without limitation, costs to investigate and assess such injury, destruction or loss; (ix) any acts of Borrower or other users of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances at any facility or incineration vessel containing such or similar Hazardous Substances; (x) any acts of Borrower or other users of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (xi) any personal injury, wrongful death, or property or other damage arising under any statutory or common law or tort law theory, including, without limitation, damages assessed for a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property; and (xii) any material misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to Article 10.

(b) Notwithstanding the provisions of Section 11.2(a) or of any Loan Document to the contrary, Borrower shall have no obligation to indemnify the Indemnified Parties for Losses and costs of Remediation (i) in connection with Hazardous Substances which are initially released or placed on, in or under the Property after the date, if any, upon which Lender (or its designee) takes title to the Property following the occurrence of an Event of Default, or (ii) which result directly and solely from Lender's willful misconduct or gross negligence.

Section 11.3 DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES.

Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals

to defend or assist them at Borrower's expense if such Indemnified Party has reason to believe that its interests are not being adequately represented or diverge from other interests being represented by such counsel (but Borrower shall be obligated to bear the expense of at most only one such separate counsel), and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith. Nothing contained herein shall prevent an Indemnified Party from employing separate counsel in any such action at any time and participating in the defense thereof at its own expense.

Section 11.4 SURVIVAL. Except as expressly set forth in Subsection 11.2(b), the indemnifications made pursuant to Section 11.2 and the representations and warranties, covenants, and other obligations arising under Article 10, shall continue indefinitely in full force and effect and shall survive and in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including, without limitation, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto, except for an express release delivered by Lender in writing.

#### Article 12 - WAIVERS

Section 12.1 MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling, in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 12.2 WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower

hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 12.3 WAIVER OF STATUTE OF LIMITATIONS. To the fullest extent permitted by law, Borrower hereby expressly waives and releases the pleading of any statute of limitations as a defense to payment of the Debt or performance of its other Obligations.

### Article 13 - MISCELLANEOUS PROVISIONS

Section 13.1 DOCUMENT PROTOCOLS. This Security Instrument is governed by the Document Protocols set forth on Appendix I annexed hereto and made a part hereof, which are incorporated herein as if fully set forth herein.

Section 13.2 USURY LAWS. It is the intention of Borrower and Lender to conform strictly to the usury and similar laws relating to interest from time to time in force, and all agreements between Lender and Borrower, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever, whether by acceleration of maturity hereof or otherwise, shall the amount paid or agreed to be paid in the aggregate to Lender as interest hereunder or under the other Loan Documents or in any other security agreement given to secure the Debt, or in any other document evidencing, securing or pertaining to the Debt, exceed the maximum permissible under applicable usury or such other laws (the "Maximum Amount"). If from any possible construction of any document, interest would otherwise be payable hereunder or under any other Loan Document in excess of the Maximum Amount, or in the event for any reason whatsoever any payment by or act of Borrower pursuant to the terms or requirements hereof or of any other Loan Document shall result in the payment of interest which would exceed the Maximum Amount, then any such construction shall be subject to the provisions of this Section, and ipso facto such document shall be automatically reformed, without the necessity of the execution of any amendment or new document, so that the obligation of Borrower to pay interest or perform such act or requirement shall be reduced to the limit authorized under the applicable laws, and in no event shall Borrower be obligated to pay any interest, perform any act, or be bound by any requirement which would result in the payment of interest in excess of the Maximum Amount. Any amount received by Lender in excess of the Maximum Amount shall, without further agreement or notice between or by any party hereto, be deemed applied to reduce the principal amount of the Note immediately upon receipt of such moneys by Lender, with the same force and effect as though Borrower had specifically designated such sums to be applied to principal prepayment. The provisions of this Section shall supersede any inconsistent provision of this Security Instrument or any other Loan Document.

Section 13.3 PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender may impose certain administrative, processing or servicing fees in connection with (a) any extension, renewal, modification, amendment and termination of the Loan,

(b) any release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement, (e) collecting, holding and disbursing reserves created under the Loan Documents pursuant to this Security Instrument, and (f) inspections required to make certain determinations under the Loan Documents. Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority. Borrower hereby acknowledges and agrees to pay, immediately upon demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time.

Section 13.4 ATTORNEY'S FEES FOR ENFORCEMENT. Borrower shall pay all reasonable legal fees and disbursements incurred by Lender in connection with the preparation of the Loan Documents, and Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Property, in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder or under any other Loan Document, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

Section 13.5 TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Loan, the Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any rating agency rating such Securities or any prospective investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, any Guarantor, any Indemnitors and the Property, as Lender determines necessary or desirable. Borrower, any Guarantor and any Indemnitor agree to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Section, including, without limitation, the delivery of an estoppel certificate required in accordance with Section 6.3 hereof and such other documents as may be reasonably requested by Lender.

