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**MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS**

WEC 98C-5 LLC,
(Borrower)

RED MOUNTAIN FUNDING, L.L.C.,
(Lender)

Dated: August 5th, 1998

This instrument prepared by and upon
recordation should be returned to:

Burr & Forman LLP
One Georgia Center, Suite 1200
600 W. Peachtree Street
Atlanta, Georgia 30308
Attention: Gary W. Farris, Esq.

Location: Lincoln Highway/Cicero Avenue, Matteson, Illinois

Tax Parcel Number: 31-22-300-023

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CHARGE C.T.I.C. DUPLICATION

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THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "Security Instrument"), dated as of August 5th, 1998 by **WEC 98C-5 LLC**, a Texas limited liability company, having its principal office at 6750 LBJ Freeway, Suite 1100, Dallas, Texas 75240 ("Borrower"), to **RED MOUNTAIN FUNDING, L.L.C.**, a Delaware limited liability company, at its principal place of business at 420 North 20th Street, 9th Floor, Birmingham, Alabama 35203 ("Lender").

WITNESSETH:

To secure the payment of an indebtedness in the principal sum of Thirteen Million Six Hundred Twelve Thousand Five Hundred and No/100 Dollars (\$13,612,500.00), lawful money of the United States of America (the "Loan"), to be paid with interest according to the terms of that certain Promissory Note dated the date hereof made by Borrower to Lender (said Promissory Note, together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note") and all other Debt (hereinafter defined), Borrower has mortgaged, given, granted, bargained, sold, alien, enfeoffed, conveyed, confirmed, pledged, assigned, and hypothecated and by these presents does hereby mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate unto Lender the Premises (as defined herein) which is described in **Exhibit A** attached hereto and the buildings, structures, fixtures (except trade fixtures not owned by Borrower), additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Borrower now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter described are collectively referred to herein as the "Mortgaged Property"):

(a) All that certain real property described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Premises"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim and demand whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

(b) All easements, rights-of-way, 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, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property 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 Mortgaged Property, to the center line thereof and all the estates, rights, titles,

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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 Mortgaged Property and every part and parcel thereof, with the appurtenances thereto;

(c) All machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and 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 Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Borrower in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "Uniform Commercial Code") superior in priority to the lien of this Security Instrument. In connection with Equipment which is leased to Borrower or which is subject to a lien or security interest which is superior to the lien of this Security Instrument, this Security Instrument shall also cover all right, title and interest of each Borrower in and to all deposits, and the benefit of all payments now or hereafter made with respect to such Equipment;

(d) All awards or payments, including interest thereon, which may hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain or condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(e) All right, title and interest of Borrower in and to (i) that certain Lease dated October 31, 1985, by and between Chicago Title & Trust Company, as trustee under a Trust Agreement dated June 15, 1985, and known as Trust No. 1035200, and Six Anchors Limited Partnership, a Maryland limited partnership (collectively, "Original Lessor" or "Seller"), and CPS Realty Partnership, an Illinois general partnership (the "Original Lessee"), as amended by Amendment of Lease dated as of August 1, 1993, between Original Lessor and CPS Department Stores, Inc., a Delaware corporation (as successor lessee to Original Lessee by assignment) ("Lessee"), as further amended and extended by Second Amendment to Lease of even date herewith between Borrower (as successor lessor to Original Lessor by assignment) and Lessee (as so amended and extended, the "Lease"), (ii) that certain Corporate Guaranty of even date herewith executed by Proffitt's, Inc., a Tennessee corporation ("Lease Guarantor"), in favor of Borrower with respect to the Lease (the "Lease Guaranty"), and (iii) all other leases, subleases (if, and to the extent that Borrower has any rights, title or interest therein), including, without

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limitation, any assignments thereof (including, without limitation, all guarantees of any such leases, assignment of leases and subleases) and other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property and the Improvements heretofore or hereafter entered into (the "Other Leases"), and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Mortgaged Property (the "Rents"), and all proceeds from the sale or other disposition of the Lease or Other Leases and the right to receive and apply the Rents to the payment of the Debt and the right to receive and apply any payments made to Borrower by the Lessee in connection with any condemnation or casualty, including, without limitation, Lessee's purchase of the Mortgaged Property, to payment of the Debt;

(f) All right, title and interest of Borrower in and to any insurance policies covering the Mortgaged Property, including, without limitation, all proceeds thereof and any unearned premiums on any insurance policies covering the Mortgaged Property, 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 Mortgaged Property or any part thereof, subject to and in accordance with the terms and conditions of the Lease;

(g) Subject to the terms and provisions of this Security Instrument, the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Lender in the Mortgaged Property or any part thereof;

(h) All franchises, trade names, trademarks, symbols, service marks, books, records, plans and specifications, contracts, licenses, approvals, consents, subcontracts, service contracts, management contracts, permits and other agreements of any nature whatsoever now or hereafter obtained or entered into by Borrower, or any managing agent of the Mortgaged Property on behalf of Borrower, with respect to the use, occupation, development, construction and/or operation of the Mortgaged Property or any part thereof or the activities conducted thereon or therein, or otherwise pertaining to the Mortgaged Property or any part thereof;

(i) All accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Mortgaged Property or any part thereof, and all reserve accounts, accounts for the deposit, collection and/or disbursement of Rents and other accounts now or hereafter in existence with respect to the Loan, including, without limitation, all interest reserve accounts and replacement reserve accounts provided for under any documentation entered into or delivered by Borrower in connection with the Loan;

(j) All rights which Borrower now has or may hereafter acquire, to be indemnified and/or held harmless from any liability, loss, damage, costs or expense (including, without limitation, attorneys' fees and disbursements) relating to the Mortgaged Property or any part thereof;

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(k) All the estate, rights, and appurtenances of Borrower in respect of or otherwise relating to the Lease and the Lease Guaranty, including, but not limited to (i) all modifications, extensions and renewals of the Lease and all rights to renew or extend the term thereof, (ii) all of Borrower's rights, if any, pertaining to deposits of the Lessee under the Lease (including lessee security deposits, if any), (iii) all other options, privileges and rights granted and demised to Borrower under the Lease, (iv) all the right or privilege of Borrower to terminate, cancel, abridge, surrender, merge, modify or amend the Lease and/or the Lease Guaranty, and (v) any and all possessory rights of Borrower and other rights and/or privileges of possession, including, without limitation, Borrower's right to elect to take possession of the Mortgaged Property;

(l) All of Borrower's claims and rights to damages and any other remedies in connection with or arising from the rejection of the Lease by the Lessee or any trustee, custodian or receiver pursuant to the U.S. Bankruptcy Code, as amended (the "Bankruptcy Code") in the event that there shall be filed by or against the Lessee any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereafter in effect;

(m) All of Borrower's interest in and to all minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Premises;

(n) All present and future monetary deposits held by any public or private utility with respect to utility services furnished to any part of the Premises or the Improvements (to the extent of Borrower's interest therein);

(o) All right, title and interest of Borrower in and to all building materials, supplies and equipment now or hereafter placed on the Premises or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Premises or the Improvements;

(p) All right, title and interest of Borrower in and to all refunds and rebates of taxes and assessments relating to the Premises and Improvements (except to the extent such refunds and rebates relate to taxes or assessments paid by the Lessee under the Lease);

(q) All right, title and interest of Borrower in and to all representations and warranties (for so long as such representations and warranties survive) made by Seller pursuant to that certain Real Estate Purchase Agreement between Seller and Borrower pertaining to the Premises and Improvements;

(r) All right, title and interest of Borrower in and to all proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, the proceeds of insurance and condemnation awards; and

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

In any event the Mortgaged Property shall include all of Borrower's right, title and interest in and to any Accounts, Inventory, Documents, General Intangibles, Chattel Paper, Equipment and Fixtures (as each term is defined in the Uniform Commercial Code), whether now owned or hereafter acquired, arising out of or in any way related to the Premises and the Improvements.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever.

This Security Instrument is given to secure the following indebtedness and obligations (said indebtedness and obligations being hereinafter collectively called the "Debt"):

(i) The full and prompt payment of the principal amount evidenced by the Note, together with interest thereon at the rate or rates set forth therein and all other sums payable to Lender thereunder;

(ii) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other document or agreement now or hereafter executed by Borrower in favor of Lender which evidences, secures or guarantees all or any portion of the payments due under the Note or otherwise is executed and/or delivered in connection with the Loan (the Note, this Security Instrument, and such other documents and agreements being collectively referred to herein as the "Loan Documents") and the payment of all other sums therein covenanted to be paid;

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

(iv) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof, it being contemplated by Borrower and Lender that Borrower may hereafter become so indebted to Lender; provided that the maximum amount secured hereby shall not exceed twice the principal amount of the Note plus all other indebtedness hereby secured, including, without limitation, interest and disbursements made for Taxes, Insurance Premiums and Other Charges (as such terms are hereinafter defined) with respect to the Mortgaged Property; and

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(v) Payment and performance of all modifications, amendments, extensions, consolidations, and renewals, however evidenced, of any of the obligations described in (i) through (iv) above.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt and every covenant and condition set forth herein and in the Note shall have been satisfied, these presents and the estate and lien hereby granted shall cease, terminate and be void.

AND Borrower represents and warrants to and covenants and agrees with Lender as follows:

PART I - GENERAL PROVISIONS

1. **Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Borrower shall pay the Debt at the time and in the manner provided in the Note and in this Security Instrument. All the covenants, conditions and agreements contained in the Note and the other 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. All payments due under the Lease shall be paid directly by Lessee to the Lender or Servicer (hereinafter defined) when such amounts are due and payable. All such payments received by Lender or Servicer shall be applied promptly upon receipt, but not less than monthly, as follows:

(a) First, all amounts due and payable under the Note and the other Loan Documents ("Debt Service") shall be paid to or retained by Lender, as the case may be; and

(b) Second, as long as no uncured Event of Default (as defined in Section 21 below) exists hereunder or under the Note or any of the other Loan Documents, the balance of funds, if any, shall be paid within five (5) business days after the receipt of good funds by Lender or Servicer to Borrower by wire transfer or immediately available funds to an account designated by Borrower, which payments to Borrower shall be free of the lien of the Security Instrument and all rights of Lender under the other Loan Documents, including, without limitation, the Assignment of Lease and Rents delivered to Lender contemporaneously herewith.

