

# UNOFFICIAL COPY

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Cook County Recorder 125.00



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PARKWAY BANK AND TRUST COMPANY, not individually but as Trustee under Trust No. 11693 dated June 17, 1997  
(Mortgagor)

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to

CAPITAL LEASE FUNDING, L.P.  
(Mortgagee)

MORTGAGE, SECURITY AGREEMENT AND  
ASSIGNMENT OF LEASES AND RENTS

Dated as of: July 16, 1999

Location: 7516 N. Clark Street, Chicago, Illinois

THIS DOCUMENT WAS PREPARED BY, AND  
AFTER RECORDING RETURN TO:

Rubin Baum Levin Constant & Friedman

30 Rockefeller Plaza

New York, N.Y. 10112

Attention: Christine A. McGuinness, Esq.

**BOX 333-CTI**

# UNOFFICIAL COPY 99691333

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "Mortgage"), made as of the 16<sup>th</sup> day of July, 1999, by PARKWAY BANK AND TRUST COMPANY, not individually but as Trustee under Trust No. 11693 dated June 17, 1997, having its principal place of business at 4800 N. Harlem Avenue, Harwood Heights, IL 60656 ("Mortgagor"), to CAPITAL LEASE FUNDING, L.P., a Delaware limited partnership, having its principal place of business at 110 Maiden Lane, 36th Floor, New York, New York 10005 ("Mortgagee").

## WITNESSETH:

To secure the payment of an indebtedness in the principal sum of (\$2,585,228.49) (the "Loan"), lawful money of the United States of America, to be paid with interest according to a certain Mortgage Note dated the date hereof made by Mortgagor to Mortgagee (the note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note") and all other sums due hereunder, under the Note and any Other Security Documents (hereinafter defined) (said indebtedness and interest due under the Note and all other sums due hereunder and under the Note and the Other Security Documents being hereinafter collectively called the "Debt"), Mortgagor has mortgaged, conveyed, confirmed, pledged, assigned, and hypothecated and by these presents does hereby mortgage, convey, confirm, pledge, assign and hypothecate unto Mortgagee the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Mortgagor 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 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 (including, without limitation, all right, title and interest of Mortgagor under any reciprocal easement agreement affecting or pertaining to the Mortgaged Property), 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 Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) 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 Mortgagor, or in which Mortgagor 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 Mortgagor, or in which Mortgagor 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 Mortgagor 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 lien to the lien of this Mortgage. In connection with Equipment which is leased to Mortgagor or which is subject to a lien or security interest which is superior to the lien of this Mortgage, this Mortgage shall also cover all right, title and interest of Mortgagor in and to all deposits, and the benefit of all payments now or hereafter made with respect to such Equipment.

(c) all awards or payments, including interest thereon, which may heretofore and 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;

(d) all right, title and interest of Mortgagor in and to the lease dated as of September 28, 1998 (including, without limitation, all guarantees thereof) (as it may be amended from time to time, the "Lease") between Mortgagor, as successor to original lessor, as lessor, and LaSalle National Bank Association, a banking association, as lessee ("Lessee") and all other leases and subleases (including, without limitation, all guarantees thereof) and other agreements affecting the use, enjoyment or occupancy of the Premises and the Improvements heretofore or hereafter entered into (the "Other Leases") (including any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code (the "Bankruptcy Code") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Premises and the Improvements) and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements (the "Rents") (including any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Premises and the Improvements and all claims as a creditor in connection with any of the foregoing) and all proceeds from the sale, cancellation,

surrender or other disposition of the Lease and the Other Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) Mortgagor's interest in any insurance policies covering the Premises and the Improvements, including, without limitation, that certain lease enhancement insurance policy dated on or about the date hereof and issued by Lexington Insurance Company in connection with this Loan (the "Lease Enhancement Policies")<sup>1</sup>, all proceeds thereof and any unearned premiums on any insurance policies covering the Mortgaged Property (including, without limitation, the Lease Enhancement Policies), including, without limitation, the right to receive and apply, subject to and in accordance with the terms and conditions of this Mortgage, the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property or any part thereof;

(f) the right, in the name and on behalf of Mortgagor, subject to and in accordance with the terms and conditions of this mortgage, 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 Mortgagee in the Mortgaged Property or any part thereof;

(g) 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 Mortgagor, or any managing agent of the Mortgaged Property on behalf of Mortgagor, 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;

(h) all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which Mortgagor 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, that certain account for the payment of Rents to Mortgagee described in Paragraph 14(a) of the Assignment of Lease and Rents delivered to Mortgagee by Mortgagor on the date hereof and all interest reserve accounts, borrower reserve accounts and replacement reserve accounts provided for under any documentation entered into or delivered by Mortgagor in connection with the Loan; and

(i) all rights which Mortgagor now has or may hereafter acquire, to be indemnified and/or held harmless from any liability, loss, damage, cost or expense (including, without limitation, attorneys' fees and disbursements) relating to the Mortgaged Property or any part thereof.

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<sup>1</sup> Delete references to "Lease Enhancement Policies" if there are no Lease Enhancement Policies in the deal.

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

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void and this Mortgage shall be immediately released by Mortgagor.

AND Mortgagor represents to and covenants and agrees with Mortgagee as follows:

**Part I**

**General Provisions**

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Mortgagor will pay the Debt at the time and in the manner provided in the Note and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Mortgage now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, 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 Note and Mortgage (the "Other Security Documents"), are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

2. Title. Mortgagor represents that, subject to and in accordance with the terms and conditions of the Trust, Mortgagor holds title to the Mortgaged Property and has the right to mortgage the same and that Mortgagor possesses an indefeasible 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 and those exceptions shown in the title insurance policy insuring the lien of this Mortgage. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Insurance. (a) The Mortgaged Property shall at all times during the entire term of this Mortgage be insured for the mutual benefit of Mortgagor and Mortgagee against loss or damage by any peril covered by a standard "all risk of physical loss" insurance policy, or, where Lessee is required to maintain insurance, with such insurance as is required to be maintained by Lessee pursuant to the terms of the Lease (provided, if the Lease permits Lessee to self-insure, Mortgagee may require no insurance during the period that Lessee shall be self-insuring the Mortgaged Property), or in the event that the Lease is no longer in effect, as otherwise required by

Mortgagee. Unless Mortgagee shall have otherwise agreed, such insurance, whether provided by Mortgagor or Lessee, shall be in an amount (i) equal to at least the then full replacement cost of the Improvements and Equipment, without deduction for physical depreciation, and (ii) such that the insurer would not deem Mortgagor a co-insurer under said policies. The policies of insurance carried in accordance with this Paragraph 3 (the "Policies") shall be paid in advance as provided in the Lease.

(b) Unless the Policies described in this Paragraph 3(b) are being provided by Lessee in accordance with the provisions of Paragraph 3(a) herein, Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall also obtain and maintain during the entire term of this Mortgage 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 at least equal to the outstanding principal amount of the Note or the maximum limit of coverage available with respect to the Improvements and Equipment under said Act, whichever is less.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages.

(iii) Such other insurance as may from time to time be reasonably required by Mortgagee in order to protect its interests.

(c) All Policies if and to the extent required by Mortgagee and except as otherwise provided in the Lease (i) shall be issued by an insurer rated at least "A" by the Rating Agencies that is satisfactory to Mortgagee, (ii) shall contain the standard New York mortgagee or equivalent non-contribution clause naming Mortgagee as the person to which all payments made by such insurance company shall be paid, (iii) shall be maintained throughout the term of this Mortgage without cost to Mortgagee, (iv) shall (or certificates thereof) be delivered to Mortgagee, (v) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under said Policies and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification or cancellation, and (vi) shall be reasonably satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee as to amounts, form, risk coverage, deductibles, loss payees and insureds. The premiums for such Policies (the "Insurance Premiums") shall be paid as the same become due and payable. Not later than thirty (30) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Mortgagee satisfactory evidence of the renewal of each Policy.

(d) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Mortgagee. Mortgagor shall not settle or adjust or permit the settlement or adjustment of any insurance claim in excess of \$100,000, except as otherwise provided in the Lease, without Mortgagee's prior written consent.

All insurance proceeds 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 for such restoration and repair upon such conditions which are otherwise customary in the locality where the Mortgaged Property is situated, which conditions shall include, without limitation, the following: (i) no Event of Default, or event which with notice and/or the passage of time, or both, would constitute an Event of Default has occurred and remains uncured at the time of such disbursement; (ii) the insurer does not deny liability to any named insured; (iii) the remaining Mortgaged Property continues at all times to comply, subject to any repairs required to be completed as a result of the subject damage or destruction, with all applicable building, zoning and other land use laws and regulations; (iv) in Mortgagee's reasonable judgment, the restoration or repair is practicable and can be completed within a reasonable period of time following such damage or destruction, but in no event later than the date by which completion is required under the Lease; (v) Mortgagor shall cause the tenant under the Lease to proceed promptly after the insurance claims are settled with the restoration or repair; and (vi) the restoration or repair is performed in compliance with 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 shall be delivered to Mortgagee and may be retained and applied by Mortgagee, after deduction of Mortgagee's reasonable costs and expenses of collection, toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper (such application to be without any prepayment consideration, except that if an Event of Default, or an event with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the Default Prepayment Consideration (as such term is defined in the Note) computed in accordance with the Note).