Section 13.6 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the other Loan Documents and the performance and discharge of the other Obligations.



Section 13.7 CERTAIN DEFINED TERMS. For all purposes of this Security Instrument, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein:

(a) "Affiliate" shall mean, with respect to any Person, (i) each Person that controls, is controlled by or is under common control with such Person, (ii) each Person that, directly or indirectly, owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, any of the Stock of such Person, and (iii) each of such Person's officers, directors, members, joint venturers and partners.

(b) "Borrower" shall mean the Person identified as such in this Security Instrument, any subsequent owner of the Property who succeeds to the obligations of Borrower hereunder, and each of their heirs, executors, legal representatives, successors and assigns.

(c) "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

(d) "Control" shall mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise. For the purpose of this definition, "control" includes the correlative meanings of "controlled by" and "under common control with."

(e) "Lender" shall mean the Person identified as such in this Security Instrument and its successors, assigns and transferees.

(f) "Opinion of Counsel" shall mean an opinion or opinions in writing signed by independent legal counsel to Borrower, designated by Borrower, and reasonably satisfactory to Lender.

(g) "Person" shall mean any individual, corporation, partnership, joint venture, estate, trust, limited liability company, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(h) "Single-Purpose Entity" shall mean a Person which owns no interest or property other than the Property or interests in Borrower.

(i) "Stock" shall mean all shares, options, warrants, general or limited partnership interests, membership interests, participations or other equivalents (regardless of how designated) in a corporation, limited liability company, partnership or any equivalent entity, whether voting or nonvoting, including, without limitation, common stock, preferred stock, or any other "equity

security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended).

(j) "Transfer" shall mean the conveyance, assignment, sale, transfer, mortgaging, collateral assignment, encumbrance, pledging, alienation, hypothecation, granting of a security interest in, granting of options with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest (i) in all or any portion of the Property; and (ii) in Borrower (or any trust of which Borrower is a trustee), or, if Borrower is a limited or general partnership, limited liability company, joint venture, trust, nominee trust, tenancy in common or other unincorporated form of business association or form of ownership interest, in any Person having a direct or indirect legal or beneficial ownership in Borrower, excluding any legal or beneficial interest in any constituent limited partner or member of Borrower but including the interest of such limited partner or member itself and further including any legal or beneficial interest in any constituent general partner of Borrower, if applicable, in any general partner of any constituent general partner of Borrower, or, if Borrower is a limited liability company, in any constituent corporate member of Borrower. The term "Transfer" shall include, without limitation, the following: an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof or any interest therein for a price to be paid in installments; an agreement by Borrower leasing all or a substantial part of the Property to one or more Persons pursuant to a single transaction or related transactions, or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rent; any instrument subjecting the Property to a condominium regime or transferring ownership to a cooperative corporation or other form of multiple ownership or governance; the dissolution or termination of Borrower, any general partner of Borrower, any general partner of any general partner of Borrower, if applicable, or, if Borrower is a limited liability company, any corporate member of Borrower; the issuance of new Stock in any corporation which is Borrower, a member of Borrower (if Borrower is a limited liability company), a partner of Borrower or, if applicable, a partner of a general partner of Borrower; the merger or consolidation with any other Person of Borrower, any general partner of Borrower, any general partner of any general partner of Borrower, if applicable, or, if Borrower is a limited liability company, any corporate member of Borrower; and, if Borrower is a non-member managed limited liability company, any change in the Person appointed as manager of Borrower.

#### Article 14 - STATE SPECIFIC PROVISIONS

[None]

#### Article 15 - SUBORDINATION

Section 15.1 Subordination. Notwithstanding anything to the contrary contained herein, this Security Instrument is given to Lender subject to the following terms and conditions:

