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MORTGAGE AND SECURITY AGREEMENT

Dated as of September 1, 1998

30

From

WILLOW, L.L.C.

(the "Company")

To

PHOENIX HOME LIFE MUTUAL INSURANCE COMPANY

(the "Mortgagee")

775718702 3045

Walgreen Retail Outlet  
(NEC Willow Road and  
Old Willow Road.  
City of Northfield, Cook County, Illinois)

This instrument was  
prepared by and when recorded  
return to:

Daniel J. Favero  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

BOX 333-CTI

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ATTACHMENTS TO MORTGAGE:

MORTGAGE AND SECURITY AGREEMENT dated as of September 1, 1998 (the "Mortgage"), from WILLOW, L.L.C., an Illinois limited liability company (the "Company"), having its principal office at c/o Centrum Properties Inc., 225 West Hubbard Street, Chicago, Illinois 60610-4416, to PHOENIX HOME LIFE MUTUAL INSURANCE COMPANY (the "Mortgagee"), whose address is c/o Phoenix Duff & Phelps, Inc., 56 Prospect Street, Hartford, Connecticut 06115-0480, Attention: Private Placement Division.

This Mortgage is also a Security Agreement and financing statement under the Uniform Commercial Code of State of Illinois and in compliance therewith the following information is set forth:

1. The names and addresses of the Debtor and Secured Party are:

Debtor: Willow, L.L.C.  
c/o Centrum Properties Inc.  
225 West Hubbard Street  
Chicago, Illinois 60610-4416

Secured Party: Phoenix Home Life Mutual Insurance  
Company  
c/o Phoenix Duff & Phelps, Inc.  
56 Prospect Street  
Hartford, Connecticut 06115-0480  
Attention: Private Placement Division

2. The property covered by this Security Agreement and financing statement is described in the Granting Clauses hereof.

3. Some or all of the fixtures, equipment and other property described herein is or may become fixtures.

4. The Debtor is the record owner of the real estate described in Annex A attached hereto and made a part hereof.

#### RECITALS

A. The Company and the Mortgagee have executed and delivered the Note Agreement dated as of September 1, 1998 (the "Note Agreement") providing for the commitment of the Mortgagee to purchase the 6.57% Senior Secured Notes, due August 15, 2018 (the "Notes") of the Company in an aggregate principal amount not to exceed \$4,285,000, to be dated the date of issue, expressed to bear interest from the date of issue until maturity at the rate of 6.57% per

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annum and will amortize as set forth in the amortization schedules attached thereto. Interest on the Notes will be computed on the basis of a 360-day year of twelve 30-day months.

B. The predecessor in interest to the Company has leased the Mortgaged Property (as hereinafter defined) to Bond Drug Company of Illinois, an Illinois corporation (the "Tenant"), under and pursuant to the terms of that certain Lease Agreement dated May 24, 1996 (as amended from time to time, the "Lease") and has or will assign all of its right, title and interest in and to the Lease to the Mortgagee pursuant to that certain Assignment of Lease dated as of the date hereof (the "Lease Assignment"). The obligations of the Tenant under the Lease have been guaranteed by Walgreen Co., a Delaware corporation (the "Guarantor"), pursuant to that certain Guaranty dated May 31, 1996 (the "Guaranty").

C. The Notes and all principal thereof, premium, if any, and interest thereon and all additional amounts and other sums at any time due and owing from, and required to be paid by the Company under the terms of the Notes and the Note Agreement, the Lease Assignment and this Mortgage are hereinafter sometimes referred to as the "Indebtedness Hereby Secured."

D. The Company is duly authorized under all applicable provisions of law and its Articles of Organization to issue the Notes, and the Company is duly authorized under all applicable provisions of law and its governing instruments to execute and deliver this Mortgage and to mortgage, convey and assign the Mortgaged Property (as defined below) to the Mortgagee as security for the Notes and all limited liability company or corporate, as the case may be, action and all consents, approvals and other authorizations and all other acts and things necessary to make this Mortgage the valid, binding and legal instrument for the security of the Notes have been done and performed.

NOW, THEREFORE, THIS MORTGAGE WITNESSETH: That the Company, in consideration of the premises, the purchase and acceptance of the Notes by the Mortgagee and of the sum of Ten Dollars received by the Company from the Mortgagee and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on the Notes according to their tenor and effect, and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, agreements and conditions contained in or incorporated by reference into the Notes, this Mortgage, the Note Agreement or the Lease Assignment and the Company do each hereby mortgage, assign, pledge and hypothecate unto the Mortgagee, its successors and assigns, forever, and grants to the Mortgagee, its successors and assigns, forever, a security interest in and to all and singular the following described properties, rights, interest and privileges and all of the Company's estate, right, title and interest therein, thereto and thereunder (all of which properties hereby mortgaged, assigned, pledged and hypothecated or intended so to be are hereinafter collectively referred to as the "Mortgaged Property"):

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**GRANTING CLAUSE FIRST**

**THE PROPERTY**

The parcel of land in Cook County, State of Illinois, described in Annex A attached hereto and made a part hereof, together with the all buildings, structures, improvements and appurtenances now standing, or at any time hereafter constructed or placed, upon such land, including all building material, building equipment and fixtures of every kind and nature whatsoever on said land or in any building, structure or improvement now or hereafter standing on said land which are classified as fixtures under applicable law and which are used in connection with the operation, maintenance or protection of said buildings, structures and improvements as such (including, without limitation, all boilers, air conditioning, ventilating, plumbing, heating, lighting and electrical systems and apparatus, all communications equipment and intercom systems and apparatus, all sprinkler equipment and apparatus and all elevators and escalators) and the reversion or reversions, remainder or remainders, in and to said land, and together with all and singular the tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances to said land, belonging or in anywise appertaining thereto, including, without limitation, any streets, ways, alleys, gores or strips of land adjoining said land, and all claims or demands whatsoever either in law or in equity, in possession or expectancy, of, in and to said land, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired and is affixed or attached or annexed to said land, shall be and remain or become and constitute a portion of said land and the security covered by and subject to the lien of this Mortgage, together with all accessions, parts and appurtenances appertaining or attached thereto and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all thereof, and together with all rents, income, revenues, awards, issues and profits thereof, and the present and continuing right to make claim for, collect, receive and receipt for any and all of such rents, income, revenues, awards, issues and profits arising therefrom or in connection therewith.

