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**DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

From  
JL Holdings III, LLC

To

Well Fargo Bank Northwest, National Association, as Trustee

Dated as of June 29, 2006

This Instrument Prepared by,  
and after recording, return to:

Lewis A. Burleigh  
Dechert LLP  
200 Clarendon Street  
Boston, MA 02116  
617.654.8601

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THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Security Instrument") dated as of June 29, 2006 (the "Effective Date"), is made by JL HOLDINGS III, LLC, a Delaware limited liability company (together with its permitted assigns hereunder, "Borrower"), having its principal office at 2603 Camino Ramon, Suite 200, San Ramon, California 94583 to CHICAGO TITLE INSURANCE COMPANY, as deed of trust trustee ("Deed of Trust Trustee") for the benefit of WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, AS TRUSTEE ("Lender") pursuant to the Declaration of Trust dated as of the Effective Date (the "Declaration"), having its principal place of business at 299 South Main Street, 12th Floor, MAC: U1228-120 Salt Lake City, Utah 84111.

**WITNESSETH:**

To secure the payment of an indebtedness in the principal sum of \$756,351.47 in lawful money of the United States of America, to be paid with interest according to the terms of that certain Promissory Note dated as of even date herewith, with a maturity date of December 10, 2019, made by Borrower to Lender (such note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note") and all other Debt (hereinafter defined), Borrower hereby conveys and warrants to the Deed of Trust Trustee IN TRUST WITH POWER OF SALE for the benefit of Lender and its successors and assigns Borrower's leasehold interest in the Premises (as defined herein) which is described in **Exhibit A** attached hereto 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 Borrower now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Borrower's right, title and interest in and to 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") subject, however, to the Permitted Exceptions (as hereinafter defined):

- (a) all right, title and interest of Borrower as lessee under the Lease (the "Ground Lease") described on Schedule A attached hereto in and to all that certain real property described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Premises"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim and demand whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;
- (b) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Mortgaged Property, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in

equity, of Borrower of, in and to the Mortgaged Property and every part and parcel thereof, with the appurtenances thereto;

- (c) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Borrower in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted from time to time by the State or States where any of the Mortgaged Property is located or where Borrower is organized, as applicable (the "Uniform Commercial Code"), superior in priority to the lien of this Security Instrument. In connection with Equipment which is leased to Borrower or which is subject to a lien or security interest which is superior to the lien of this Security Instrument, this Security Instrument shall also cover all right, title and interest of each Borrower in and to all deposits, and the benefit of all payments now or hereafter made with respect to such Equipment;
- (d) all awards or payments, including interest thereon, which may hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain or condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;
- (e) all right, title and interest of Borrower in and to (i) that certain Lease dated as of December 23, 1998 (together with all amendments, modifications and supplements thereto, the "Lease") between Borrower, as lessor, and Brinker Restaurant Corporation, as lessee (together with any permitted assignees under the Lease, the "Lessee"), (ii) the guaranty of Lessee's obligations under the Lease (the "Lease Guaranty"), dated as of even date with the Lease, by Brinker International, Inc. (the "Lease Guarantor"), relating to the Lease, and (iii) all other leases, subleases (if, and to the extent that, Borrower has any rights, title or interest therein), including, without limitation, any assignments thereof (including, without limitation, all guarantees of any such leases, assignment of leases and subleases) and other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property and the Improvements heretofore or hereafter entered into (the "Other Leases"), and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Mortgaged Property (if, and to the extent that, Borrower has any rights, title or interest therein) (the "Rents"), and all proceeds from the sale or other disposition of the Lease or Other Leases and the right to receive and apply the Rents to the payment of the Debt and the right to

receive and apply any payments made to Borrower by the Lessee in connection with any condemnation or casualty, including, without limitation, Lessee's purchase of the Mortgaged Property, to payment of the Debt;

- (f) all right, title and interest of Borrower in and to any insurance policies covering the Mortgaged Property or the Lease, including, without limitation, all proceeds thereof and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property or any part thereof, subject to and in accordance with the terms and conditions of the Lease;
- (g) subject to the terms and provisions of this Security Instrument, the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Lender in the Mortgaged Property or any part thereof;
- (h) all franchises, trade names, trademarks, symbols, service marks, books, records, plans and specifications, contracts, licenses, approvals, consents, subcontracts, service contracts, management contracts, permits and other agreements of any nature whatsoever now or hereafter obtained or entered into by Borrower, or any managing agent of the Mortgaged Property on behalf of Borrower, with respect to the use, occupation, development, construction and/or operation of the Mortgaged Property or any part thereof or the activities conducted thereon or therein, or otherwise pertaining to the Mortgaged Property or any part thereof (but excluding any such items now or hereafter obtained or entered into by Lessee or Lease Guarantor if, and to the extent that, Borrower has no right, title or interest therein);
- (i) all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Mortgaged Property or any part thereof, and all reserve accounts, accounts for the deposit, collection and/or disbursement of Rents and other accounts now or hereafter in existence under any Loan Documents with respect to the Loan (as defined in paragraph 50), including, without limitation, all interest reserve accounts and replacement reserve accounts provided for under any documentation entered into or delivered by Borrower in connection with the Loan;
- (j) subject to the terms of the Assignment, all rights which Borrower now has or may hereafter acquire, to be indemnified and/or held harmless from any liability, loss, damage, costs or expense (including, without limitation, attorneys' fees and disbursements) relating to the Mortgaged Property or any part thereof;
- (k) all appurtenances in respect of or otherwise relating to the Lease, including, but not limited to, all the estate and rights of the Borrower of, in and to (i) all modifications, extensions and renewals of the Lease and all rights to renew or extend the term thereof, (ii) all of Borrower's rights, if any, pertaining to deposits of the Lessee under the Lease (including lessee security deposits, if any), (iii) all other options, privileges and rights

granted and demised to the Borrower under the Lease, (iv) all the right or privilege of the Borrower to terminate, cancel, abridge, surrender, merge, modify or amend the Lease, and (v) any and all possessory rights of the Borrower and other rights and/or privileges of possession, including, without limitation, the Borrower's right to elect to take possession of the Mortgaged Property;

- (l) all of the Borrower's claims and rights to damages and any other remedies in connection with or arising from the rejection of the Lease by the Lessee or any trustee, custodian or receiver pursuant to the United States Bankruptcy Code, as amended (the "Bankruptcy Code") in the event that there shall be filed by or against the Lessee any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereafter in effect;
- (m) all of Borrower's interest in and to all minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Premises;
- (n) all present and future monetary deposits given by Borrower to any public or private utility with respect to utility services furnished to any part of the Premises or the Improvements;
- (o) all right, title and interest of Borrower in and to all building materials, supplies and equipment now or hereafter placed on the Premises or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Premises or the Improvements;
- (p) all right, title and interest of Borrower in and to all refunds and rebates of taxes and assessments relating to the Premises and Improvements (except to the extent such refunds and rebates relate to taxes or assessments which are paid by the Lessee under the Lease);
- (q) all of Borrower's interest in moneys and investments which may from time to time become subject to the lien hereof;
- (r) all right, title and interest of Borrower in and to all proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, the proceeds of insurance and condemnation awards; and
- (s) any contract right, option or right of first refusal, now owned or hereafter acquired by Borrower, to purchase or otherwise acquire the interest of the lessor (the "Ground Lessor") under the Ground Lease or any other estate, title or interest in or to the property subject to the Ground Lease;
- (t) any right of Borrower to reject or terminate, or to agree to or acquiesce in any rejection or termination of the Ground Lease, whether made with respect to any election under Section 365(b) of the Bankruptcy Code (or any successor provision) or under any similar law or right of any nature, or otherwise;



- (u) all other rights and privileges (including but not limited to any credit, security, deposit and offset) of the Borrower as lessee under the Ground Lease and all rights, privileges and prerogatives to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease;
- (v) all other or greater rights and interests of every nature in the Premises (including the fee simple estate therein) or the Improvements or the Ground Lease and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower (excluding, however, the Excepted Payments and Excepted Rights as specifically set forth in the Assignment).

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever, provided that the Mortgaged Property shall include Excepted Rights and Excepted Payments, as defined in the Assignment, only to the extent Lender has rights to such Excepted Rights and Excepted Payments as specifically set forth in the Assignment, subject, however to the Permitted Exceptions (hereinafter defined).

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

- (a) The full and prompt payment of the principal amount evidenced by the Note, together with interest thereon at the rate or rates set forth therein and, if applicable, the Prepayment Consideration (as defined in the Note);
- (b) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any of the Loan Documents (hereinafter defined) and the payment of all other sums therein covenanted to be paid;
- (c) Any and all additional advances made by Lender pursuant to this Security Instrument or the other Loan Documents to protect or preserve the Mortgaged Property or the lien or security interest created hereby on the Mortgaged Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower remains the owner of the Mortgaged Property at the time of such advances);
- (d) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof, it being contemplated by Borrower and Lender that Borrower may hereafter become so indebted to Lender, provided that upon payment in full of the Note and amounts due under this Security Instrument relating to the Mortgaged Property, other indebtedness owing by Borrower to Lender secured by this Security Instrument shall no longer be included in the meaning of the term "Debt", and this Security Instrument shall be discharged and cancelled; and

- (e) Payment and performance of all modifications, amendments, extensions, consolidations, and renewals, however evidenced, of any of the obligations described in (a) through (d) above.

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

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

1. Payment of Debt and Performance of Covenants, Conditions and Agreements.

Borrower shall pay the Debt at the time and in the manner provided in the Note and in the other Loan Documents. Borrower shall perform, observe or comply with all of the covenants, conditions and agreements contained in the Note, this Security Instrument and any and all other documents (collectively, the "Loan Documents") now or hereafter executed by Borrower and/or others and by or in favor of Lender, which evidence, secure or guarantee all or any portion of the payments due under the Note or otherwise is executed and/or delivered in connection with and directly related to the Note and this Security Instrument (including, without limitation, the Assignment). All payments due to Borrower or Lender under the Lease (other than Excepted Rights and Excepted Payments and amounts owed to third parties such as ground lessors or taxing authorities) shall be paid directly by Lessee to Lender when such amounts are due and payable. All such payments received by Lender shall be applied promptly upon receipt, but not less than monthly, as follows: *first*, to payment of any unpaid Lender fees as specified in paragraph 55 hereof; *second*, all amounts then due and payable under the Note and the other Loan Documents ("Debt Service") shall be paid to or retained by Lender, as the case may be; and *third*, except for any payments made in advance of their due date (which such payments shall be held by the Lender and applied as provided in this sentence on such due date), as long as no uncured Event of Default (hereinafter defined) or payment or bankruptcy default as described in paragraphs 21(a) or 21(i) hereof exists hereunder or under the Note or any of the other Loan Documents, the balance of funds, if any, shall be paid within five (5) Business Days (as defined in the Note) after the receipt of good funds by Lender to Borrower by wire transfer of immediately available funds to an account designated by Borrower, which payments to Borrower shall be free of the lien of this Security Instrument and all rights of Lender under the other Loan Documents, including, without limitation, the Assignment. Funds held by Lender shall be held in an interest bearing account and, so long as no Event of Default has occurred and is continuing, earnings thereon shall be remitted to Borrower on a current basis.

2. Warranty of Title; Other Representations.

- (a) Borrower is lawfully seized and possessed of a valid, subsisting and indefeasible leasehold estate in all of the property subject to the Ground Lease, and has the right, power and authority to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey such leasehold estate to Lender. The Ground Lease is a lease of an unencumbered (except as otherwise provided herein) ground leasehold estate in the Premises subject, in each case, to no liens, mortgages or

encumbrances other than Permitted Exceptions (as hereinafter defined). Borrower leases its interest in the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for (i) the Lease, (ii) the Other Leases, (iii) those exceptions shown in (or insured against by) the title insurance policy insuring (or any pro forma title insurance policy purporting to insure) the lien of this Security Instrument, including any outstanding fee mortgages and other leases prior to the Ground Lease (if applicable) shown in such title policy or pro forma and (iv) other items expressly herein permitted (collectively, the "Permitted Exceptions"). The Permitted Exceptions do not and will not materially and adversely affect (a) the ability of Borrower to pay in full the principal and interest on the Note in a timely manner, or (b) the use of the Premises for the use currently being made thereof, the operation of the Premises as currently being operated, or the value of the Premises. Subject to the Permitted Exceptions, Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend such title, validity and priority to Lender against the claims of all parties or persons whomsoever. The foregoing warranty of title shall survive the foreclosure of this Security Instrument and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Mortgaged Property pursuant to any foreclosure. Upon the recording of this Security Instrument in the county recorder's office of the county where the Premises are located and the filing of appropriate UCC financing statements, Lender will have a valid first lien on the Mortgaged Property, subject only to Permitted Exceptions.