(a) This Security Instrument, all restatements, replacements, supplements, extensions, renewals, amendments and modifications hereto, the lien created hereunder and thereunder and Lender's right to receive payment of the indebtedness evidenced by the Note (the "Indebtedness") shall be and the same are hereby made and shall continue subject and subordinate to (i) that certain Mortgage, Security Agreement and Fixture Filing, dated as of May \_\_\_\_, 1998 (as the same may hereafter be amended, modified, extended, restated, replaced, renewed or supplemented, the "First Security Instrument"), given by Borrower to First Security Commercial Mortgage, L.P., encumbering the Property; (ii) that certain Assignment of Leases and Rents, dated as of May \_\_\_\_, 1998 (as the same may hereafter be amended, modified, extended, restated, replaced, renewed or supplemented, the "Assignment of Rents"), made by Borrower, as assignor, in favor of First Security Commercial Mortgage, L.P., as assignee, encumbering the Property; (iii) any other mortgage, deed of trust, deed to secure debt, security instrument or collateral assignment, whether now or hereafter existing, relating to the Superior Indebtedness (as hereinafter defined) and affecting all or any part of the Property and any and all increases therein or any extension, consolidation, modification, restatement, replacement, supplement, renewal, or amendment thereto (collectively, the "Other Security Instruments," the First Security Instrument, the Assignment of Rents and the Other Security Instruments, as such instruments may be spread, confirmed, reaffirmed, consolidated and modified, are herein referred to individually as a "Superior Security Instrument" and collectively as the "Superior Security Instruments" and the holders thereof from time to time individually as a "Superior Lender" and collectively as the "Superior Lenders"); (iv) the Superior Loan Documents (as hereinafter defined) and any assignment of the Superior Loan Documents; and (v) any modification or amendment of any of the terms of the Superior Loan Documents, including, without limitation, any extension, renewal or refinancing of the indebtedness evidenced by any of the Superior Loan Documents (collectively, the "Superior Indebtedness"), any additional advance of funds thereunder and any supplemental or additional deed of trust, mortgage or other document or instrument securing the Superior Indebtedness or any modification, renewal or extension thereof, regardless of the time of recording of any such deed of trust, mortgage or other document or instrument. As used herein, "Superior Loan Documents" shall mean the Superior Security Instruments and all other documents, instruments and agreements evidencing, securing, guaranteeing, relating to or otherwise delivered in connection with the Superior Indebtedness.

(b) The subordination provided for herein automatically, and without any notice to, consent of, or action by Lender or any other party whatsoever, shall extend to all modifications, renewals, refinancings, replacements and extensions whatsoever of any of the Superior Loan Documents. No release or waiver by any Superior Lender of any of its rights against any person or entity under the Superior Loan Documents shall require notice to or consent of Lender or any other party, nor shall any such release or waiver operate as a defense to or release of any of the obligations of Lender or the rights of the Superior Lenders under the Superior Loan Documents. Without limiting the generality of any of the foregoing, Lender hereby consents to any increases of the indebtedness owed by Borrower under the Superior Indebtedness.

(c) Without the prior written consent of all Superior Lenders, Lender shall not take an Enforcement Action (as hereinafter defined) under the Note or this Mortgage unless all Superior Indebtedness shall have been indefeasibly satisfied in full. "Enforcement Action" shall mean either the commencement of a foreclosure proceeding, the exercise of a statutory power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against, or the taking of possession or control of, the Property or any other collateral securing the Indebtedness or the Superior Indebtedness, as the case may be, or otherwise the exercise of any of the rights or remedies available to the Superior Lenders under the Superior Loan Documents or to Lender under the Note, this Mortgage or the other Loan Documents upon the occurrence of a default under the Superior Loan Documents or the Note, this Mortgage or the other Loan Documents, as the case may be.

(d) Lender shall not assert any default under the Note or this Mortgage as a result of Borrower's compliance with the terms of any of the Superior Loan Documents, as the same may be amended or increased from time to time, and the provisions of the Superior Loan Documents shall govern any conflicting provisions of the Note or this Mortgage.

(e) So long as any Superior Security Instrument shall be in effect, no tenant under any lease of any portion of the Property will be made a party defendant in the foreclosure of this Mortgage, nor will any other action be taken in connection with such foreclosure which would have the effect of terminating or diminishing the rights of the tenant under any such lease.

(f) So long as any Superior Security Instrument shall be in effect, no portion of the rents, issues and profits of the Property shall be collected in connection with the foreclosure of this Mortgage or otherwise except through a receiver appointed by the court in which such foreclosure action is brought. The rents, issues and profits collected by any such receiver shall be applied first to the payment of taxes, maintenance and operating charges and disbursements incurred in connection with the operation and maintenance of the Property, next to the payment of principal (after giving effect to any acceleration thereof), interest and other sums due under the Superior Security Instruments in order of priority, and then to the Indebtedness. Any balance remaining shall be applied to those legally entitled thereto.

(g) So long as any Superior Security Instrument shall be in effect, notwithstanding anything contained herein to the contrary, Lender shall (A) not be entitled to receive any condemnation awards or insurance proceeds in respect to the Property, and Lender agrees that such awards and/or proceeds shall be applied as the Superior Lender whose lien is most senior shall direct, including, without limitation, to the payment of any sums owed to the Superior Lenders under the Superior Security Instruments or to the restoration of the Property, or such portion thereof as the Superior Lender whose lien is most senior shall direct, (B) execute such non-disturbance agreements with tenants of the Property as any Superior Lender shall require, (C) execute such partial releases of deed of trust and other appropriate releases, without consideration, as any Superior Lender shall direct upon the conveyance of any portion of the Property, and (D) if applicable, execute such

subordination agreements as any Superior Lender shall direct upon (i) the filing of any declaration of condominium approved by such Superior Lender in respect to the Property and (ii) the recording of any easement, right-of-way or other encumbrance approved by such Superior Lender in respect to the Property.