2. **Warranty of Title.** Borrower warrants that Borrower has good and marketable title to the Mortgaged Property and has the right to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that, except for this Security Instrument, Borrower possesses an unencumbered fee estate in the Premises and the Improvements subject to the Lease and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for the Lease, those exceptions shown in the title insurance policy insuring the lien of this Security Instrument and other items as herein expressly permitted (collectively, the "Permitted Exceptions"). Subject to the Permitted Exceptions, Borrower shall forever warrant, defend and preserve such 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. The foregoing warranty of title shall survive the foreclosure of this Security Instrument and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Mortgaged Property pursuant to any foreclosure.

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3. Insurance.

(a) During the time that the Lease is in effect, Borrower shall cause the Mortgaged Property at all times during the entire term of this Security Instrument to be insured by either Borrower or Lessee for the mutual benefit of Borrower and Lender against loss or damage by fire and against loss or damage by other risks and hazards covered by a standard "all risk" insurance policy, as specified in the Lease, together with such other insurance as is required to be maintained by Borrower or Lessee under the Lease. In the event that the Lease is no longer in effect, the amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Mortgaged Property and owned by Borrower from time to time, without reduction for depreciation, but excluding footings and foundations and parts of the Mortgaged Property to the extent not insurable. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Lender's election, by reference to such indices, appraisals or information as Lender determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same, in each case, with inflation guard coverage to reflect the effect of inflation. Each such policy or policies, if so required, shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Lender's reasonable approval. The premiums (the "Insurance Premiums") for the policies of insurance carried in accordance with this Section (the "Policies") shall be paid annually in advance if paid by Borrower or, if paid by Lessee pursuant to the Lease, at such other times required of Lessee under the Lease.

(b) Unless such insurance is being provided by the Lessee under the Lease, Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain during the entire term of this Security Instrument the following Policies:

(i) Flood insurance if any part of the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount equal to at least the then full replacement value of the Mortgaged Property or the amount of flood insurance available under said Act, whichever is less;

(ii) Comprehensive general liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages on an "occurrence basis" with minimum combined single limit coverage of not less than \$5,000,000;

(iii) Insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, sprinkler systems, high pressure piping and machinery, elevators and escalators, if any, and other similar equipment installed in the Improvements, in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements which

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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;

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

(v) Except while the Lease is in effect, loss of rents or loss of business income insurance in amounts sufficient to compensate Borrower for all Rents during a period of not less than one (1) year in which the Mortgaged Property may be damaged or destroyed; and

(vi) Except while the Lease is in effect, such other insurance as may from time to time be reasonably and customarily required by Lender in order to protect its interests in the Mortgaged Property.

(c) All Policies if and to the extent required by Lender and except as otherwise provided in the Lease or herein (i) shall be issued by an insurer satisfactory to Lender in its sole discretion, (ii) shall contain the standard New York mortgagee or equivalent non-contribution clause naming Lender as the person to which all payments made by such insurance company shall be paid, (iii) shall be maintained throughout the term of this Security Instrument without cost to Lender, (iv) a certificate thereof shall be delivered to Lender, (v) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a coinsurer under said Policies and that Lender shall receive at least 30 days prior written notice of any modification or cancellation, and (vi) shall be reasonably satisfactory in form and substance to Lender and shall be reasonably approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Not later than 10 days prior to the expiration date of each of the Policies, Borrower shall deliver to Lender satisfactory evidence of the renewal of each Policy.

(d) Notwithstanding anything to the contrary in this Security Instrument, Borrower shall be deemed to be in compliance with all insurance requirements hereunder if Lessee is in compliance with the provisions of the Lease regarding insurance requirements.

(e) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give, or cause to be given, prompt notice thereof to Lender. Except as otherwise provided in the Lease, Borrower shall not settle or adjust or permit the settlement or adjustment of any insurance claim without Lender's prior written consent. All insurance proceeds required to be applied to restoration and repair of the Mortgaged Property under the Lease shall be held by Lender or Lender's designated agent and disbursed in accordance with the provisions of the Lease for such restoration and repair subject to compliance with the following conditions: (i) No Lease Default (as defined in Section 21 below) then exists, (ii) Borrower or Lessee, as the case may be, proceeds promptly after the insurance claims are settled with the restoration or repair; and (iii) the restoration or repair is performed in compliance with the Lease and all applicable laws, rules and regulations. All insurance proceeds not required to be disbursed for repair and restoration of the Mortgaged Property pursuant to the provisions of the Lease (the "Net Award") shall be paid to

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the Lessee, subject to the terms of the Lease; provided that if a Lease Default then exists, the Net Award will be paid to Lender and shall be applied by Lender toward payment of the Debt and such application shall not be subject to the Prepayment Consideration (as defined in the Note), except that if an Event of Default has occurred and is continuing, then such application shall be subject to the Prepayment Consideration in accordance with the Note.

(f) Borrower acknowledges Lender's right under and pursuant to Section 23 hereof to obtain (either itself or by its agents, servicers, nominees or attorneys) any insurance required hereunder should Borrower fail to or cause Lessee to do so as required hereunder.

4. Payment of Taxes, etc.

(a) All taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") shall be paid on or prior to the date the same become due and payable. Borrower shall deliver, or cause to be delivered by Lessee, to Lender, promptly upon Lender's written request, evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever ("Prohibited Encumbrances") which may be or become a lien or charge against the Mortgaged Property, subject to paragraph (b) below. Borrower shall furnish, or cause to be furnished, to Lender or its designee receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) Subject to the terms of the Lease (provided that no Lease Default then exists under the Lease), after prior written notice to (i) Lender, Borrower may, or (ii) Lender and Borrower, Lessee may, to the extent permitted under the Lease, at its own expense, contest, or permit to be contested, 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, Other Charges or Prohibited Encumbrances, provided that (1) Borrower is not in default under the Note or this Security Instrument, (2) such proceeding shall suspend the collection of the Taxes, Other Charges or Prohibited Encumbrances from Borrower and from the Mortgaged Property, (3) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder if contested by Borrower, or under the Lease if contested by Lessee, (4) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost during the pendency of such contest, and (5) if a Lease Default then exists or if the Lease is not in existence, Borrower or Lessee shall post a bond or other security with and acceptable to Lender in its discretion in an amount equal to 125% of the amount being contested.

5. **Escrow Fund.** Borrower shall, during the existence of an Event of Default (unless the Lessee under the Lease is paying such sums directly) or during any period that the Lease is not in effect, at the option of Lender or its designee, pay to Lender on the first day of each calendar month one-twelfth of the amount reasonably estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, the Taxes and Other Charges and the Insurance Premiums (the "Escrow Fund"). The Escrow Fund, if any, and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an

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aggregate sum by Borrower to Lender. Borrower hereby pledges to Lender any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Lender will apply the Escrow Fund to the timely payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Other Charges and Insurance Premiums pursuant to Sections 3 and 4 hereof, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the Taxes and Other Charges and Insurance Premiums when due, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Lender may apply any sums then present in the Escrow Fund to the payment of the following items in any order in its sole 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; or
- (v) All other sums payable pursuant to the Note, this Security Instrument and the other Loan Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument.

Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrow Fund shall be payable or credited to Borrower.

6. Condemnation.

(a) Borrower shall promptly give or shall cause Lessee to promptly give Lender written 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 but not limited to 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, in this Security Instrument and the other Loan Documents, and the Debt shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Lender to the discharge of the Debt. Subject to the terms of the Lease, 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 and in the Note. Subject to the terms of the Lease (provided that no Lease Default then exists), Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender.

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(b) All condemnation awards or payments required to be applied to restoration and repair of the Mortgaged Property under the Lease shall be disbursed in accordance with the provisions of the Lease. The Net Award shall be delivered to Lender, subject to the terms of the Lease, and, to the extent (if any) not required under the Lease to be applied for such restoration and repair, shall be paid to Lessee; provided that, if a Lease Default then exists, then such Net Award will be paid to Lender to be applied to the reduction or discharge of the Debt whether or not then due and payable. Such application to be without payment of any Prepayment Consideration or any other prepayment consideration, except that if an Event of Default has occurred and is continuing, then such application shall be subject to the Prepayment Consideration in accordance with the Note.

(c) If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, and subject to the terms of the Lease (provided that no Lease Default then exists), to receive said award or payment, or a portion thereof sufficient to pay the Debt. Borrower shall file and prosecute or cause to be filed and prosecuted its claim or claims for any such award or payment in good faith and with due diligence and, subject to the terms of the Lease (provided that no Lease Default), cause the same to be paid over to Lender, and hereby irrevocably authorizes and empowers Lender, in the name of Borrower or otherwise, to collect and receive any such award or payment and to file and prosecute such claim or claims, and although it is hereby expressly agreed that the same shall not be necessary in any event, Borrower shall, upon demand of Lender, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Lender, free and clear of any encumbrances of any kind or nature whatsoever.

7. The Lease.

(a) Borrower, by this Security Instrument and the Assignment of Lease and Rents of even date herewith, has absolutely and unconditionally assigned to Lender, all of Borrower's right, title and interest in the Lease, the Lease Guaranty, the Other Leases and the Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment. Borrower represents to Lender that, as of the date hereof, (i) the Lease and the Lease Guaranty are in full force and effect, (ii) a true and correct copy of the Lease (as amended to the date hereof) and the Lease Guaranty have been delivered to Lender, (iii) to the best of Borrower's knowledge, no Lease Default, or event which, with the passage of time or the giving of notice (or both) would constitute a Lease Default, has occurred and is continuing under of the Lease, (iv) Borrower has not delivered to, or received from the Lessee, any notice of a Lease Default and (v) all rents due and payable under the Lease, including all additional rent, have been paid in full.