- (b) Borrower has not borrowed or received debt financing other than the Debt that has not been heretofore or concurrently herewith paid in full. Borrower has no known material contingent liabilities. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which it or any of its property is bound, other than obligations incurred in the ordinary course of business and other than obligations under the Loan Documents and the Lease and the Ground Lease.
- (c) To the best of Borrower's knowledge, there are no pending actions, suits or proceedings, arbitrations or governmental investigations against the Premises, an adverse outcome of which would materially affect Borrower's performance under the Loan Documents.
- (d) Borrower (1) has not entered into this transaction or any Loan Document with the intent to hinder, delay or defraud any creditor, and (2) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents and the Lease, the fair saleable value of Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed, probable or contingent liabilities. Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will

not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of or payable to Borrower).

- (e) Borrower is not (1) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended; (2) a "holding company" or "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (3) subject to any other federal or state law or regulation which would restrict or regulate its ability to enter into and perform the terms of the Note and this Security Instrument.
- (f) To the best of Borrower's knowledge, (i) the Premises have adequate rights of access to public ways and are served by adequate water, sewer, sanitary sewer and storm drain facilities; (ii) all public utilities necessary to the continued use and enjoyment of the Improvements as presently used and enjoyed are located in the public right-of-way abutting the Premises, and all such utilities are connected so as to serve the Premises without passing over other property, or perpetual access easements for such utility purposes are appurtenant rights to the Premises; and (iii) all roads necessary for the full utilization of the Improvements for their current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subjects of access easements for the benefit of the Premises.
- (g) To the best of Borrower's knowledge and except as disclosed in the Lender's title insurance policy, there are no pending or, to the knowledge of Borrower, proposed special or other assessments for public improvements or otherwise affecting the Premises which are not the obligation of the Lessee under the Lease.
- (h) To the best of Borrower's knowledge and except as shown in the survey or site plan delivered to Lender, the Improvements are not located in a flood hazard area as defined by the Federal Insurance Administration.
- (i) No statement of fact made by Borrower in the Loan Documents contains any untrue statement of material fact or omits to state any material fact necessary to make statements contained herein or therein not materially misleading. There is no fact presently known to Borrower which has not been disclosed which materially and adversely affects, nor as far as Borrower can foresee, might materially and adversely affect the business, operations or condition (financial or otherwise) of Borrower.
- (j) Borrower, and to the best of Borrower's knowledge, (i) each Person owning an interest of 20% or more in Borrower, and (ii) Guarantor: (A) is not currently

identified on the OFAC List, (B) is not a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of any applicable legal requirement, and (C) is not in violation of Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and the Uniting and Strengthening America by Providing Appropriate Tools Required in Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56). "OFAC List" as used herein means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any applicable legal requirement (or if such list does not exist, the similar list then being maintained by the United States), including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States. The OFAC List currently is accessible through the internet website at [www.treas.gov/ofac/t11sdn.pdf](http://www.treas.gov/ofac/t11sdn.pdf).

- (k) (i) None of the funds or other assets of Borrower or Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under federal law, including, without limitation, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. , and any executive orders or regulations promulgated thereunder, with the result that (A) the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law, or (B) the Loan is in violation of law ("Embargoed Person").
- (ii) No Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable (whether directly or indirectly), with the result that (A) the investment in Borrower or Guarantor, as applicable (whether directly or indirectly) is prohibited by law, or (B) the Loan is in violation of law; and none of the funds of Borrower or Guarantor, as applicable, have been derived from any unlawful activity with the result that (y) the investment in Borrower or Guarantor, as applicable (whether directly or indirectly) is prohibited by law, or (z) the Loan is in violation of law.

### 3. Insurance.

- (a) During the time that the Lease is in effect, Borrower shall cause the Mortgaged Property at all times during the entire term of this Security Instrument to be insured by either Borrower or Lessee for the mutual benefit of Borrower and Lender against loss or damage by fire and against loss or damage to the Improvements and Equipment by other risks and hazards covered by a standard "all risk" insurance policy, as specified in the Lease, together with such other insurance as is required to be maintained by Borrower or Lessee under the Lease; provided, that Lessee may self-insure as and to the extent permitted under the

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

- (b) Unless such insurance is being provided by Lessee under the Lease or the Lessee is self-insuring in accordance with the provisions of the Lease, Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain during the entire term of this Security Instrument the following Policies:
- (i) Flood insurance if any part of the Improvements included within the Mortgaged Property are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount equal to at least the then full replacement value of such Improvements or the amount of flood insurance available under said Act, whichever is less.
  - (ii) Comprehensive general liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages on an "occurrence basis" with minimum combined single limit coverage of not less than \$5,000,000.
  - (iii) Insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, sprinkler systems, high pressure piping and machinery, elevators and

- escalators, if any, and other similar equipment installed in or on the Improvements, in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements which policies shall insure against physical damage to and loss of occupancy and use of the Improvements arising out of an accident or breakdown covered thereunder.
- (iv) During the period of any construction on the Premises or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value" or "Course of Construction" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount reasonably approved by Lender and, to the extent required by applicable law, worker's compensation insurance covering all persons engaged in such construction, renovation or alteration.
  - (v) Loss of rents or loss of business income insurance in amounts sufficient to compensate Borrower for all Rents during a period of not less than one (1) year in which the Mortgaged Property may be damaged or destroyed; provided, that Borrower shall not be required to obtain or maintain the insurance described in this paragraph 3(b)(v) so long as the Lease is in effect and no Lease Default (as defined in paragraph 21(p) hereof) shall have occurred and be continuing.
  - (vi) Such other insurance as may from time to time be reasonably and customarily required by Lender in order to protect its interests in the Mortgaged Property.
- (c) All Policies (i) shall be issued by an insurer satisfactory to Lender in its sole discretion and having a claims paying ability rating of "A" or better by Standard & Poor's and "A2" or better by Moody's Investors Service, (ii) shall contain the standard New York mortgagee or equivalent non-contribution clause naming Lender as the person to which all payments made by such insurance company shall be paid and assuring continuance of coverage notwithstanding foreclosure and change of title to the Mortgaged Property or use of the Mortgaged Property for a more hazardous purpose, (iii) shall be maintained throughout the term of this Security Instrument without cost to Lender, (iv) shall be evidenced by a memorandum of insurance which shall be delivered to Lender, unless a copy of such memorandum of insurance is available without charge on the internet and Borrower or Lessee provides Lender with the internet address and password for accessing the memorandum, (v) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said Policies and that the insurer shall endeavor to provide to Lender at least thirty (30) days prior written notice of any modification or cancellation, and (vi) shall be reasonably satisfactory in form and substance to Lender and shall be reasonably approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Not later than ten (10)

days prior to the expiration date of each of the Policies, Borrower shall deliver to Lender satisfactory evidence of the renewal of each Policy.

- (d) Notwithstanding any provision herein to the contrary, Borrower shall be deemed to be in compliance with all insurance requirements hereunder if Lessee is in compliance with the provisions of the Lease regarding insurance requirements (including the self-insurance provisions of the Lease).
- (e) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give, or cause to be given, prompt notice thereof to Lender. Except as otherwise provided in the Lease, Borrower shall not settle or adjust or permit the settlement or adjustment of any insurance claim without Lender's prior written consent. All insurance proceeds required to be applied to restoration and repair of the Mortgaged Property under the Lease shall be held and disbursed in accordance with the provisions of the Lease for such restoration and repair subject to compliance with the following conditions: (i) no Lease Default (as defined in paragraph 21(p) hereof), then exists (ii) Borrower or Lessee, as the case may be, proceeds promptly after the insurance claims are settled with the restoration or repair; and (iii) the restoration or repair is performed in compliance with the Lease and all applicable laws, rules and regulations. The Net Award (hereinafter defined) shall be paid to Lessee, subject to the terms of the Lease; provided that if a Lease Default then exists, the Net Award will be paid to Lender and shall be applied by Lender toward payment of the Debt and such application shall not be subject to Prepayment Consideration or other prepayment consideration.
- (f) Borrower acknowledges Lender's right to obtain (either itself or by its agents, servicers, nominees or attorneys) at the expense of Borrower any insurance required hereunder should Borrower fail to or cause Lessee to do so as required hereunder.
- (g) [Reserved.]
- (h) The term "Net Award" as used in this Security Instrument shall mean all insurance proceeds and condemnation awards, as applicable, net of any reasonable expenses of Lender or Borrower in collecting such amounts, which are not required to be disbursed for repair and restoration of the Mortgaged Property pursuant to the provisions of the Lease.

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 by Borrower or Lessee on or prior to the date any interest or penalties are due thereon (except to the extent the Taxes or Other Charges are payable in installments, in which case Borrower or Lessee shall have the right to pay such Taxes or Other Charges in such installments). Borrower shall deliver, or cause to be delivered by Lessee, to Lender, promptly upon Lender's written request, evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever ("Prohibited Encumbrances") which may be or become a lien or charge against the Mortgaged Property, subject to paragraph 4(b) hereof, provided however, that the lien of ad valorem real estate taxes need not be discharged until the last day that the related taxes may be paid without incurring any interest or penalty. Borrower may, at its option and sole discretion, execute and deliver such powers of attorney and other documents granting the Lessee the rights to execute, acknowledge and deliver tax returns, statements and other tax related instruments, and pay any Taxes with respect to the Mortgaged Property or any income therefrom.

- (b) Notwithstanding the foregoing, provided that no Lease Default then exists, after prior written notice to Lender, Borrower may, and after notice to Borrower and Lender, Lessee may, to the extent permitted under the Lease, at its own expense, contest, or permit to be contested, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, Other Charges or Prohibited Encumbrances, provided that (i) such proceeding shall suspend the collection of the Taxes, Other Charges or Prohibited Encumbrances from Borrower and from the Mortgaged Property, (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute an Event of Default thereunder if contested by Borrower, or under the Lease if contested by Lessee, (iii) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost during the pendency of such contest, and (iv) if a Lease Default then exists or if the Lease is not in existence, Borrower or Lessee shall post a bond or other security with and acceptable to Lender in its discretion in an amount equal to 125% of the amount being contested. The right of contest provided in this paragraph is separate from and in addition to any right of contest the Lessee may have under the Lease.

5. Escrow Fund.

Borrower shall, during the existence of an Event of Default (unless the Lessee under the Lease is paying such sums directly to the taxing authority or insurer, as applicable), or during any period that the Lease is not in effect, at the option of Lender or its designee, pay to Lender on the first day of each calendar month one-twelfth of the amount reasonably estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, the Taxes and Other Charges and the Insurance

Premiums (the "Escrow Fund"). The Escrow Fund, if any, and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Borrower hereby pledges to Lender any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Lender will apply the Escrow Fund to the timely payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Other Charges and Insurance Premiums pursuant to paragraphs 3 and 4 hereof, Lender shall return any excess to Borrower or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the Taxes and Other Charges and Insurance Premiums when due, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Lender may apply any sums then present in the Escrow Fund to the payment of the following items in any order in its sole discretion:

- (i) Interest on the unpaid principal balance of the Note;
- (ii) Amortization of the unpaid principal balance of the Note; or
- (iii) All other sums payable pursuant to the Note (including the Prepayment Consideration), this Security Instrument and the other Loan Documents (including taxes and insurance premiums), including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument.

Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender, but shall be held in an interest bearing account. Interest on the Escrow Fund shall be payable or credited to Borrower, except during the continuance of an Event of Default.

6. Condemnation.

- (a) Borrower shall, upon obtaining knowledge thereof, promptly give or shall cause Lessee to promptly give Lender written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, in this Security Instrument and the other Loan Documents and the Debt shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Lender to the discharge of the Debt. Subject to the terms of the Lease, Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out

of the award interest at the rate or rates provided herein and in the Note. Subject to the terms of the Lease (provided that no default beyond any applicable notice and/or cure period then exists under the Lease), Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender.