(h) Lender waives any claim or right of subrogation which it may have to any lien, estate, right or other interest in the Property that is, or may be, prior in right to the Superior Security Instruments, any other Superior Loan Document which purports to create a lien.

(i) Lender shall not increase, renew, extend, amend or modify the Note, this Mortgage or the Indebtedness unless each Superior Lender, prior to the effectiveness of any such increase, renewal, extension, amendment or modification, shall have executed a written instrument evidencing its consent to such action.

(j) To further evidence the subordinations and provisions referred to in clauses (a) through (i) above, Lender agrees that, within ten (10) days after request by any Superior Lender, it will do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, documents, estoppels and instruments as such Superior Lender may request for the better assuring and evidencing of the foregoing subordination and provisions. The provisions of this paragraph shall be binding upon Lender's successors and assigns and inure to the benefit of the successors and assigns of the Superior Lenders.

(k) Unless and until a Trigger Event (as hereinafter defined) shall occur, payments may be made on account of the Indebtedness, the Note or this Mortgage only if and to the extent that all Superior Indebtedness then presently due and payable and all other payments required to be made under the Superior Loan Documents, including, without limitation, all taxes, insurance premiums, maintenance, capital reserve requirements and operating charges and disbursements incurred in connection with the operation and maintenance of the Property have been paid in full in cash and all of the covenants, obligations and liabilities of Borrower set forth in the Superior Loan Documents have been fulfilled.

(l) In the event that (i) any of the following shall occur: (a) any insolvency, bankruptcy, receivership, custodianship, assignment for the benefit of creditors, liquidation, reorganization, readjustment, composition or other similar proceeding relating to Borrower, its property or its creditors as such, whether under any bankruptcy, reorganization or insolvency law or laws, federal or state, or any law, federal or state, relating to relief of debtors, readjustment of indebtedness, reorganization, composition or extension, (b) any proceeding for any partial or total liquidation, liquidating distribution, dissolution or other winding-up of Borrower, voluntary or involuntary, whether or not involving insolvency or bankruptcy proceedings, or (c) any other marshalling of the assets of Borrower (any of the foregoing events, a "Proceeding"), (ii) any Event of Default (as defined in the Superior Loan Documents) (a "Superior Event of Default") shall occur and not be cured or waived in writing by each Superior Lender, or (iii) the maturity of any Superior



Indebtedness shall be accelerated, and until such acceleration has been rescinded or the Superior Indebtedness that has been accelerated has been paid in full, then and in any such event (any of such events, a "Trigger Event"), the Superior Indebtedness shall be indefeasibly paid in full in cash, or such payment shall have been provided for, before any payment or distribution, whether in cash, securities or other property (other than securities of Borrower or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinate, at least to the extent provided in the subordination provisions with respect to the Indebtedness, to the payment of all Superior Indebtedness at the time thereof under any such plan of reorganization or readjustment), shall be made in respect to the Indebtedness, the Note or this Mortgage (a "Subordinated Payment"), whether it is due or not due, and Lender agrees that any payment or distribution of any kind or character, whether in cash, securities or other property (other than securities of Borrower or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the Indebtedness, to the payment of all Superior Indebtedness at the time thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect to the Indebtedness, the Note or this Mortgage shall be paid or delivered directly to the Superior Lender whose lien is most senior for application in payment of the Superior Indebtedness (or to a banking institution selected by the court or other person making the payment or delivery or designated by the Superior Lender whose lien is most senior) for application in payment of the Superior Indebtedness until all Superior Indebtedness shall have been paid in full, or such payment shall have been provided for, all as provided more specifically in the Note.

(m) Lender hereby undertakes and agrees, upon the request of any Superior Lender, to execute, verify, deliver and file in a timely manner any proofs of claim, consents, assignments or other action necessary or appropriate to enforce the obligations of Borrower to Lender in respect of the Subordinated Payments, and to vote any claims at any meeting of creditors or for any plan or with respect to any matter as such Superior Lender shall direct, all in order to preserve and maintain all claims against Borrower for Subordinated Payments so that the Superior Lenders will have the benefit of such claims as provided herein. Upon failure of Lender to do so, the Superior Lender whose lien is most senior shall be deemed to be irrevocably appointed the agent and attorney-in-fact of Lender to execute, verify, deliver and file any such proofs of claim, consents, assignments or other instrument, to vote any such claims in any Proceeding, and to receive and collect any and all dividends, payments, or other disbursements made thereon in whatever form the same may be paid or issued and to apply the same on account of the Superior Indebtedness in the manner provided in this Section 15. Lender hereby declares that the foregoing power is coupled with an interest and such power is and shall be irrevocable by Lender. Any conflict among the Superior Lenders with respect to this Section 15 shall be resolved in favor of the Superior Lender whose lien is most senior.