(b) Borrower agrees with Lender that Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Lease and shall not do or permit to be done anything to impair the value of the Lease or the Lease Guaranty as a security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) subject to clause (viii) below, shall enforce all of the terms, covenants and conditions contained in the Lease upon the part of the Lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not execute any other assignment of lessor's interest in the Lease; (v) shall not alter, modify or change the terms of the Lease or the Lease Guaranty without the prior written consent of Lender, or cancel or terminate the Lease or the Lease Guaranty or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by the Lease or of any interest therein so as to effect a merger of the estates and rights

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of, or termination or diminution of the obligations of Lessee or Lease Guarantor; (vi) subject to the provisions set forth below, shall not consent to, reject, approve or disapprove any action or inaction requested by Lessee or Lease Guarantor, which consent shall not be unreasonably withheld; (viii) except as provided for in the Excepted Rights and Payments (as defined in the Assignment of Lease and Rents), shall not pursue any remedies under the Lease or the Lease Guaranty without the prior written consent of Lender; (ix) upon request of Lender, shall request and use reasonable efforts to obtain an estoppel certificate from the Lessee in substantially the form required by the Lease or if not so required, in form and substance reasonably satisfactory to Lender; and (x) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Lender shall from time to time reasonably require. Without limitation upon the general nature of item (vi) above, the approval or disapproval of the following actions or requests of Lessee and/or Lease Guarantor pursuant to the Lease and the Lease Guaranty respectively shall be governed by the following provisions:

(1) Borrower and Lender shall approve a substitution of the "Exchange Property" (as defined in the Lease) for the Mortgaged Property pursuant to Section 19.4 of the Lease only if (A) Lessee and Lease Guarantor satisfy all of the conditions precedent to the exchange transaction set forth in such Section, and (B) Borrower executes and delivers to Lender all documentation with respect to the substitution of Exchange Property for the Mortgaged Property, including, without limitation, appropriate amendments to this Security Instrument (or a new security instrument in substantially the same form as this Security Instrument) and the other Loan Documents as Lender may reasonably request, together with any legal opinions reasonably requested by Lender with regard to the due execution and delivery of such documentation and the enforceability of such documentation under applicable law.

(2) In regard to an assignment by Lessee of its interest under the Lease pursuant to Section 29(c) of the Lease, Borrower and Lender shall approve the release of Lease Guarantor from its obligations under the Lease Guaranty only if Lease Guarantor satisfies all of the conditions precedent to such release set forth in the Lease Guaranty.

8. **Maintenance of Mortgaged Property.** The Mortgaged Property shall be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the equipment or as otherwise permitted under the Lease) without the prior written consent of Lender. All funds deposited by Lessee pursuant to Section 15.2 of the Lease in connection with the substantial demolition of the Improvements shall be held by Lender or Lender's designated agent and disbursed in accordance with the Lease. Borrower shall cause the Mortgaged Property to be in compliance with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Borrower shall cause any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 6 hereof to be promptly repaired, replaced or rebuilt, as provided in the Lease. Subject to the provisions of the Lease (provided that no Lease Default then exists), Borrower shall not initiate, join 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 Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a lawful nonconforming use, Borrower will not cause or

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permit such nonconforming use, to be discontinued or abandoned without the prior written consent of Lender.

9. Transfer or Encumbrance of the Mortgaged Property.

(a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and the owners of the beneficial interest in the SPC Member (as hereinafter defined) in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, and that Lender will continue to rely on Borrower's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Borrower default in the repayment of the Debt, Lender can recover all or a portion of the Debt by a sale of the Mortgaged Property. Except as otherwise provided herein, and subject to Sections 19.1(c), 19.4, and 40 of the Lease (provided that no Lease Default then exists), Borrower shall not, without the prior written consent of Lender, which consent may not be unreasonably withheld by Lender after consideration of all relevant factors, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof or any interest therein, or permit the Mortgaged Property or any part thereof or any interest therein to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Section 9 shall be deemed to include, without limitation, (i) an installment sales agreement wherein Borrower agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space lessee thereunder 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 the Lease or any Rents; (iii) any divestiture of Borrower's title to the Mortgaged Property or any interest therein in any manner or way, whether voluntary or involuntary, or any merger, consolidation, dissolution or syndication affecting Borrower; (iv) if Borrower is a corporation, the voluntary or involuntary sale, conveyance or transfer of any of such corporation's stock or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation directly or indirectly; (v) if Borrower or any general partner of Borrower is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer, manager, or member, or the transfer of any partnership interests of any general partner, managing partner or limited partner or the transfer of any interests of any joint venturer or member (or any interests of any entity directly or indirectly controlling such partner, joint venturer or member, by operation of law or otherwise); and (vi) if Borrower is a business trust, the voluntary or involuntary sale, conveyance or transfer of any beneficial interest in Borrower.

(c) The foregoing provisions of this Section 9 shall not be deemed to prohibit any of the following:

(i) The sale, conveyance or transfer of an ownership interest in Borrower or any general partner, manager or member of Borrower if such transfer, together with all prior transfers of ownership interests in such entity since the date of this Security Instrument, relates to forty-nine percent (49%) or less of the beneficial

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ownership interest in such entity, provided that Borrower or such other entity, as reconstituted after such transfer, complies with the provisions of Section 20 hereof;

(ii) The sale, conveyance or transfer of an ownership interest in Borrower or any general partner, manager or member of Borrower that, together with all prior transfers of ownership interests in such entity since the date of this Security Instrument, relates to greater than forty-nine percent (49%) of the beneficial ownership interest in such entity, provided that (A) the transferee thereof shall assume all obligations of the affected owner, if any, under the Note, this Security Instrument, and the other Loan Documents from and after the date of transfer, in which case Lender agrees that the affected owner shall be relieved of such obligations thereafter and shall deliver to the transferring owner a release to such effect; (B) no Event of Default shall have occurred and be continuing at the time of such transfer; (C) such transfer is permitted under the documents governing Borrower and such owner; (D) the transferee provides Lender with a "bring down" letter updating the non-consolidation opinion of even date herewith delivered by Winstead Sechrest & Minick P.C. to Lender in connection with this Security Instrument (the "Non-Consolidation Opinion") or a new Non-Consolidation Opinion, in each case issued by a law firm acceptable to Lender; (E) the provisions of Section 20 hereof are satisfied; and (F) the transferee shall, in Lender's reasonable judgment, have a similar or better creditworthiness and net worth as the original beneficial owner of Borrower as set forth in the Financial Certification provided to Lender by Borrower and its sole member of even date herewith (the "Financial Certification");

(iii) The transfer of any limited partnership interests in Borrower or in any general partner, manager, member, beneficial owner or trustee of Borrower, or any ownership interest, direct or indirect, in any trustee or beneficial owner of Borrower shall be freely transferable, and the removal and replacement of any trustee or manager of Borrower may be accomplished, without the consent of Lender (provided that, immediately after such transfer, the provisions of Section 20 hereof are satisfied),

(iv) Any involuntary transfer caused by the death of Borrower or any general partner, shareholder, joint venturer, or beneficial owner of any person holding any interest in Borrower, any beneficial owner of Borrower or any trustee of Borrower, or if Borrower is a partnership, any limited partner thereof, shall not be a default under this Security Instrument so long as Borrower is reconstituted, if required, following such death and so long as those persons responsible for the management of the Mortgaged Property remain unchanged as a result of such death or any replacement management is approved by Lender.

(d) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Lender's prior written consent or as otherwise expressly permitted herein. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or

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not Lender has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

(e) Lender's consent to a sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property made in contravention of this Section shall be null and void and of no force and effect.

(f) Borrower agrees to bear and shall pay or reimburse Lender on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer approved by Lender hereunder.

(g) Notwithstanding the foregoing provisions of this Section 9, a sale, conveyance or transfer of the Mortgaged Property in its entirety (hereinafter, a "Sale") to an entity satisfying the requirements of Section 20 hereof (the "Transferee") shall be permitted provided that each of the following terms and conditions are satisfied:

- (1) No Event of Default has occurred and is continuing;
- (2) Borrower gives Lender written approval of the proposed Sale within a reasonable period of time prior to such Sale;
- (3) Borrower pays Lender, concurrently with the closing of such Sale, (i) an administrative fee of \$2,500 with respect to the first Sale occurring after the date of this Security Instrument and an administrative fee in the amount of \$10,000 with respect to the second and each subsequent Sale, plus (ii) all out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Lender in connection with the Sale;
- (4) The Transferee assumes and agrees to pay (subject to the non-recourse provisions of Section 54 hereof) the Debt and to perform all obligations under the Note, the Security Instrument and the other Loan Documents (and the transferring Borrower ("Transferor") shall be relieved of such obligations thereafter and Lender shall execute and deliver to such Transferor a release to such effect), and prior to or concurrently with the closing of such Sale, the Transferee executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions (including a nonconsolidation opinion in substantially the same form as the Non-Consolidation Opinion) as Lender may reasonably require;
- (5) Transferor and the Transferee execute, without any cost or expense to Lender, new financing statements or financing statement amendments and any additional documents reasonably requested by Lender;

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(6) Transferor and Transferee shall execute a Lease assignment and assumption agreement reasonably acceptable to Lender, which shall be consented to by Lessee if required under the Lease;

(7) Lessee or Transferor shall provide Lender with written evidence (including a legal opinion, if reasonably required by Lender), satisfactory to Lender in its reasonable discretion, that the Sale is permitted under the Lease;

(8) Transferor shall cause to be delivered to Lender, without any cost or expense to Lender, such endorsements to Lender's title insurance policy, hazard insurance endorsements or certificates and other similar materials as Lender may deem necessary at the time of the Sale, all in form and substance reasonably satisfactory to Lender, including, without limitation, an endorsement or endorsements to Lender's title insurance policy insuring the lien of this Security Instrument, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in paragraph (4) of this subsection with no additional exceptions added to such policy and insuring that fee simple title to the Mortgaged Property is vested in the Transferee, or, in lieu thereof, such other documents or evidence as Lender may reasonably require in order to confirm that such policy is unaffected by the Sale;

(9) Transferor executes and delivers to Lender, without any cost or expense to Lender, a release of Lender, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Note, this Security Instrument, and any of the other Loan Documents through and including the date of the closing of the Sale, which agreement shall be in form and substance satisfactory to Lender and shall be binding upon the Transferee;

(10) Transferee complies with the provisions of Section 20 hereof;

(11) Such Sale is not construed so as to relieve any current guarantor or indemnitor (a "Guarantor") of its obligations under any guaranty or indemnity agreement executed in connection with the Loan, and each such Guarantor executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of each such guaranty and indemnity agreement, provided that if the Transferee or a party associated with the Transferee approved by Lender in its discretion (provided that Lender will not withhold its approval if the creditworthiness and net worth of the substitute guarantor is as good or better than the creditworthiness of Wolverine Equities Company 98C L.P. set forth in the Financial Certification, as reasonably determined by Lender) assumes the obligations of the current Guarantor under its guaranty or indemnity agreement and the Transferee or such party associated with the Transferee, as applicable, executes, without any cost or expense to Lender, a new guaranty or indemnity agreement in form and substance satisfactory to Lender, then Lender shall release the current Guarantor from all obligations arising under its guaranty or indemnity agreement after the closing of such Sale (provided, however, that the foregoing release shall under no circumstances apply with respect to Lessee);

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(12) In the event that the Transferee is the Lessee, (i) the deed of conveyance to the Lessee conspicuously states that, notwithstanding anything to the contrary in such deed or any other document or instrument executed in connection with the Sale, the leasehold estate of Lessee in and to the Mortgaged Property shall not merge into the fee estate of the Mortgaged Property acquired by Lessee pursuant to the Sale and the Lease and the Lease Guaranty shall remain in full force and effect to the same extent as if such Sale had not occurred, and (ii) Transferor delivers to Lender an estoppel certificate from Lessee and Lease Guarantor, in form and content reasonably acceptable to Lender, which states in substance that it is the express intent of Lessee and Lease Guarantor that no such merger of title has occurred or will occur as the result of the Sale and that the Lease and the Lease Guaranty shall remain in full force and effect to the same extent as if such Sale had not occurred (provided that Lender acknowledges that Lessee does not have a direct obligation to Borrower to deliver such estoppel certificate, but does have such an obligation to Lender pursuant to that certain Subordination, Attornment and Non-Disturbance Agreement executed in connection with the Lease, and Lender agrees to enforce such obligation, if necessary, in connection with any such sale); and

(13) Lender shall have received such legal opinions as may be required by any Rating Agency or reasonably requested by Lender in connection with such transfer and confirmation from the Rating Agency that the Sale will not result in a qualification, downgrade, or withdrawal of the then existing rating of any security issued with respect to or in connection with the Loan.