- (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. Subject to the terms of the Lease, the Net Award shall be delivered to Lender, and, to the extent (if any) not required under the Lease to be applied for such restoration and repair, shall be paid to Lessee; provided that, if a Lease Default then exists, then such Net Award will be paid to Lender to be applied to the reduction or discharge of the Debt whether or not then due and payable. Such application is to be without payment of any the Prepayment Consideration or any other prepayment consideration, except that if an Event of Default under this Security Instrument has occurred and is continuing prior to the commencement of any condemnation or eminent domain proceeding, then such application shall be subject to the payment of the Prepayment Consideration in accordance with the terms of the Note.

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

7. The Lease.

- (a) Borrower, by this Security Instrument and the Assignment has absolutely and unconditionally assigned to Lender, all of Borrower's right, title and interest in the Lease, the Other Leases and the Rents, it being intended by Borrower that such assignment constitutes a present, absolute assignment, subject to the terms and conditions of the Assignment. Borrower represents to Lender that, as of the date hereof, (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 Lender,

(iii) Borrower and, to the best of Borrower's knowledge, Lessee, is not in default under any of the terms, covenants or conditions of the Lease, (iv) Borrower 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, including all additional rent, have been paid in full.

- (b) Borrower agrees with Lender that Borrower (i) shall observe and perform all the obligations imposed upon the Borrower as lessor under the Lease, keep the Lease in full force and effect and shall not do or permit to be done anything to impair the value of the Lease as a security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) subject to clause (vii) below, shall enforce all of the terms, covenants and conditions contained in the Lease upon the part of the Lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not execute any other assignment of lessor's interest in the Lease (other than as permitted and in accordance with the terms of paragraph 9 hereof); (v) shall not alter, modify or change the terms of the Lease without the prior written consent of Lender, 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 waive, consent to, reject, approve or disapprove any action or inaction requested by Lessee without the prior written consent of Lender including, without limitation any assignment of or subletting under the Lease (provided, however, that Lender's consent to a subletting or assignment shall not be required if Borrower's consent is not required pursuant to the Lease and such subletting or assignment is in accordance with the Lease terms); (vii) except as expressly provided in the Assignment, shall not pursue any remedies under the Lease without the prior written consent of Lender, provided that (without giving notice of default), Borrower may notify Lessee of its non-payment of rent; (viii) upon request of Lender, shall request and use reasonable efforts to obtain an estoppel certificate from Lessee in substantially the form required by the Lease or if not so required, in form and substance reasonably satisfactory to Lender; and (ix) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Lender shall from time to time reasonably require.
- (c) Each scheduled payment of fixed monthly rent under the Lease (the "Fixed Rent") on each date for the payment thereof is at least equal to the interest and principal due and payable on the Note in the same month in which such payment of Fixed Rent becomes due and payable, and all of such payments, in the aggregate, are sufficient to pay the principal of the Note to maturity.

8. Maintenance of Mortgaged Property.

Borrower shall maintain or cause to be maintained the Mortgaged Property in a good and safe condition and repair that meets the standards of the Lease. The Improvements and

the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment or alterations as otherwise permitted under the Lease) without the prior written consent of Lender. Borrower shall cause the Mortgaged Property to be in compliance with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Borrower shall cause any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in paragraph 6 hereof to be promptly repaired, replaced or rebuilt, as provided in the Lease. Borrower shall not initiate, join in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a lawful nonconforming use, unless permitted under the Lease Borrower will not cause or permit such nonconforming use to be discontinued or abandoned without the prior written consent of Lender.

9. Transfer or Encumbrance of the Mortgaged Property.

(a) General. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Borrower default in the repayment of the Debt, Lender can recover all or a portion of the Debt by a sale of the Mortgaged Property. Except as otherwise provided herein, Borrower shall not, without the prior written consent of Lender, which consent may be withheld in its sole discretion, consummate a Sale or Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Sale or Transfer without Lender's prior written consent or as otherwise expressly permitted herein. This provision shall apply to every Sale or Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Sale or Transfer. Lender's consent to a Sale or Transfer shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any Sale or Transfer made in contravention of this paragraph shall be null and void and of no force and effect. It is expected that on or about the date of delivery hereof, the manager of Borrower will be dissolved and its assets distributed to Matthew Schoenberg, and that Jaylor Services, LLC will be substituted as the new manager of Borrower; no consent, delivery of documents or fee is required for such changes other than copies of the documents effecting such changes and a certified copy of the operating agreement of Jaylor Services, LLC.

(b) Definitions. The following terms shall have the definitions set forth below or otherwise as set forth in this paragraph 9, as so indicated:

"Beneficial Ownership Interest" shall mean the interest in Borrower which evidences or has the right to the economic or financial benefits or burdens of Borrower's business, which such interests may include, without limitation, those of a corporate shareholder, limited liability company member, trust beneficiary,

general partner, limited partner or joint venturer, or any controlling interest of any entity directly or indirectly controlling such general partner, managing partner, joint venturer or member, by operation of law or otherwise.

“Grantee” shall mean the Person to whom a Sale is made by the Borrower.

“Grantor” shall mean the then current Borrower who is making a Sale to a Grantee.

“Sale” shall mean the sale, conveyance, alienation, mortgage, encumbrance, pledge or other transfer of the Mortgaged Property or any part thereof or any interest therein, or the permitting of the Mortgaged Property or any part thereof or any interest therein to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred. A Sale shall be deemed to include, without limitation: (i) an installment sales agreement wherein Borrower agrees to sell the Mortgaged Property or any part thereof or any interest therein for a price to be paid in installments (provided, however, that a “Sale” shall not include the execution and delivery of a contract for sale of any portion of the Mortgaged Property which is not an installment sales agreement until the execution and delivery of a deed or other conveyance instrument contemplated thereby); (ii) an agreement by Borrower leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space lessee thereunder; (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower’s right, title and interest in and to the Lease or any Rents, except as evidenced by this Security Instrument, the Assignment or the other Loan Documents; and (iv) any divestiture of Borrower’s fee or leasehold, as applicable, title to the Mortgaged Property or any part thereof or any interest therein in any manner or way, whether voluntary or involuntary, or any merger, consolidation, dissolution or syndication affecting Borrower, except in the case of a foreclosure by Lender.

“Transfer” shall mean (i) any transfer, pledge or encumbrance (whether voluntary or involuntary) in one or a series of transactions in which all or any portion of the Beneficial Ownership Interest in Borrower is transferred, pledged or encumbered to a Person who is not, as of the date of such transfer, an existing holder of all or a part of the Beneficial Ownership Interest in Borrower, or (ii) any transfer of the “management and control” (as defined below) in an existing holder of the primary Beneficial Ownership Interest in Borrower (such transfer shall be a “Transfer” of that Borrower). The term “management and control” as used herein shall mean (A) if referring to a limited liability company that is member-managed, then any managing member interest, (B) if referring to a partnership (whether general or limited), then any general partner interest (excluding any general partner interest held by an SPC Member), and (C) if referring to any other type of entity, then fifty-one percent (51%) or more of the economic interest in such entity. Notwithstanding the foregoing, a Transfer shall not be deemed to exist if the following conditions are satisfied: (w) the transfer in one or a series of transactions aggregating less than forty-nine percent (49%) of the Beneficial Ownership Interest in Borrower; (x) such transfer does not change the actual

control of Borrower; (y) such transfer does not adversely affect the bankruptcy remote structure of the Borrower; and (z) such transfer does not include the transfer or replacement of any entity or person satisfying the independent management requirements for a bankruptcy remote structure unless the transferee or replacement entity or person also satisfies such independent management requirements for a bankruptcy remote structure.

“Transferee“ shall mean the Person to whom all or any portion of the Beneficial Ownership Interest in Borrower is being transferred, or, in the case of a Transfer as described in section (ii) of the definition of “Transfer” above, the holder of the primary Beneficial Ownership Interest in Borrower following such Transfer.

“Transferor“ shall mean the Person owning any Beneficial Ownership Interest in Borrower which is the subject of a Transfer.

(c) Sale Conditions. Notwithstanding anything herein to the contrary, a Sale to a Grantee satisfying the requirements of paragraph 20 hereof shall be permitted by Lender, and the prior written consent of Lender to such Sale shall not be required, provided that each of the following terms and conditions are satisfied:

- (i) No Event of Default is then continuing hereunder or under any of the other Loan Documents, and no Lease Default exists (and Lender shall have received a certificate from Borrower certifying such facts to the best of its knowledge, and a certificate from Grantee representing that, to its knowledge, no event which, with the passage of time, could become an Event of Default or Lease Default shall be continuing immediately following such Sale).
- (ii) Borrower pays or causes to be paid to Lender, concurrently with the closing of such Sale, any and all out-of-pocket costs and expenses, including, without limitation, the reasonable attorneys’ fees and disbursements, Uniform Commercial Code financing statement preparation costs and filing fees, title search costs and title insurance endorsement premiums incurred by Lender in connection with the review, approval and documentation of the Loan assumption and other matters related to such Sale.
- (iii) The Grantee assumes and agrees to pay (subject to the non-recourse provisions of paragraph 51 hereof) the indebtedness secured hereby and to perform all obligations under the Note, this Security Instrument, the Participation Agreement (hereinafter defined) and the other Loan Documents pursuant to the documents and agreements executed and delivered in connection therewith as Lender shall reasonably require to evidence and effectuate said assumption as hereby contemplated including, without limitation, an assumption agreement in form and substance reasonably acceptable to Lender (the “Loan Assumption Agreement“).

- (iv) Grantor and Grantee authorize the filing of new Uniform Commercial Code financing statements or financing statement amendments (if necessary) and any additional documents reasonably requested by Lender to effectuate the security interest of Lender in the Mortgaged Property as to the Grantee. In connection therewith, Lender agrees to authorize the filing of new financing statement amendment or termination to release any security interest against Grantor.
- (v) Grantor shall provide Lender with a copy of the following Sale documents: (i) a deed an assignment of the Ground Lease covering the Premises and Improvements, (ii) a bill of sale covering the personalty constituting the Mortgaged Property, (iii) a Lease assignment and assumption agreement in a form reasonably acceptable to Lender, and (iv) the Loan Assumption Agreement.
- (vi) If the Lease does not authorize the assignment of the Borrower's rights as the landlord under the Lease without Lessee's consent thereto, Grantor shall provide Lender with either (i) written evidence (including a legal opinion, if reasonably required by Lender), satisfactory to Lender in its reasonable discretion, that such transfer is permitted under the Lease or (ii) Lessee's execution, for approval purposes only, of the Lease assignment specified in subparagraph (v) above.
- (vii) Grantor shall cause to be delivered to Lender with respect to Lender's title insurance policy delivered at the closing of the initial Loan (the "Title Policy") such endorsements or certificates and other similar materials as Lender may reasonably deem necessary at the time of the Sale, all in form and substance reasonably satisfactory to Lender, including, without limitation, an endorsement or endorsements to the Title Policy insuring that the lien of this Security Instrument constitutes a first lien on Borrower's interest in the Mortgaged Property subject only to the Permitted Exceptions and subsequent title exceptions as heretofore approved by Lender or permitted under this Security Instrument, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in subparagraph (iii) and insuring that fee simple title a ground leasehold estate to the Mortgaged Property is vested in the Grantee, or, in lieu thereof, such other documents or evidence as Lender may reasonably require in order to confirm that such Title Policy is unaffected by the Sale.
- (viii) Grantor executes and delivers to Lender a release of Lender, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Note, this Security Instrument, and any of the other Loan Documents through and including the date of the closing of the Sale, which agreement shall be in form and substance reasonably satisfactory to Lender and shall be binding upon the Grantor.