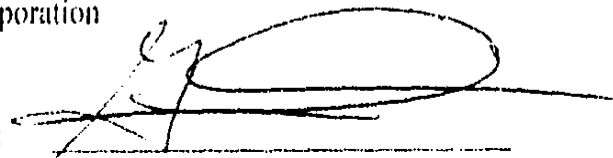
(n) Upon the occurrence of any Proceeding, the provisions of this Section 15 shall remain in full force and effect, and the court having jurisdiction over the Proceeding is hereby authorized

to preserve such priority and subordination in approving any such plan of reorganization, arrangement or liquidation without the prior written consent of the Superior Lenders.

IN WITNESS WHEREOF THIS SECURITY INSTRUMENT has been executed by Borrower as of the day and year first above written.

BORROWER:

WASH DEPOT XIV, INC., a Delaware corporation

By:   
Name: Gregory S. Anderson  
Its: Executive Vice President

Property of Cook County Clerk's Office

STATE OF Delaware  
COUNTY OF Delaware

I, the undersigned, a notary public, in and for the county and state aforesaid, DO HEREBY CERTIFY, that GREGORY S. ANDERSON, personally known to me to be the Executive Vice President of WASH DEPOT XIV, INC., a Delaware corporation, and personally known to me to be the same person whose name is subscribed to within the Document, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act and deed of WASH DEPOT XIV, INC., a Delaware corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 1 day of May, 1998.

Donna L. Forbes  
Notary Public  
DONNA L. FORBES  
Notary Public  
My Commission Expires Nov. 8, 2002

[SEAL]

Property of Cook County Clerk's Office

LEGAL DESCRIPTION

PARCEL 1:

That part of Section 2, Township 42 North, Range 10 East of the Third Principal Meridian, described as follows: Beginning at the intersection of the East and West 1/4 line of said Section with the center line of Rand Road, said intersection being 1514.39 feet West of the East line of said Section (measured on said East and West 1/4 line); thence Northwesterly along the center line of said Rand Road, said center line forming an angle of 47 degrees 00 minutes 10 seconds with the East and West 1/4 line of said Section, 145.08 feet to the place of beginning; thence Northwesterly along the center line of Rand Road, 100 feet; thence Northeasterly at right angles to Rand Road, 548.28 feet; thence Southeasterly along a line that forms an angle of 52 degrees 36 minutes 30 seconds to the right with a prolongation of the last described course for a distance of 125.89 feet; thence Southwesterly 548.28 feet to the place of beginning, in Cook County, Illinois.

PARCEL 2:

That part of Section 2, Township 42 North, Range 10 East of the Third Principal Meridian, described as follows: Beginning at the intersection of the East and West 1/4 line of said Section with the center line of Rand Road, said intersection being 1514.39 feet West of the East line of said Section (measured on said East and West 1/4 line); thence Northwesterly along the center line of said Rand Road, said center line forming an angle of 47 degrees 00 minutes 10 seconds with the East and West 1/4 line of said Section, a distance of 245.08 feet to point of beginning; thence Northwesterly along the center line of Rand Road, 100 feet; thence Northeasterly at right angles to Rand Road, 471.84 feet; thence Southeasterly along a line that forms an angle of 52 degrees 36 minutes 30 seconds to the right, with a prolongation of the last described course for a distance of 125.89 feet; thence Southwesterly 548.28 feet to the place of beginning, in Cook County, Illinois.

PROPERTY ADDRESS: 2021 & 2031 N. RAND RD.  
PALATINE, ILLINOIS

PIN: 02-02-203-035 VOL. 148  
02-02-203-036 VOL. 148

## APPENDIX I

DOCUMENT PROTOCOLS

I. Certain Definitions. For the purposes of this Appendix I and the Document Protocols contained herein, all capitalized terms used but not otherwise defined herein shall have the meanings provided therefor in the Security Instrument to which this Appendix I is annexed.

II. Document Protocols. With respect to any instrument that states in substance that it is governed by the "Document Protocols," the following shall apply:

(a) General Rules of Usage. These Document Protocols shall apply to such instrument as from time to time amended, modified, replaced, restated, extended or supplemented, including by waiver or consent, and to all attachments thereto and all other documents or instruments incorporated therein. When used in any instrument governed by these Document Protocols: (i) references to a Person are, unless the context otherwise requires, also to its heirs, executors, legal representatives, successors and assigns, as applicable; (ii) "hereof," "herein," "hereunder" and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto; (iii) references to any gender include, unless the context otherwise requires, references to all genders, and references to the singular include, unless the context otherwise requires, references to the plural, and vice versa; (iv) "shall" and "will" have equal force and effect; (v) references in an instrument to "Article," "Section," "Paragraph" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, paragraph or subdivision of or an attachment to such instrument; (vi) all accounting terms not otherwise defined therein have the meanings assigned to them in accordance with GAAP; and (vii) "include," "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import.