(e) Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of the Lease Enhancement Policies, including, without limitation, the terms of the paragraph entitled "Maintenance of Certain Insurance Coverage" under any such Lease Enhancement Policies. Mortgagor acknowledges Mortgagee's right under and pursuant to Paragraph 23 hereof to obtain (either itself or by its agents, servants, nominees or attorneys) any insurance required of Mortgagor hereunder should Mortgagor fail 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. Mortgagor will deliver to Mortgagee, promptly upon

Mortgagee's request, evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property. Mortgagor shall furnish to Mortgagee or its designee receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) After prior written notice to Mortgagee, Mortgagor, at its own expense, may 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 or Other Charges, provided that (i) Mortgagor is not in default under the Note or this Mortgage, (ii) Mortgagor is permitted to do so under the provisions of any mortgage or deed of trust junior in lien to this Mortgage, (iii) such proceeding shall suspend the collection of the Taxes or Other Charges from Mortgagor and from the Mortgaged Property, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder, (v) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) adequate reserves for the payment of the Taxes or Other Charges, together with all interest and penalties thereon, shall have been set aside, and (vii) Mortgagor shall have furnished to Mortgagee, or caused to be furnished to Mortgagee, such security as may be required in the proceeding, or as may be requested by Mortgagee, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon.

5 Escrow Fund. Mortgagor shall, after an Event of Default (unless the tenant under the Lease is paying such sums directly) or during any period that the Lease is not in effect, at the option of Mortgagee or its designee, pay to Mortgagee on the fifteenth day of each calendar month after notice from Mortgagee (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or reasonably estimated by Mortgagee to be payable, during the next ensuing twelve (12) months, and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (said amounts in (a) and (b) above hereinafter called 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 aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Paragraphs 3 and 4 hereof, Mortgagee shall, in its discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Mortgagor shall promptly pay to Mortgagee, upon demand, an amount which Mortgagee shall reasonably estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Mortgagee 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 Mortgage and the Other Security Documents, including, without limitation, advances made by Mortgagee pursuant to the terms of this Mortgage.

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 Mortgagee. No earnings or interest on the Escrow Fund shall be payable to Mortgagor.

6 Condemnation. (a) Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee 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), Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, in this Mortgage and the Other Security 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 Mortgagee to the discharge of the Debt. Mortgagee 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. Mortgagor shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Mortgagor, to be paid directly to Mortgagee.

(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. All condemnation awards or payments not required to be disbursed for repair and restoration of the Mortgaged Property pursuant to the provisions of the Lease shall be delivered to Mortgagee and applied to the reduction or discharge of the Debt whether or not then due and payable (such application to be without any prepayment consideration, except that if an Event of Default, or an event with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the Default Prepayment Consideration computed in accordance with the Note). If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought,

recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt.

Mortgagor 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 cause the same to be paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Mortgagor or otherwise, to collect and receipt for 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, Mortgagor shall, upon demand of Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Mortgagee, free and clear of any encumbrances of any kind or nature whatsoever.

The Lease. (a) Mortgagor, by this Mortgage and the Assignment of Lease and Rents of even date herewith, has absolutely and unconditionally collaterally assigned to Mortgagee, all of Mortgagor's right, title and interest in the Lease, the Other Leases and the Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment. Mortgagor represents to Mortgagee that (i) the Lease is in full force and effect, (ii) a true and correct copy of the Lease as amended to the date hereof has been delivered to Mortgagee, (iii) to Mortgagor's knowledge, neither Mortgagor nor Lessee is in default under any of the terms, covenants or conditions of the Lease, (iv) Mortgagor has not delivered to, or received from the Lessee any notice of default under the Lease and (v) all rents due and payable under the Lease on or before the date hereof, including all additional rents, have been paid in full. Mortgagee will not exercise any of the rights or powers conferred upon it hereunder unless and until an Event of Default shall exist and remain uncured hereunder.

(b) Mortgagor agrees with Mortgagee that Mortgagor (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 as security for the Debt; (ii) shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall reasonably enforce all of the material 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 in any material respect without the prior consent of Mortgagee, or cancel or terminate the Lease 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 of, or termination or diminution of the obligations of Lessee thereunder; (vi) shall not alter, modify or change the terms of any guaranty of the Lease or cancel or terminate any such guaranty without the prior consent of Mortgagee; (vii) shall not consent to any assignment of or subletting under the Lease not in accordance with the Lease terms, without the prior written consent of Mortgagee; (viii) upon request of Mortgagee, 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 Mortgagee; and (ix) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and

assignments in connection with the Mortgaged Property as Mortgagee shall from time to time reasonably require.

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 consent of Mortgagee. Mortgagor shall cause the Mortgaged Property to be in compliance with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Mortgagor 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 Paragraph 6 hereof to be promptly repaired, replaced or rebuilt provided the proceeds of any such casualty or proceeding are made available to Mortgagee in accordance with the terms and provisions hereof. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof, the effect of which would adversely affect the Mortgaged Property. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee.

9 Transfer or Encumbrance of the Mortgaged Property. (a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover all or a portion of the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof or any interest therein or any direct or indirect interest in Mortgagor, or permit the Mortgaged Property or any part thereof or any interest therein or any direct or indirect interest in Mortgagor 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 Paragraph 9 shall be deemed to include, without limitation, (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to the Lease or any Rents; (iii) any divestiture of Mortgagor's title or any interest therein in any manner or way, whether voluntary or involuntary, or

any merger, consolidation, dissolution or syndication affecting Mortgagor; (iv) if Mortgagor, any person or entity guaranteeing payment of the Debt or any portion thereof or performance by Mortgagor of any of the terms of this Mortgage (a "Guarantor"), or any general partner or managing member of Mortgagor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of any of such corporation's stock (or any stock or other interests of any corporation or entity directly or indirectly controlling such corporation, by operation of law or otherwise) 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; and (v) if Mortgagor, any Guarantor or any general partner or managing member of Mortgagor or any Guarantor 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 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).

(c) Mortgagee 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 Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Mortgagee's consent. 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 not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

(d) Mortgagee'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 Mortgagee'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 Paragraph 9 shall be null and void and of no force and effect.

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

(f) Mortgagee's consent to the sale or transfer of the Mortgaged Property will not be unreasonably withheld after consideration of all relevant factors, provided that:

(i) no Event of Default shall have occurred and remain uncured;

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- (ii) the proposed transferee ("Transferee") shall be a reputable entity or person of good character, creditworthy, with sufficient financial worth considering the obligations assumed and undertaken, as evidenced by financial statements and other information reasonably requested by Mortgagee and shall comply in all respects with the provisions set forth in Paragraph 20 of this Mortgage and all other applicable criteria of the Rating Agencies (as hereinafter defined);
- (iii) Mortgagee shall have received evidence satisfactory to Mortgagee that all required approvals, if any, to such sale or transfer shall have been obtained, including, without limitation, approvals required under the Lease or the Lease Enhancement Policies;
- (iv) Mortgagee shall have received evidence in writing from the Rating Agencies to the effect that such transfer will not result in a re-qualification, reduction or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction (as hereinafter defined). The term "Rating Agencies" as used herein shall mean any of Standard & Poor's Ratings Group, Duff & Phelps Credit Rating Co., Moody's Investors Service, Inc. and Fitch Investors Service, Inc. or any other nationally-recognized statistical rating agency which has been approved by Mortgagee and which is then rating the securities or certificates issued in connection with the Secondary Market Transaction;
- (v) Mortgagee shall have received such legal opinions as may be requested by Mortgagee or any Rating Agency in connection with such sale or transfer;
- (vi) the Transferee shall have executed and delivered to Mortgagee an assumption agreement in form and substance acceptable to Mortgagee, evidencing such Transferee's agreement to abide and be bound by the terms of the Note, this Mortgage and the Other Security Documents, together with such title insurance endorsements as may be reasonably requested by Mortgagee; and
- (vii) Mortgagee shall have received an assumption fee equal to one percent (1%) of the then unpaid principal balance of the Note in addition to the payment of all costs and expenses incurred by Mortgagee and Servicer in connection with such assumption (including reasonable attorneys' fees and costs); provided, however, with respect to a Qualifying Transfer (as hereinafter defined), Mortgagor shall only be required to pay the actual costs and expenses incurred by Mortgagee

and Servicer in connection with such assumption (including reasonable attorneys' fees and costs). For purposes of this clause (vii), the term "Qualifying Transfer" shall mean a transfer for which the major purpose is to restructure the form of ownership among family members of the principal interest holders of Mortgagor.

(g) Notwithstanding anything to the contrary herein, in the event of any transfer by Mortgagor of all or any portion of the Mortgaged Property or any interest therein (whether or not such transfer shall have been approved by Mortgagee), such transferee shall be automatically deemed to have assumed all the obligations of the Insured Owner (as such term is defined in the Lease Enhancement Policies) under the Lease Enhancement Policies, including any application submitted in connection therewith, without the need for any further agreement or documentation.