**GRANTING CLAUSE SECOND**

**THE LEASE**

The Lease, and all of the Company's estate, right, title, interest, claim and demand as landlord in, to and under the Lease, including all extensions and renewals of the term thereof, and all existing or future amendments, supplements or modifications of the Lease (and to any short memorandum form of the Lease executed for recording purposes), together with all rights, powers, privileges, options and other benefits as landlord under the Lease, including, without limitation, (a) the immediate and continuing right (whether or not an Event of Default under the Note Agreement or this Mortgage shall have occurred and be continuing) to receive and collect all rents (whether as Basic Rent (as defined in the Lease) or otherwise), income, revenues, issues, profits, insurance proceeds, condemnation awards, bankruptcy claims, liquidated damages, purchase price proceeds and other payments, tenders and security payable to or receivable by the landlord under the Lease; (b) if the Tenant exercises any right, or shall be required, to purchase



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the Mortgaged Property or the landlord's interest therein, the right and power (such power and right being coupled with an interest) to execute and deliver as agent and attorney-in-fact of the landlord under the Lease, an appropriate deed or other instruments of transfer necessary or appropriate for the conveyance and transfer to the purchaser of the Mortgaged Property or the portion thereof being so purchased, and all interest of the landlord therein and to perform in the name and for and on behalf of the landlord, as such agent and attorney-in-fact, any and all other necessary or appropriate acts with respect to any such purchase, conveyance and transfer; (c) the right to make all waivers, consents and agreements; (d) the right to give and receive copies of all notices and other instruments or communications; (e) the right to take such action upon the occurrence of an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law; (f) all right, title and interest of the Company in, to and under the Guaranty; and (g) the right to do any and all other things whatsoever which the Company or any landlord is or may be entitled to do under the Lease; all rights under this Granting Clause Second having also been granted to the Mortgagee in and by the Lease Assignment, which Lease Assignment is hereby incorporated into this Granting Clause Second, it being understood that the assignment made herein and in the Lease Assignment are intended to be one and the same.

**GRANTING CLAUSE THIRD****OTHER AND AFTER-ACQUIRED PROPERTY**

Any and all moneys and other property (including each amendment or supplement to any and all instruments included in the Mortgaged Property) which may from time to time, by delivery to the Mortgagee or by any instrument, including this Mortgage, be subjected to the lien hereof by the Company or by anyone on the behalf of the Company or with the consent of the Company, or which may come into the possession or be subject to the control of the Mortgagee pursuant to this Mortgage, or pursuant to any instrument included in the Mortgaged Property, it being the intention of the Company and the Mortgagee and it being hereby agreed by them that all property hereafter acquired by the Company and required to be subjected to the lien of this Mortgage or intended so to be shall forthwith upon the acquisition thereof by the Company be as fully embraced within the lien of this Mortgage as if such property were now owned by the Company and were specifically described in this Mortgage and granted hereby or pursuant hereto.

**GRANTING CLAUSE FOURTH****PROCEEDS**

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance and condemnation awards and payments.

**SUBJECT. HOWEVER,** as to all property or rights in property at any time subject to the lien hereof (whether now owned or hereafter acquired), to the following:

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(a) The agreement of the parties hereto that any and all trade fixtures, signs, furniture, furnishings, equipment, machinery or other tangible personal property located on the Mortgaged Property not owned by the Company, whether or not classified as fixtures under applicable law, are expressly excluded from the lien and security interest created by this Mortgage, and that the same shall in no instance be deemed to be encompassed within the term "Mortgaged Property"; and

(b) The Permitted Encumbrances, as defined in Section 1 hereof.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee and its successors and assigns, with the purpose of securing performance of each agreement, covenant and warranty of the Company contained herein and payment of the indebtedness evidenced by the Notes from time to time issued under and pursuant to the Note Agreement. It is understood and agreed that this Mortgage is to secure the obligation of the Company to repay, without preference or priority, all of the Notes executed and delivered pursuant to the Note Agreement including those heretofore executed, those of even date herewith and those to be executed in the future as specified in said Note Agreement.

IN TRUST, NEVERTHELESS, WITH POWER OF SALE (to the extent permitted by law), upon the terms and trusts herein set forth for the benefit and security of all present and future holders of the Notes in accordance with their terms and all other sums payable hereunder or under the Notes, and for the performance and observance of the Notes and this Mortgage, all as herein set forth.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if the Company performs the covenants herein contained and pays to the Mortgagee, its successors or assigns, the full amount of all principal of, and premium, if any, and interest on the Notes and all other sums due or payable hereunder or under the Note Agreement, the estate, right and interest of the Mortgagee in the property hereby conveyed shall cease and this Mortgage shall become null and void, but otherwise to remain in full force and effect.

It is agreed and understood by the parties hereto that:

1. The Mortgage and the Assignment are intended to and shall constitute security for the entire indebtedness represented by said Notes.

2. Any part of the security herein described, and any security described in any other mortgage, assignment of lease or other instrument now or hereafter given to secure the indebtedness which is secured by this Mortgage, may be released by the Mortgagee without affecting the lien hereof on the remainder.

3. The Company for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof, or to have the Mortgaged Property hereunder and the property covered by any other mortgage or assignment of lease securing the Notes marshalled upon any foreclosure of any of said deeds of trust or



assignments of leases, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety.

4. Upon the occurrence of an Event of Default hereunder, the Mortgagee has, among other things, the right to foreclose on the Mortgaged Property and dispose of the same. The Mortgagee's deed or other instrument of conveyance, transfer or release (which, if permitted by law, may be in the name of the Mortgagee or as attorney for the Company, and the Mortgagee hereby is irrevocably appointed as such attorney) shall be effective to convey and transfer to the grantee an indefeasible title to the property covered thereby, discharged of all rights of redemption by the Company or any person claiming under it, and to bar forever all claims by the Company or the said Mortgagee to the property covered thereby and no grantee from the Mortgagee shall be under any duty to inquire as to the authority of the Mortgagee to execute the same, or to see to the application of the purchase money.

#### SECTION 1. DEFINITIONS.

The following terms shall have the following meanings for all purposes of this Mortgage:

"Company" shall mean not only WILLOW, L.L.C., but also its successors and assigns.

"Default" shall mean any event which would constitute an Event of Default if any requirement in connection therewith for the giving of notice, or the lapse of time, or the happening of any further condition, event or action had been satisfied.

"Event of Default" shall mean any events specified in Section 5 hereof.

"Event of Loss" with respect to the Mortgaged Property shall mean any casualty described in Article 14 of the Lease and any condemnation which results in a termination of the Lease.

"Guarantor" is defined in the Recitals hereto.

"Guaranty" is defined in the Recitals hereto.

"Lease" is defined in Recital B hereto.

"Lease Assignment" shall mean the Assignment of Lease dated as of September 1, 1998 from the Company to the Mortgagee pertaining to the Mortgaged Property, as the same may from time to time be supplemented or amended.

"Loan Value" of the Mortgaged Property shall be the aggregate unpaid principal amount of the Notes.

"Mortgagee" shall mean Phoenix Home Life Mutual Insurance Company and any successor thereto appointed pursuant to Section 6.1 of this Mortgage, to the extent required by

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law to permit the exercise of any remedies pursuant to Section 5.2 of this Mortgage and for any other purpose hereunder shall mean the Mortgagee.