Notwithstanding anything to the contrary above, no Sale may occur during the months of July 1998 and November 1998.

(h) No other indebtedness may be secured by the Mortgaged Property (senior, subordinate or *pari passu*); provided, however, that Borrower may further encumber the Mortgaged Property if the documents evidencing or creating such encumbrance shall expressly provide, in addition to any other items reasonably required by Lender, that (i) such security instrument is expressly subordinate to the lien of this Security Instrument in all respects (including, without limitation, that no debt service payments or other payments shall be required under such security instrument or under any promissory note secured by such security instrument while any portion of the Debt remains outstanding) and the holder of such security instrument enters into a subordination and standstill agreement satisfactory in all respects to Lender; (ii) the loan which will be secured by such security instrument shall only be payable on or after 366 days after the maturity of the Note, (iii) the holder of such security instrument shall have entered into a written agreement approved by Lender which prohibits such holder from exercising any remedies, including accelerating any indebtedness and commencing any action (including the filing of a bankruptcy petition or similar proceeding) against Borrower for collection of interest, principal or other charges while the Note is outstanding and prohibits such holder from filing a claim in a bankruptcy or similar proceeding commenced by Borrower or by one or more affiliates of Borrower and requires that such holder shall vote against any plan presented in such proceeding which would alter the terms of the Note, this Security Instrument or any of the other Loan Documents or, at Lender's election, assign any such claim and/or right to vote to Lender (provided that such holder may file a claim in a bankruptcy or similar proceeding commenced by an independent person other than itself); (iv) Lender shall have received evidence satisfactory to Lender that all required approvals, if any, to such encumbrance shall have been obtained, including, without limitation, approvals required under the Lease;

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(v) Lender shall have received written confirmation from the Rating Agencies that such further encumbrance will not result in a downgrade, qualification or withdrawal of the rating with respect to any security secured by or related to the Loan; and (vi) Lender shall have received such legal opinions as may be requested by Lender or any Rating Agency in connection with such further encumbrance.

10. Estoppel Certificates.

(a) After request by Lender, Borrower shall within ten (10) days furnish Lender 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 date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Security Instrument, and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Borrower, and at Borrower's sole cost and expense (provided, that Borrower shall only be required to reimburse Lender for its actual out-of-pocket costs (excluding legal fees and disbursements) incurred by Lender), Lender shall provide Borrower a statement, duly certified (i) setting forth the outstanding principal amount of the Loan; (ii) confirming whether, to its actual knowledge, without independent investigation or inquiry, no Event of Default or event which, with the passage of time or the giving of notice (or both), would constitute an Event of Default, has occurred and is continuing; and (iii) attaching a copy of the Note, this Security Instrument and the other Loan Documents identified on Borrower's request, and certifying that to its actual knowledge, without independent investigation or inquiry, such copies are true, correct and complete. Lender shall be required to furnish such certificate only once a year or in connection with any pending or proposed Sale or other transfer as contemplated in Section 9 hereof, which Borrower believes to be a bona fide offer.

11. **Changes in the Laws Regarding Taxation.** 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 Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Mortgaged Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

12. **No Credits on Account of the Debt.** 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 Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. In the event such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

13. **Documentary Stamps.** If at any time the United States of America, any state or commonwealth thereof or any subdivision of any such state or commonwealth shall require revenue

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or other stamps to be affixed to the Note or this Security Instrument, or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

14. **Usury Laws.** This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all previous payments in excess of such maximum rate shall be deemed to have been payments in reduction of the principal and not on account of the interest due hereunder.

15. **Books and Records.** Borrower shall keep adequate books and records of account in accordance with its standard accounting practices and procedures and furnish to Lender: (a) upon Lender's request, unaudited financial statements of Borrower for the year just ended, including balance sheet and statement of income and expenses certified as true and correct by Borrower; (b) copies of all tax returns filed by Borrower within twenty (20) days after the filing thereof; and (c) copies of all financial information received by Borrower under the Lease within twenty (20) days after receipt thereof. Borrower shall provide Lender with such additional financial or management information with respect to the Lessee or the Mortgaged Property as Lender may reasonably request, provided that any such additional information is available to Borrower pursuant to the terms and provisions of the Lease.

16. **Performance of Other Agreements.** Borrower shall observe and perform or cause Lessee to observe or 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 the Mortgaged Property, including, without limitation, any reciprocal easement, operating or similar agreement, and if Borrower shall fail to so observe and perform, or cause to be so observed and performed by Lessee, any such terms, Lender and Servicer and their agents, employees, contractors, engineers, architects and other representatives shall have the right to so observe and perform such terms.

17. **Further Acts, etc.** Borrower will, at the cost of Lender, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated 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. 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 Mortgaged 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

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available to Lender pursuant to this Section 17; provided, however, that such power of attorney shall only be exercised during the existence of an Event of Default hereunder.

18. **Recording of Security Instrument, etc.** Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Lender in, the Mortgaged Property. Borrower will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, 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 Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Security Instrument.

19. **Prepayment.** If permitted by the Note, the Debt may be prepaid in accordance with the terms thereof.

20. **Single Purpose Entity/Separateness.** Borrower hereby represents and warrants to, and covenants with, Lender that as of the date hereof and until such time as the Debt shall be paid in full:

(a) Borrower does not own and will not own any asset or property other than (i) the Mortgaged Property, and (ii) incidental personal property necessary for the ownership or operation of the Mortgaged Property.

(b) Borrower will not engage in any business other than the ownership, management, leasing and operation of the Mortgaged Property, and Borrower will conduct and operate its business as presently conducted and operated.

(c) Borrower will not enter into any contract or agreement with any affiliate of Borrower, any constituent party of Borrower, any Guarantor or any affiliate of any constituent party or Guarantor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(d) Borrower has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt or (ii) unsecured trade debt customarily payable within thirty (30) days.

(e) Borrower has not made and will not make any loans or advances to any third party (including any affiliate or constituent party, any Guarantor or any

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affiliate of any constituent party or Guarantor), and shall not acquire obligations or securities of its affiliates.

(f) Borrower is and will remain solvent and Borrower will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(g) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will not, nor will Borrower permit any constituent party or Guarantor to amend, modify or otherwise change the articles of organization, regulations, partnership certificate, partnership agreement, articles of incorporation and bylaws, trust certificate and agreement or other organizational documents of Borrower or such constituent party or Guarantor, in any manner which would be in violation of any covenants or representations and warranties contained in the Loan Documents, without the prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned.

(h) Borrower will maintain books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and Borrower will file its own tax returns. Borrower shall maintain its books, records, resolutions and agreements as official records.

(i) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower, any constituent party of Borrower, any Guarantor or any affiliate of any constituent party or Guarantor), and shall conduct business in its own name and shall maintain and utilize separate stationery, invoices and checks. Borrower shall correct any known misunderstanding regarding its status as a separate entity and shall not identify itself as a division or part of its affiliates or any of its affiliates as a division or part of Borrower.

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

(k) Borrower will not commingle the funds and other assets of Borrower with those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party or Guarantor, or any other person.

(l) Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party or Guarantor, or any other person.

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

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(n) Borrower will not dissolve or terminate or materially amend the terms of its articles of organization, certificate of incorporation, partnership agreement or operating agreement or other agreement pursuant to which Borrower is organized.

(o) Borrower will not enter into any transaction of merger or consolidation, or liquidate or dissolve (or suffer any liquidation or dissolution), or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any entity.

(p) If Borrower is a limited partnership or a limited liability company, at least one general partner, managing member, or member, as the case may be, shall be a corporation whose sole asset is its interest in Borrower and which at all times has a director who qualifies as an Independent Director (as defined below), or if Borrower is a corporation, at least one member of the board of directors is person who qualifies as an Independent Director (in each case, an "SPC Member"), and such SPC Member will at all times comply, and SPC Member and the other owners of Borrower will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Section 20 as if such representation, warranty or covenant was made directly by such SPC Member. As used herein, the term "Independent Director" means a person reasonably satisfactory to Lender who shall not have been at the time of such individual's appointment, and may not have been at any time during the preceding five years (i) a shareholder of, or an officer, director (except when acting as an Independent Director), partner or employee of, Borrower or any of its shareholders, subsidiaries or affiliates, (ii) a substantial creditor, customer of, or supplier to, Borrower or any of its shareholders, subsidiaries or affiliates, (iii) a person or other entity controlling or under common control with any such shareholder, partner, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, employee, supplier or customer. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

(q) Borrower shall not cause or permit the board of directors of Borrower or the SPC Member, as applicable, to take any action which, under the terms of any certificate of incorporation, by-laws, operating agreement or any voting trust agreement with respect to any common stock, requires the vote of the board of directors of Borrower or the members or general partners of Borrower or the SPC Member, as applicable, unless at the time of such action there shall be at least one member who is an Independent Director.

(r) Borrower shall conduct its business so that the assumptions made with respect to Borrower in the Non-Consolidation Opinion shall be true and correct in all respects.