(h) Notwithstanding anything to the contrary contained in this Paragraph 9, holders of interests in Mortgagor and beneficiaries of holders of interests of Mortgagor (or holders of interests in any entity directly or indirectly holding an interest in Mortgagor) as of the date of this Mortgage (the "Interest Holders") shall have the right to transfer their interest in Mortgagor (or any entity directly or indirectly holding an interest in Mortgagor) without Mortgagee's consent; provided, however, that (i) after taking into account any prior transfers pursuant to this Paragraph 9, whether to the proposed transferee or otherwise, no such transfer (or series of transfers) shall result in (x) the proposed transferee, together with all members of his/her immediate family or any affiliates thereof, owning in the aggregate (directly, indirectly or beneficially) 49% or more of the interests in Mortgagor (or any entity directly or indirectly holding an interest in Mortgagor), or (y) a transfer in the aggregate of 49% or more of the interests in Mortgagor as of the date hereof, (ii) no such transfer of interest shall result in a change of control of Mortgagor or the day to day operations of the Mortgaged Property, (iii) Mortgagor shall give Mortgagee notice of such transfer together with copies of all instruments effecting such transfer not less than ten (10) business days prior to the date of such transfer; (iv) no Event of Default has occurred and remains uncured; and (v) the legal and financial structure of Mortgagor after such transfer and its shareholders, partners or members and the single purpose and bankruptcy remoteness nature of Mortgagor satisfies Mortgagee's then current applicable underwriting criteria and requirements including, without limitation, the requirement at the request of Mortgagee, to deliver evidence reasonably satisfactory to Mortgagee that the single purpose and bankruptcy remoteness nature of Mortgagor following such transfer is in accordance with the standards of two of the Rating Agencies or, if a securitization has occurred, the Rating Agencies rating the securities in the securitization (including, in such event written confirmations from such Rating Agencies that such transfer or series of transfers will not result in a requalification, reduction or withdrawal of the ratings then applicable to such securities). For the purposes of this Paragraph 9, a proposed transferee shall be deemed to own that interest in the Mortgagor and/or a constituent entity of Mortgagor owned by an immediate family member. In addition, a transfer shall not require the consent of Mortgagee if the transfer occurs (x) by inheritance, devise or bequest or by operation of law upon the death of a natural person who is an Interest Holder, provided that, such transfer is to an immediate family member of such Interest Holder, or a trust established for the benefit of such immediate family member or (y) among Interest

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Holders or the immediate family members of an Interest Holder. For purposes of this Paragraph 9, (1) an "immediate family member" shall mean an individual's spouse; brothers and sisters (whether by the whole or half blood), ancestors or lineal descendants by birth or adoption, trusts for the exclusive benefit of any of the foregoing individuals, and/or any limited partnership in which the immediate family member is a general partner; and (2) a change of control of Mortgagor shall be deemed to have occurred if there is any change in the identity of the individual or group of individuals who have the right, by virtue of the articles of organization, the operating agreement or any other agreement, with or without taking any formative action, to cause Mortgagor to take some action or to block Mortgagor from taking some action which, in either case, Mortgagor could take or could refrain from taking were it not for the rights of such individuals.

10 Estoppel Certificates. After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee 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 and this Mortgage are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

11 Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage 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 Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than one hundred and eighty (180) days, to declare the Debt immediately due and payable.

12 No Credits on Account of the Debt. Mortgagor 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 Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

13 Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

14 Usury Laws. This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the Debt at a rate which could subject Mortgagee to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by law to contract or agree to pay. If by the terms of this Mortgage or the Note, Mortgagor 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. Mortgagor and Guarantors, if any, shall keep adequate books and records of account in accordance with generally accepted accounting principles consistently applied and furnish to Mortgagee: (a) an annual operating statement of the Mortgaged Property; (b) an annual balance sheet and profit and loss statement of Mortgagor's beneficiary, and of any Guarantor, prepared and certified by the chief financial officer of Mortgagor's beneficiary within ninety (90) days after the close of each fiscal year; and (c) such annual balance sheets and profit and loss statements and other financial statements as may, from time to time, be required by Mortgagee. Mortgagor shall provide Mortgagee with such additional financial or management information as Mortgagee may reasonably request, provided that any such additional information with respect to the Lessee or the Mortgaged Property is available to Mortgagor pursuant to the terms and provisions of the Lease.

16 Performance and Enforcement of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor and shall enforce each and every term required to be observed or performed by any other party 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 Mortgagor shall fail to so observe, perform and enforce any such terms, Mortgagee and Servicer and their agents, employees, contractors, engineers, architects and other representatives shall have the right to so observe, perform and enforce such terms.

17 Further Acts, etc. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee an



irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this Paragraph 17.

18 Recording of Mortgage, etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, 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 Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, 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 Mortgage, 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. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

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

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

(a) The purpose for which Mortgagor is organized shall be limited solely to (i) owning, holding, selling, leasing, transferring, exchanging, operating and managing the Mortgaged Property, (ii) entering into the Loan with Mortgagee, (iii) refinancing the Mortgaged Property in connection with a permitted repayment of the Loan and (iv) transacting any and all lawful business for which Mortgagor may be organized under its constitutive law that is incidental, necessary and appropriate to accomplish the foregoing.

(b) Mortgagor 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.

(c) Mortgagor will not engage in any business other than the ownership, management and operation of the Mortgaged Property and Mortgagor will conduct and operate its business as presently conducted and operated. Mortgagor shall not pledge its assets for the benefit of any other person or entity, other than with respect to the Loan.

(d) Mortgagor will not enter into any contract or agreement with any affiliate of Mortgagor, any constituent party of Mortgagor, any Guarantor or any affiliate or constituent party of Guarantor, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with unaffiliated third parties. Mortgagor will allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate.

(e) Mortgagor 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 and operational debt customarily payable within thirty (30) days incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the Loan may be secured (subordinate or pari passu) by the Mortgaged Property.

(f) Mortgagor has not made and will not make any loans or advances to any third party (including any affiliate or constituent party of Mortgagor, any Guarantor or any affiliate or constituent party of Guarantor), and shall not acquire obligations or securities of its affiliates or any constituent party and shall not hold evidence of indebtedness issued by any other person or entity (other than cash and investment-grade securities).

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

(h) Mortgagor has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Mortgagor will not, nor will Mortgagor permit any constituent party or Guarantor to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of Mortgagor or such constituent party or Guarantor without the prior written consent of Mortgagee.

(i) Mortgagor will maintain books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Mortgagor's assets will not be listed as assets on the financial statement of any other entity. Mortgagor will file its own tax returns and will not file a consolidated federal income tax return with any other corporation.. Mortgagor shall maintain its books, records, resolutions and agreements as official records.

(j) Mortgagor 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 Mortgagor, any constituent party of Mortgagor, any Guarantor or any affiliate or constituent party of Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the

other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(k) Mortgagor 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.

(l) Neither Mortgagor nor any constituent party will seek or effect the dissolution, winding up, sale of assets, liquidation, consolidation or merger, in whole or in part, or the sale of any material assets, of Mortgagor.

(m) Mortgagor will hold all of its assets in its own name and will not commingle the funds and other assets of Mortgagor with those of any affiliate or constituent party of Mortgagor, any Guarantor, any affiliate or constituent party of Guarantor or any other person or entity and will not participate in any cash management system with any such party.

(n) Mortgagor 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.

(o) Mortgagor does not and will not hold itself out to be responsible for the debts or obligations of any other person or entity and does not and will not guarantee the debts or obligations of any other person or entity.

(p) Mortgagor shall not hold out its credit as being available to satisfy the obligations of any other person or entity.

(q) Mortgagor shall maintain a sufficient number of employees in light of its contemplated business operations and shall pay the salaries of its own employees from its own funds.

(r) If Mortgagor is a limited partnership or a limited liability company and its general partner or managing member, respectively, is (i) a corporation whose sole asset is its interest in Mortgagor or (ii) another limited partnership or limited liability company with a general partner or managing member, respectively, that is a corporation whose sole asset is its interest in such general partner or managing member of Mortgagor (each such corporation an "SPC Party"), each such SPC Party will at all times comply, and will cause Mortgagor to comply, with each of the representations, warranties, and covenants contained in this Paragraph 20 as if such representation, warranty or covenant was made directly by such SPC Party.

21 Events of Default. The Debt shall become immediately due and payable at the option of Mortgagee, without notice or demand, upon any one or more of the following events ("Events of Default"):

(a) if any portion of the Debt is not paid by the later of (i) three (3) days after receipt of the Servicer Notice or (ii) when due;

(b) if any of the Taxes or Other Charges is not paid when the same is due and payable, subject to the provisions of Paragraph 4;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Mortgagee upon request or if the Lease Enhancement Policies are not kept in full force and effect;

(d) if Mortgagor violates or does not comply with any of the provisions of Paragraphs 7, 9, 20, 34 or 35;

(e) if a default by Mortgagor or an event which with notice or lapse of time or both would become a default by Mortgagor has occurred and is continuing under the Lease and has not been cured as provided therein [within a period of time equal to one-half of the time allowed for such cure under the Lease]<sup>2</sup> or if the Lease is canceled, terminated, abridged, modified or surrendered, except as provided herein;

(f) if any representation of Mortgagor, or of any Guarantor, made herein or in any such guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall 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];

(g) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;

(h) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor 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, Mortgagor or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(i) if Mortgagor shall be in default (beyond any applicable grace, notice or cure period under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;

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<sup>2</sup> Add only if tenant estoppel or non-disturbance agreement to be used for the transaction does not allow Mortgagee an additional period of time beyond the time allowed Mortgagor to cure Mortgagor's defaults under the Lease

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

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

(l) if for more than thirty (30) days after notice from Mortgagee, Mortgagor shall continue to be in default under any other term, covenant or condition of the Note, this Mortgage or any of the Other Security Documents, provided that the notice and grace period set forth in this subparagraph (l) shall not apply to any other Event of Default expressly set forth in this Paragraph 21 or to any other Event of Default defined as such in the Note or any Other Security Document or to any other covenant or condition with respect to which a grace period is expressly provided elsewhere.

22 Default Interest. Upon the occurrence of any Event of Default, Mortgagor shall pay interest on the unpaid principal balance of the Note at a rate equal to the greater of four percent (4)% above the Applicable Interest Rate (as defined in the Note) (the "Default Rate"). The Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Debt. This charge shall be added to the Debt, and shall be deemed secured by this Mortgage. 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 Mortgagee 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 Right to Cure Defaults. (a) Upon the occurrence of any Event of Default, Mortgagee 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 Mortgagor and without releasing Mortgagor 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 Mortgagee and/or Servicer may deem necessary to protect the security hereof. Mortgagee 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 Mortgagee and/or Servicer are authorized to appear in, defend, or bring any action or proceeding to protect Mortgagee's interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, including, without limitation, the remedies provided for in subparagraph (c) below. All costs and expenses (the "Advances") incurred by Mortgagee and/or Servicer in remedying such Event of Default or other such failure by Mortgagor (including, without limitation, any such failure with respect to property other than the Mortgaged Property, as may be provided for in the Lease) or in appearing in, defending, or bringing any such action or proceeding

(including, without limitation, reasonable attorneys' fees and disbursements to the extent permitted by law and any fees of any special servicer of Mortgagee) shall bear interest at the Default Rate (the "Advance Interest"), for the period after notice from Mortgagee and/or Servicer that such cost or expense was incurred to the date of payment to Mortgagee and/or Servicer. All such Advances incurred by Mortgagee or Servicer, as applicable (the "Advancing Party"), together with all such Advance Interest thereon, shall be deemed to be protective advances hereunder and shall constitute a portion of the Debt and be secured by this Mortgage and the Other Security Documents and shall be immediately due and payable upon demand by Mortgagee or Servicer therefor.