"*Note Agreement*" shall mean the Note Agreement dated as of September 1, 1998 between the Company and the Purchaser named in Schedule I thereto, providing for the commitment of such Purchaser to purchase the Notes of the Company issued under and pursuant to the terms thereof, as the Note Agreement may from time to time be supplemented or amended.

"*Notes*" is defined in the Recitals hereto.

"*Permitted Encumbrances*" shall mean the liens described in clauses (a) through (i) of Section 2.8 of this Mortgage.

"*Person*" shall mean an individual, partnership, limited liability company, corporation, trust or unincorporated organization.

"*Security*" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"*SNDA Agreement*" shall mean the Subordination Non-Disturbance and Attornment Agreement dated as of September 1, 1998 between the Mortgagee and the Tenant.

"*Subsidiary*" shall mean any entity of which more than 50% (by number of votes) of the Voting Stock is owned and controlled by the Company and/or one or more entities which are Subsidiaries.

"*Tenant*" shall mean Bond Drug Company of Illinois, an Illinois corporation.

"*Uniform Commercial Code*" shall mean the Uniform Commercial Code as in effect in the State of Illinois, as amended.

"*Voting Stock*" shall mean Securities of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

## SECTION 2. GENERAL COVENANTS AND WARRANTIES.

The Company covenants, warrants and agrees as follows:

*Section 2.1. Note Agreement Covenants.* Each and all of the terms, provisions, restrictions, covenants and agreements set forth in the Note Agreement or incorporated therein by reference, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns, are incorporated herein by reference to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Note Agreement was fully set out in an amendment or

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supplement to this Mortgage; and the Company does hereby covenant and agree well and truly to abide by, perform and be governed and restricted by each and all of the matters provided for by the Note Agreement and so incorporated herein to the same extent and with the same force and effect as if each and all of said terms, provisions, restrictions, covenants and agreements so incorporated herein by reference were set out and repeated herein at length. Without limiting the foregoing, the Company covenants and agrees to pay all taxes, assessments and governmental charges or levies imposed upon this Mortgage or the Notes or any other indebtedness secured hereby.

*Section 2.2. Ownership of Mortgaged Property.* The Company covenants and warrants that it has good and marketable title to the Mortgaged Property hereinbefore conveyed to the Mortgagee free and clear of all liens, charges and encumbrances whatever except Permitted Encumbrances, and the Company has full right, power and authority to grant, mortgage, pledge, assign, sell, demise, bargain, hypothecate, convey, grant a security interest in, transfer and set over the same to the Mortgagee for the uses and purposes in this Mortgage set forth; and the Company will warrant and defend its title to the Mortgaged Property against all claims and demands whatsoever. Without limiting the foregoing, the Company represents and warrants that the restrictions, exceptions, reservations, limitations, interests and other matters, if any, set forth immediately following the specific descriptions of the parcels of land in Annex A attached hereto, together with all other restrictions, exceptions, reservations, limitations, interests and other matters, if any, existing on the date of execution and delivery of this Mortgage, do not in the aggregate impair the value of the Mortgaged Property or adversely affect the utility, structural integrity or beneficial enjoyment of the Mortgaged Property for the uses to which the Mortgaged Property is being put.

*Section 2.3. Further Assurances.* The Company will, at its own expense, do, execute, acknowledge and deliver all and every further act, deed, conveyance, transfer and assurance necessary or proper for the better assuring, conveying, assigning and confirming unto the Mortgagee all of the Mortgaged Property, or property intended so to be, whether now owned or hereafter acquired.

*Section 2.4. Payment of Principal and Interest.* The Company will duly and punctually pay the principal of, and premium of, if any, and interest on all Notes secured hereby according to the terms thereof.

*Section 2.5. Maintenance of Mortgaged Property, Other Liens, Compliance with Laws, Etc.* (a) Without limiting the provisions of Section 6.4 of the Note Agreement, the Company shall (i) subject to Sections 3 and 4 hereof, promptly repair, restore or rebuild any buildings or improvements now or hereafter located on the Mortgaged Property which may become damaged or be destroyed, (ii) keep the Mortgaged Property in good condition and repair, ordinary wear and tear excepted, without waste, and free from all claims, liens, charges and encumbrances other than Permitted Encumbrances, (iii) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property which does not constitute a Permitted Encumbrance, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee, (iv) comply with all requirements of law or municipal ordinances with respect to the Mortgaged Property and the use thereof (including, without limitation, any law or municipal

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ordinance with respect to environmental protection or hazardous wastes), failure to comply with which would result in any material interference with the use or operation of the Mortgaged Property by the Company, (v) promptly procure, maintain and comply with, all permits, licenses and other authorizations required for the use of the Mortgaged Property or any erection, installation, operation and maintenance of the Mortgaged Property or any part thereof, and (vi) make no material alterations in said Mortgaged Property except as required by law or municipal ordinance; *provided, however*, that so long as the Mortgaged Property is subject to the Lease, (A) the requirements with respect to the maintenance, repair, restoration and rebuilding of the Mortgaged Property contained in this Section 2.5 shall be satisfied by the maintenance, repair, restoration and rebuilding of the Mortgaged Property in accordance with and to the extent provided in the Lease and (B) the exercise by Tenant of any right granted to it under the Lease shall not give rise to a default under this Mortgage if such right is exercised in compliance with the Lease so long as neither the lien nor the priority of this Mortgage is impaired by the exercise of such rights.

(b) The Company may, or may permit the Tenant to, (i) construct upon the Mortgaged Property additional buildings, structures and other permanent improvements ("*Improvements*") and (ii) install, assemble and place upon the Mortgaged Property any trade fixtures, signs, furniture, furnishings, equipment, machinery and other tangible personal property used or useful in the business of the Company or the Tenant, as the case may be, whether or not classified as fixtures under applicable law. All such Improvements shall be and remain part of the realty and shall be subject to this Mortgage. Such trade fixtures, signs, furniture, furnishings, equipment, machinery and other tangible personal property shall be and remain the property of the Company or the Tenant as the case may be, shall not be deemed part of the Mortgaged Property for purposes of condemnation or casualty, and the Company or the Tenant, as the case may be, may remove the same from the Mortgaged Property at any time prior to the expiration or earlier termination of this Mortgage, *provided* that the Company, at its expense, shall repair or shall cause the Tenant to repair any damage to the Mortgaged Property resulting from such removal.

(c) Any repair, restoration, rebuilding, substitution, replacement, modification, alteration of or addition to the Mortgaged Property pursuant to this Section 2.5 must not impair the market value or usefulness of the Mortgaged Property for use in the ordinary course of business; shall be performed in a good and workmanlike manner and be expeditiously completed in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto, including to the extent necessary to maintain in full force and effect the policies of insurance required by Section 2.6 hereof. All costs and expenses of each such repair, restoration, rebuilding, substitution, replacement, the discharge of all liens filed against the Mortgaged Property arising out of the same, together with all costs and expenses necessary to obtain any permits or licenses required in connection therewith shall be promptly paid by the Company or the Tenant.