(b) Non-Recourse. [Intentionally omitted].

(c) Notices, Etc. All notices, consents, approvals, statements, requests, reports, demands, instruments or other communications to be made, given or furnished pursuant to, under or by virtue of such instrument (each, a "notice") shall be in writing and shall be deemed given or furnished if addressed to the party intended to receive the same at the address of such party as set forth below (i) upon receipt when personally delivered at such address, (ii) three (3) Business Days after the same is deposited in the United States mail as first class registered or certified mail, return receipt requested, postage prepaid, or (iii) one Business Day after the date of delivery of such notice to a nationwide, reputable commercial courier service:



Lender: **FIRST SECURITY COMMERCIAL MORTGAGE, L.P.**, a Delaware limited partnership, having an address at 150 S. Wacker Drive, Suite 1100, Chicago, Illinois 60606, Attention: Barry L. Powell

with a copy by the same means sent simultaneously to: **WOLIN & ROSEN, LTD.**, 2 N. LaSalle Street, Suite 1776, Chicago, Illinois 60602, Attention: Charles J. Mack

Borrower: **WASH DEPOT XIV, INC.**, 435 Eastern Avenue, Malden, Massachusetts 02148; Attention: Greg Anderson

Indemnitor: **WASH DEPOT HOLDINGS, INC.**, 435 Eastern Avenue, Malden, Massachusetts 02148; Attention: Greg Anderson

with a copy of any notice to Borrower or Indemnitor by the same means sent simultaneously to: **SALVO, RUSSELL AND FICHTER**, 1767 Sentry Parkway West, Suite 210, Blue Bell, PA 19422, Attention: Mitchell Russell, Esq.

Any party may change the address to which any notice is to be delivered to any other address within the United States of America by furnishing written notice of such change at least fifteen (15) days prior to the effective date of such change to the other parties in the manner set forth above, but no such notice of change shall be effective unless and until received by such other parties. Rejection or refusal to accept, or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed to be receipt of any such notice. Any notice to an entity shall be deemed to be given on the date specified in subparagraph (c) above, without regard to when such notice is delivered by the entity to the individual to whose attention it is directed and without regard to the fact that proper delivery may be refused by someone other than the individual to whose attention it is directed. If a notice is received by an entity, the fact that the individual to whose attention it is directed is no longer at such address or associated with such entity shall not affect the effectiveness of such notice. Notices may be given on behalf of any party by such party's attorneys.

(d) Severability. Whenever possible, each provision of such instrument shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of such instrument shall be prohibited by or invalid or unenforceable under the applicable law of any jurisdiction with respect to any Person or circumstance, such provision shall be ineffective to the extent of such prohibition, invalidity or unenforceability, without invalidating the remaining provisions of such instrument or affecting the validity or enforceability of such provisions in any other jurisdiction or with respect to other Persons or circumstances. To the extent permitted by applicable law, the parties to such instrument thereby waive any provision of law that renders any provision thereof prohibited, invalid or unenforceable in any respect.

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(c) Remedies Not Exclusive. No remedy therein conferred upon or reserved to Lender is intended to be exclusive of any other remedy or remedies available to Lender under such instrument, at law, in equity or by statute, and each and every such remedy shall be cumulative and in addition to every other remedy given thereunder or now or hereafter existing at law, in equity or by statute.

(d) Liability. If Borrower or Indemnitor consists of more than one Person, the obligations and liabilities of each such Person under such instrument shall be joint and several.

(g) Binding Obligations; Covenants Run with the Land. Such instrument shall be binding upon Borrower or Indemnitor, as the case may be, and the successors, assigns, heirs and personal representatives of Borrower or Indemnitor, as the case may be, and shall inure to the benefit of Lender and all subsequent holders of such instrument and their respective officers, directors, employees, shareholders, agents, successors and assigns. Nothing in such instrument, whether express or implied, shall be construed to give any Person (other than the parties thereto and their permitted successors and assigns and as expressly provided therein) any legal or equitable right, remedy or claim under or in respect of such instrument or any covenants, conditions or provisions contained therein. If such instrument is to be recorded, all of the grants, covenants, terms, provisions, covenants and conditions of such instrument shall run with the land.