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21. Events of Default. Each of the following events constitutes an event of default ("Event of Default").

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- (a) If any portion of the Debt is not paid within ten (10) days from the date it was due;
- (b) Subject to the provisions of Section 4(b) hereof, if any of the Taxes or Other Charges, or other sums due hereunder are not paid within fifteen (15) days following written notice to Borrower that the same have not been paid when due;
- (c) If (i) the Policies are not kept in full force and effect or (ii) if, within thirty-five (35) days following written demand, Borrower shall fail to cause the delivery of any such Policies or a certificate, binder or other evidence of the renewal of any such Policies to Lender;
- (d) if Borrower violates or does not comply with the provisions of subsections 7(b)(iv), 7(b)(v), 7(b)(vi) or 7(b)(vii);
- (e) if Borrower transfers or encumbers the Mortgaged Property or any interest therein in violation of the provisions of Section 9 hereof;
- (f) if Borrower breaches the provisions of Section 20 hereof and fails to cure any such breach within thirty (30) days after written notice; which cure with respect to clauses (c), (f), (g), (h), (i), (k), (l), (p), (q) and (r) of Section 20 shall be deemed effectuated upon the delivery to Lender of an opinion of counsel satisfactory to Lender in its sole discretion (instead Secrest & Minick P.C. is hereby approved) to the effect that such breach would not result in the substantive consolidation of the assets of Borrower with the assets of any beneficial interests in Borrower;
- (g) if any representation or warranty of Borrower, or any Guarantor, made herein or in any certificate, report, financial statement or other instrument or document furnished to Lender shall prove to have been false or misleading in any material respect when made or if any of the assumptions in the Non Consolidation Opinion shall be or become inaccurate;
- (h) if Borrower shall make a general assignment for the benefit of creditors or if Borrower shall generally not be paying its debts as they become due;
- (i) if a receiver, liquidator or trustee of Borrower shall be appointed or if Borrower shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in, by Borrower or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, upon the same not being discharged, stayed or dismissed within 60 days;

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21. **Events of Default.** Each of the following events constitutes an event of default ("Event of Default"):

(a) If any portion of the Debt is not paid within ten (10) days from the date it was due;

(b) Subject to the provisions of Section 4(b) hereof, if any of the Taxes or Other Charges, or other sums due hereunder are not paid within fifteen (15) days following written notice to Borrower that the same have not been paid when due;

(c) If (i) the Policies are not kept in full force and effect or (ii) if, within thirty-five (35) days following written demand, Borrower shall fail to cause the delivery of any such Policies or a certificate, binder or other evidence of the renewal of any such Policies to Lender;

(d) If Borrower violates or does not comply with the provisions of subsections 7(b)(iii), 7(b)(v), 7(b)(vi) or 7(b)(vii);

(e) If Borrower transfers or encumbers the Mortgaged Property or any interest therein in violation of the provisions of Section 9 hereof;

(f) If Borrower breaches the provisions of Section 20 hereof and fails to cure any such breach within thirty (30) days after written notice; which cure with respect to clauses (c), (f), (g), (h), (i), (k), (l), (p), (q) and (r) of Section 20 shall be deemed effectuated upon the delivery to Lender of an opinion of counsel satisfactory to Lender in its sole discretion (Winstead Sechrest & Minick P.C. is hereby approved) to the effect that such breach would not result in the substantive consolidation of the assets of Borrower with the assets of the holder of any beneficial interests in Borrower;

(g) If any representation or warranty of Borrower, or any Guarantor, made herein or in any certificate, report, financial statement or other instrument or document furnished to Lender shall prove to have been false or misleading in any material respect when made or if any of the assumptions in the Non Consolidation Opinion shall be or become inaccurate;

(h) If Borrower shall make a general assignment for the benefit of creditors or if Borrower shall generally not be paying its debts as they become due;

(i) If a receiver, liquidator or trustee of Borrower shall be appointed or if Borrower shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in, by Borrower or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, upon the same not being discharged, stayed or dismissed within 60 days;

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(j) if the Mortgaged Property or any part thereof is taken on execution or other process of law in any action against Borrower;

(k) if the holder of any lien or security interest on the Mortgaged Property (without implying the consent of Lender to the existence or creation of any such lien or security interest), whether superior or subordinate to this Security Instrument or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder;

(l) subject to the provisions of Section 4(b) hereof, if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien (other than for local real estate taxes or assessments which are not then due and payable) and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) calendar days;

(m) if Borrower fails to cure promptly any violations of laws or ordinances affecting the Mortgaged Property;

(n) if Borrower fails to (i) permit on-site inspections of the Mortgaged Property (subject to the terms of the Lease, provided that no Lease default then exists), or (ii) provide the financial information required pursuant to Section 15 hereof, and such breach or default continues for five (5) days after notice thereof;

(o) if Borrower shall default in the observance or performance of any other term, covenant or condition of the Note, this Security Instrument or any of the other Loan Documents, and Borrower shall fail to remedy such default within thirty (30) days after notice by Lender to Borrower of such default, or if such default is of such a nature that it cannot with due diligence be cured within said thirty (30) day period and Borrower shall not commence within said thirty (30) days, or shall not thereafter diligently prosecute to completion, all steps necessary to cure such default within a reasonable period of time;

(p) if an "Event of Default" occurs under Section 20 of the Lease (a "Lease Default") and Borrower, after receiving written notice thereof from Lender, has failed to cure such Lease Default or has failed to cause Tenant to cure such Lease Default within (i) ten (10) days in the case of a Lease Default arising from Lessee's failure to pay basic or additional rent under the Lease (a "Rent Default"), or (ii) thirty (30) days in the case of any other Lease Default; provided that following the occurrence of a Rent Default in each of six (6) consecutive months, Borrower shall not be entitled to right to notice and opportunity to cure with respect to the occurrence of a Rent Default in any of the next eighteen (18) months following such six (6) month period; and

(q) if the Lease or the Lease Guaranty is canceled, terminated, abridged, modified or surrendered (other than a termination of the Lease Guaranty under the limited circumstances expressly provided in the Lease Guaranty).

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22. **Default Interest.** Upon the occurrence of any Event of Default, Borrower shall pay interest on the unpaid principal balance of the Note at the Default Rate (as defined in the Note). The Default Rate shall be computed from the occurrence of the Event of Default until the earlier of the cure of such default or the actual receipt and collection of the Debt. This charge shall be added to the Debt, and shall be deemed secured by this Security Instrument. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default. If the Default Rate is above the maximum rate permitted by applicable law, the Default Rate shall be the maximum rate permitted by applicable law.

23. **Lender's Right to Cure Defaults.**

(a) Subject to the rights of the Lessee under the Lease (provided that no Lease Default then exists), upon the occurrence and during the continuance of any Event of Default, Lender and/or Servicer may (themselves or by their agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or curing or being deemed to have cured any default hereunder, make or do the same in such manner and to such extent as Lender and/or Servicer may deem necessary to protect the security hereof. Subject to the rights of the Lessee under the Lease (provided that Lease Default then exists), Lender and Servicer (and their agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Mortgaged Property for such purposes and Lender and/or Servicer are authorized to appear in, defend, or bring any action or proceeding reasonably necessary to protect Lender's interest in the Mortgaged Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including, without limitation, reasonable attorneys' fees and disbursements to the extent permitted by law), with interest as provided in this Section 23, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such reasonable costs and expenses incurred by Lender and/or Servicer in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender and/or Servicer that such cost or expense was incurred to the date of payment to Lender and/or Servicer. All such costs and expenses incurred by Lender or Servicer together with interest thereon calculated at the above rate shall be deemed to be protective advances hereunder and shall constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender or Servicer therefor.

(b) In order to facilitate Lender's and/or Servicer's rights under subsection (a) above and subject to Lessee's rights under the Lease (provided that no Lease Default then exists), Borrower hereby further grants to Lender and Servicer and any agents, employees, contractors, engineers, architects, nominees, attorneys and other representatives of Lender and/or Servicer, an easement on, over, through and under the Mortgaged Property in order to exercise any such rights. Such easement is self-effectuating and runs with the land during the duration of this Security Instrument, and shall be binding upon Borrower and all successors and assigns of Borrower. Borrower shall cause the foregoing rights of Lender and easement to be agreed to by and binding upon all lessees of the Mortgaged Property and all successors and assigns of such lessees. Borrower shall promptly execute, and cause to be executed, any other documents reasonably required by Lender in order to further confirm the foregoing rights of Lender and easement. For the foregoing purposes, Borrower constitutes and appoints each of Lender and Servicer its true and lawful attorney-in-fact with full power of substitution to exercise any such rights in the name of Borrower. Borrower

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empowers each of said attorneys-in-fact to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Security Instrument, the other Loan Documents and/or the Lease. It is further understood and agreed that the foregoing powers of attorney, which shall be deemed to be powers coupled with an interest, cannot be revoked. Borrower specifically agrees that all powers granted to Lender and Servicer under this Security Instrument may be assigned by Lender to its successors or assigns as holder of the Note and by Servicer to its successors or assigns as servicer of the Loan.

24. [Intentionally Omitted]

25. [Intentionally Omitted]

26. **Right of Entry.** Subject to the rights of Lessee under the Lease (provided that no Lease Default then exists), Lender and its agents shall have the right at any time during normal business hours to enter and inspect the Mortgaged Property.