Notwithstanding anything to the contrary in this subparagraph (a) or in the Note, if, within thirty (30) days after Mortgagor has received written demand from the Advancing Party, Mortgagor has failed to reimburse the Advancing Party for all Advances incurred by the Advancing Party, together with Advance Interest thereon, then, unless the Advancing Party specifies in such written demand that the failure of Mortgagor to make such reimbursement shall constitute an Event of Default hereunder, (i) the failure of Mortgagor to reimburse the Advancing Party for such Advances and Advance Interest pursuant to such written demand shall not, in and of itself, be deemed to be an Event of Default hereunder; (ii) such Advances and Advance Interest shall automatically be deemed to be due and payable on the earlier of the Maturity Date (as defined in the Note) or fifteen (15) days after Mortgagor has received subsequent written demand therefor from the Advancing Party, and the failure of Mortgagor to pay such Advances and Advance Interest on the earlier of the Maturity Date or the expiration of such 15-day period shall be deemed to be an automatic Event of Default hereunder; and (iii) from and after the expiration of such 30-day period until the date such Advances and Advance Interest have been paid in full by Mortgagor, the Applicable Interest Rate (as defined in the Note) shall be equal to the Default Rate, and the outstanding principal balance of the Note shall bear interest at such Applicable Interest Rate. Notwithstanding that such Advances and Advance Interest may be due and payable on the earlier of the Maturity Date or the expiration of such 15-day period as provided in clause (ii) above, Mortgagor shall nevertheless have the right at any time to pay to the Advancing Party all or any portion of such Advances, together with the Advance Interest which is accrued thereon through the date of such payment. If the Advances and Advance Interest have been paid in full by Mortgagor in accordance with the preceding sentence, then from and after the date of such payment (and provided that no Event of Default has occurred and is continuing), the Applicable Interest Rate on the Note shall be the rate per annum as originally set forth in the Note prior to the failure of Mortgagor to reimburse the Advancing Party prior to the expiration of such 30-day period. Except with respect to the payment of Advances and Advance Interest by Mortgagor, the foregoing provisions of this Paragraph 23 shall not in any way affect the provisions of the Note regarding prepayment of the principal balance of the Note or the provisions of Paragraph 59 hereof.

(b) In order to facilitate Mortgagee's and/or Servicer's rights under subparagraph (a) above, Mortgagor hereby further grants to Mortgagee and Servicer and any agents, employees, contractors, engineers, architects, nominees, attorneys and other representatives of Mortgagee 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, and shall be binding upon

Mortgagor and all successors and assigns of Mortgagor. Mortgagor shall cause the foregoing rights of Mortgagee and easement to be agreed to by and binding upon all tenants of the Mortgaged Property and all successors and assigns of such tenants. Mortgagor shall promptly execute, and cause to be executed, any other documents required by Mortgagee in order to further confirm the foregoing rights of Mortgagee and easement. For the foregoing purposes, Mortgagor constitutes and appoints each of Mortgagee and Servicer its true and lawful attorney-in-fact with full power of substitution to exercise any such rights in the name of Mortgagor. Mortgagor empowers each of said attorneys-in-fact to do any and every act which Mortgagor might do in its own behalf to fulfill the terms of the Note, this Mortgage, the Other Security 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. Mortgagor specifically agrees that all powers granted to Mortgagee and Servicer under this Mortgage may be assigned by Mortgagee to its successors or assigns as holder of the Note and by Servicer to its successors or assigns as servicer of the Loan.

(c) Mortgagor specifically admits and acknowledges that a prima facie showing of any threatened breach, anticipatory breach or breach of any term, provision or condition of this Mortgage by Mortgagor also constitutes a showing (i) of irreparable injury to Mortgagee, for which Mortgagee may have no adequate remedy at law, and (ii) that the balance of hardships weighs in favor of Mortgagee. Immediately upon learning of any such threatened breach, anticipatory breach or breach by Mortgagor, in addition to any other rights or remedies available under this Mortgage or at law or in equity, Mortgagee and/or Servicer shall have the right to, but shall not be obligated to, (A) institute an action, suit or proceeding in equity for the specific performance of any such term, provision or condition; (B) institute an action, suit or proceeding against Mortgagor for damages resulting from such threatened breach, anticipatory breach or breach and/or (C) commence an action against Mortgagor for injunctive relief, and may move, ex parte and without notice to Mortgagor, for a temporary restraining order or preliminary injunction, prohibitory and/or mandatory as the circumstances require, restraining and prohibiting any such threatened breach, anticipatory breach or breach. Mortgagor expressly waives any requirement that Mortgagee and/or Servicer post a bond or undertaking for any such temporary restraining order or preliminary injunction described in clause (C) above.

24. Late Payment Charge. If any portion of the Debt is not paid on or before the date on which it is due, Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum amount permitted by applicable law, to defray the expense incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Mortgage and the Other Security Documents.

25. Prepayment After Event of Default. Except during the last six (6) months of the term of the Loan, and as otherwise expressly provided in connection with a casualty or condemnation under Paragraphs 3(d) and 6(b) hereof, the principal balance of the Note may not be prepaid in whole or in part, whether voluntarily or involuntarily, prior to the Maturity Date; provided, however, that Mortgagor shall have the right and option to defease the Loan and obtain

a release of the Mortgaged Property from the lien of this Mortgage in accordance with and subject to the terms and provisions set forth in Paragraph 59 of this Mortgage (the "Defeasance Option").

If following the occurrence of any Event of Default, Mortgagor or any purchaser at foreclosure or any other person shall tender payment of all or any portion of the Debt, whether such payment is voluntary or involuntary, or occurs as a result of a foreclosure or the exercise of any other remedies available to Mortgagee under the Note, this Mortgage and the Other Security Documents, or otherwise, such tender shall be deemed to be an attempt to circumvent the prohibition against prepayment set forth in this Paragraph 25 and Mortgagor shall pay to Mortgagee, in addition to the Debt, the Default Prepayment Consideration.

26. Right of Entry. Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times upon reasonable prior notice.

27. Remedies. (a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor 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 Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute proceedings for the complete foreclosure of this Mortgage 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;
- (iii) 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 Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;
- (iv) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note;
- (v) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;
- (vi) 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 the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;

(vii) enter into or upon the Mortgaged Property, either personally or by its agents, servicers, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to cancel, enforce or modify the Lease and, if the Lease shall no longer be in effect, the right to make, cancel, enforce or modify new leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof; and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, assessments, insurance and Other Charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees; or

(viii) pursue such other rights and remedies as may be available at law and in equity.

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

(b) The proceeds of any sale made under or by virtue of this Paragraph 27, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Paragraph 27 or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its discretion shall deem proper.

(c) To the extent permitted by applicable law, Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage 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, Mortgagee, 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 Mortgagee under or by virtue of this Paragraph 27, Mortgagee, 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. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, 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 Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor 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 Paragraph 27 shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this Paragraph 27, Mortgagee 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 Mortgagee is authorized to deduct under this Mortgage.

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

28. Reasonable Use and Occupancy. In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, 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 Mortgagor or may require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

29. Security Agreement. This Mortgage 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 Mortgagor in the Mortgaged Property. Mortgagor by executing and

delivering this Mortgage has granted and hereby grants to Mortgagee, 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 Paragraph 29 the "Collateral"). If an Event of Default shall occur, Mortgagee, 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 Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee 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 Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee'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 Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof. Mortgagor hereby irrevocably appoints Mortgagee 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 Mortgagee, as secured party, in connection with the Collateral.

30. Actions and Proceedings. Mortgagee 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, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect their interest in the Mortgaged Property. Mortgagee 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.

31. Waiver of Counterclaim. All amounts due under this Mortgage, the Note and the Other Security Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Mortgagor 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 Mortgagee, and, to the extent permitted by law, waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Mortgagee against Mortgagor, or in any matters whatsoever arising out of or in any way connected with this Mortgage, the Note, any of the Other Security Documents or the Debt.

32. Recovery of Sums Required to Be Paid. Mortgagee 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 Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

33. Marshalling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

34. Hazardous Substances (a) Mortgagor hereby represents to Mortgagee that, to the best of Mortgagor's knowledge, except as may have been disclosed in that certain environmental report prepared by AEC and dated January 25, 1997, as amended \_\_\_\_\_, 1999 (the "Environmental Report"): (i) the Mortgaged Property is not in direct or indirect violation of any federal, state, or local law, ordinance or regulation or any court judgment or order of any federal, state or local agency or regulatory body applicable to Mortgagor or to the Mortgaged Property relating to industrial hygiene or to environmental or unsafe conditions including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Substances (hereinafter defined) those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations, or processes relating to the Mortgaged Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Mortgaged Property or, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act and Occupational Safety and Health Act, and all regulations adopted in respect to the foregoing laws (collectively, "Environmental Laws"); (ii) the Mortgaged Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, pollutants or contaminants, petroleum and petroleum products, tremolite, anthophylli or actinolite or polychlorinated biphenyls (including, without limitation, any raw materials which include hazardous constituents) and any other substances or materials which are included under or regulated

by Environmental Laws (collectively, "Hazardous Substances"); (iii) no Hazardous Substances are or have been, prior to Mortgagor's acquisition of the Mortgaged Property, discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Mortgaged Property otherwise than in compliance with all Environmental Laws; (iv) no property adjoining the Mortgaged Property is being used or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances; and (v) no underground storage tanks exist on any of the Mortgaged Property except as those disclosed in writing to Mortgagee and which comply with applicable Environmental Laws.