(d) The Company will only use and operate the Mortgaged Property, or permit the same to be used and operated, for any lawful purpose.

**Section 2.6. Insurance.** (a) Without limiting the provisions of Section 6.5 of the Note Agreement, the Company will insure the Mortgaged Property, or will cause the Mortgaged

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Property to be insured, against such perils and hazards, and in such amounts and with such limits as the Mortgagee may from time to time reasonably require, and in any event will continuously maintain, or will cause to be continuously maintained, the following-described policies of insurance.

(1) Fire and extended coverage insurance covering the Mortgaged Property and the improvements located thereon, to the extent of not less than 100% of the full insurable replacement value of the Mortgaged Property, exclusive of foundations and excavations, from time to time;

(2) Public liability and property damage insurance with respect to the Mortgaged Property covering liability for death or bodily injury in any one accident, mishap or casualty to a limit of not less than \$1,000,000 and shall cover liability for property damage in one accident, mishap or casualty in the amount of not less than \$100,000;

(3) Non-cancelable loss of "rental value" insurance against the Tenant not paying the anticipated, full amount of the rent under the Lease (including, without limitation, all fixed rent and all additional percentage rent) and other obligations caused by an abatement of or reduction in such rent due to a casualty on the Mortgaged Property described in Article 13 of the Lease.

(4) Insurance against a condemnation of the Mortgaged Property which results in a termination of the lease or a reduction in rent;

(5) Residual value insurance against diminution of the value of the Mortgaged Property resulting from changes in market conditions; and

(6) Such other insurance against such risks as is customary to be carried by companies similarly situated and owning properties in the State of Illinois similar to the Mortgaged Property.

(b) Any insurance policies carried in accordance with this Section 2.6 shall be either (i) written by insurance companies of recognized national standing and with a "claims paying rating" of "NAIC 1" or better by the National Association of Insurance Commissioners (the "NAIC") or an equivalent rating by an NAIC-approved rating organization and authorized to do business in the State of Illinois or (ii) in the case of the insurance coverage described in clauses (1), (2) and (3) of Section 2.6(a), carried pursuant to a program of self-insurance maintained by the Tenant or the Guarantor (so long as the entity maintaining such program has a GAAP net worth of at least \$250,000,000) and: (1) shall name the Mortgagee as an additional insured, as its interests may appear, (2) in the case of policies covering loss or damage to the Mortgaged Property, shall provide that such losses, if any, shall be payable solely to the Mortgagee or, at the direction of the Mortgagee, the depository under a standard mortgagee loss payable clause satisfactory to the Mortgagee, (3) shall provide that the Mortgagee's interest shall be insured regardless of any breach or violation by the Company of any warranties, declarations or conditions contained in such policies, (4) such insurance, as to the interest of the Mortgagee



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therein, shall not be invalidated by the use or operation of the Mortgaged Property for purposes which are not permitted by such policies, nor by any foreclosure or other proceedings relating to the Mortgaged Property, nor by change in title to or ownership of the Mortgaged Property, (5) if any premium or installment is not paid when due, or if such insurance would lapse or be canceled, terminated or materially changed for any reason whatsoever, the insurers will promptly notify the Mortgagee and any such lapse, cancellation, termination or change shall not be effective as to the Mortgagee for 30 days after receipt of such notice, (6) appropriate certification shall be made to the Mortgagee by each insurer with respect thereto, (7) in the case of insurance described in clause (a)(3) of this Section 2.6, the amount of coverage under any such policy shall be not less than an amount equal to twelve monthly installments of principal and interest on the Notes, (8) in the case of insurance described in clause (a)(4) of this Section 2.6, the amount of such coverage shall be not less than the unamortized principal balance of the Notes and (9) in the case of insurance described in clause (a)(5) of this Section 2.6, the amount of such coverage shall be not less than the principal amount of the Notes due at maturity. Provided no Default or Event of Default has occurred or is continuing, the loss, if any, under any policy pertaining to loss by reason of damage to or destruction of any portion of the Mortgaged Property shall be adjusted with the insurance companies by the Company, subject to the reasonable approval of the Mortgagee if the loss exceeds \$50,000. The loss so adjusted shall be paid to the Mortgagee pursuant to said loss payable clause unless said loss is \$50,000 or less in which case said loss shall be paid directly to the Company, provided no Default or Event of Default has occurred and is continuing, in which event any such loss shall be paid to the Mortgagee.

(c) The Company shall furnish the Mortgagee with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal not less than 30 days prior to the expiration date of the original policy or renewal policies. All such policies shall provide that the same shall not be canceled without at least 30 days' prior written notice to each insured named therein.

*Section 2.7. Payment of Taxes and Other Charges.* Without limiting the provisions of Section 6.6 of the Note Agreement, the Company will pay and discharge (if they are not otherwise paid by Tenant under the Lease), before the same shall become delinquent, together with interest and penalties thereon, if any. (a) all taxes, assessments (including assessments for benefits from public works or improvements whenever begun or completed), levies, fees, water, sewer, electrical and other utility service rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, and whether or not within the contemplation of the parties hereto, which are at any time levied upon or assessed against it or the Mortgaged Property or any part thereof or upon this Mortgage or the Notes secured thereby, or upon the revenues, rents, issues, income and profits in respect of the Mortgaged Property, or arising in respect of the occupancy, use or possession thereof, which failure to pay would result in the creation of a lien upon the Mortgaged Property or any part thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property or in the diminution thereof or would result in any material interference with the use or operation of the Mortgaged Property by the Company, (b) all franchise, excise and other taxes, fees and charges assessed, levied or imposed in respect of its existence as a limited liability company or its right to do business in any state, (c) all income, excess profits, excise, sales, franchise, gross receipts and other taxes, duties or



imposts, whether of a like or different nature, assessed, levied or imposed by any governmental authority on it or the Mortgaged Property, or any portion thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property if the failure to pay any such tax, duty or impost might result in the creation of a lien upon any asset of the Company or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or in the diminution thereof, and whether or not any such tax, duty or impost is payable directly by the Company or is subject to withholding at the source and (d) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might result in the creation of a lien on the Mortgaged Property or upon the revenues, rents, issues, income and profits of the Mortgaged Property and, in general, will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Company, without expense to the Mortgagee.

Nothing in this Section 2.7 shall require the payment of any sum which is required to be paid by the Company pursuant to this Section 2.7 so long as the Company shall in good faith contest its obligation so to do by appropriate proceedings which will prevent the forfeiture or sale of any property of the Company or any material interference with the use or operation thereof by the Company, during the pendency of such proceedings and shall set up a reserve, reasonably adequate, in the opinion of any managing member of the Company against any such payment.