27. **Remedies**

(a) Upon the occurrence and during the continuation of any Event of Default, 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 Mortgaged Property, including, but not limited to, 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:

(1) declare the entire Debt to be immediately due and payable;

(2) institute proceedings for the complete foreclosure of this Security Instrument in which case the Mortgaged 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;

(3) with or without entry, 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 of this Security Instrument for the balance of the Debt not then due;

(4) [Intentionally Omitted]

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

(6) to the extent permitted by applicable law and subject to the provisions of Section 54 hereof, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument;

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(7) subject to Lessee's rights under the Lease (provided that no Lease Default then exists), apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged 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 or of any person, firm or other entity liable for the payment of the Debt;

(8) subject to the terms of the Lease (provided that no Lease Default then exists), enter into or upon the Mortgaged Property, either personally or by its agents, servicers, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, and thereupon Lender (or any receiver appointed pursuant to paragraph (7) above) may do or permit one or more of the following, successively or concurrently, (i) enter upon and take possession and control of any and all of the Mortgaged Property; (ii) take and maintain possession of all documents, books, records, papers and accounts relating to the Mortgaged Property; (iii) exclude Borrower and its agents, servants and employees wholly from the Mortgaged Property; (iv) manage and operate the Mortgaged Property; (v) preserve and maintain the Mortgaged Property; (vi) make repairs and alterations to the Mortgaged Property; (vii) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Lender may in its sole discretion deem appropriate or desirable to place the Mortgaged Property in such condition as will, in Lender's sole discretion, make it or any part thereof readily marketable or rentable; (viii) if the Lease has been terminated (or Lessee's possession rights under the Lease have been terminated), conduct a marketing or leasing program with respect to the Mortgaged Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Mortgaged Property under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (ix) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (x) execute and deliver, in the name of Lender as attorney-in-fact and agent of Borrower or in its own name as Lender, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (xi) enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (xii) collect and receive the Rents from the Mortgaged Property; (xiii) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (xiv) sue for unpaid Rents, payments, income or proceeds in the name of Borrower or Lender; (xv) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (xvi) compromise or give acquittance for Rents, payments, income or proceeds that may become due; (xvii) delegate or assign any and all rights and powers given to Lender by this Security Instrument; and (xviii) do any acts which Lender in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Security Instrument. This Security Instrument shall constitute a direction to and full authority

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to the Lessee under the Lease and any other tenant or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Lender, at the request of Lender, to pay all amounts owing under the Lease and any other lease, contract, concession, license or other agreement to Lender without proof of the default relied upon. The Lessee under the Lease or any other tenant or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request, notice or demand by Lender for the payment to Lender of any Rents or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any default under this Security Instrument or under any of the other Loan Documents has actually occurred or is then existing. Borrower hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Mortgaged Property, in Borrower's name, place and stead, during an Event of Default, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any portion of the Debt is outstanding. Any money advanced by Lender in connection with any action taken under this subsection (8), together with interest thereon at the Default Rate from the date of making such advancement by Lender until actually paid by Borrower, shall be a demand obligation owing by Borrower to Lender and shall be secured by this Security Instrument and by every other instrument securing all or any portion of the Debt;

(9) with or without taking possession of the Mortgaged Property, sue or otherwise collect the Rents, including those past due and unpaid; and

(10) exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Security Instrument shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) To the fullest extent permitted by law, the proceeds of any sale under this Security Instrument shall be applied, to the extent funds are so available, to the following items in such order as Lender in its discretion may determine:

(1) To payment of the reasonable costs, expenses and fees of taking possession of the Mortgaged Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Lender's rights and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

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(2) To payment of all sums expended by Lender under the terms of any of the other Loan Documents and not yet repaid, together with interest on such sums at the Default Rate.

(3) To payment of the interest, principal and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Rate, in any order that Lender chooses in its sole discretion.

(4) The remainder, if any, of such funds shall be disbursed to Borrower or to the person or persons legally entitled thereto.

(c) To the extent permitted by applicable law, Lender may adjourn from time to time any sale by it to be made under or by virtue of this Security Instrument by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and except as otherwise provided by any applicable provision of law, Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Lender under or by virtue of this Section, Lender, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Lender is hereby irrevocably appointed the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Section shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

(e) Upon any sale made under or by virtue of this Section, Lender may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument.

(f) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Security Instrument upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Lender hereunder, but such liens, rights, powers and remedies of Lender shall continue unimpaired as before.

28. **Reasonable Use and Occupancy.** In addition to the rights which Lender may have herein, upon the occurrence of any Event of Default, Lender, at its option, may 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 Mortgaged Property as may be occupied by Borrower or may require Borrower to vacate and surrender possession of the

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Mortgaged Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

29. **Security Agreement.** This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Mortgaged Property. Borrower by executing and delivering this Security Instrument has granted and hereby grants to Lender, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this Section 29 the "Collateral"). If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at the Mortgaged Property. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees and disbursements, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the 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. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. In the event of any change in name, identity or structure of any Borrower, such Borrower shall notify Lender thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Borrower shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Lender shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof. 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 or other statements signed only by Lender, as secured party, in connection with the Collateral; provided, however, that such power of attorney shall only be exercised during the existence of an Event of Default hereunder.

30. **Actions and Proceedings.** Lender has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding which Lender, in its discretion, decides should be brought to protect their interest in the Mortgaged Property (which action or proceeding may be brought in the name and on behalf of Borrower upon the occurrence and during the continuation of an Event of Default hereunder). Lender shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

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31. **Waiver of Counterclaim.** All amounts due under this Security Instrument, the Note and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Borrower hereby waives the right to assert a setoff, counterclaim (other than a mandatory or compulsory counterclaim) or deduction in any action or proceeding brought against it by Lender.

32. **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.

33. **Waiver of Right of Redemption, Marshalling and Other Matters.** Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged 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 Mortgaged Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law. Borrower acknowledges that the Mortgaged Property does not include "agricultural real estate" or "residential real estate" as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b) Borrower waives any and all rights of redemption from sale under any order of foreclosure of this Security Instrument or other rights of redemption which may run to Borrower or any other "Owner of Redemption" as that term is defined in 735 ILCS 5/15-1212. Borrower waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by law of the State.

34. **Hazardous Waste and Other Substances.**

(a) Except as otherwise disclosed by that certain environmental assessment report with respect to the Mortgaged Property, which report Borrower furnished to Lender prior to the date hereof (the "Environmental Report"), or otherwise disclosed to Lender in writing, Borrower hereby represents and warrants to Lender that, as of the date hereof Borrower has received no written notice (i) that the Mortgaged Property is in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up (collectively, "Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 *et seq.* and 40 CFR §302.1 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), The Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.* and 40 CFR §116.1 *et seq.*), and the Hazardous Materials Transportation Act (49 U.S.C. §1801 *et seq.*), and the regulations promulgated pursuant to said laws, all as amended; and any similar laws and regulations of the state having jurisdiction over the Mortgaged Property; (ii) of any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, generated, stored, processed or disposed of on or released or discharged at, onto or under from the Mortgaged Property (including underground contamination) except for those substances used by Borrower in the ordinary course of its business and in

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compliance with all Environmental Laws; (iii) that the Mortgaged Property is subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances; (iv) of any existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances located on the Mortgaged Property; (v) of any investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Mortgaged Property nor does Borrower know of any basis for such a claim; and (vi) of any claim by any party that any use, operation or condition of the Mortgaged Property violates any Environmental Laws.

(b) As long as the Lease is in effect, Borrower shall enforce the obligations of Lessee thereunder with respect to compliance with Environmental Laws. If at any time the Lease shall not be in effect, Borrower shall keep or cause the Mortgaged Property to be kept free from Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) by all lessees of space in the Improvements, and, without limiting the generality of the foregoing, during the term of this Security Instrument, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos.

(c) Borrower shall promptly notify Lender if Borrower shall become aware of the possible existence of any Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) on the Mortgaged Property or if Borrower shall become aware that the Mortgaged Property is or may be in direct or indirect violation of any Environmental Laws. Further, immediately upon receipt of the same, Borrower shall deliver to Lender copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments received by Borrower pertaining to the actual, alleged or potential presence or existence of any such Hazardous Substances at, on, about, under, within, near or in connection with the Mortgaged Property. Borrower shall, promptly and when and as required by any Environmental Laws, at Borrower's sole cost and expense, take, or cause Lessee to take, all actions as shall be necessary or advisable for the clean-up of any and all portions of the Mortgaged Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Lender), and shall further pay or cause to be paid, at no expense to Lender, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Mortgaged Property. In the event Borrower fails to do so, Lender may, but shall not be obligated to, cause the Mortgaged Property or other affected property to be freed from any Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) or otherwise brought into conformance with Environmental Laws and any and all costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the

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Note. Borrower hereby grants to Lender and its agents and employees, subject to the rights of Lessee (provided that no default beyond any applicable notice and/or cure period then exists under the Lease), access to the Mortgaged Property and a license to remove any Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) and to do all things Lender shall deem necessary to bring the Mortgaged Property in conformance with Environmental Laws. Borrower covenants and agrees, at Borrower's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Lender), and hold Lender harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lender or the Mortgaged Property, and arising directly or indirectly from or out of: (i) the presence, release or threat of release of any Hazardous Substances on, in, under or affecting all or any portion of the Mortgaged Property or any surrounding areas, regardless of whether or not caused by or within control of Borrower; (ii) the violation of any Environmental Laws relating to or affecting the Mortgaged Property, caused by Borrower; (iii) the failure by Borrower to comply fully with the terms and conditions of this Section 34; (iv) the breach of any representation or warranty contained in this Section 34; or (v) the enforcement of this Section 34, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Substances from all or any portion of the Mortgaged Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances on, in, under or affecting any portion of the Mortgaged Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Mortgaged Property or any surrounding areas. The indemnity set forth in this Section 34(c) shall also include any diminution in the value of the security afforded by the Mortgaged Property or any future reduction in the sales price of the Mortgaged Property by reason of any matter set forth in this Section 34(c). Lender's rights under this Section shall survive payment in full of the indebtedness secured hereby and shall be in addition to all other rights of Lender under this Security Instrument, the Note and the other Loan Documents.

(d) Upon Lender's request, at any time after the occurrence and during the continuation of an Event of Default hereunder or at such other time as Lender has reasonable grounds to believe that Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) are or have been released, stored or disposed of on or around the Mortgaged Property or that the Mortgaged Property may be in violation of the Environmental Laws, Borrower shall provide, at Borrower's sole cost and expense, an inspection or audit of the Mortgaged Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Lender indicating the presence or absence of Hazardous Substances on the Mortgaged Property or an inspection or audit of the Improvements prepared by an engineering or consulting firm approved by Lender indicating the presence or absence of friable asbestos or substances containing asbestos on the Mortgaged Property. If Borrower fails to provide such inspection or audit within forty-five (45) days after such request, Lender may order the same, and Borrower hereby grants to Lender and its employees and agents access to the Mortgaged Property

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and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(e) Without limiting the foregoing, where recommended by the Environmental Report and/or a "Phase I" or "Phase II" assessment, Borrower shall establish and comply with an operations and maintenance program relative to the Mortgaged Property, in form and substance acceptable to Lender, prepared by an environmental consultant acceptable to Lender, which program shall address any Hazardous Substances (including asbestos containing material or lead based paint) that may now or in the future be detected on the Mortgaged Property. Without limiting the generality of the preceding sentence, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify to address matters raised in the Environmental Report and/or a "Phase I" or "Phase II" assessment, (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (iii) at Borrower's sole expense, supplemental examination of the Mortgaged Property by consultants specified by Lender to address matters raised in the Environmental Report and/or a "Phase I" or "Phase II" assessment, (iv) subject to the terms of the Lease (provided that no default beyond any applicable notice and/or cure period then exists under the Lease), access to the Mortgaged Property, by Lender, its agents or servicer, to review and assess the environmental condition of the Mortgaged Property and Borrowers compliance with any operations and maintenance program, and (v) variation of the operations and maintenance program in response to the reports provided by any such consultants.