(b) So long as Mortgagor owns or is in possession of the Mortgaged Property, Mortgagor shall (i) keep or cause the Mortgaged Property to be kept free from Hazardous Substances and in compliance with all Environmental Laws; (ii) promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Substances on the Mortgaged Property and/or if Mortgagor shall become aware that the Mortgaged Property is in direct or indirect violation of any Environmental Laws; and (iii) conduct and complete or cause to be conducted and completed all remedial action necessary to clean up such Hazardous Substances and remove such Hazardous Substances and/or cure such violations, as applicable, as required by law, promptly after Mortgagor becomes aware of same. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure.

(c) Upon Mortgagee's reasonable request, at any time and from time to time while this Mortgage is in effect, Mortgagor shall provide at Mortgagor's sole expense, an inspection or audit of the Mortgaged Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous Substances on the Mortgaged Property. If Mortgagor fails to provide such inspection or audit within thirty (30) days after such request Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and a license to undertake such inspection or audit. The cost of such inspection or audit shall be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate. The obligations and liabilities of Mortgagor under this Paragraph 34 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

35. Asbestos. Mortgagor represents that, to the best of Mortgagor's knowledge, no asbestos or any substance containing asbestos ("Asbestos") is located on the Mortgaged Property except as may have been disclosed in the Environmental Report. Mortgagor shall not install in the Mortgaged Property, nor permit to be installed in the Mortgaged Property, Asbestos and shall remove or cause to be removed any Asbestos promptly upon discovery to the satisfaction of Mortgagee, or take all action necessary to ensure that such Asbestos is abated or managed in a manner which complies with all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos. Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local

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laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations.

In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. Upon Mortgagee's reasonable request, at any time and from time to time while this Mortgage is in effect, Mortgagor shall provide, at Mortgagor's sole expense, an inspection or audit of the Mortgaged Property prepared by an engineering or consulting firm approved by Mortgagee, indicating the presence or absence of Asbestos on the Mortgaged Property. If Mortgagor fails to provide such inspection or audit within thirty (30) days after such request, Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and a license to undertake such inspection or audit. The cost of such inspection or audit shall be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate. The obligations and liabilities of Mortgagor under this Paragraph 35 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

36. Environmental Monitoring. In the event that any investigation, site monitoring, containment cleanup, removal, restoration or other work of any kind is reasonably required under an applicable Environmental Law (the "Remedial Work"), Mortgagor shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law). All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's reasonable attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Debt and shall bear interest thereafter until paid at the Default Rate.

37. Handicapped Access. (a) Mortgagor agrees that the Mortgaged Property shall at all times strictly 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").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Mortgaged Property, Mortgagor shall not alter or permit the Mortgaged Property to be altered in any manner which would increase Mortgagor's

responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Mortgagee.

(c) Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to 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 Security Documents, Mortgagor covenants and agrees at its sole cost and expense to protect, defend, indemnify and save harmless Mortgagee and Servicer 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 Mortgagee or Servicer by reason of (a) ownership of this Mortgage, 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 Mortgagor to perform or comply with any of the terms of this Mortgage; (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, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Mortgaged Property or any other property; (g) 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 Mortgagee or Servicer by reason of the application of this Paragraph 38 shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee or Servicer until paid.

The obligations and liabilities of Mortgagor under this Paragraph 38 shall survive any termination, satisfaction or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Mortgage or in the Loan Documents, the indemnities and obligations of Mortgagor provided for in this Mortgage shall not apply to any losses or costs incurred by Mortgagee with respect to Hazardous Substances or Asbestos which are first placed in the Mortgaged Premises on or after the date on which Mortgagee obtains title to or possession of the Mortgaged Premises pursuant to an exercise by Mortgagee or its remedies under any of the Loan Documents or as a result

of a conveyance of title to the Mortgaged Premises by Mortgagor to Mortgagee in lieu of such exercise of remedies.

39. Notices. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Mortgage, 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, or by facsimile, 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 Mortgagee:

Capital Lease Funding, L.P.  
110 Midden Lane, 36th Floor  
New York, New York 10005  
Attention: Paul McDowell, Esq.  
Phone: (212) 527-7676  
Fax: (212) 267-4976

with a copy concurrently to:

Rubin Baum Levin Constant & Friedman  
30 Rockefeller Plaza  
New York, New York 10112  
Attention: Christine A. McGuinness, Esq.  
Phone: (212) 698-7700  
Fax: (212) 698-7825

and with a copy concurrently to:

Midland Loan Services, Inc.  
210 West Tenth Street  
Kansas City, MO 64105  
Attention: Alan Torgler  
Phone: (816) 435-5000  
Fax: (816) 435-2326



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To Mortgagor:

c/o Gateway-LaSalle, L.L.C.  
7420 Quincy  
Willowbrook, IL 60521  
Attention: Roxanne Gardner  
Phone: (630)-986-9600  
Fax: (630)-986-5093

with a copy to:

Alzheimer & Gray  
10 South Wacker Drive  
Chicago, Illinois 60606-7482  
Attention: Brian Shea  
Phone: 312-715-4808  
Fax: 312-715-4800

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 day such material is sent, (iii) if sent by certified mail, three (3) days after such notice has been sent by Mortgagor or Mortgagee, or (iv) if sent by facsimile, upon sending party's receipt of confirmation that the fax has been received.

40. Authority; Compliance with ERISA and State Statutes on Governmental Plans. (a) Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, 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 Mortgage on Mortgagor's part to be performed.

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

(c) Mortgagor represents that, as of the date of this Mortgage and throughout the term of this Mortgage, (i) Mortgagor 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 Mortgagor do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

(d) Mortgagor represents to Mortgagee that, as of the date of this Mortgage and throughout the term of this Mortgage (i) Mortgagor is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and (ii) transactions by or with Mortgagor or any Mortgagor are not

subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

(e) Mortgagor covenants and agrees to deliver to Mortgagee such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Mortgagee in its sole discretion, that (i) Mortgagor is not an "employee benefit plan" or a "governmental plan"; (ii) Mortgagor 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:

1. Equity interests in Mortgagor are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);
2. Less than 25 percent of all equity interests in such Mortgagor are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or
3. Mortgagor qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

(f) Any of the following shall constitute an Event of Default under this Mortgage, entitling Mortgagee to exercise any and all remedies to which it may be entitled under this Mortgage, and any Other Security Documents: (i) the failure of any representation made by any Mortgagor under this Paragraph 40 to be true and correct in all respects, (ii) the failure of any Mortgagor to provide Mortgagee with the written certifications and evidence referred to in this Paragraph 40, or (iii) the consummation by Mortgagor or any one Mortgagor of a transaction which would cause this Mortgage or any exercise of Mortgagee's rights under this Mortgage, or the Other Security Documents to constitute a non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, or otherwise subjecting Mortgagee to liability for violation of ERISA or such state statute.

(g) Mortgagor shall indemnify Mortgagee and defend and hold Mortgagee harmless from and against all civil penalties, excise taxes, or other loss, cost, damage and expense (including, without limitation, 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 any individual prohibited transaction exemption under ERISA that may be required, in Mortgagee's sole discretion) that Mortgagee may incur, directly or indirectly, as a result of a default under this Paragraph 40. This indemnity shall survive any termination, satisfaction or foreclosure of this Mortgage.

41. Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except

with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

42. Remedies of Mortgagor. In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the Other Security Documents, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment.

43. Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

44. Non-Waiver. The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantors to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the Other Security 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 Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the Other Security Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee hereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee 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 Mortgage, 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 Mortgagor or Mortgagee, 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.

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

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

48. Headings, etc. The headings and captions of various paragraphs of this Mortgage 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 Mortgage 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 Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," 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. Mortgagor 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. Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

53. Cooperation. Mortgagor acknowledges that Mortgagee and its successors and assigns may (a) sell this Mortgage, the Note and Other Security Documents to one or more investors as a whole loan, (b) participate the Loan to one or more investors, (c) deposit this Mortgage, the Note and Other Security Documents with a trust, which trust may sell certificates to 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"). Mortgagor shall cooperate in good faith with Mortgagee in effecting any

such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by the Rating Agency 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; provided, however, that the Mortgagor 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 of the Loan. Mortgagor shall provide such information and documents relating to Mortgagor, Guarantor, if any, the Mortgaged Property, the Lease and the Lessee as Mortgagee or any Rating Agency may reasonably request in connection with a Secondary Market Transaction, including, without limitation, any further environmental requirements. Mortgagee shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Mortgagor, the Guarantor, if any, the Mortgaged Property and the Lessee. Mortgagor 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.