*Section 2.8. Limitation on Liens.* The Company will not create or incur or suffer to be incurred or to exist, any mortgage, pledge, security interest, encumbrance, lien or charge of any kind upon the Mortgaged Property, whether now owned or hereafter acquired, or upon any income or proceeds therefrom, except the following:

(a) liens for property taxes and assessments or governmental charges or levies and liens securing claims or demands of mechanics and materialmen, *provided* that payment thereof is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings;

(b) liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Company shall at any time in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;

(c) liens, charges, encumbrances and priority claims incidental to the conduct of business or the ownership of properties and assets (including warehousemen's and attorneys' liens and statutory landlords' liens) and deposits, pledges or liens to secure payment of premiums on insurance purchased in the usual course of business or in connection with self-insurance or in connection with workmen's compensation, unemployment insurance or social security legislation, or to secure the performance of bids, tenders or trade contracts, or to secure statutory obligations, surety or appeal bonds or other liens of like general nature incurred in the ordinary course of business and not in connection with the borrowing of money, *provided* in each case, the obligation secured is

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not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings;

(d) minor survey exceptions or minor encumbrances, easements or reservations of, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties, which encumbrances, easements, reservations, rights and restrictions do not in the aggregate materially detract from the value of said properties or materially impair their use in the operation of the business of the Company;

(e) the lien of this Mortgage;

(f) the lien of the Lease, subject to the SNDA Agreement;

(g) the lien of the Lease Assignment;

(h) the lien of any permitted sublease from the Tenant, as sublessor, to any Person, as sublessee; *provided* that the lien thereof shall be subject to the terms of the Lease and the SNDA Agreement; and

(i) easements, rights of way, reservations, restrictive agreements, servitude and rights of others against the Mortgaged Property which are listed on Schedule B to the ALTA Title Insurance Policy delivered to the Mortgagee following the issuance and delivery of the Notes.

*Section 2.9. The Lease.* At all times the Mortgaged Property shall be leased to the Tenant under the Lease, *provided* that, to the extent permitted thereby and by the SNDA Agreement, the Lease may be assigned or the Mortgaged Property sublet by the Tenant upon the terms and conditions set forth in the Lease and in the SNDA Agreement. The Company will punctually perform all obligations, covenants and agreements by it to be performed under the Lease or the Lease Assignment strictly in accordance with the terms thereof and will at all times do all things necessary to compel performance by the Tenant of all covenants and agreements by it to be performed under the Lease or the Lease Assignment. The Company will take no action and permit no action to be taken by other Persons which will release the Tenant from its obligations and liabilities under the Lease or the Assignment or result in the termination, amendment or modification of, or impair the validity of, the Lease or the Assignment. The Company will give to the Mortgagee notice of all defaults by the Tenant under the Lease or the Assignment promptly after they have become known to the Company. Neither this Mortgage nor the Lease Assignment nor any action or inaction on the part of the Mortgagee or the holders of the Notes shall constitute an assumption on the part of the Mortgagee or the holders of the Notes of any obligation to the Tenant or any other person under the Lease. No action or inaction on the part of the Company shall adversely affect or limit in any way the rights of the Mortgagee or the holders of the Notes under this Mortgage or the Lease Assignment, or, through this Mortgage or the Lease Assignment, under the Lease.

The Company will not, except with the prior written consent of the Mortgagee, take or suffer to be taken any action or consent to or permit any prepayment or discount of rent or payment of rent more than one month in advance, under the Lease or any permitted sublease.

*Section 2.10. Advances.* If the Company shall fail to comply with the covenants contained herein or in the Note Agreement or the Lease Assignment and incorporated herein by reference, the Mortgagee, after five days' prior written notice to the Company and without waiving or releasing any obligation or Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Company, and may enter upon the Mortgaged Property or any part thereof for such purpose and take all such action thereon as, in the opinion of the Mortgagee, may be necessary or appropriate therefor. All sums so paid by the Mortgagee and all costs and expenses (including without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the rate of 8.57% per annum from the date of payment or incurrence, shall be secured hereby in priority to the indebtedness evidenced by the Notes and shall be paid by the Company to the Mortgagee on demand. The Mortgagee in making any payment authorized under this Section relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof. The Mortgagee, in performing any act hereunder, shall be the sole judge of whether the Company is required to perform the same under the terms of this Mortgage.

*Section 2.11. Recordation.* The Company will, at its own expense, cause this Mortgage, the Lease (or a memorandum thereof), the Lease Assignment, the SNDA Agreement, all supplements hereto and thereto, and any financing statements and continuation statements required by law, including the Uniform Commercial Code, in respect hereof and thereof at all times to be kept recorded and filed at its own expense in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee hereunder and thereunder, and will furnish to the Mortgagee promptly after the execution and delivery of this Mortgage, the Lease, the Lease Assignment, the SNDA Agreement and each supplement hereto and thereto an opinion of counsel stating that, in the opinion of such counsel, this Mortgage, the Lease (or a memorandum thereof), the Lease Assignment, the SNDA Agreement or such supplement, as the case may be, has been properly recorded or filed for record so as to make effective of record the lien intended to be created hereby and/or thereby.

*Section 2.12. After-Acquired Property.* Any and all property hereafter acquired which is of the kind or nature described in the Granting Clauses hereof and is or intended to become a part thereof, shall ipso facto, and without any further conveyance, assignment or act on the part of the Company or the Mortgagee become and be, subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless the Company shall from time to time, if requested by the Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage any and all such property.

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## SECTION 3. POSSESSION, USE AND RELEASE OF PROPERTY.

*Section 3.1. Company's Right of Possession.* Provided no Event of Default has occurred and is continuing, the Company shall be suffered and permitted to remain in full possession, enjoyment and control of the Mortgaged Property subject always to the observance and performance of the terms of this Mortgage, the Note Agreement, the Lease Assignment and the SNDA Agreement. It is expressly understood that the use and possession of the Mortgaged Property by the Tenant or any of its permitted subtenants under and subject to the Lease shall not constitute a violation of this Section 3.1.

*Section 3.2. Release of Mortgaged Property - Event of Loss and Payment of Loan Value.* Upon the occurrence of any Event of Loss in respect of the Mortgaged Property, the Company shall give the Mortgagee, within 60 days after the occurrence thereof, written notice of such Event of Loss, which notice shall specify (a) in the case of a casualty, whether (i) the Company will repair or rebuild the Mortgaged Property as provided in Article 14 of the Lease, or (ii) the Tenant will terminate the Lease as provided in Article 14 thereof and in consequence of which the Company will prepay the Notes in accordance with the provisions of Section 4.1 hereof, or (b) in the case of a condemnation (i) which results in the termination of the Lease, the Company has applied to the issuer of the policy described in Section 2.6(a)(4) for distribution of proceeds to prepay the Notes in accordance with Section 4.1 hereof or (ii) which does not result in a termination of the Lease, the Company has applied to the issuer of the policy described in Section 2.6(a)(4) for distribution of proceeds to make up for any abatement of rent under the Lease. In the event such notice specifies that the Company will make a prepayment of the Notes, then the Mortgagee shall execute a release in respect of the Mortgaged Property upon receipt of such prepayment in full.