(f) If any action shall be brought against Lender based upon any of the matters for which Lender is indemnified under this Section 34, Lender shall notify Borrower in writing thereof and Borrower shall promptly assume the defense thereof, including, without limitation, the employment of counsel acceptable to Lender and the negotiation of any settlement; provided, however, that any failure of Lender to notify Borrower of such matter shall not impair or reduce the obligations of Borrower hereunder. Lender shall have the right, at the expense of Borrower (which expense shall be included in the costs described in subsection (c) above), to employ separate counsel in any such action and to participate in the defense thereof. In the event Borrower shall fail to discharge or undertake to defend Lender against any claim, loss or liability for which Lender is indemnified hereunder, Lender may, at its sole option and election, defend or settle such claim, loss or liability. The liability of Borrower to Lender hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both the settlement consideration and the costs and expenses, including, without limitation attorney's fees and disbursements, incurred by Lender in effecting such settlement. In such event, such settlement consideration, costs and expenses shall be included in costs described in subsection (c) above, shall bear interest at the Default Rate, and Borrower shall pay the same as provided in this Section 34.

35. [Intentionally Omitted]

36. [Intentionally Omitted]

37. **Handicapped Access.** Subject to Lessee's rights under the Lease (provided that no Lease Default then exists), Borrower agrees that the Mortgaged Property shall at all times strictly

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comply, to the extent applicable, with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws"). Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Mortgaged Property, Borrower shall not alter or permit the Mortgaged Property to be altered in any manner which would increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. Lender may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Lender. Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

38. **Indemnification.** In addition to any other indemnifications provided herein or in the other Loan Documents, Borrower covenants and agrees at its sole cost and expense to protect, defend, indemnify and save harmless Lender and any and all its successors and assigns hereunder from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Lender and any and all its successors and assigns hereunder (except to the extent caused by the gross negligence or wilful misconduct of Lender) by reason of any of the following for which the event or events which give rise to such cause of action or liability occurred prior to a foreclosure or deed in lieu of foreclosure or other transfer of the Mortgaged Property pursuant to Lender's exercise of its remedies hereunder: (a) ownership of this Security Instrument, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Security Instrument; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Substance or asbestos on, from, or affecting the Mortgaged Property or any property contiguous therewith; (g) to the extent not covered by insurance, any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or asbestos including, without limitation, the costs and expenses of any remedial action, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; and (j) any failure of the Mortgaged Property to comply with any Access Laws. Any amounts payable to Lender and any and all its successors and assigns hereunder by reason of the application of this Section 38 shall be secured by this Security Instrument and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender and any and all its successors and assigns hereunder until paid. The obligations and liabilities of Borrower under this Section 38 shall survive any termination, satisfaction or assignment of this Security Instrument and the exercise by Lender of any of its rights

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or remedies hereunder including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

39. **Notices.** Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Security Instrument, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

To Lender:

Red Mountain Funding, L.L.C.
420 North 20th Street, 9th Floor
Birmingham, Alabama 35203

with a copy concurrently to (which alone shall not constitute notice):

Burr & Forman LLP
One Georgia Center, Suite 1200
600 West Peachtree Street
Atlanta, Georgia 30308
Attention: Gary W. Farris, Esq.

To Borrower:

WEC 98C-5 LLC
6750 LBJ Freeway, Suite 1100
Dallas, Texas 75240
Attention: Greg L. England

with a copy concurrently to (which alone shall not constitute notice):

Winstead Sechrest & Minick P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
Attention: J. Richard White, Esq.

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the business day such material is sent, or (iii) if sent by certified mail, three (3) business days after such notice has been sent by Borrower or Lender.

39. **Authority; Compliance with ERISA and State Statutes on Governmental Plans.**

(a) Borrower (and the undersigned representative of Borrower, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Security Instrument, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign the Mortgaged 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.

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(b) Borrower represents and warrants that Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and the related Treasury Department regulations, including temporary regulations.

(c) Borrower represents and warrants that, as of the date of this Security Instrument and throughout the term of this Security Instrument, (i) Borrower is not 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, and (ii) the assets of such Borrower do not constitute "plan assets" of one or more such plans within the meaning of 29 CFR Section 2510.3-101.

(d) Borrower represents and warrants to Lender that, as of the date of this Security Instrument and throughout the term of this Security Instrument (i) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and (ii) transactions by or with Borrower or any Borrower are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

(e) Borrower covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of this Security Instrument, as reasonably requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" or a "governmental plan"; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 CFR § 2510.3-101(b)(2);

(ii) Less than twenty-five percent (25%) of all equity interests in such Borrower are held by "benefit plan investors" within the meaning of 29 CFR § 2510.3-101(f)(2); or

(iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 CFR § 2510.3-101(c) or (e).

(f) Any of the following shall constitute an Event of Default under this Security Instrument, entitling Lender to exercise any and all remedies to which it may be entitled under this Security Instrument, and any other Loan Documents: (i) the failure of any representation or warranty made by any Borrower under this Section to be true and correct in all respects, (ii) the failure of any Borrower to provide Lender with the written certifications and evidence referred to in this Section, or (iii) the consummation by Borrower of a transaction which would cause this Security Instrument or any exercise of Lender's rights under this Security Instrument, or the other Loan Documents to constitute a non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, or otherwise subjecting Lender to liability for violation of ERISA or such state statute.

(g) Borrower shall indemnify Lender and defend and hold Lender and any and all its successors and assigns hereunder harmless from and against all civil penalties, excise taxes, or other loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining

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any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender and any and all its successors and assigns hereunder may incur, directly or indirectly, as a result of a default under this Section. This indemnity shall survive any termination, satisfaction or foreclosure of this Security Instrument.

41. **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.

42. **Remedies of Borrower.** 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 the Note, this Security Instrument or the other Loan Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.

43. **Discretion of Lender.** Wherever pursuant to this Security 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 reasonable discretion of Lender, unless this Security Instrument provides expressly to the contrary.

44. **Non-Waiver.** 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 (a) the failure of Lender to comply with any request of Borrower or Guarantors 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, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents. 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. Subject to Section 54 hereof, 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 and remedies 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.

45. **No Oral Change.** This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought. Borrower acknowledges and agrees that, pursuant to Section 21 of that certain Additional Named Insured Endorsement relating to the residual value insurance

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policy issued by Financial Structures Limited (the "RSV Insurer") in connection with the Loan, Lender is required to obtain the consent of the RSV Insurer to any material amendments, modifications, changes, waivers, discharges, or terminations of this Security Instrument and the other Loan Documents (which consent shall not be unreasonably withheld or delayed), and accordingly Lender shall be entitled to condition its consent to any such matters upon the receipt of such consent from the RSV Insurer.

46. **Liability.** If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

47. **Inapplicable Provisions.** If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

48. **Headings, etc.** The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

49. **Duplicate Originals.** This Security Instrument may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

50. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

51. **Homestead.** To the extent permissible under applicable law, Borrower hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part hereof.

52. **Assignments.** Lender shall have the right to assign or transfer its rights under this Security Instrument without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Security Instrument.

53. **Cooperation.** Borrower acknowledges that Lender and its successors and assigns may (a) sell this Security Instrument, the Note and other Loan Documents to one or more investors as a whole loan, (b) participate the Loan to one or more investors, (c) deposit this Security Instrument, the Note and other Loan Documents with a trust, which trust may sell certificates to

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investors evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary Market Transactions"). Borrower shall, at Lender's expense, cooperate in good faith with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements reasonably imposed by the participants involved in any Secondary Market Transaction including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the Rating Agency and addressing such matters as the Rating Agency may require, and providing direct access to financial and other information relating to the Lessee and the Mortgaged Property (subject to the terms of the Lease); provided, however, that Borrower shall not be required to modify any documents evidencing or securing the Loan which would modify (i) the interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the amortization of principal of the Note, or (iv) any other material economic term or other operating covenants of the Loan. Borrower shall provide such information and documents relating to Borrower, the Mortgaged Property, the Lease and the Lessee as Lender or any Rating Agency may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Borrower, the Mortgaged Property and the Lessee. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Mortgaged Property may be included in a private placement memorandum, prospectus or other disclosure documents. As used herein, "Rating Agency" shall mean any nationally recognized statistical rating agency selected by Lender including, without limitation, Duff & Phelps Rating Co., Fitch Investors Services, Inc., Moody's Investors Services, Inc., and/or Standard & Poor's Rating Services, collectively, and any successor to any of them; provided, however, that at any time during which the Debt is an asset of a securitization or is otherwise an asset of any rated transaction, "Rating Agency" shall mean the rating agency or rating agencies that from time to time rate the securities, certificates or other instruments issued in connection with such securitization or other transaction.