54. Recourse Provisions. Subject to the qualifications below, Mortgagee shall not enforce the liability and obligation of Mortgagor to perform and observe the obligations contained in this Mortgage, the Note or in any of the Other Security Documents by any action or proceeding wherein a money judgment shall be sought against Mortgagor, except that Mortgagee may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Mortgagee to enforce and realize upon its interests under the Note, this Mortgage or the Other Security Documents or in the Mortgaged Property, or any other collateral given to Mortgagor pursuant to this Mortgage and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Mortgagor only to the extent of Mortgagor's interest in the Mortgaged Property and in any other collateral given to Mortgagee, and Mortgagee, by accepting this Mortgage the Note and the Other Security Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Mortgagor in any such action or proceeding under or by reason of or in connection with this Mortgage, the Note or the Other Security Documents. The provisions of this Paragraph 54 shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Mortgage, the Note or any of the Other Security Documents; (ii) impair the right of Mortgagee to name Mortgagor as a party defendant in any action or suit for foreclosure and sale under this Mortgage; (iii) affect the validity or enforceability of any guaranty made in connection with the Debt or any of the rights and remedies of the Mortgagee thereunder; (iv) impair the right of Mortgagee 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 Mortgagee to enforce the liability and obligation of Mortgagor, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Mortgagee (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(a) fraud or intentional misrepresentation by Mortgagor or any Guarantor in connection with the Loan;

(b) the gross negligence or willful misconduct of Mortgagor;

(c) physical waste of the Mortgaged Property;

(d) the breach of any provision of any environmental indemnity given by Mortgagor to Mortgagee in this Mortgage or by separate agreement concerning Environmental Laws, Hazardous Substances and Asbestos and any indemnification of Mortgagee with respect thereto in such document or agreement;

(e) the removal or disposal by Mortgagor of any portion of the Mortgaged Property after an Event of Default;

(f) the misapplication or conversion by Mortgagor of (i) any insurance proceeds paid by reason of any loss, damage or destruction to the Mortgaged Property, (ii) any awards or other amounts received in connection with the condemnation of all or a portion of the Mortgaged Property, or (iii) any rents following an Event of Default;

(g) failure by Mortgagor to pay charges for labor or materials or other charges due and payable by Mortgagor that can create liens on any portion of the Mortgaged Property; and

(h) any security deposits collected by Mortgagor with respect to the Mortgaged Property which are not delivered to Mortgagee upon a foreclosure of the Mortgaged Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof.

Notwithstanding anything to the contrary in this Mortgage, the Note or any Other Security Documents, (i) Mortgagee shall not be deemed to have waived any right which Mortgagee may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt secured by this Mortgage or to require that all collateral shall continue to secure all of the Debt owing to Mortgagee, and (ii) the Debt shall become fully recourse to Mortgagor in the event that: (A) Mortgagor fails to maintain its status as a single purpose entity as required by, and in accordance with the terms and provisions of, this Mortgage; (B) Mortgagor fails to obtain Mortgagee's prior written consent to any subordinate financing or other voluntary lien by Mortgagor encumbering the Mortgaged Property as required by this Mortgage; or (C) Mortgagor fails to obtain Mortgagee's prior written consent to any assignment, transfer, or conveyance of the Mortgaged Property or any interest therein as required by this Mortgage; or (D) without the prior written consent of Mortgagee, (1) the Lease is amended or modified, or (2) the Lease is terminated or canceled (except by Lessee, as expressly permitted by the provisions of the Lease or the term of the Lease is surrendered, or Mortgagor and Lessee enter into any agreement to

do any of the foregoing in this clause (D)<sup>3</sup>; or (E) there is any violation of the use restrictions and/or exclusivity restrictions in the Lease, including, without limitation, the provisions of Section 6 of the Lease<sup>4</sup>.

55. **Governing Law; Submission to Jurisdiction.** This Mortgage 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 Mortgagor, 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 Mortgagor'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 action, suit proceeding or litigation to enforce such obligations of such Mortgagor, endorser or Guarantor. Each Mortgagor and each endorser or Guarantor hereby waives and agrees not to assert, as a defense in any action, suit or proceeding arising out of or relating to this Mortgage, the Note, the 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 Mortgage, 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. In the event any such action, suit, proceeding or litigation is commenced, Mortgagor, or endorser and Guarantor agree that service of process may be made, and personal jurisdiction over such Mortgagor, endorser or Guarantor obtained, by service of a copy of the summons, complaint and other pleadings required to commence such litigation upon such Mortgagor or endorser or Guarantor at the address set forth in Paragraph 39 herein.

56. **Waiver of Jury Trial.** MORTGAGOR 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 MORTGAGE, 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 MORTGAGOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY

<sup>3</sup> to be used if tenant estoppel, guarantor estoppel or non-disturbance agreement does not contain a provision requiring tenant or guarantor to obtain the consent of Mortgagee prior to amending or terminating the Lease or Lease Guaranty. OBTAIN PERSONAL GUARANTY FROM PRINCIPAL OF BORROWER.

<sup>4</sup> to be used if Lease contains rights of rent abatement or termination by tenant or other tenant remedies if use or exclusivity provisions are violated. OBTAIN PERSONAL GUARANTY FROM PRINCIPAL OF BORROWER.

**AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH 56 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.**

57. Miscellaneous.

(a) Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date, and the failure of Mortgagee 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 Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor 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 Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party.

(b) Mortgagor represents and warrants to Mortgagee that, as of the date hereof, there has not been committed by Mortgagor 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 Mortgagor's obligations under the Note, this Mortgage or under any of the Other Security Documents. Mortgagor 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, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee 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 Paragraph 57.

(c) Mortgagor represents to Mortgagee that all utilities necessary for the operation of the Improvements are available at the Mortgaged Property.

(d) Whenever consent is required from any of the parties to this Mortgage, such consent shall not be unreasonably withheld, conditioned or delayed.

58. Servicer. Mortgagee may from time to time appoint one or more servicers and/or special servicers (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 Mortgagee and to act as agent of Mortgagee hereunder.

59. Defeasance.

(a) Provided no Event of Default, or event which with notice and/or the passage of time would become an Event of Default, has occurred and is continuing, at any time (x) after the earlier to occur of (I) the date which is four (4) years from the date hereof or (II) the date which is



two years from the "startup day" within the meaning of Section 806G(a)(9) of the Code of the REMIC Trust or otherwise two years after the securitization of the Loan, and (y) before the Maturity Date, Mortgagor may voluntarily defease the Loan and obtain the release of the Mortgaged Property from the lien of this Mortgage upon the satisfaction of the following conditions precedent:

(i) not less than thirty (30) days prior written notice to Mortgagee specifying a regularly scheduled payment date (the "Release Date") on which the Defeasance Deposit (hereinafter defined) is to be made;

(ii) the payment to Mortgagee of interest accrued and unpaid on the principal balance of the Note to but not including the Release Date;

(iii) the payment to Mortgagee of all other sums, not including scheduled interest or principal payments due after the Release Date, due under the Note; this Mortgage and the Other Security Documents;

(iv) the payment to Mortgagee of the Defeasance Deposit; and

(v) the delivery to Mortgagee of:

(A) a security agreement, in form and substance satisfactory to Mortgagee, creating a first priority lien on the Defeasance Deposit and the U.S. Obligations (hereinafter defined) purchased on behalf of Mortgagor with the Defeasance Deposit in accordance with this provision of this Paragraph 59 (the "Security Agreement");

(B) a release of the Mortgaged Property from the lien of this Mortgage (for execution by Mortgagee) in a form appropriate for the jurisdiction in which the Mortgaged Property is located and otherwise satisfactory to Mortgagee in form and substance;

(C) an officer's certificate of Mortgagor certifying that the requirements set forth in this Paragraph 59(a) have been satisfied;

(D) an opinion of counsel for Mortgagor in form and substance satisfactory to Mortgagee stating, among other things, that Mortgagee has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations purchased by Mortgagee on behalf of Mortgagor, and that Mortgagor has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Mortgagor (hereinafter defined);

- (E) evidence in writing from the applicable Rating Agencies to the effect that such release will not result in a re-qualification, reduction or withdrawal of any rating in effect immediately prior to such defeasance for any securities issued in connection with a Secondary Market Transaction involving the Loan which are then outstanding;
- (F) if required by the applicable Rating Agencies, Mortgagor should also deliver or cause to be delivered a non-consolidation opinion with respect to the Successor Mortgagor in form and substance satisfactory to Mortgagee and the applicable Rating Agencies;
- (G) a certificate of Mortgagor's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the required Scheduled Defeasance Payments; and
- (H) such other certificates, documents or instruments as Mortgagee may reasonably request.

In connection with the conditions set forth in subparagraph (a)(v) above, Mortgagor hereby appoints Mortgagee as its agent and attorney-in-fact for the purpose of using the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled payment dates after the Release Date upon which interest and principal payments are required under the Note (including the amounts due on the Maturity Date) and in amounts equal to the scheduled payments due on such dates under the Note (the "Scheduled Defeasance Payments"). Mortgagor, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to Mortgagee and applied to satisfy the obligations of Mortgagor under the Note.

(b) Upon compliance with the requirements of this Paragraph 59, the Mortgaged Property shall be released from the lien of this Mortgage and the pledged U.S. Obligations shall be the sole source of collateral securing the Note. Provided no Event of Default has occurred and is continuing, any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by subparagraph (a) above and satisfy Mortgagor's obligations under this Paragraph 59 shall be remitted to Mortgagor. In connection with such release, Mortgagor (or, at Mortgagee's option, Mortgagee) shall establish or designate a successor entity (the "Successor Mortgagor"), which shall be a single purpose bankruptcy remote entity approved by Mortgagee, and Mortgagor shall transfer and assign all obligations, rights and duties under and to the Note together with the pledged U.S. Obligations to such Successor Mortgagor. Such Successor Mortgagor shall assume the obligations under the Note and the Security Agreement and Mortgagor shall be relieved of its obligations thereunder. Mortgagor shall pay \$1,000.00 to any such Successor Mortgagor as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Mortgage to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this Paragraph 59, but Mortgagor shall pay all costs

and expenses incurred by Mortgagee, including, without limitation, Mortgagee's reasonable attorneys' fees and expenses, incurred in connection with this Paragraph 59.