(h) No Oral Modifications. Such instrument, and any of the provisions thereof, cannot be altered, modified, amended, waived, extended, changed, discharged or terminated orally or by any act on the part of Borrower, Indemnitor or Lender, but only by an agreement in writing signed by the party against whom enforcement of any alteration, modification, amendment, waiver, extension, change, discharge or termination is sought. Without limiting the generality of the foregoing, any payment made by Lender for insurance premiums, Taxes, Other Charges or any other charges affecting the Property shall not constitute a waiver of Borrower's or Indemnitor's default in making such payments and shall not obligate Lender to make any further payments.

(i) Entire Agreement. Such instrument, together with the other applicable Loan Documents and this Appendix, constitutes the entire agreement of the parties thereto with respect to the subject matter thereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

(j) Waiver of Acceptance. Borrower and Indemnitor hereby waive any acceptance of such instrument by Lender in writing, and such instrument shall immediately be binding upon Borrower or Indemnitor, as the case may be.

(k) Jurisdiction, Court Proceedings. EACH OF LENDER, BORROWER AND INDEMNITOR, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (1) SUBMITS TO PERSONAL, NONEXCLUSIVE JURISDICTION IN THE STATE

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OR COMMONWEALTH OF ILLINOIS WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM, RELATING TO OR IN CONNECTION WITH SUCH INSTRUMENT OR THE LOAN, (II) AGREES THAT ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN COOK COUNTY, ILLINOIS, AND (III) SUBMITS TO THE JURISDICTION OF SUCH COURTS. EACH OF BORROWER AND INDEMNITOR, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, FURTHER AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY FORUM OTHER THAN COOK COUNTY, ILLINOIS (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM), AND IRREVOCABLY AGREES NOT TO ASSERT ANY OBJECTION WHICH IT MAY EVER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT LOCATED IN ILLINOIS AND ANY CLAIM THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(l) Service of Process. Borrower and Indemnitor each initially and irrevocably does hereby designate and appoint Alun Garfield, Esq. having an address c/o Garfield & Merel, Ltd., having an address at 211 W. Wacker Drive, 15<sup>th</sup> Floor, Chicago, IL 60606, as its authorized agent to accept and acknowledge on its behalf service of any and all process which may be served in any such suit, action or proceeding in any federal or state court in Illinois, and agrees that service of process upon said agent at said address and written notice of said service of Borrower or Indemnitor, as the case may be, mailed or delivered to Borrower or Indemnitor, as the case may be, in the manner provided in this Appendix shall be deemed in every respect effective service of process upon Borrower or Indemnitor, as the case may be, in any such suit, action or proceeding in the State of Illinois. Borrower and Indemnitor each agrees that it (i) shall give prompt notice to Lender of any changed address of its authorized agents hereunder, (ii) may at any time and from time to time designate a substitute authorized agent with an office in Illinois (which office shall be designated as the address for service of process), and (iii) shall promptly designate such a substitute if its authorized agent ceases to have an office in Illinois or is dissolved without leaving a successor. No notice of change of designated agent by Borrower or Indemnitor or of such agent's address shall be or be deemed effective until thirty (30) days following Lender's receipt thereof. Borrower and Indemnitor each further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon.

(m) WAIVER OF COUNTERCLAIM. BORROWER AND INDEMNITOR EACH HEREBY KNOWINGLY WAIVES THE RIGHT TO ASSERT ANY COUNTERCLAIM, OTHER THAN A COMPULSORY OR MANDATORY COUNTERCLAIM, IN ANY ACTION OR PROCEEDING BROUGHT AGAINST EITHER OF THEM BY LENDER OR ITS AGENTS.

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(n) WAIVER OF JURY TRIAL. BORROWER, INDEMNITOR AND LENDER, TO THE FULL EXTENT PERMITTED BY LAW, EACH HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES HEREBY THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, BROUGHT BY ANY OF THEM AGAINST THE OTHER BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO OR IN CONNECTION WITH SUCH INSTRUMENT, THE LOAN OR ANY COURSE OF CONDUCT, ACT, OMISSION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, SUCH PERSON'S DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH SUCH PERSON), IN CONNECTION WITH THE LOAN OR SUCH INSTRUMENT, INCLUDING, WITHOUT LIMITATION, IN ANY COUNTERCLAIM WHICH BORROWER OR INDEMNITOR MAY BE PERMITTED TO ASSERT THEREUNDER OR WHICH MAY BE ASSERTED BY LENDER OR ITS AGENTS AGAINST BORROWER OR INDEMNITOR, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THIS WAIVER BY BORROWER AND INDEMNITOR OF THEIR RIGHT TO A JURY TRIAL IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN.

(o) No Waivers by Lender. No delay or omission of Lender in exercising any right or power accruing upon any default under such instrument shall impair any such right or power or shall be construed to be a waiver of any default under such instrument or any acquiescence therein, nor shall any single or partial exercise of any such right or power or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. Acceptance of any payment after the occurrence of a default under such instrument shall not be deemed to waive or cure such default under such instrument; and every power and remedy given by such instrument to Lender may be exercised from time to time as often as may be deemed expedient by Lender. Borrower and Indemnitor hereby waive any right to require Lender at any time to pursue any remedy in Lender's power whatsoever.