*Section 3.3. Eminent Domain.* The Company, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, shall notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings, and the Company from time to time will deliver or cause to be delivered to the Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable to the Company shall be paid to the Mortgagee, and such award or compensation shall be retained by the Mortgagee as part of the Mortgaged Property and, if such condemnation results in a termination of the Lease, applied in accordance with Section 4.1(a)(i) hereof and, if such condemnation does not result in a termination of the Lease, such award or compensation shall be paid over to the party entitled to such amounts. The Mortgagee shall be under no obligation to question the amount of the award or compensation and the Mortgagee may accept any such award or compensation. In any such condemnation proceedings the Mortgagee may be represented by counsel, whose reasonable costs and disbursements shall be paid by the Company.



SECTION 4. APPLICATION OF INSURANCE AND CERTAIN OTHER MONEYS RECEIVED BY THE MORTGAGEE.

*Section 4.1. Insurance Proceeds and Condemnation Awards.* (a) The amounts received by or payable to the Mortgagee from time to time which constitute insurance proceeds in respect of any damage to or destruction or condemnation of the Mortgaged Property or any part thereof, condemnation awards or compensation covering the Mortgaged Property (less the actual costs, fees and expenses incurred in the collection thereof) shall be held by the Mortgagee as part of the Mortgaged Property and shall be applied by the Mortgagee as follows:

(i) if a casualty occurs which results in a termination of the Lease as provided in Article 14 thereof, or if a condemnation occurs which results in the termination of the Lease in accordance with Article 22 thereof and the Company shall be required to prepay the Notes pursuant to Section 2.1 of the Note Agreement, such proceeds, award or compensation, as the case may be, shall be applied in payment and satisfaction of the Loan Value of the Mortgaged Property upon the terms and in the manner provided in Section 2.1 of the Note Agreement, together with interest due and payable thereon to the date of payment, and the balance, if any, of any such proceeds shall be paid to the Company; or

(ii) subject to clause (iii) below, if a casualty occurs which does not result in the termination of the Lease and the Company shall be required to repair or rebuild the Mortgaged Property as required pursuant to Article 14 of the Lease, all casualty insurance proceeds resulting from such casualty shall be paid over to the Company or as it may direct from time to time upon a written application signed by a managing member of the Company and accompanied by such evidence in reasonable detail as may be satisfactory to the Mortgagee supporting such application for the purpose of paying, or reimbursing the Company for the payment of, the reasonable cost, as shown by such certificate, of repairing, rebuilding or replacing part or all of the Mortgaged Property damaged or destroyed ("*Restoration*"), but only for and to the extent that the Company shows by such evidence of costs that the proceeds, award or compensation remaining on deposit with the Mortgagee, together with any additional funds irrevocably allocated or otherwise provided for in a manner satisfactory to the Mortgagee for such purpose, shall be sufficient to complete such Restoration and restore the Mortgaged Property (as nearly as practicable) at least to the market value and condition which existed immediately prior to the damage, destruction, condemnation or taking, as the case may be, free from liens or encumbrances except Permitted Encumbrances. Every such application for the payment of such proceeds, award or compensation shall state that no Event of Default has occurred and is continuing. Any proceeds in excess of the amount needed for Restoration remaining after the Restoration has been completed shall be paid to the Company. The Mortgagee shall receive a supplement hereto sufficient, as shown by an opinion of counsel (which may be counsel for the Tenant or the Company), to grant a valid first lien in any additions to or substitutions for the Mortgaged Property to the Mortgagee, which opinion shall also cover the filing and/or recording of such supplement (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable

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law) so as to perfect the lien and security interest in such additions or substitutions, or in the alternative an opinion that no such supplement is required for such purpose; or

(iii) all insurance proceeds paid under any loss of "rental value" policy referred to in Section 2.6(a)(3) shall be paid directly to the Fiscal Agent (as defined in the Note Agreement) for application pursuant to Section 5(b) of the Fiscal Agency Agreement (as defined in the Note Agreement) as an installment of fixed monthly rent.

(b) Subject to Section 2.6(b) hereof with respect to adjustments of losses, any appraisal or adjustment of such loss or any settlement or payment of indemnity therefor which shall be agreed upon between the Company and the relevant insurance company shall be accepted by the Mortgagee.

*Section 4.2. Mortgage Title Insurance.* Any moneys received by the Mortgagee as payment for any loss under any policy of mortgage title insurance which was delivered by the Company shall become part of the Mortgaged Property and shall be paid and applied in the same manner contemplated by Section 5.2 hereof.

*Section 4.3. Investment of Insurance Proceeds and Condemnation Awards or Compensation.* All insurance proceeds, condemnation awards or compensation received by the Mortgagee as payment for any casualty occurrence or condemnation relating to the Mortgaged Property under any policy of insurance or as an award or compensation for the taking in condemnation or other eminent domain proceedings relating to the Mortgaged Property or any part thereof shall, at the written request of the Company, be invested or reinvested by the Mortgagee in (a) direct obligations of the United States of America maturing in not more than 90 days from the date of such investment, (b) commercial paper maturing within 270 days from the date of acquisition and rated in the highest rating classification by at least one national rating agency, or (c) certificates of deposit of commercial banks in the United States of America with capital and surplus of \$100,000,000 or more maturing in not more than five days from the date of such investment. Upon a written request of the Company in accordance with the terms of this Mortgage, or at any time when the Mortgagee shall determine that cash is required pursuant to Section 4.1 hereof, the Mortgagee shall sell all or any designated part of such investments at the then market price therefor and shall pay and apply the proceeds in accordance with the terms of Section 4.1.

*Section 4.4. Application if Event of Default Exists.* If an Event of Default has occurred and is continuing to the knowledge of the Mortgagee, all amounts received by the Mortgagee under this Mortgage shall be applied in the manner provided for in Section 5 hereof in respect of proceeds and avails of the Mortgaged Property.

## SECTION 5. DEFAULTS AND REMEDIES THEREFOR.

*Section 5.1. Events of Default.* The Company acknowledges and agrees that each and all of the terms and provisions of Sections 7.1 through 7.3, both inclusive, of the Note Agreement have been and are incorporated into this Mortgage by reference to the same extent as though fully set out herein and that the term Event of Default wherever used in this Mortgage shall mean



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either: (a) an Event of Default as defined in Section 7.1 of the Note Agreement; or (b) the failure of the Company to comply with any covenant, agreement or warranty contained in this Mortgage within 30 days (the "*Initial Cure Period*") after the earlier of (i) the Mortgagee or any of the holders of the Notes giving notice thereof to the Company or (ii) an officer of the Company acquiring actual knowledge of the failure of the Company to comply with such covenant, agreement or warranty; *provided, however*, that the Initial Cure Period shall be extended an additional 60 days (such additional 60-day period being the "*Extension Cure Period*") if (x) such Default cannot be remedied within the Initial Cure Period because of reasons which are beyond the Company's control, (y) such Default is reasonably likely (in the good faith opinion of the Company) to be remedied within the Extension Cure Period, and (z) the Company has commenced to remedy such Default and continues to exercise due diligence to remedy such Default until successful.