- (ix) Grantee executes and delivers to Lender a certificate that, as of the date of closing of the Sale, Grantee is in compliance with the provisions of paragraph 20 hereof.
  - (x) Lender shall have received such legal opinions (including an authority opinion of Grantee and the holder or holders of the primary Beneficial Ownership Interest in Grantee, and an enforceability opinion as to the aforementioned Loan Assumption Agreement, each of which shall be substantively similar to the form of such opinion delivered in connection with the execution of this Security Instrument, or may be in such other form as is reasonably acceptable to Lender) as may be reasonably requested by Lender in connection with such Sale.
  - (xi) Reserved.
  - (xii) Lender shall have received written confirmation that the documents described above have been delivered in a form that complies with the terms hereof from special counsel to the owners of the Pass-Through Certificates (hereinafter defined), it being agreed that Dechert LLP is such counsel until Lender is otherwise notified in writing by the holders of a majority in percentage interest of the Pass-Through Certificates.
- (d) Transfer Conditions. Notwithstanding anything herein to the contrary, a Transfer shall be permitted by Lender, and the prior written consent of Lender to such Transfer shall not be required, provided that each of the following terms and conditions are satisfied:
- (i) No Event of Default is then continuing hereunder or under any of the other Loan Documents, and no Lease Default exists (and Lender shall have received a certificate from Transferor certifying such facts to the best of its knowledge, and a certificate from Transferee representing that, to its knowledge, no event which, with the passage of time, could become an Event of Default or Lease Default shall be continuing immediately following such Transfer).
  - (ii) Lender has received evidence reasonably satisfactory to it that all required approvals, if any, under the governing documents of Borrower to effectuate such Transfer shall have been obtained or are not needed.
  - (iii) [Reserved.]
  - (iv) [Reserved.]
  - (v) Lender shall have received evidence that Borrower and Transferee are each in good standing in its state of formation and are each duly qualified and in good standing in the state where the Mortgaged Property is located, if such qualification is required by the laws of such state in order for such party to fulfill its obligations in connection with the Loan.

- (vi) Lender shall have received an authority, execution and delivery opinion of the Transferee and Borrower (to the extent Borrower executes any operative documents in connection with the Transfer) substantively similar to the forms of such opinions delivered in connection with the execution of this Security Instrument, as applicable.
  - (vii) Reserved.
  - (viii) Reserved.
  - (ix) Lender shall have received written confirmation that the documents described above have been delivered in a form that complies with the terms hereof from special counsel to the owners of the Pass-Through Certificates (hereinafter defined), it being agreed that Dechert LLP is such counsel until Lender is otherwise notified in writing by the holders of a majority in percentage interest of the Pass-Through Certificates.
- (e) Special Sale and Transfer Provisions.
- (i) In connection with any Sale approved by Lender or consummated as herein provided, Lender agrees that the Grantor shall be released and relieved of all obligations under the Note, this Security Agreement and the other Loan Documents from and after the date of consummation of such Sale. Lender shall execute and deliver to such Grantor a written acknowledgment that all of the Sale Conditions set forth herein have been satisfied and a release to such effect at no cost to Lender.
  - (ii) [Reserved.]
  - (iii) [Reserved].
  - (iv) Notwithstanding the foregoing, however, (A) limited partnership interests in Borrower or in any general partner, limited partner, beneficial owner, member or trustee of Borrower or any other beneficial ownership interest, direct or indirect, in any trustee or beneficial owner of Borrower shall be freely transferable without the consent of Lender or compliance with the provisions of this paragraph 9, and (B) the removal and replacement of any limited partner, non-managing member or trustee of Borrower without otherwise violating the provisions of this paragraph 9, which person or entity is not required to satisfy the independent management requirements pursuant to paragraph 20 hereof, may be accomplished without the consent of Lender; provided, that in each such case, (i) such transfer, removal or replacement when taken with all such other transfers and removal, in the aggregate, shall result in the transfer of less than forty-nine percent (49%) of the Beneficial Ownership Interest in Borrower; (ii) such transfer, removal or replacement does not change the actual control of Borrower; (iii) such transfer, removal or replacement does not adversely affect the bankruptcy remote structure of the Borrower; and (iv) such

transfer, removal or replacement does not include the transfer, removal or replacement of any entity or person satisfying the independent management requirements for a bankruptcy remote structure unless the transferee or replacement entity or person also satisfies such independent management requirements for a bankruptcy remote structure.

- (v) Notwithstanding the foregoing, any involuntary transfer of a Beneficial Ownership Interest in Borrower caused by the death of any general or limited partner, shareholder, joint venturer, trustee, member, manager or other type of owner holding any Beneficial Ownership Interest in Borrower shall not be a default under this Security Instrument or constitute a Sale or Transfer so long as Borrower is reconstituted, if required, following such death and so long as either (i) those persons responsible for the management of the Mortgaged Property remain unchanged as a result of such death or (ii) any replacement management is approved by Lender (which approval shall not be unreasonably withheld). Subject to the first condition set forth in the preceding sentence, non-management interests in Borrower may be transferred to the spouse of Matthew Schoenberg, and to any direct descendants of Matthew Schoenberg and their respective spouses.
- (vi) In connection with each Sale or Transfer, Grantee (in the case of a Sale) or Borrower (in the case of a Transfer), as the case may be, shall represent and warrant to Lender in writing that all of the representations and warranties set forth in paragraph 37 hereof shall survive such Sale or Transfer.
- (f) Transaction Fee; Counsel Fee. It shall be a condition of any Sale or Transfer transaction that Borrower shall pay Lender, in addition to the amounts described above, in the case of a Sale, a fee of \$5,000 per Sale (on a per transaction basis, not a per property basis, whether of a single property or of all assets of Borrower to a single purchaser) and, in the case of a Transfer, a fee of \$1,000 per Transfer (as applicable, the "Transaction Fee"). In addition, Borrower will be or cause to be paid the reasonable fees and expenses of special counsel to the owners of the Pass-Through Certificates in connection with any Sale or Transfer as well as the reasonable out of pocket expenses of Lender.
- (g) [Reserved.]
- (h) Easements; Dedications. If no Event of Default shall have occurred and be continuing, Borrower, or the Lessee on behalf of Borrower, may, from time to time, in connection with the transactions contemplated by the Lease or otherwise, (i) sell and convey an interest in the Mortgaged Property to any Person legally empowered to take such interest under the power of eminent domain, (ii) grant routine utility, access and other customary easements, rights of way and other rights in the nature of easements with respect to the Mortgaged Property as Lessee may reasonably request, (iii) release or relocate existing easements and

appurtenances which are for the benefit of the Mortgaged Property as reasonably requested by Lessee, (iv) dedicate or transfer portions of the Mortgaged Property for road, highway or other public purposes, (v) execute petitions to have the Mortgaged Property annexed to any municipal corporation or utility district, (vi) enter into or modify existing easements, covenants, waivers, approvals or restrictions for utilities, parking or other matters as Lessee may desire or determines necessary for the operation of the Mortgaged Property as reasonably requested by Lessee, and (vii) execute and deliver to any Person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers. Borrower may instruct Lender to execute and deliver any instruments necessary to effect any of the above by providing Lender with a certificate attaching the following:

- (i) such instrument;
- (ii) a certificate of Borrower stating (A) that such grant, release, dedication, transfer, petition or amendment is not detrimental in any material respect to the proper conduct of Lessee's business on such Mortgaged Property, (B) the consideration, if any, being paid for such grant, release, dedication, transfer, petition or amendment and that Lessee considers such consideration to be fair and adequate, (C) that such grant, release, dedication, transfer, petition or amendment does not materially impair Lessee's use or operation of such Mortgaged Property or adversely affect the value of the Premises (or does not reduce the fair market value of the Mortgaged Property by any amount greater than the amount being paid to Borrower for such instrument), and (D) that, for so long as the Lease shall be in effect, Lessee will perform all obligations, if any, of Borrower under such instrument and will remain obligated under the Lease in accordance with its respective terms;
- (iii) if required under the Lease, an updated ALTA survey, or a site plan or other depiction, acceptable to Lender in its reasonable discretion, reflecting such grant, release, dedication, transfer, petition or amendment;
- (iv) with respect to any documents being recorded in the applicable real estate records, confirmation of lien priority of this Security Instrument from the title company that issued the Title Policy;
- (v) a letter from the appraiser who prepared the appraisal of the Mortgaged Property delivered to Lender at the time of delivery of this Security Instrument, or another appraiser reasonably acceptable to Lender to the effect that the grant, release, dedication or transfer of a portion of the Mortgaged Property for a road, highway or other public purpose or the grant or release is not estimated to reduce the fair market value of the Mortgaged Property by an amount greater than the amount of consideration being paid to Borrower or Lessee therefor; and

- (vi) such other instruments, certificates, title insurance policy endorsements and opinions of counsel as Lender may reasonably request.

Upon the satisfactory review by Lender and special counsel (referred to above) to the owners of the Pass-Through Certificates of the certificate and supporting documentation, Lender shall, without any further action or consent of any owner of a Pass-Through Certificate or any other Person, notify Borrower in writing that Lender has approved such certificate and supporting documentation, and request that Borrower execute and deliver the appropriate consent, subordination, deed or other instrument requested by Lessee.

If the consideration payable to Borrower (net of any amounts payable to the Lessee under the Lease or to the ground lessor under a Ground Lease) in connection with such grant, release, dedication, transfer, petition or amendment exceeds 2% of the then outstanding principal balance of the Loan, Borrower hereby assigns to Lender and agrees to deliver to Lender all such consideration actually received by Borrower (less reasonable actual transaction costs and applicable federal income tax on such proceeds) which shall be applied to the partial prepayment of the Note, without Prepayment Consideration or other penalty.

10. Estoppel Certificates. After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note; (ii) the unpaid principal amount of the Note; (iii) the rate of interest of the Note; (iv) the date installments of interest and/or principal were last paid; and (v) that the Note and this Security Instrument are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

Within fifteen (15) days after request by Borrower, and at Borrower's sole cost and expense (provided that Borrower shall only be required to reimburse Lender for its actual out-of-pocket costs (including reasonable legal fees and disbursements incurred by Lender)), Lender shall provide Borrower and/or Transferor, and Grantee, or Transferee, as applicable, a statement, duly certified (i) setting forth the outstanding principal amount of the Loan; (ii) confirming whether, to its actual knowledge, without independent investigation or inquiry, any default exists under the Note, this Security Instrument and the other Loan Documents; and (iii) attaching a copy of the Note, this Security Instrument and the other Loan Documents identified on Borrower's request, and certifying that to its actual knowledge, without independent investigation or inquiry, such copies are true, correct and complete. Lender shall be required to furnish such certificate only once a year or in connection with any pending or proposed Sale or Transfer as contemplated in the Loan Documents.

11. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Mortgaged Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Lender is advised by

counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable. Any prepayment made pursuant to this paragraph shall be without Prepayment Consideration or any other prepayment consideration.

12. Intentionally Omitted.
13. Documentary Stamps. If at any time the United States of America, any state or commonwealth thereof or any subdivision of any such state or commonwealth shall require revenue or other stamps to be affixed to the Note or this Security Instrument, or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.
14. Usury Laws. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all previous payments in excess of such maximum rate shall be deemed to have been payments in reduction of the principal and not on account of the interest due hereunder.
15. Books and Records. Borrower shall keep adequate books and records of account in accordance with sound accounting principles on a modified cash basis or a federal income tax basis, in either case consistently applied and furnish to Lender upon Lender's request: (a) unaudited financial statements of Borrower for the year just ended, including balance sheet and statement of income and expenses certified as true and correct by an officer, general partner or manager of the Borrower (provided, however, that Borrower shall not be required to provide such financial statements until at least 90 days following the end of the applicable fiscal year); (b) copies of all tax returns filed by Borrower within twenty (20) days after the filing thereof; and (c) copies of all financial information received by Borrower under the Lease within twenty (20) days after receipt thereof. Borrower shall provide Lender with such additional financial or management information with respect to Lessee or the Mortgaged Property as Lender may reasonably request, provided that in the case of Lessee any such additional information is available to Borrower pursuant to the terms and provisions of the Lease.
16. Performance of Other Agreements. Borrower shall observe and perform or cause Lessee to observe or perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property, including, without limitation, any reciprocal easement, operating or similar agreement, and if Borrower shall fail to so observe and perform, or cause to be

so observed and performed by Lessee, any such terms, Lender and its agents, employees, contractors, engineers, architects and other representatives shall have the right to so observe and perform such terms.