(c) For purposes of this Paragraph 59, the following terms shall have the following meanings:

(i) The term "Code" shall mean the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

(ii) The term "Defeasance Deposit" shall mean an amount equal to the remaining principal amount of the Note, the Yield Maintenance Premium, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of this Paragraph 59.

(iii) The term "REMIC Trust" shall mean a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code that holds the Note;

(iv) The term "U.S. Obligations" shall mean direct non-callable obligations of the United States of America; and

(v) The term "Yield Maintenance Premium" shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

## Part II

### State Specific Provisions

See Attached

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### State Specific Provisions

a. Fixture Filing. This Mortgage is hereby entitled "Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing. The following legend is hereby added to the first page hereof:

"THIS INSTRUMENT IS EFFECTIVE AND SHALL REMAIN EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES ON THE REAL ESTATE HEREIN DESCRIBED AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF COOK COUNTY, ILLINOIS. THE MAILING ADDRESS OF MORTGAGEE AND THE ADDRESS OF MORTGAGOR ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THE INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT."

b. Maturity Date. In the paragraph immediately following the word "WITNESSETH" on page 1 hereof, the following is hereby inserted after the words "(the mortgage note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note")":

"which Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due on December 15, 2018"

c. Maximum Amount Secured Hereby. In the paragraph immediately following the word "WITNESSETH" on page 1 hereof, the following is hereby inserted after the words "(said indebtedness and interest due under the Note and all other sums due hereunder and under the Note and under the Other Security Documents being hereinafter collectively referred to as the "Debt")":

"(, provided, however, that the indebtedness secured hereby shall in no event exceed an amount equal to three hundred percent (300%) of the face amount of the Note))"

d. Waiver of Statutory Right. Mortgagor hereby waives, to the extent now or hereafter permitted by law, all rights of redemption of this Mortgage pursuant to the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. ("IMFL"), on behalf of itself and all those taking by through or under Mortgage.

e. Compliance with Illinois Mortgage Foreclosure Law. In the event that any provision of this Mortgage shall be inconsistent with any provision of IMFL, the provisions of IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with IMFL. If any

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provision of this Mortgage shall grant to Mortgagee any rights or remedies upon any Event of Default by Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Debt secured by this Mortgage or by the judgment of foreclosure.

f. Illinois Responsible Property Transfer Act. Mortgagor covenants and agrees that, if the disclosure requirements of the Illinois Responsible Property Transfer Act, 765 ILCS 90/1 et seq. ("RPTA") apply to the loan transaction contemplated by this Mortgage, Mortgagor will comply with RPTA and will timely execute and deliver to Mortgagee such disclosure documents as may be required by RPTA. Mortgagor agrees to place of record simultaneously with the recording of this Mortgage, any disclosure statement furnished to Mortgagee pursuant to this paragraph and also to file simultaneously therewith a true and correct copy of said disclosure statement with the Illinois Environmental Protection Agency, as and if required by applicable law.

g. Security Agreement. Paragraph 29 is hereby modified by deleting the words "at least five (5) days prior to such action" and substituting therefor the words "at least ten (10) days prior to such action".

h. Financing Statement. The following is hereby added to Paragraph 29 hereof:

"This Mortgage also constitutes a financing statement for the purpose of Section 9-402 of the Illinois Uniform Commercial Code (Illinois Revised Statutes, Section 26) and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of Cook County, Illinois.

(1) Name of Debtor:	Combined Development-Howard, L.L.C.
Debtor's Mailing Address:	7420 So. Quincy Willowbrook, Illinois 60521
Address of Property:	7516 N. Clark Street Chicago, Illinois
Name of Secured Party:	Capital Lease Funding, L.P.
Address of Secured Party:	110 Maiden Lane 36th Floor New York, New York 10005

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(2) This financing statement covers the following types or items of property: the property described in this instrument, and all other items of personal property now or at any time hereafter owned by Mortgagor and used in connection with the Mortgaged Premises

(3) Some of the above goods are or are to become fixtures on the real property described herein. Mortgagor is the record owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located."

i. Use of Loan Proceeds. Mortgagor covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured hereby constitutes: (a) a "business loan" as that term is defined in, and for all purposes of, the Illinois Interest Act, Section 815 ILCS 205/4(1)(c); and (b) "a loan secured by a mortgage on real estate" within the purview and operation of Section 815 ILCS 205/4(1)(l).

j. Usury. All agreements between Mortgagor and Mortgagee (including, without limitation, those contained in this Mortgage, the Note and any other Loan Documents) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Mortgagee exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other documents securing the Debt, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, Mortgagee shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

EXHIBIT "A"

MORTGAGE SIGNATURE AND EXONERATION RIDER

This MORTGAGE is executed by PARKWAY BANK & TRUST COMPANY, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said PARKWAY BANK & TRUST COMPANY, hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said Note contained shall be construed as creating any liability on the said Trustee or on said PARKWAY BANK & TRUST COMPANY personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, or on account of any warranty or indemnification made hereunder, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the Trustee and its successors and said PARKWAY BANK & TRUST COMPANY personally are concerned, the legal holder or holders of said Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided or by action to enforce the personal liability of the guarantor, if any.

The Trustee makes no personal representations as to nor shall it be responsible for the existence, location or maintenance of the chattels herein described, if any, or of any environmental conditions, codes or obligations concerning the property whether under any federal, state or local statute, rule, regulation, or ordinance. The beneficiaries of this Trust, have management and control of the use of the property and as such, have the authority on their own behalf to execute any document as environmental representative but not as agent for or on behalf of the Trustee.

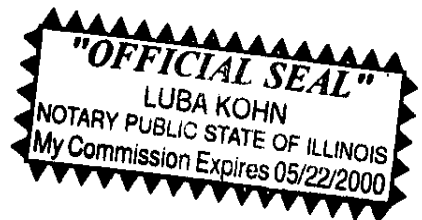
PARKWAY BANK & TRUST COMPANY, As Trustee under Trust No. 11693 dated 6-17-97 as aforesaid and not personally,

By: [Signature]  
VICE PRESIDENT & TRUST OFFICER  
Attest: [Signature]  
ASSISTANT TRUST OFFICER

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid do hereby certify that the above named officers of PARKWAY BANK & TRUST COMPANY, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in the capacities shown, appeared before me this day in person, and acknowledged signing, sealing and delivering the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal on 7-13-99  
(DATE)  
[Signature]  
(Notary Public)



State Specific Provisions

a. Fixture Filing. This Mortgage is hereby entitled "Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing. The following legend is hereby added to the first page hereof:

"THIS INSTRUMENT IS EFFECTIVE AND SHALL REMAIN EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES ON THE REAL ESTATE HEREIN DESCRIBED AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF COOK COUNTY, ILLINOIS. THE MAILING ADDRESS OF MORTGAGEE AND THE ADDRESS OF MORTGAGOR ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THE INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT."

b. Maturity Date. In the paragraph immediately following the word "WITNESSETH" on page 1 hereof, the following is hereby inserted after the words "(the mortgage note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note")":

"which Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due on \_\_\_\_\_, 2019"

c. Maximum Amount Secured Hereby. In the paragraph immediately following the word "WITNESSETH" on page 1 hereof, the following is hereby inserted after the words "(said indebtedness and interest due under the Note and all other sums due hereunder and under the Note and under the Other Security Documents being hereinafter collectively referred to as the "Debt")":

"(, provided, however, that the indebtedness secured hereby shall in no event exceed an amount equal to three hundred percent (300%) of the face amount of the Note))"

d. Waiver of Statutory Right. Mortgagor hereby waives, to the extent now or hereafter permitted by law, all rights of redemption of this Mortgage pursuant to the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15 1101 et seq. ("IMFL"), on behalf of itself and all those taking by, through or under Mortgagor.



e. Compliance with Illinois Mortgage Foreclosure Law. In the event that any provision of this Mortgage shall be inconsistent with any provision of IMFL, the provisions of IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with IMFL. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon any Event of Default by Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Debt secured by this Mortgage or by the judgment of foreclosure.

f. Illinois Responsible Property Transfer Act. Mortgagor covenants and agrees that, if the disclosure requirements of the Illinois Responsible Property Transfer Act, 765 ILCS 90/1 et seq. ("RPTA"), apply to the loan transaction contemplated by this Mortgage, Mortgagor will comply with RPTA and will timely execute and deliver to Mortgagee such disclosure documents as may be required by RPTA. Mortgagor agrees to place of record simultaneously with the recording of this Mortgage, any disclosure statement furnished to Mortgagee pursuant to this paragraph and also to file simultaneously therewith a true and correct copy of said disclosure statement with the Illinois Environmental Protection Agency, as and if required by applicable law.

g. Security Agreement. Paragraph 29 is hereby modified by deleting the words "at least five (5) days prior to such action" and substituting therefor the words "at least ten (10) days prior to such action".

h. Financing Statement. The following is hereby added to Paragraph 29 hereof:

"This Mortgage also constitutes a financing statement for the purpose of Section 9-402 of the Illinois Uniform Commercial Code (Illinois Revised Statutes, Section 26) and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of Cook County, Illinois.

- (1) Name of Debtor: Combined Development-Howard, L.L.C.
- Debtor's Mailing Address: 7420 So. Quincy  
Willowbrook, Illinois 60521
- Address of Property: 7516 N. Clark Street  
Chicago, Illinois
- Name of Secured Party: Capital Lease Funding, L.P.