*Section 5.2. Remedies.* When any Event of Default has occurred and is continuing, the Mortgagee may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein or in the Note Agreement conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Mortgagee may, by notice in writing to the Company declare the entire unpaid balance of the Notes to be immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon and premium, if any, shall be and become immediately due and payable.

(b) Subject always to the then existing rights, if any, of the Tenant under the Lease, the Mortgagee personally or by agents or attorneys may (i) enter into and take possession of all or any part of the Mortgaged Property, and may forthwith use, operate, manage, insure, repair and improve the Mortgaged Property and take any other action which, in the Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Property, (ii) collect and receive all earnings, revenues, rents, issues, profits and income from the Mortgaged Property or any part thereof (and for such purpose the Company each does hereby irrevocably constitute and appoint the Mortgagee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, the Company irrevocably acknowledging that any payment made to the Mortgagee hereunder shall be a good receipt and acquittance against the Company to the extent so made), (iii) pay all principal charges including taxes and assessments levied thereon and operating and maintenance expenses and all disbursements and liabilities of the Company hereunder and (iv) apply the net proceeds arising from any such operation of the Mortgaged Property as provided in Section 5.3 hereof in respect of the proceeds of a sale of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of the Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's

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compensation) incurred pursuant to the powers herein contained shall be secured hereby which the Company promises to pay upon demand together with interest at the rate of 8.57% per annum. The Mortgagee shall not be liable to account to the Company for any action taken pursuant hereto other than to account for any rents actually received by the Mortgagee. Without taking possession of the Mortgaged Property, the Mortgagee may, in the event the Mortgaged Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the rate of 8.57% per annum.

(c) The Mortgagee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale to the Company at least 30 days prior to the date of such sale and having given any other notice which may be required by law, sell and dispose of said Mortgaged Property or any part thereof at public auction or private sale to the highest bidder, which may be the Company in one lot as an entirety or in separate lots (the Company for itself and for all who may claim by, through or under it hereby expressly waiving and releasing all rights to have the Mortgaged Property marshalled to the extent permitted by law), and either for cash or on credit and on such terms as the Mortgagee may determine and at any place (whether or not it be the location of the Mortgaged Property or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales or for any such adjourned sale or sales, without further published notice.

(d) The Mortgagee may proceed to protect and enforce its rights by a suit or suits in equity or at law, or, subject to the limitations of liability specifically set forth in Section 6.10, for the specific performance of any covenant or agreement contained herein or in the Notes, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy. Upon the bringing of any suit to foreclose this Mortgage or to enforce any other remedy available hereunder, the plaintiff shall be entitled as a matter of right, without notice and without giving bond to the Company or anyone claiming under, by or through it, and without regard to the solvency or insolvency of the Company or the then value of the premises, to apply to an appropriate court to have a receiver appointed of all the Mortgaged Property and of the earnings, income, rents, issues, profits and proceeds thereof, with such power as the court making such appointment shall confer, and the Company does hereby irrevocably consent to such appointment.

(e) In case of any sale of the Mortgaged Property, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Mortgage, the Mortgagee may bid and become the purchaser, and the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Notes and any

claims for interest and premium matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Notes, including principal and interest and premium thereof, out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash. If at any foreclosure proceeding the Mortgaged Property shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the Mortgagee shall, subject to the limitations of liability specifically set forth in Section 6.10, be entitled to the entry of a deficiency decree against the Company and against the property of the Company for the amount of such deficiency.

(f) The Mortgagee shall have any and all rights and remedies (including, without limitation, extra judicial power of sale (to the extent permitted by law)) provided to a secured party by the Uniform Commercial Code with respect to any and all parts of the Mortgaged Property which are and which are deemed to be governed by the Uniform Commercial Code. Without limiting the generality of the foregoing, the Mortgagee shall, with respect to any part of the Mortgaged Property constituting property of the type in respect of which realization on a Lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including, without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Uniform Commercial Code for reasonable notification shall be met by mailing written notice to the Company at its address set forth in Section 6.3 at least 30 days prior to the sale or other event for which such notice is required.

(g) The Mortgagee shall have any and all rights and remedies provided for in the Note Agreement.

*Section 5.3. Application of Proceeds.* The purchase money proceeds and/or avails of any sale of the Mortgaged Property, or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) first, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and to the extent permitted by applicable law, the reasonable compensation of the Mortgagee, its agents, attorneys and counsel, and of all proper expenses, liability and advances incurred or made hereunder by the Mortgagee, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made; and

(b) second, to the amount then owing or unpaid on the Notes for principal, premium, if any, and interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Notes, then ratably to each holder of the Notes according to the aggregate of such principal and the accrued and unpaid interest and premium, if any, with application on each Note to be made, first, to unpaid premium, if any, second, to the unpaid interest thereon, and third, to unpaid principal thereof; and

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(c) third, to the payment of any other sums required to be paid by the Company pursuant to any provision of this Mortgage, the Lease Assignment, the Note Agreement, the Notes or any other instrument given to secure the Notes; and

(d) fourth, to the payment of the surplus, if any, to the Company, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

*Section 5.4. Waiver of Extension, Appraisal and Stay Laws.* The Company covenants that, upon the occurrence of an Event of Default and the acceleration of the Notes pursuant to Section 5.2(a) and to the extent that such rights may then be lawfully waived, it will not at any time thereafter insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension or moratorium law now or at any time hereafter in force, or claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction or, after confirmation of any such sale or sales claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives for itself and on behalf of each and every person, all benefit and advantage of any such law or laws which would otherwise be available to any such person in connection with the enforcement of any of the Mortgagee's remedies hereunder; and covenants that it will not in connection with any such enforcement proceedings invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Mortgagee but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Company hereby waives any and all rights of redemption from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of the Company and each and every Person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Company in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Company, its respective successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Company, its respective successors or assigns.

*Section 5.5. Costs and Expenses of Foreclosure.* In any suit to foreclose the lien hereon there shall be allowed and included as additional Indebtedness Hereby Secured in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as the Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of



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Willow, L.L.C.

Mortgage and Security Agreement

the Mortgaged Property, all of which expenditures shall become so much additional Indebtedness Hereby Secured which the Company agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the rate of 8.57% per annum.