17. Further Acts, etc. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more Uniform Commercial Code financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Mortgaged Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this paragraph 17; provided, however, that such power of attorney shall only be exercised during the existence of an Event of Default hereunder.
18. Recording of Security Instrument, etc. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time (but only upon request of Lender), will cause this Security Instrument, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Lender in, the Mortgaged Property. Borrower will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Security Instrument.
19. Prepayment: Payup/Paydown.
- (a) Except as otherwise provided herein, the Debt may be prepaid in whole only, and not in part, as specified in the Note, and subject to Prepayment Consideration (as

defined in the Note). The Debt may be prepaid in part only as described below and in connection with the application of Net Award against the Debt as provided in paragraphs 3(e) and 6(b) hereof, in connection with minor releases and easements as described in paragraph 9(h), or as may be required pursuant to paragraphs 11, 12 or 13 hereof.

- (b) The transaction evidenced and secured by this Security Instrument and the Note is intended to be a revolving credit facility on the terms hereinafter set forth, meaning that the principal amount secured hereby may be paid down by Borrower (other than through monthly installment payments as set forth in the Note), subject to Lender's obligation to re-advance the sum so paid down from amounts deposited into escrow, as hereinafter provided. To the extent permitted by law, the lien securing the re-advanced amount shall have the same priority as the lien hereof prior to such paydown. The maximum indebtedness secured by this Security Instrument shall not exceed the original principal amount of the Note, plus interest and premium (if any) thereon, charges and expenses of collection incurred by Lender, amounts advanced for taxes or insurance, reasonable attorneys' fees and additional amounts constituting the Debt hereunder. Provided that Borrower certifies in writing that no default or Event of Default has occurred and is continuing, Borrower shall have the right (the "Paydown Right") to repay all or a portion of the Note, to be exercisable from time to time (the "Paydown Date") during the period from the date of this Security Instrument in connection with a Sale or Transfer (which has occurred or is anticipated to occur on or within ten (10) Business Days of the Paydown Date). Such Paydown Right shall be exercised to prepay an amount less than 100% of the outstanding principal amount of the Note (the amount actually so paid down is herein called the "Paydown Amount"). The Paydown Right may be exercised upon written notice (the "Paydown Notice") no fewer than six (6) Business Days and no more than thirty (30) days prior to the Paydown Date to Lender and Escrow Agent (as hereinafter defined). The Paydown Notice shall set forth the (i) amount of the Paydown Amount, (ii) the Paydown Date, (iii) the amount of each of the Paydown Prepayment Consideration (calculated as of the date of said notice), the Interim Interest Fee, the Interest Accrual and the Administrative Fee for the account of Lender (each as hereinafter defined and, together with the Paydown Amount, collectively called the "Total Paydown Amount"), and (iv) the "Paydown Period", which shall be a period of no more than thirty (30) days from the Paydown Date to and including the next Payment Date (if, contrary to the intent of the parties, Fixed Rent is received during the Paydown Period, it shall be processed by Lender as if the Paydown Right had not been exercised). In addition, in connection with the Paydown Prepayment Consideration, Lender shall initially calculate the amount of such premium and compare such calculations with the calculation provided in the Paydown Notice by the Borrower, and present such calculations to the Certificateholders. If the Registered Owners of a majority in percentage interest of Outstanding Pass-Through Certificates disagrees with such calculations and presents an alternative calculation of such amount, the calculations provided by the Registered Owners shall be substituted therefor and shall be conclusively deemed correct, absent manifest error. Borrower may



exercise its Paydown Right upon completion of the following (the "Paydown Requirements"): (i) all applicable conditions and requirements of paragraph 9 hereof shall have been satisfied, and (ii) Borrower shall have deposited with Escrow Agent the Total Paydown Amount. Notwithstanding satisfaction of the Paydown Requirements, however, the lien of this Security Instrument shall continue in full force and effect in accordance with the terms hereof. Upon satisfaction of the Paydown Requirements by Borrower, Lender and Borrower shall instruct Escrow Agent to hold and invest the Paydown Amount, the Paydown Prepayment Consideration, the Interim Interest Fee, the Interest Accrual and the Administrative Fee for the account of the Lender in accordance with the terms of the Escrow Agreement (hereinafter defined). Notwithstanding anything herein to the contrary, Borrower may withdraw its Paydown Notice at any time prior to the Paydown Date and satisfaction of the Paydown Requirements by written notice to Lender and Escrow Agent.

- (c) The transferee of the Mortgaged Property or the Borrower with a new beneficial owner (in either circumstance, the "New Borrower") shall have the right (the "Payup Right") to borrow an amount equal to the Paydown Amount (the "Payup Amount") on any Business Day during the Paydown Period. The Payup Right may be exercised by giving written notice (the "Payup Notice") to Lender and Escrow Agent no later than two (2) Business Days prior to the Payup Date (as hereinafter defined) setting forth its name, address and wire transfer instructions. The Payup Notice shall set forth the Business Day (the "Payup Date") upon which the Payup Right is to be exercised. New Borrower may consummate its Payup Right upon completion of the following (the "Payup Requirements"): (i) New Borrower shall have provided Lender and Escrow Agent with the Payup Notice; (ii) if and to the extent available under applicable law and title insurance regulations, New Borrower shall have delivered to Lender a title insurance endorsement confirming the continuation in effect of the original policy of mortgage title insurance insuring Lender and insuring no change in priority of lien as to the entire amount of the Debt following the borrowing by New Borrower of the Paydown Amount; (iii) New Borrower shall have provided Lender with the Transferee Documents (as hereinafter defined); (iv) Lender shall have received an opinion of counsel satisfactory to Lender to the effect that (A) Lender and the Registered Owners (as hereinafter defined) should not be subject to income tax liability as a result of the transactions contemplated in this paragraph and (B) the Trust created under the Declaration should not be or become an association taxable as a corporation for federal income tax purposes as a result of the transactions contemplated in this paragraph; and (v) an entity which then owns New Borrower and which provides evidence that it has a net worth acceptable to Lender in its discretion shall have delivered an agreement indemnifying Lender and each Registered Owner against tax liability as a result of the receipt by Lender (and by the Registered Owners of their respective shares) of the Paydown Amount as a repayment of principal of the Note; provided, however, that such indemnity shall not apply to (1) the Lender if it is a Real Estate Mortgage Investment Conduit pursuant to Section 860 et seq. of the Internal Revenue Code of 1986 as amended (a "REMIC") and (2) any Registered Owner which is a

REMIC. All documents described in the foregoing clauses (i) through (v) shall be in form and substance satisfactory to counsel for Lender.

- (d) Upon satisfaction of the Payup Requirements, Lender shall notify Escrow Agent of such fact and shall direct Escrow Agent to (i) re-advance on behalf of Lender (from amounts held by Escrow Agent pursuant to the Escrow Agreement) as principal under the Note the Payup Amount to New Borrower; (ii) pay to Guarantor or to such party as Guarantor directs in writing the Paydown Prepayment Consideration and Interest Accrual; (iii) remit to Lender the earnings on the Total Paydown Amount as partial compensation for the transactions contemplated hereby and not as a payment with respect to the Note, which earnings are to be distributed pro rata to the Registered Owners (as hereinafter defined); (iv) pay to Escrow Agent the Administrative Fee in accordance with the terms of the Escrow Agreement; and (v) pay to Lender the Interim Interest Fee which shall be held by Lender and remitted to the Registered Owners as part of the next regularly scheduled distribution (in lieu of an equal amount otherwise payable out of Rents).
- (e) In the event the Payup Requirements are not satisfied by 5:00 p.m. New York time on the next to last Business Day (as defined in the Note) of the Paydown Period, Lender shall notify Escrow Agent of such fact and shall instruct Escrow Agent on the following Business Day (as defined in the Note) to (i) remit to Lender the Paydown Amount as a prepayment of the Note and an amount equal to the applicable Paydown Prepayment Consideration; (ii) pay to Escrow Agent the Administrative Fee in accordance with the terms of the Escrow Agreement; (iii) pay to Lender the Interim Interest Fee and Interest Accrual to cover accrued but unpaid interest on the Note; (iv) pay to Lender the earnings on the Total Paydown Amount as partial compensation for the transactions contemplated hereby and not as a payment with respect to the Note, which earnings are to be distributed by Lender pro rata to the Registered Owners (as hereinafter defined) and (v) disburse to New Borrower all amounts, if any, remaining on deposit with the Escrow Agent after satisfying the requirements of subparts (i) through (iv) of this sentence. Upon receipt of any of the amounts set forth in subparts (i) through (iv) of the immediately preceding sentence, Lender shall remit such funds and the earnings on the Total Paydown Amount to the Registered Owners in accordance with their respective participation interests.
- (f) For purposes of this paragraph 19, the term "Administrative Fee" shall mean the fee paid to Escrow Agent in accordance with the Escrow Agreement (hereinafter defined). The term "Interest Accrual" shall mean an amount equal to the interest scheduled to accrue on the Note from the date through which interest thereon has been paid to the beginning of the Paydown Period. The term "Interim Interest Fee" shall mean an amount equal to the interest on the Note which would have accrued on the Note during the Paydown Period (from and including the first day thereof) if the Paydown Amount had not been paid. The term "Paydown Prepayment Consideration" shall mean an amount equal to the Prepayment Consideration incurred or to be incurred as a result of the Payup Requirements not

being satisfied by the time set forth in paragraph 19(e). "Escrow Agreement" shall mean an escrow agreement in the form acceptable to Borrower, Lender and the Escrow Agent named therein; an Escrow Agreement shall be executed and delivered by Borrower, Lender and Escrow Agent in connection with, and as a condition to, any exercise of the Paydown Right or the Payup Right hereunder. "Escrow Agent" shall mean a title insurance company or agency reasonably approved by Lender, together with its successors and assigns, acting as "Escrow Agent" under and in accordance with the terms of the Escrow Agreement.

- (g) "Transferee Documents" shall mean the following:
- (i) a certificate of the beneficial owner of New Borrower, attaching true and complete copies of New Borrower's and the beneficial owner of New Borrower's organizational documents and authorizing resolutions and certifying that all of the representations and warranties set forth in the respective Loan Documents, the Lease and all other documents related thereto to which New Borrower or the beneficial owner of New Borrower has become a party are true and correct as of the Payup Date;
  - (ii) good standing certificates of the New Borrower or the new beneficial owner of Borrower, whichever is applicable, from the Secretary of State of the state in which such entity is organized and the Secretary of State of the state where the Mortgaged Property is located, but the latter certificate shall only be required for such New Borrower or new beneficial owner if it is required by local law to qualify to do business in such state (provided, that if such Persons are not required by local law to qualify to do business in such state, Borrower shall have delivered to Lender an opinion of local counsel, in form and substance satisfactory to Lender, stating such conclusion);
  - (iii) an incumbency certificate of New Borrower or the new beneficial owner of Borrower, whichever is applicable, setting forth the authorized signatories of New Borrower with specimen signatures;
  - (iv) an opinion of outside counsel with respect to New Borrower, as to the enforceability of the Loan Documents, the Lease and the Replacement Indemnity in a form and content substantially identical to the opinions of Borrower delivered in connection with the execution and delivery of this Security Instrument (or a "down date" of the opinions of Borrower delivered in connection with the execution and delivery of this Security Instrument in form and substance satisfactory to Lender);
  - (v) an officer's certificate of New Borrower setting forth compliance with the single purpose entity requirements of paragraph 20 hereof.
- (h) Borrower agrees to pay or cause to be paid all reasonable fees and expenses (including the applicable Escrow Fee (hereinafter defined) and reasonable legal

fees) incurred by Borrower, Escrow Agent and Lender on behalf of the registered owners (the "Registered Owners") of those certain pass-through certificates (each a "Pass-Through Certificate") issued in connection with the Note and this Security Instrument, in connection with Borrower's or New Borrower's exercise of the Paydown Right and/or the Payup Right.