54. **Recourse Provisions.** Subject to the qualifications below, Lender shall not be entitled to and shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in this Security Instrument, the Note or in any of the other Loan Documents by any action or proceeding wherein a money judgment or personal liability shall be sought against Borrower or any managers or members of Borrower or any members (or other constituent party(ies)) of any managers or members of Borrower or any officers, shareholders or directors thereof (the "Released Parties"), except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interests under the Note, this Security Instrument or the other Loan Documents or in the Mortgaged Property, or any other collateral given to Borrower pursuant to this Security Instrument and the other Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower and/or the Released Parties only to the extent of Borrower's interest in the Mortgaged Property and in any other collateral given to Lender, and Lender, by accepting this Security Instrument, the Note and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower or any of the Released Parties in any such action or proceeding under, or by reason of, or in connection with this Security Instrument, the Note or the other Loan Documents. The provisions of this Section shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Security Instrument, the Note or any of the other Loan Documents; (ii) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under this Security Instrument; (iii) affect the validity or enforceability

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of any guaranty made in connection with the Debt or any of the rights and remedies of the Lender thereunder; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of the Assignment of Lease and Rents executed in connection herewith; or (vi) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

- (1) the failure of Borrower to account for Lessee's security deposits, if any, for Rent or any other payment collected from Lessee by Borrower under the Lease;
- (2) after notice of an uncured Event of Default and during the continuance of such Event of Default, the failure of Borrower to apply 100% of all net income (i.e., after payment of operating expenses relating to the Mortgaged Property) derived from the Mortgaged Property, and received by Borrower, to the repayment of the Note;
- (3) a material misrepresentation made by Borrower, or the holders of beneficial or ownership interests in Borrower, in connection with (i), the financing evidenced by the Note, this Security Instrument or the other Loan Documents or (ii), that certain Commitment Letter issued by Lender or an affiliate of Lender to Borrower or an affiliate thereof;
- (4) any attempt by Borrower to divert or otherwise cause to be diverted any amounts payable to Lender or Servicer for the benefit of Lender in accordance with the other Loan Documents;
- (5) the misappropriation or misapplication of insurance or condemnation proceeds obtained by Borrower relating to the Mortgaged Property;
- (6) any environmental matter(s) affecting the Mortgaged Property which is introduced or caused by Borrower or the beneficial owner of Borrower;
- (7) any waste of or damage to the Mortgaged Property caused by the willful or wanton acts or omissions of Borrower or its agents;
- (8) the willful or grossly negligent material violation by Borrower of any law, ordinance, rule, or regulation applicable to Borrower or the Mortgaged Property;
- (9) the termination or amendment of the Lease or the Lease Guaranty by Borrower in violation of the terms of this Security Instrument;
- (10) the failure of Borrower to maintain its existence as a single asset, special purpose entity in good standing, as required by Section 20 of this Security Instrument;
- (11) the failure by Borrower to obtain the prior written consent of Lender to any transfer the Mortgaged Property or any interest therein in violation of the terms

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of this Security Instrument, or to any subordinate financing or other voluntary lien encumbering the Mortgaged Property, in each case to the extent Lender's consent is required under Section 9 of this Security Instrument; and

(12) any out-of-pocket expenses incurred by Lender, including legal fees and expenses, as the result of the filing of any bankruptcy or insolvency proceeding by or against Borrower or the enforcement of any of the obligations of Borrower pursuant to items (1) through (11) above.

Notwithstanding the foregoing, Borrower shall be personally liable for and shall reimburse Lender for and shall indemnify Lender against all losses, costs, damages and expenses incurred by Lender as a result of the matters set forth above. Further notwithstanding anything to the contrary in this Security Instrument, the Note or any other Loan Documents, (i) Lender shall not be deemed to have waived any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by this Security Instrument or to require that all collateral shall continue to secure all of the Debt owing to Lender.

55. Governing Law; Submission to Jurisdiction. THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF. EACH BORROWER AND EACH ENDORSER OR GUARANTOR HEREBY SUBMITS TO PERSONAL JURISDICTION IN SAID STATE AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SAID STATE (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF SUCH BORROWER'S, ENDORSER'S OR GUARANTOR'S OBLIGATIONS HEREUNDER, UNDER THE NOTE, ANY GUARANTY AND THE OTHER SECURITY DOCUMENTS, AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE SUCH OBLIGATIONS OF SUCH BORROWER, ENDORSER OR GUARANTOR. EACH BORROWER AND EACH ENDORSER AND GUARANTOR HEREBY WAIVES AND AGREES NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT, THE NOTE, ANY GUARANTY OR ANY OF THE OTHER SECURITY DOCUMENTS, (A) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE COURTS OR THAT THIS SECURITY INSTRUMENT, THE NOTE, ANY GUARANTY AND/OR ANY OF THE OTHER SECURITY DOCUMENTS MAY NOT BE ENFORCED IN OR BY THOSE COURTS OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (B) THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR (C) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF PAYEE TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). IN THE EVENT ANY SUCH ACTION, SUIT, PROCEEDING OR LITIGATION IS COMMENCED, BORROWER, OR ENDORSER AND GUARANTOR AGREE THAT SERVICE OF PROCESS MAY BE MADE, AND PERSONAL JURISDICTION OVER SUCH BORROWER, ENDORSER OR GUARANTOR OBTAINED, BY SERVICE OF A COPY OF THE SUMMONS, COMPLAINT AND OTHER PLEADINGS REQUIRED TO COMMENCE SUCH

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LITIGATION UPON SUCH BORROWER OR ENDORSER OR GUARANTOR AT BORROWER'S ADDRESS FIRST ABOVE WRITTEN.

56. **Waiver of Jury Trial.** BORROWER AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT, OR THE OTHER SECURITY DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY LENDER AND BORROWER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER OR LENDER.

57. **Miscellaneous.**

(a) Any consent or approval by Lender in any single instance shall not be deemed or construed to be Lender's consent or approval in any like matter arising at a subsequent date, and the failure of Lender to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Lender be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Lender pursuant hereto shall be narrowly construed to be applicable only to Borrower and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, other than the party to whom such consent or approval was given or reasonably intended to benefit, and any such consent or approval shall not be deemed to constitute Lender a venturer or partner with Borrower nor shall privity of contract be presumed to have been established with any such third party.

(b) Borrower represents and warrants to Lender that as of the date hereof, there has not been committed by Borrower any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Borrower's obligations under the Note, this Security Instrument or under any of the other Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Borrower hereby indemnifies Lender and agrees to defend and hold Lender harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this Section.

(c) To the extent there is any inconsistency among the Note, this Security Instrument and the other Loan Documents and the Lease with respect to any representations, warranties, covenants and events of default of Borrower and/or Lessee, then the applicable provisions of the Lease shall govern so long as the Lease is in effect and no Lease Default then exists. If the Loan Documents contain provisions which are not addressed in the Lease, then the Loan Document provisions shall prevail; provided, further, the Loan Documents shall in all events govern repayment of the Loan, the interest rate on the Loan, Events of Default, and Lender's remedies against Borrower and Guarantor.

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58. **Servicer.** Lender may, at the sole cost and expense of Lender, from time to time appoint one or more servicer(s) (collectively, the "Servicer") to administer the Loan or otherwise perform certain functions in connection with the Loan, which Servicer shall have the power and authority to exercise all of the rights and remedies of Lender and to act as agent of Lender hereunder.

59. **Contractual Statute of Limitations.** Borrower hereby agrees that any claim or cause of action by Borrower against Lender, or any of Lender's directors, officers, employees, agents, accountants or attorneys, based upon, arising from or relating to the Debt, or any other matter, cause or thing whatsoever, whether or not relating thereto, occurred, done, omitted or suffered to be done by Lender or by Lender's directors, officers, employees, agents, accountants or attorneys, whether sounding in contract or in tort or otherwise, shall be barred unless asserted by Borrower by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within one (1) year after Borrower knew or should have known of the act, occurrence or omission upon which such claim or cause of action, or any part thereof, is based and service of a summons and complaint on an officer of Lender or any other person authorized to accept service of process on behalf of Lender, within thirty (30) days thereafter. Borrower agrees that such one (1) year period of time is reasonable and sufficient time for a borrower to investigate and act upon any such claim or cause of action. The one (1) year period provided herein shall not be waived, tolled or extended except by the specific written agreement of Lender. This provision shall survive any termination of this Security Instrument or any of the other Loan Documents.

60. **Relationship of the Parties.** The relationship between Borrower and Lender is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

61. **No Merger.** It is the desire and intention of the parties hereto that this Security Instrument and the lien hereof do not merge in fee simple title to the Mortgaged Property. It is hereby understood and agreed that should Lender acquire any additional or other interests in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in such other or additional interests in or to the Mortgaged Property, toward the end that this Security Instrument may be foreclosed as if owned by a stranger to said other or additional interests.

62. **Rights With Respect to Junior Encumbrances.** Any person or entity purporting to have or to take a junior mortgage or other lien upon the Mortgaged Property or any interest therein shall be subject to the rights of Lender to amend, modify, increase, vary, alter or supplement this Security Instrument, the Note or any of the other Loan Documents, and to extend the maturity date of the indebtedness secured hereby, and to increase the amount of such indebtedness, and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for such indebtedness, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Security Instrument losing its priority over the rights of any such junior lien.

63. **Fixture Filing.** This Security Instrument shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures. This Security Instrument shall also be effective as a financing statement covering minerals or the like (including oil and gas) and is to

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be filed for record in the real estate records of the county where the Premises is situated. The mailing address of Borrower and the address of Lender from which information concerning the security interests may be obtained are set forth above.

64. **After-Acquired Mortgaged Property.** All property acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further mortgage, conveyance or assignment become subject to the lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further mortgages, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument.

65. **No Representation.** By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument and the other Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Lender.

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Exhibit A

PARCEL 1:

LOT 2 IN LINCOLN MALL, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 21840371, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENTS CONTAINED IN THAT CERTAIN RECIPROCAL CONSTRUCTION OPERATION AND EASEMENT AGREEMENT DATED MARCH 7, 1972 AND RECORDED ON MARCH 24, 1972 AS DOCUMENT NUMBER 21846183, AS AMENDED BY EASEMENT AGREEMENT RECORDED ON MARCH 29, 1971, AS DOCUMENT 21433856, AND BY DOCUMENT NO. 24099069, IN, ON, OVER, UPON AND UNDER LOTS 1, 3, 4, 5 AND 6 IN LINCOLN MALL SUBDIVISION AFORESAID AS PROVIDED THEREIN.

PARCEL 3:

EASEMENTS CONTAINED IN THAT CERTAIN TOTAL SITE AGREEMENT DATED MARCH 7, 1972 AND RECORDED MARCH 24, 1972 AS DOCUMENT 21846182, AS AMENDED BY EASEMENT AGREEMENT RECORDED ON MARCH 29, 1971, AS DOCUMENT NO. 21433856, AND BY DOCUMENT NO. 24099069, IN, ON, OVER, UPON AND UNDER LOTS 1, 3, 4, 5, 8, 9, 10 11 AND 12 IN LINCOLN MALL SUBDIVISION AFORESAID AS PROVIDED THEREIN.

WEC 98C-5-Lincoln Mall:

Location: Lincoln Highway/Cicero Avenue, Matteson, Illinois
Tax Parcel Number: 31-22-300-023

RETURN TO: *Sharon Cooper*
CHICAGO TITLE INSURANCE
NATIONAL BUSINESS GROUP
7616 LBJ FRWY., SUITE 300
DALLAS, TEXAS 75251

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