(p) Waiver of Notice. Neither Borrower nor Indemnitor shall be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which such instrument specifically and expressly provides for the giving of notice by Lender to Borrower or Indemnitor, as the case may be, and except with respect to matters for which Borrower or Indemnitor, as the case may be, is not, pursuant to applicable legal requirements, permitted to waive the giving of notice. Each of Borrower and Indemnitor hereby expressly waives the right to receive any notice from Lender with respect to any matter for which such instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower or Indemnitor, as the case may be.

(q) Offsets, Counterclaims and Defenses. Any assignee of such instrument from Lender or any successor or assignee of Lender shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such instrument which Borrower or Indemnitor may otherwise have against any assignor of such instrument, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower or Indemnitor in any action or proceeding brought by any such assignee upon such instrument, and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower and Indemnitor.

(r) Restoration of Rights. In case Lender shall have proceeded to enforce any right under such instrument by foreclosure sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to Lender, then, in every such case, Borrower, Indemnitor and Lender shall be restored to their former positions and rights thereunder.

(s) TIME OF THE ESSENCE. TIME SHALL BE OF THE ESSENCE IN THE PERFORMANCE OF ALL OBLIGATIONS OF BORROWER AND INDEMNITOR THEREUNDER.

(t) Governing Law. SUCH INSTRUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OR COMMONWEALTH WHERE THE PROPERTY IS LOCATED, EXCEPT TO THE EXTENT THAT THE APPLICABILITY OF ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, IN WHICH CASE SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING.

(u) Sole Discretion of Lender. Wherever pursuant to such instrument, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Lender and shall be final and conclusive, except as may be otherwise specifically provided therein. In addition, Lender shall have the right to refuse to grant its consent, approval or acceptance or to indicate its satisfaction whenever such consent, approval, acceptance or satisfaction shall be required under such instrument.

(v) Counterparts. Such instrument may be executed in any number of separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same instrument. All signatures need not be on the same counterpart. The failure of any party thereto to execute such instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

(w) Exhibits Incorporated; Headings. The information set forth on the cover of such instrument, the table of contents, the headings and the exhibits annexed thereto, if any, shall be

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deemed to be incorporated therein as a part thereof with the same effect as if set forth in the body thereof. The headings and captions of the various articles, sections and paragraphs of such instrument are for convenience of reference only and shall not be construed as modifying, defining or limiting, in any way, the scope or intent of the provisions thereof.

(x) No Joint Venture or Partnership. Borrower, Indemnitor and Lender intend that the relationship created under such instrument be solely that of mortgagor and mortgagee, borrower and lender, or indemnitor and lender, as the case may be. Nothing therein is intended to create a joint venture, partnership, tenancy-in-common, agency or joint tenancy relationship between Borrower and Lender or Indemnitor and Lender, as the case may be, nor to grant to Lender any interest in the Property other than that of mortgagee or lender; it being the intent of the parties hereto that Lender shall not share in any loss whatsoever generated by the Property and that Lender shall have no control over the day-to-day management and operation of the Property.

(y) Remedies of Borrower and Indemnitor. If Borrower or Indemnitor, as the case may be, shall seek the approval or consent of Lender under such instrument, which instrument expressly provides that Lender's approval shall not be unreasonably withheld, and Lender shall fail or refuse to give such consent or approval, the burden of proof as to whether or not Lender acted unreasonably shall be upon Borrower or Indemnitor, as the case may be. In addition thereto, in the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under such instrument it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's and Indemnitor's remedies shall be limited to injunctive relief or declaratory judgment.

(z) Release of any Party. Any one or more parties liable upon or in respect of such instrument may be released without affecting the liability of any party not so released.

(aa) Attorneys' Fees. Wherever it is provided in such instrument that Borrower or Indemnitor pay any costs and expenses, such costs and expenses shall include, without limitation, all reasonable attorneys' paralegal and law clerk fees and disbursements, including, without limitation, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender.

(bb) Method of Payment. All amounts required to be paid by any party to such instrument to any other party shall be paid in such freely transferable coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

(cc) True Copy. By executing such instrument, Borrower or Indemnitor, as the case may be, acknowledges that it has received a true copy of such instrument.

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(dd) Other Miscellaneous Provisions. With respect to such instrument: (i) any act which Lender is permitted to perform under such instrument may be performed at any time and from time to time by Lender or by any Person designated by Lender; and (ii) each appointment of Lender as attorney-in-fact for Borrower or Indemnitor under such instrument shall be irrevocable and coupled with an interest.

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