- (i) Borrower will also pay or cause to be paid the reasonable fees and expenses of special counsel to the Escrow Agent in connection with any Sale or Transfer.
20. Single Purpose Entity/Separateness. Borrower hereby represents and warrants to, and covenants with, Lender that as of the date hereof and until such time as the Debt shall be paid in full:
- (a) Borrower does not own and will not own any asset or property other than (i) its interest in the Mortgaged Property and other properties leased to Lessee and mortgaged to Lender (the "Other Properties"), and (ii) incidental personal property necessary for the ownership or operation of the Mortgaged Property and the Other Properties.
  - (b) To the extent its office, if any, is located in the offices of any of its affiliates, Borrower will pay fair market rent for its office space located therein and its fair share of any overhead costs with respect thereto.
  - (c) Borrower will not engage in any business other than the acquisition, ownership, management, leasing, financing, operation and sale of the Mortgaged Property and the Other Properties, and Borrower will conduct and operate its business as presently conducted and operated.
  - (d) Borrower will not enter into any contract or agreement with any affiliate of Borrower, any constituent party of Borrower, any guarantor or any affiliate of any constituent party or guarantor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party. This provision shall not prohibit Borrower from entering into a management agreement with an affiliate on market terms, provided that any payment to the manager is subordinated to Borrower's obligations hereunder and the manager has no right to a lien to secure any management fee.
  - (e) Borrower has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt (and the New Note, if applicable) or (ii) unsecured trade payables or accounts payable on account of incidentals or services supplied or furnished to Borrower which are customarily incurred in the ordinary course of business and generally payable within thirty (30) days, or (iii) obligations to Lessee under the Lease or to other tenants or occupants of the Mortgaged Property and the Other Properties.

- (f) Borrower has not made and will not make any loans or advances to any third party (including any affiliate or constituent party, any guarantor or any affiliate of any constituent party or guarantor), shall not pledge its assets for the benefit of any other entity and shall not acquire obligations or securities of its members or its affiliates.
- (g) Borrower is and will remain solvent and Borrower will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.
- (h) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence.
- (i) Borrower will make investments directly or by brokers engaged and paid by the Borrower or its agents (provided that if any such agent is an affiliate of the Borrower it shall be compensated at a fair market rate for its services).
- (j) Borrower will maintain books, accounting records and other corporate documents and records, financial statements, bank accounts and payroll accounts separate from those of its affiliates, any constituent party and any other person. If required by law to file tax returns, Borrower will file its own tax returns (if required by applicable law) and characterize itself as a separate entity (except to the extent it is treated as a disregarded entity solely for tax purposes) from any affiliate or other person in each and every report, tax return or financial statement. Borrower shall maintain its books, records, resolutions and agreements as official records.
- (k) Borrower will separately manage the Borrower's liabilities from those of any affiliate and pay from its assets (to the extent available) all of its own obligations, indebtedness and liabilities, including all administrative expenses and compensation to employees, consultants or agents, and all operating expenses.
- (l) Borrower will not become involved in the day-to-day management of any other person.
- (m) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any of its managers, members, any affiliate of Borrower, any constituent party of Borrower, any guarantor or any affiliate of any constituent party or guarantor), and shall conduct business in its own name and through its own authorized directors, officers, managers, employees and agents and shall maintain and utilize separate stationery, invoices and checks. Borrower shall correct any known misunderstanding regarding its status as a separate entity and shall not identify itself as a division or part of its members or affiliates or any of its affiliates as a division or part of Borrower.
- (n) Borrower will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

- (o) Borrower will not commingle the funds and other assets of Borrower with those of any affiliate or constituent party, any guarantor, or any affiliate of any constituent party or guarantor, or any other person.
- (p) Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, any guarantor, or any affiliate of any constituent party or guarantor, or any other person.
- (q) Borrower does not and will not hold itself out to be responsible for the debts or obligations of any other person.
- (r) Borrower will not dissolve or terminate or materially amend the terms of its trust agreement, certificate of incorporation, partnership agreement, operating agreement or other agreement pursuant to which Borrower is organized.
- (s) Borrower will not enter into any transaction of merger or consolidation, or liquidate or dissolve (or suffer any liquidation or dissolution), or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any entity.

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

- (a) if any portion of the Debt is not paid within five (5) days from the date it was due;
- (b) subject to the provisions of paragraph 4(b) hereof, if Taxes are not paid before they become delinquent, or Other Charges or other sums due hereunder are not paid when due, and Borrower fails to cure after ten (10) days after the earlier of notice or actual knowledge thereof;
- (c) subject to the provisions of paragraph 3(d) hereof, if (i) the Policies are not kept in full force and effect or (ii) within ten (10) days following written demand, Borrower shall fail to cause the delivery of any such Policies or a certificate, binder or other evidence of the renewal of any such Policies to Lender;
- (d) if Borrower violates or does not comply with the provisions of [subparagraphs 7(b)(iv), 7(b)(v), 7(b)(vi) or 7(b)(vii)];
- (e) if Borrower transfers or encumbers the Mortgaged Property or any interest therein in violation of the provisions of paragraph 9 hereof;
- (f) if Borrower breaches the provisions of paragraph 20 hereof,
- (g) if any representation or warranty of Borrower, or any guarantor, made herein or in any certificate, report, financial statement or other instrument or document furnished to Lender shall prove to have been false or misleading in any material respect when made;

- (h) if Borrower shall make a general assignment for the benefit of creditors or if Borrower shall generally not be paying its debts as they become due;
- (i) if a receiver, liquidator or trustee of Borrower shall be appointed or if Borrower shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in, by Borrower or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower upon the same not being discharged, stayed or dismissed within sixty (60) days;
- (j) if the Mortgaged Property or any part thereof is taken on execution or other process of law in any action against Borrower other than a condemnation proceeding;
- (k) if the holder of any lien or security interest on the Mortgaged Property, not including any fee mortgage which is subordinate to the Ground Lease (without implying the consent of Lender to the existence or creation of any such lien or security interest), whether superior or subordinate to this Security Instrument or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder;
- (l) subject to the provisions of paragraph 4(b) hereof, if the Mortgaged Property becomes subject to any mechanic's, materialmen's or other lien (other than for local real estate taxes or assessments which are not then due and payable) and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) calendar days after Borrower's actual knowledge thereof;
- (m) subject to the rights of Lessee to contest same as set forth in the Lease, if Borrower fails to cure, or fails to take commercially reasonable actions to enforce Lessee's obligations to cure, promptly any violations of laws or ordinances affecting the Mortgaged Property;
- (n) if Borrower fails to (i) permit on-site inspections of the Mortgaged Property (subject to the terms of the Lease, provided that no default beyond any applicable notice and/or cure period then exists under the Lease), or (ii) provide the financial information required pursuant to paragraph 15 hereof, and such breach or default continues for ten (10) days after written notice thereof from Lender;
- (o) if Borrower shall default in the observance or performance of any other term, covenant or condition of the Note, this Security Instrument or any of the other Loan Documents, and Borrower shall fail to remedy or cause to be remedied such default within thirty (30) days after notice by Lender to Borrower of such default,

or if such default is of such a nature that it cannot with due diligence be cured within said thirty (30) day period, and Borrower shall not commence or cause to be commenced within said thirty (30) days, or shall not thereafter diligently prosecute, or cause to be prosecuted, to completion, all steps necessary to cure such default within a reasonable period of time;

- (p) subject to paragraph 23(c) hereof, if any Event of Default under the Lease ("Lease Default") shall occur, provided that no Event of Default under the Loan Documents shall be deemed to exist as a result of this paragraph (p) until Borrower has received notice of the Lease Default and has failed to cause Lessee to cure same within the time, if any, provided by the Lease, and in no event shall an Event of Default exist hereunder by reason of a breach of the Lease by Lessee until such breach has become an Event of Default thereunder;
- (q) if an event of default occurs under any other mortgage or deed of trust from Borrower in favor of Lender;
- (r) if the Lease is canceled, terminated, abridged, modified or surrendered (other than as provided in the Lease) without the prior written consent of Lender; and
- (s) if Borrower violates or does not comply with the provisions of paragraph 66 hereof.

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

23. Right to Cure Defaults.

- (a) Subject to the rights of the Lessee under the Lease (provided that no Lease Default then exists), upon the occurrence and during the continuance of any Event of Default, Lender may (itself or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or curing or being deemed to have cured any default hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to the rights of the Lessee under the Lease (provided that no Lease Default then exists), Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the



Mortgaged Property for such purposes and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to protect Lender's interest in the Mortgaged Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including, without limitation, the Prepayment Consideration, if any, and reasonable attorneys' fees and disbursements to the extent permitted by law), with interest as provided in this paragraph 23, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such reasonable costs and expenses incurred by Lender in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the above rate shall be deemed to be protective advances hereunder and shall constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

- (b) In order to facilitate Lender's rights under subparagraph (a) above and subject to Lessee's rights under the Lease (provided that no default beyond any applicable notice and/or cure period then exists under the Lease), Borrower hereby further grants to Lender and any agents, employees, contractors, engineers, architects, nominees, attorneys and other representatives of Lender, a license and right of access on, over, through and under the Mortgaged Property in order to exercise any such rights. Such license and right of access is self-effectuating and runs with the land during the duration of this Security Instrument, and shall be binding upon Borrower and all successors and assigns of Borrower. Borrower shall cause the foregoing rights of Lender and such license and right of access to be agreed to by and binding upon all lessees of the Mortgaged Property and all successors and assigns of such lessees. Borrower shall promptly execute, and cause to be executed, any other documents reasonably required by Lender in order to further confirm the foregoing rights of Lender and such license and right of access. For the foregoing purposes, Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to exercise any such rights in the name of Borrower. Borrower empowers said attorney-in-fact to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Security Instrument, the other Loan Documents and/or the Lease. It is further understood and agreed that the foregoing power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Borrower specifically agrees that all powers granted to Lender under this Security Instrument may be assigned by Lender to its successors or assigns as holder of the Note.
- (c) Borrower shall have the right but not the obligation to cure up to three (3) consecutive defaults by Lessee in the payment of fixed monthly rent under the Lease within the grace period set forth in the Lease, provided that such right shall be limited to six (6) monthly defaults during the life of the Note, and Borrower

shall have the right, but not the obligation, to cure any other default by Lessee within the grace periods set forth in the Lease.

24. Right of Entry. Subject to the rights of Lessee under the Lease (provided that no Lease Default then exists), Lender and its agents shall have the right at any time during normal business hours to enter and inspect the Mortgaged Property.
25. Remedies.
- (a) Upon the occurrence and during the continuation of any Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:
- (i) declare the entire Debt (including the Prepayment Consideration, if payable under the terms hereof or of the other Loan Documents) to be immediately due and payable;
  - (ii) institute proceedings for the complete foreclosure of this Security Instrument, as may be permitted by applicable laws, 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 Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien of this Security Instrument for the balance of the Debt not then due;
  - (iv) to the extent permitted by applicable law, sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
  - (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note;
  - (vi) to the extent permitted by applicable law and subject to paragraph 51 hereof, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument;

- (vii) to the extent permitted by applicable law and subject to Lessee's rights under the Lease (if still in effect) 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 Borrower, any guarantor or of any person, firm or other entity liable for the payment of the Debt;
- (viii) to the extent permitted by applicable law and subject to Lessee's rights under the Lease (if still in effect and provided that no Lease Default then exists), enter into or upon the Mortgaged Property, either personally or by its agents, servicers, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, and thereupon Lender (or any receiver appointed pursuant to paragraph (vii) above) may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Mortgaged Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Mortgaged Property; (c) exclude Borrower and its agents, servants and employees wholly from the Mortgaged Property; (d) manage and operate the Mortgaged Property; (e) preserve and maintain the Mortgaged Property; (f) make repairs and alterations to the Mortgaged Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Lender may in its sole discretion deem appropriate or desirable to place the Mortgaged Property in such condition as will, in Lender's sole discretion, make it or any part thereof readily marketable or rentable; (h) if the Lease has been terminated, conduct a marketing or leasing program with respect to the Mortgaged Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Mortgaged Property under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Lender as attorney-in-fact and agent of Borrower or in its own name as Lender, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents from the Mortgaged Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid Rents, payments, income or proceeds in the name of Borrower or Lender; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give

acquittance for Rents, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Lender by this Security Instrument; (r) require that Escrow Agent pay over to Lender all amounts then being held by Escrow Agent for application by Lender towards payment of the Debt or other sums then due Lender under the Loan Documents; and (s) do any acts which Lender in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Security Instrument. This Security Instrument shall constitute a direction to and full authority to the Lessee under the Lease, and any other tenant or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Lender, at the request of Lender, to pay all amounts owing under the Lease (other than Excepted Payments), and any other lease, contract, concession, license or other agreement to Lender without proof of the default relied upon. The Lessee under the Lease or any other tenant or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request, notice or demand by Lender for the payment to Lender of any Rents or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any default under this Security Instrument or under any of the other Loan Documents has actually occurred or is then existing. Borrower hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Mortgaged Property, in Borrower's name, place and stead, during an Event of Default, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any portion of the Debt is outstanding. Any money advanced by Lender in connection with any action taken under this subparagraph (viii), together with interest thereon at the Default Rate from the date of making such advancement by Lender until actually paid by Borrower, shall be a demand obligation owing by Borrower to Lender and shall be secured by this Security Instrument and by every other instrument securing all or any portion of the Debt;