Address of Secured Party: 110 Maiden Lane  
36th Floor  
New York, New York 10005

(2) This financing statement covers the following types or items of property: 'the property described in this instrument, and all other items of personal property now or at any time hereafter owned by Mortgagor and used in connection with the Mortgaged Premises

(3) Some of the above goods are or are to become fixtures on the real property described herein. Mortgagor is the record owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located."

i. Use of Loan Proceeds. Mortgagor covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligation secured hereby constitutes: (a) a "business loan" as that term is defined in, and for all purposes of, the Illinois Interest Act, Section 815 ILCS 205/4(1)(c); and (b) "a loan secured by a mortgage on real estate" within the purview and operation of Section 815 ILCS 205/4(1)(l).

j. Usury. All agreements between Mortgagor and Mortgagee (including, without limitation, those contained in this Mortgage, the Note and any other Loan Documents) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Mortgagee exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other documents securing the Debt, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, Mortgagee shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

## EXHIBIT A

### Legal Description

PARCEL 1:

THAT PART OF THE SOUTHEAST FRACTIONAL 1/4, NORTH OF INDIAN BOUNDARY LINE OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF THE WEST LINE OF CLARK STREET EASTERLY OF THE EASTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY AND NORTHERLY OF A LINE DRAWN FROM A POINT IN THE CENTER OF CLARK STREET 122 FEET SOUTHEASTERLY OF THE NORTH LINE OF SAID SOUTHEAST FRACTIONAL 1/4 TO A POINT IN THE WEST LINE OF SAID SOUTHEAST FRACTIONAL 1/4, 358 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SOUTHEAST FRACTIONAL 1/4 (EXCEPT THEREFROM THE NORTH 33 FEET THEREOF CONVEYED TO THE CITY OF CHICAGO FOR STREET PURPOSES BY DEED RECORDED OCTOBER 10, 1903 AS DOCUMENT 3452710), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF THE SOUTHEAST FRACTIONAL 1/4, NORTH OF INDIAN BOUNDARY LINE OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION ON THE WESTERLY LINE OF NORTH CLARK STREET (FORMERLY GREEN BAY ROAD) WITH THE NORTH LINE OF SOUTH ROGER TOUHY'S NORTH CLARK STREET AND BIRCHWOOD AVENUE SUBDIVISION OF THE SOUTH 1/2 OF BLOCK 10 IN MURPHY'S ADDITION TO ROGERS PARK; THENCE WEST ALONG THE NORTH LINE OF SAID SUBDIVISION OF THE SOUTH 1/2 OF BLOCK 10, 110-65/100 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY; THENCE NORTHERLY ALONG SAID RIGHT OF WAY 73-75/100 FEET TO THE SOUTH LINE OF A TRACT OF LAND HERETOFORE DEEDED BY EDWARD MURPHY, SR. TO JOHN DOWNING, LYING EAST OF RAILWAY; THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF SAID DOWNING TRACT, 96-35/100 FEET TO THE WESTERLY LINE OF NORTH CLARK STREET; THENCE SOUTHEASTERLY ALONG SAID WESTERLY LINE OF NORTH CLARK STREET, 97-56/100 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 1 AND 2 AND LOT 3 (EXCEPT THE SOUTH 5-1/2 FEET THEREOF) IN SOUTH ROGER TOUHY NORTH CLARK STREET AND BIRCHWOOD AVENUE SUBDIVISION OF THE SOUTH 1/2 OF BLOCK 10 IN MURPHY'S ADDITION TO ROGERS PARK, A SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THAT INDIAN BOUNDARY LINE AND WEST OF GREEN BAY ROAD, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THAT PART OF THE SOUTHEAST FRACTIONAL 1/4, NORTH OF THE INDIAN BOUNDARY LINE OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

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BEGINNING AT THE SOUTHEAST CORNER OF A TRACT OF LAND DEEDED BY EDWARD MURPHY TO EUGENE MACK, SAID CORNER BEING IN THE CENTER OF GREEN BAY ROAD AND 122 FEET SOUTHEASTERLY OF THE NORTH LINE OF SAID QUARTER SECTION; RUNNING THENCE SOUTH 78 DEGREES WEST ALONG THE SOUTHERLY LINE OF SAID MACK'S LAND, 115.15 FEET TO THE EASTERLY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID RAILWAY, 99.11 FEET TO THE SOUTHERLY LINE OF LAND CONVEYED BY HENRIETTA SNELL TO WILLIAM D. ALSEVER BY DEED DATED SEPTEMBER 9, 1899 AND RECORDED SEPTEMBER 11, 1899 AS DOCUMENT 2866877; THENCE NORTHERLY 78 DEGREES EAST ON SAID SOUTHERLY LINE TO THE CENTER OF GREEN BAY ROAD; THENCE NORTHERLY ALONG CENTER OF GREEN BAY ROAD, 99.66 FEET TO THE POINT OF BEGINNING, (EXCEPT THE NORTHERLY 75 FEET OF SAID PREMISES), (ALSO EXCEPT THEREFROM THAT PART TAKEN AND USED FOR CLARK STREET), IN COOK COUNTY, ILLINOIS.

AND ALSO

THE SOUTHERLY 25 FEET OF THE NORTHERLY 75 FEET OF THE FOLLOWING DESCRIBED TRACT OF LAND:

THAT PART OF THE SOUTHEAST FRACTIONAL 1/4, NORTH OF THE INDIAN BOUNDARY LINE OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF A TRACT OF LAND DEEDED BY EDWARD MURPHY TO EUGENE MACK, SAID CORNER BEING IN THE CENTER OF GREEN BAY ROAD AND 122 FEET SOUTHEASTERLY OF THE NORTH LINE OF SAID QUARTER SECTION; RUNNING THENCE SOUTH 78 DEGREES WEST ALONG THE SOUTHERLY LINE OF SAID MACK'S LAND, 115.5 FEET TO THE EASTERLY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID RAILWAY, 99.11 FEET TO THE SOUTHERLY LINE OF LAND CONVEYED BY HENRIETTA SNELL TO WILLIAM ALSEVER BY DEED DATED SEPTEMBER 9, 1899 AND RECORDED SEPTEMBER 11, 1899 AD 2866877; THENCE NORTHERLY 78 DEGREES EAST ON SAID SOUTHERLY LINE TO THE CENTER OF GREEN BAY ROAD; THENCE NORTHERLY ALONG THE CENTER OF SAID GREEN BAY ROAD, 99.66 FEET TO THE PLACE OF BEGINNING, (EXCEPT THEREFROM THAT PART TAKEN AND USED FOR CLARK STREET) IN COOK COUNTY, ILLINOIS.

PARCEL 5:

THE NORTHERLY 25 FEET OF THAT PART OF THE SOUTHEAST FRACTIONAL 1/4, NORTH OF INDIAN BOUNDARY LINE OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LAND DEEDED BY EDWARD MURPHY TO EUGENE MACK SAID CORNER, BEING ON CENTER OF GREEN BAY ROAD AND 122 FEET SOUTHEASTERLY OF NORTH LINE OF SAID QUARTER SECTION; THENCE SOUTH 78 DEGREES WEST ALONG SOUTHERLY LINE OF SAID MACK'S LAND, 115.5 FEET TO THE EASTERLY LINE OF CHICAGO AND NORTHWESTERN RAILWAY; THENCE SOUTHERLY ALONG EASTERLY LINE OF SAID RAILWAY, 99.11 FEET TO A POINT IN SOUTHEASTERLY LINE OF PART EAST OF RAILWAY OF TRACT CONVEYED TO WILLIAM D. ALSEVER BY DEED RECORDED SEPTEMBER 11, 1899 AS DOCUMENT 2866877; THENCE NORTH 78 DEGREES EAST ON SAID SOUTHERLY LINE TO CENTER OF GREEN BAY ROAD; THENCE NORTHERLY ON CENTER OF SAID

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ROAD, 99.66 FEET TO POINT OF BEGINNING, (EXCEPTING THEREFROM THAT PART TAKEN AND USED FOR CLARK STREET), IN COOK COUNTY, ILLINOIS.

PARCEL 6:

THE SOUTHERLY 25 FEET OF NORTHERLY 50 FEET OF FOLLOWING DESCRIBED TRACT OF LAND:

THAT PART OF SOUTHEAST FRACTIONAL 1/4 OF INDIAN BOUNDARY LINE SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT SOUTHEAST CORNER OF A TRACT OF LAND DEEDED BY EDWARD MURPHY TO EUGENE MACK SAID CORNER, BEING IN CENTER OF GREEN BAY ROAD AND 122 FEET SOUTHEASTERLY OF NORTH LINE OF SAID QUARTER SECTION; RUNNING THENCE SOUTH 78 DEGREES WEST ALONG SOUTHERLY LINE OF SAID MACK'S LAND, 115.5 FEET TO EASTERLY LINE OF CHICAGO AND NORTHWESTERN RAILWAY; THENCE SOUTHERLY ALONG EASTERLY LINE OF SAID RAILWAY, 99.11 FEET TO SOUTH LINE OF LAND CONVEYED BY HENRIETTA SNELL TO WILLIAM D. ELSEVER BY DEED DATED SEPTEMBER 9, 1899 AND RECORDED SEPTEMBER 11, 1899 AS DOCUMENT 2866377; THENCE NORTHERLY 78 DEGREES EAST ON SAID SOUTHERLY LINE TO CENTER OF GREEN BAY ROAD; THENCE NORTHERLY ALONG CENTER OF GREEN BAY ROAD, 99.66 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 7:

THE SOUTH 5-1/2 FEET OF LOT 3, AS MEASURED ON THE WEST LINE OF SAID LOT AND ALL OF LOTS 4, 5, 6 AND 7 IN SOUTH ROGERS TOUHY NORTH CLARK STREET AND BIRCHWOOD AVENUE SUBDIVISION OF THE SOUTH 1/2 OF BLOCK 10 IN MURPHY'S ADDITION TO ROGERS PARK, A SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THAT INDIAN BOUNDARY LINE AND WEST OF GREEN BAY ROAD, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 7516 N. CLARK  
CHICAGO, IL.

PIN# 11-30-402-013, 014, 015, 016, 017, 018, 019, 026