*Section 5.6. Delay or Omission Not a Waiver.* No delay, failure or omission of the Mortgagee to exercise any right, power or remedy arising from any default on the part of the Company shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Mortgagee of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom, except as may be otherwise provided herein. No right, power or remedy hereunder is intended to be exclusive of any other right, power or remedy but each and every right, power and remedy shall be cumulative and in addition to any and every other right, power and remedy given hereunder or otherwise existing. Nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Mortgage operate to prejudice, waive or affect the security of this Mortgage or any rights, powers or remedies hereunder; nor shall the Mortgagee be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

*Section 5.7. Restoration of Positions.* If the Mortgagee has instituted any proceeding to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise and such proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Mortgagee or to such holder of the Notes, then and in every such case the Company, the Mortgagee and the holders of the Notes shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Mortgagee and the holders of the Notes shall continue as though no such proceedings had been instituted.

*Section 5.8. Notes to Become Due upon Sale by Mortgagee.* Upon any sale under or by virtue of this Mortgage (other than a sale of the Mortgaged Property permitted pursuant to the terms of Section 6.7(h) of the Note Agreement), whether pursuant to foreclosure, power of sale (to the extent permitted by law) or otherwise, the entire unpaid principal amount of the Notes shall, if not previously declared due and payable, immediately become due and payable, together with interest accrued thereon and premium, if any, and all other indebtedness which this Mortgage by its terms secures, anything contrary in this Mortgage, the Notes or any other instrument serving the Notes to the contrary notwithstanding.

## SECTION 6. MISCELLANEOUS.

*Section 6.1. Successors and Assigns.* Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Mortgage contained by or on behalf of the Company, or by or on behalf of the Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

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Section 6.2. Severability. The unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 6.3. Addresses for Notices and Demands. All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, or by prepaid overnight air courier, addressed as follows:

If to the Company:

WILLOW, L.L.C.  
c/o Centrum Properties Inc.  
225 West Hubbard Street  
Chicago, Illinois 60610-4416

If to the Mortgagee:

Phoenix Home Life Mutual Insurance  
Company  
c/o Phoenix Duff & Phelps, Inc.  
56 Prospect Street  
P.O. Box 150480  
Hartford, Connecticut 06115-0480  
Attention: Private Placement Division

With a copy to:

Financial Structures Limited  
Chevron House  
11 Church Street  
Hamilton HM 11 Bermuda

or as to either party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

Section 6.4. Headings and Table of Contents. The headings of the sections of this Mortgage and the table of contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 6.5. Release of Mortgage. The Mortgagee shall release this Mortgage and the lien hereof by proper instrument or instruments upon presentation of satisfactory evidence that all indebtedness secured hereby has been fully paid or discharged.

Section 6.6. Counterparts. This Mortgage may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Mortgage.

Section 6.7. Successor Mortgagee. The Mortgagee may, at any time, by instrument in writing, appoint a successor or successors to, or discharge and appoint a new Mortgagee in the place of, any Mortgagee named herein or acting hereunder, which instrument, executed and



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acknowledged by the Mortgagee, and recorded in the office of the County Recorder of the county wherein the Mortgaged Property is situated, shall be conclusive proof of the proper substitution of such successor or successors or new Mortgagee, who shall have all the estate powers, duties, rights and privileges of the predecessor Mortgagee.

*Section 6.8. Governing Law.* This Mortgage should be construed in accordance with and governed by the laws of the State of Illinois.

*Section 6.9. Time.* Time shall be of the essence for this Mortgage.

*Section 6.10. Limitations of Liability of Company.* Anything in this Mortgage, the Notes, the Note Agreement and the Lease Assignment to the contrary notwithstanding, but subject to the qualifications set forth below, no recourse or relief for principal, interest, Make-Whole Amount or other payment shall be had under any rule of law or equity, statute or constitution or by any enforcement or any assessments or penalties, or otherwise or based on or in respect of this Mortgage, the Notes, the Note Agreement or the Lease Assignment (whether by breach of any obligation, monetary or non-monetary) against the Company or any member, shareholder, partner, owner, beneficiary, officer, director, agent or employee thereof or any predecessor or successor limited liability company (or other entity) of the Company, it being expressly understood that any obligations of the Company under or relating to this Mortgage, the Notes, the Note Agreement and the Lease Assignment are solely obligations payable out of the Mortgaged Property and are compensable solely therefrom. Notwithstanding anything to the contrary set forth herein, the Company shall be liable for (i) security deposits received or held; (ii) rents received or held by the Company after an Event of Default; (iii) rents prepaid more than one month in advance; (iv) condemnation awards and insurance proceeds not applied as required by this Mortgage; (v) fraud, material misrepresentation or bad faith; (vi) the amounts required to be paid under Section 9.4 of the Note Agreement; (vii) waste of the Property; (viii) real estate taxes or assessments delinquent as of the Closing Date (as defined in the Note Agreement); (ix) payment and performance of all obligations under this Mortgage, the Notes and the Lease Assignment upon the occurrence of an Event of Default described in Section 7.1(j), (k) or (l) of the Note Agreement; and (x) its own respective acts of gross negligence, fraud or misrepresentation which cause a material loss or damage to any holder of a Note. Nothing in this Section 6.10 is intended to or shall in any way affect or invalidate any lien or security interest created by this Mortgage or the Lease Assignment or any obligations of the Tenant or the Guarantor under the Lease or Guaranty.

*Section 6.11. Business Loan.* The Company acknowledges and agrees that the loans evidenced by the Notes constitute a business loan within the meaning of Illinois Compiled Statutes, Chapter 815, Paragraph 205/4 *et seq.*, as amended.

*Section 6.12. Amendments.* No term, covenant, agreement or condition of this Mortgage may be amended, modified, changed, waived, discharged or terminated without the prior written consent of the Mortgagee; *provided* that the Company shall have obtained the prior written consent of Financial Structures Limited as contemplated by Section 21 of the Additional Named Insured Endorsement to the Residual Value Insurance Policy referred to in Section 4.18 of the Note Agreement.


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Willow, L.L.C.

Mortgage and Security Agreement

IN WITNESS WHEREOF, the Company has caused this Mortgage to be executed in its behalf and attested, all as of the day and year first above written.

WILLOW, L.L.C.

By:   
Title: MANAGER

Property of Cook County Clerk's Office

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of September, 1998 by John McLinder, the Manager of Willow, L.L.C., an Illinois limited liability company, on behalf of the Company. 0

Jennifer R. Hicks  
Notary Public

Printed Name: Jennifer R. Hicks

Property of Cook County Clerk's Office

(SEAL)

Commission expires:



**DESCRIPTION OF REAL PROPERTY**

LOT 1 IN CENTRUM SUBDIVISION, BEING A SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 24, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SUBDIVISION RECORDED MARCH 23, 1998 AS DOCUMENT 98373126.

Property of Cook County Clerk's Office

Address: NEC Willow Road and Old Willow Road, Northfield, Cook County, Illinois  
PIN #: 04-24-219-041-0000

**ANNEX A**  
(to Mortgage and Security Agreement)