- (ix) with or without taking possession of the Mortgaged Property, sue for or otherwise collect the Rents (other than Excepted Payments consisting of proceeds of public liability insurance), including those past due and unpaid, as may be permitted by applicable laws; and
- (x) exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

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

- (b) To the fullest extent permitted by law, the proceeds of any sale under this Security Instrument shall be applied, to the extent funds are so available, to the following items in such order as Lender in its discretion may determine:
- (i) To payment of the reasonable costs, expenses and fees of taking possession of the Mortgaged Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Lender's rights and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes;
  - (ii) To payment of all sums expended by Lender under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate;
  - (iii) To payment of interest, principal, the Prepayment Consideration and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Rate, in any order that Lender chooses in its sole discretion; and,
  - (iv) The remainder, if any, of such funds shall be disbursed to Borrower or to the person or persons legally entitled thereto.
- (c) To the extent permitted by applicable law, Lender may adjourn from time to time any sale by it to be made under or by virtue of this Security Instrument by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.
- (d) Upon the completion of any sale or sales made by Lender under or by virtue of this paragraph, Lender, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Lender is hereby irrevocably appointed the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under

or by virtue of this paragraph shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

- (e) Upon any sale made under or by virtue of this paragraph, Lender may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument.
- (f) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Security Instrument upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Lender hereunder, but such liens, rights, powers and remedies of Lender shall continue unimpaired as before.
26. Reasonable Use and Occupancy. In addition to the rights which Lender may have herein, upon the occurrence of any Event of Default, Lender, at its option, may require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Borrower or may require Borrower to vacate and surrender possession of the Mortgaged Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.
27. Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Mortgaged Property. Borrower by executing and delivering this Security Instrument has granted and hereby grants to Lender, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph 27 the "Collateral"). If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at the Mortgaged Property. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees and disbursements, incurred or paid by Lender in protecting the interest in the Collateral

and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. In the event of any change in name, identity or structure of any Borrower, such Borrower shall notify Lender thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Borrower shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Lender shall deem necessary and shall pay all expenses and fees in connection with the filing and recording thereof. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Lender, as secured party, in connection with the Collateral; provided, however, that such power of attorney shall only be exercised during the existence of an Event of Default hereunder. To the extent permitted by applicable law, this Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all of the Mortgaged Property which is or is to become fixtures. The name of the record owner of the real property is that of the ground lessor under the Ground Lease, or, if the Ground Lease is a sublease, the lessor(s) under any Master Ground Lease (as such term is defined in the Lease). The name and address of the Borrower, as Debtor, and Lender, as Secured Party are as set forth on page 1 hereof.

28. Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding which Lender, in its discretion, decides should be brought to protect their interest in the Mortgaged Property (which action or proceeding may be brought in the name and on behalf of Borrower upon the occurrence and during the continuation of an Event of Default hereunder). Lender shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.
29. Waiver of Counterclaim. All amounts due under this Security Instrument, the Note and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Borrower hereby waives the right to assert a setoff, counterclaim (other than a mandatory or compulsory counterclaim) or deduction in any action or proceeding brought against it by Lender.
30. Recovery of Sums Required to Be Paid. Subject to the provisions of paragraph 51 hereof, Lender shall have the right from time to time, to the extent permitted by applicable law, to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of

foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

31. Marshalling and Other Matters. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.
32. Hazardous Waste and Other Substances.
- (a) Except as otherwise disclosed by those certain environmental assessment reports with respect to the Mortgaged Property, which reports furnished to Lender by or on behalf of Borrower prior to the date hereof (collectively, the "Environmental Report"), or otherwise disclosed to Lender in writing (including, without limitation, as disclosed in any Permitted Exceptions), Borrower hereby represents and warrants to Lender that, as of the date hereof Borrower has received no written notice (i) that the Mortgaged Property is in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up (collectively, "Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq. and 40 C.F.R. §302.1 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Federal Water Pollution Control Act (also known as the Clean Water Act) (33 U.S.C. §1251 et seq. and 40 C.F.R. §116.1 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), and the regulations promulgated pursuant to said laws, all as amended, and any similar laws and regulations of the state having jurisdiction over the Mortgaged Property; (ii) that any material, waste or substance which is (A) included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in or pursuant to any Environmental Laws, or subject to regulation under any Environmental Law; (B) listed in the United States Department of Transportation Optional Hazardous Materials Table (49 C.F.R. § 172.101), as enacted as of the date hereof or as hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities (40 C.F.R. Part 302) as enacted as of the date hereof or as hereafter amended; or (C) explosive, radioactive, asbestos, a polychlorinated biphenyl, petroleum or a petroleum product or waste oil or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, generated, stored, processed or disposed of on or released or discharged at, onto, under or from the Mortgaged Property (including



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

- (b) As long as the Lease is in effect, Borrower shall enforce the obligations of Lessee thereunder with respect to compliance with Environmental Laws. If at any time the Lease is not in effect or if Lessee fails to perform its obligations thereunder, Borrower shall keep or cause the Mortgaged Property to be kept free from Hazardous Substances (except those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) to the extent required by all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances (except those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) by all lessees of space in the Improvements, and, without limiting the generality of the foregoing, during the term of this Security Instrument, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos or potentially asbestos containing substance.
- (c) Borrower shall promptly notify Lender if Borrower shall become aware of the possible existence of any Hazardous Substances (except those substances disclosed in the Environmental Report delivered to Lender and those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) on the Mortgaged Property or if Borrower shall become aware that the Mortgaged Property is or may be in direct or indirect violation of any Environmental Laws. Further, promptly upon receipt of the same, Borrower shall deliver to Lender copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments received by Borrower pertaining to the actual, alleged or potential presence or existence of any such Hazardous Substances (except those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in

compliance with Environmental Laws) at, on, about, under, within, near or in connection with the Mortgaged Property. Subject to the terms of the Lease, Borrower shall promptly and when and as required by any Environmental Laws, at Borrower's sole cost and expense, take, or cause Lessee to take, all actions as shall be necessary or advisable for the clean-up of any and all portions of the Mortgaged Property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner in compliance with the requirements of the Lease), and shall further pay or cause to be paid, at no expense to Lender, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Mortgaged Property. In the event Borrower fails to do so, but subject to the terms of the Lease, Lender may, but shall not be obligated to, cause the Mortgaged Property to be freed from any Hazardous Substances (except those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) or otherwise brought into conformance with Environmental Laws and any and all costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Borrower hereby grants to Lender and its agents and employees, subject to the rights of Lessee under the Lease, access to the Mortgaged Property and a license to remove any Hazardous Substances (except those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) and to do all things Lender shall deem necessary to bring the Mortgaged Property in conformance with applicable Environmental Laws. Borrower covenants and agrees, at Borrower's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts selected by Borrower and acceptable to Lender), and hold Lender harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lender or the Mortgaged Property, and arising directly or indirectly from or out of: (i) the presence, release or threat of release of any Hazardous Substances (except those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with applicable Environmental Laws) on, in, under or affecting all or any portion of the

Mortgaged Property or any surrounding areas caused by Borrower or its agents; (ii) the violation of any applicable Environmental Laws relating to or affecting the Mortgaged Property; (iii) the failure by Borrower or its agents to comply fully with the terms and conditions of this paragraph 32; (iv) the breach of any representation or warranty contained in this paragraph 32; or (v) the enforcement of this paragraph 32, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Substances (except those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with applicable Environmental Laws) from all or any portion of the Mortgaged Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances (except those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with applicable Environmental Laws) on, in, under or affecting any portion of the Mortgaged Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the applicable Environmental Laws in connection with all or any portion of the Mortgaged Property or any surrounding areas. Lender's rights under this paragraph shall survive payment in full of the indebtedness secured hereby and shall be in addition to all other rights of Lender under this Security Instrument, the Note and the other Loan Documents.

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

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

- (e) Without limiting the foregoing, where recommended by the Environmental Report and/or a "Phase I" or "Phase II" assessment, Borrower shall establish and comply, or shall cause Lessee to establish and comply, with an operations and maintenance program relative to the Mortgaged Property, in form and substance reasonably acceptable to Lender, prepared by an environmental consultant reasonably acceptable to Lender, which program shall address any Hazardous Substances (except those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with Environmental Laws) (including asbestos containing material or lead based paint) that may now or in the future be detected on the Mortgaged Property. Without limiting the generality of the preceding sentence, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify to address matters raised in the Environmental Report and/or a "Phase I" or "Phase II" assessment, (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (iii) where reasonable cause therefor is present as determined by Lender, at Borrower's sole expense, supplemental examination of the Mortgaged Property by consultants reasonably specified by Lender to address matters raised in the Environmental Report and/or a "Phase I" or "Phase II" assessment, (iv) subject to the terms of the Lease, access to the Mortgaged Property, by Lender, its agents or servicer, to review and assess the environmental condition of the Mortgaged Property and Borrower's compliance with any operations and maintenance program, and (v) variation of the operations and maintenance program in response to the reports provided by any such consultants.
- (f) If any action shall be brought against Lender based upon any of the matters for which Lender is indemnified under this paragraph 32, Lender shall notify Borrower in writing thereof and Borrower shall, or shall cause Lessee to, promptly assume the defense thereof, including, without limitation, the employment of counsel and the negotiation of any settlement; provided, however, that any failure of Lender to notify Borrower of such matter shall not impair or reduce the obligations of Borrower hereunder, except to the extent that the defense of such action is prejudiced by such failure to notify. Lender shall have the right, at Lender's expense, to employ separate counsel in any such action and to participate in the defense thereof. In the event Borrower shall fail to discharge or undertake to defend Lender against any claim, loss or liability for which Lender is indemnified hereunder, Lender may, at its sole option and election, defend or settle such claim, loss or liability. The liability of Borrower to Lender hereunder shall be conclusively established by such settlement, provided such

settlement is made in good faith, the amount of such liability to include both the settlement consideration and the costs and expenses, including, without limitation attorney's fees and disbursements, incurred by Lender in effecting such settlement. In such event, such settlement consideration, costs and expenses shall be included in costs described in subparagraph (c) above, shall bear interest at the Default Rate, and Borrower shall pay the same as provided in this paragraph 32.

33. Substitution of Deed of Trust Trustee. In the case of absence, death, disability, refusals or failure of Deed of Trust Trustee in this Security Instrument (Deed of Trust) named to act, or in the case it should resign (and Trustee is hereby authorized to resign without notice to, or consent of Borrower), or if Lender or holders of the Notes, or their attorney in fact shall desire, with or without cause, to replace the Deed of Trust Trustee, then Lender or holder, as the case may be, may name, and appoint a successor and substitute trustee (or another one) without other formality than an appointment and designation in writing, which need not be acknowledged, filed or recorded to be effective, except only in those circumstances – if any – where acknowledgement, filing and/or recording is required by applicable law and such law also precludes debtor from effectively waiving such requirement. Upon such appointment, this conveyance shall automatically vest in such substitute Deed of Trust Trustee so appointed.
34. Handicapped Access.
- (a) Subject to Lessee's rights of contest set forth in the Lease, Borrower 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 Lender's approval of alterations of the Mortgaged Property, except for alterations permitted and made in accordance with the terms of the Lease, Borrower shall not alter or permit the Mortgaged Property to be altered in any manner which would increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. Lender may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Lender.
  - (c) Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.
35. Indemnification. In addition to any other indemnifications provided herein or in the other Loan Documents, Borrower covenants and agrees at its sole cost and expense to protect,

defend, indemnify and save harmless Lender and any and all its successors and assigns hereunder from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Lender and any and all its successors and assigns hereunder (except to the extent caused by the gross negligence, willful misconduct or bad faith of Lender) by reason of any of the following for which the event or events which give rise to such cause of action or liability occurred prior to a foreclosure or deed in lieu of foreclosure or other transfer of the Mortgaged Property pursuant to Lender's exercise of its remedies hereunder: (a) ownership of this Security Instrument, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof to the extent arising from or in connection with the Mortgaged Property or, to the extent arising from or in connection with the Mortgaged Property, on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Security Instrument; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Substance (except those substances stored, used or sold by Ground Lessor, Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with Environmental Laws) or asbestos on, from, or affecting the Mortgaged Property or any property contiguous therewith; (g) to the extent not covered by insurance, any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or asbestos including, without limitation, the costs and expenses of any remedial action, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; and (j) any failure of the Mortgaged Property to comply with any Access Laws. Any amounts payable to Lender and any and all its successors and assigns hereunder by reason of the application of this paragraph 35 shall be secured by this Security Instrument and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender and any and all its successors and assigns hereunder until paid. The obligations and liabilities of Borrower under this paragraph 35 shall survive any termination, satisfaction or assignment of this Security Instrument and the exercise by Lender 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. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) hand delivery, with proof of attempted delivery,

(b) certified or registered United States mail, postage prepaid, (c) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (d) telecopier (with answerback acknowledged) provided that such telecopied notice must also be delivered by one of the means set forth in (a), (b) or (c) above, addressed to the parties as follows:

If to Lender: Wells Fargo Bank Northwest, National Association  
299 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Group  
Facsimile No.: 801.246.5053

with a copy to: Dechert LLP  
200 Clarendon Street, 27<sup>th</sup> Floor  
Boston, Massachusetts 02116  
Attention: Timothy Pecci, Esq.  
Facsimile No.: 617.426.6567

If to Borrower: JL Holdings III, LLC  
c/o Jaylor Services, LLC.  
2603 Camino Ramon, Suite 200  
San Ramon, California 94583  
Attention: Kenneth A. Freed, President  
Facsimile No.: 925-242-2822

with a copy to: Jones Bothwell & Dion LLP  
44 Montgomery Street, Suite 610  
San Francisco, California  
Attention: Vern S. Bothwell  
Facsimile No.: 415-951-8901

A party receiving a notice which does not comply with the technical requirements for notice under this Section 12.6 may elect to waive any deficiencies and treat the notice as having been properly given. A notice shall be deemed to have been given: (a) in the case of hand delivery, at the time of delivery; (b) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; (c) in the case of expedited prepaid delivery upon the first attempted delivery on a Business Day; or (d) in the case of telecopier, upon receipt of answerback confirmation, provided that such telecopied notice was also delivered as required in this Section 12.6.

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

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

to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

- (b) Borrower represents and warrants that Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and the related Treasury Department regulations, including temporary regulations.
- (c) Borrower represents and warrants that, as of the date of this Security Instrument and throughout the term of this Security Instrument, (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, and (ii) the assets of such Borrower do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. §2510.3-101.
- (d) Borrower represents and warrants to Lender that, as of the date of this Security Instrument and throughout the term of this Security Instrument (i) Borrower is not a "governmental plan" within the meaning of §3(32) of ERISA, and (ii) transactions by or with Borrower are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.
- (e) Borrower covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of this Security Instrument, as reasonably requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" or a "governmental plan"; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:
- (1) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);
  - (2) Less than twenty five percent (25%) of all equity interests in such Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); or
  - (3) Borrower 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 Security Instrument, entitling Lender to exercise any and all remedies to which it may be entitled under this Security Instrument or any of the other Loan Documents: (i) the failure of any representation or warranty made by Borrower under this paragraph to be true and correct in all respects, (ii) the failure of Borrower to provide Lender with the written certifications and evidence referred to in this paragraph, or (iii) the consummation by Borrower of a transaction which would cause this Security Instrument or any exercise of Lender's rights under this Security Instrument or the other Loan Documents to constitute a non-exempt



prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, or otherwise subjecting Lender to liability for violation of ERISA or such state statute.

- (g) Borrower has never had any employees or any employee benefit plan or participated in any multi-employer benefit plan, and will not, so long as the Note is outstanding, have any employee benefit plan or participate in any multi-employer benefit plan.
- (h) Borrower shall indemnify Lender and defend and hold Lender and any and all its successors and assigns hereunder harmless from and against all civil penalties, excise taxes, or other loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender and any and all its successors and assigns hereunder may incur, directly or indirectly, as a result of a default under this paragraph. This indemnity shall survive any termination, satisfaction or foreclosure of this Security Instrument.
38. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.
39. Remedies of Borrower. In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Security Instrument or the other Loan Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.
40. Discretion of Lender. Wherever pursuant to this Security Instrument, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole good faith discretion of Lender, unless this Security Instrument provides expressly to the contrary.
41. Non-Waiver. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower, Lease Guarantor or any other guarantor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents; (b) the release, regardless

of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof; or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Subject to paragraph 51 hereof, Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights and remedies of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

42. No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.
43. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.
44. Inapplicable Provisions. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.
45. Headings, Etc. The headings and captions of various paragraphs of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.
46. Duplicate Originals. This Security Instrument may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.
47. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein.

Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

48. Homestead. To the extent permissible under applicable law, Borrower hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part hereof.
49. Assignments. Lender shall have the right to assign or transfer its rights under this Security Instrument without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Security Instrument.
50. Cooperation. Borrower acknowledges that Lender and its successors and assigns may (a) sell this Security Instrument, the Note and other Loan Documents to one or more investors as a whole loan; (b) participate the loan (the "Loan") secured by this Security Instrument to one or more investors; (c) deposit this Security Instrument, the Note and the other Loan 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"). Borrower shall, at Lender's expense, cooperate in good faith with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements reasonably imposed by the participants involved in any Secondary Market Transaction including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to each Rating Agency and addressing such matters as each Rating Agency may require, and providing direct access to financial and other information relating to the Lessee and the Mortgaged Property (to the extent available to Borrower pursuant to the terms of the Lease); provided, however, that the Borrower shall not be required to modify any documents evidencing or securing the Loan which would modify (i) the interest rate payable under the Note; (ii) the stated maturity of the Note; (iii) the amortization of principal of the Note; or (iv) any other material economic term or other operating covenants of the Loan. Borrower shall provide such information and documents relating to Borrower, the Mortgaged Property (to the extent available to Borrower), the Lease and the Lessee (to the extent available to Borrower) as Lender or any Rating Agency may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Borrower, the Mortgaged Property and the Lessee. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Mortgaged Property may be included in a private placement memorandum, prospectus or other disclosure documents. As used herein, "Rating Agency" shall mean Moody's Investors Service, Inc. and Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. and any successor to any of them; provided, however, that at any time during which the Debt is an asset of a securitization or is otherwise an asset of any rated transaction, "Rating Agency" shall mean the rating agency or rating agencies that from time to time rate the securities,

certificates or other instruments issued in connection with such securitization or other transaction.

51. **Recourse Provisions.** Subject to the qualifications below, Lender shall not be entitled to and shall not enforce the liability and obligation of Borrower (or its trustees or beneficial owners) to perform and observe the obligations contained in this Security Instrument, the Note or in any of the other Loan Documents by any action or proceeding wherein a money judgment or personal liability shall be sought against Borrower or any beneficiaries, trustees, partners, members, managers, the economic and beneficial owners of Borrower or any partners, managers or members (or other constituent party(ies)) of Borrower or of any beneficial owners, officers, directors or trustees of Borrower or any partners, managers, officers, shareholders, members or directors of any thereof (collectively, the "**Released Parties**"), except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interests under the Note (and the New Note, if applicable), this Security Instrument or the other Loan Documents or in the Mortgaged Property, or any other collateral given by Borrower pursuant to this Security Instrument and the other Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower and/or the Released Parties only to the extent of Borrower's interest in the Mortgaged Property and in any other collateral given to Lender, and Lender, by accepting this Security Instrument, the Note and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower or any of the Released Parties in any such action or proceeding under, or by reason of, or in connection with this Security Instrument, the Note or the other Loan Documents. The provisions of this paragraph shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by this Security Instrument, the Note or any of the other Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under this Security Instrument; (c) affect the validity or enforceability of any guaranty made in connection with the Debt or any of the rights and remedies of the Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of the Assignment; or (f) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

- (i) the failure of Borrower to account for Lessee's security deposits, if any, or any other similar payment collected from Lessee by Borrower under the Lease;
- (ii) after notice of an uncured Event of Default and during the continuance of such Event of Default, the failure of Borrower to apply 100% of any and all net income (i.e., after payment of operating expenses relating to the Mortgaged Property) derived from the Mortgaged Property (excluding Excepted Rights and Excepted Payments), and received by Borrower, to the repayment of the Note;

- (iii) a material misrepresentation made by Borrower, or the holders of beneficial or ownership interests in Borrower, in connection with the financing evidenced by the Note, this Security Instrument or the other Loan Documents;
- (iv) any attempt by Borrower to divert or otherwise cause to be diverted any amounts payable to Lender for the benefit of Lender in accordance with the Loan Documents;
- (v) the misappropriation or misapplication of insurance or condemnation proceeds obtained by Borrower relating to the Mortgaged Property;
- (vi) any environmental matter(s) affecting the Mortgaged Property which is introduced or caused by Borrower or the beneficial owner of Borrower;
- (vii) any waste of or damage to the Mortgaged Property caused by the willful or wanton acts or omissions of Borrower or its agents;
- (viii) the willful or grossly negligent material violation by Borrower of any law, ordinance, rule, or regulation applicable to Borrower or the Mortgaged Property;
- (ix) the termination or amendment of the Lease by Borrower in violation of the terms hereof;
- (x) the failure of Borrower to maintain its existence as a single asset, special purpose entity in good standing, as required by this Security Instrument;
- (xi) Borrower fails to obtain Lender's prior written consent to any subordinate financing or other voluntary lien caused by Borrower or its agent encumbering the Mortgaged Property as required by this Security Instrument; and
- (xii) Borrower fails to obtain Lender's prior written consent to any Sale or Transfer as and to the extent required by this Security Instrument.

Notwithstanding anything to the contrary in this Security Instrument, the Note or any other Loan Documents, Lender shall not be deemed to have waived any right which Lender may have under §§506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by this Security Instrument or to require that all collateral shall continue to secure all of the Debt owing to Lender.

52. **GOVERNING LAW; SUBMISSION TO JURISDICTION. THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OR COMMONWEALTH IN WHICH THE MORTGAGED PROPERTY IS LOCATED WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF. EACH BORROWER AND EACH ENDORSER OR GUARANTOR HEREBY SUBMITS TO PERSONAL**

JURISDICTION IN SAID STATE OR COMMONWEALTH AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SAID STATE OR COMMONWEALTH (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF SUCH BORROWER'S, ENDORSER'S OR GUARANTOR'S OBLIGATIONS HEREUNDER, UNDER THE NOTE, ANY GUARANTY AND THE OTHER LOAN DOCUMENTS, AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE SUCH OBLIGATIONS OF SUCH BORROWER, ENDORSER OR GUARANTOR. EACH BORROWER AND EACH ENDORSER AND GUARANTOR HEREBY WAIVES AND AGREES NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT, THE NOTE, ANY GUARANTY OR ANY OF THE OTHER LOAN DOCUMENTS, (A) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE COURTS OR THAT THIS SECURITY INSTRUMENT, THE NOTE, ANY GUARANTY AND/OR ANY OF THE OTHER LOAN DOCUMENTS MAY NOT BE ENFORCED IN OR BY THOSE COURTS OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (B) THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR (C) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). IN THE EVENT ANY SUCH ACTION, SUIT, PROCEEDING OR LITIGATION IS COMMENCED, BORROWER, OR ENDORSER AND GUARANTOR AGREE THAT SERVICE OF PROCESS MAY BE MADE, AND PERSONAL JURISDICTION OVER SUCH BORROWER, ENDORSER OR GUARANTOR OBTAINED, BY SERVICE OF A COPY OF THE SUMMONS, COMPLAINT AND OTHER PLEADINGS REQUIRED TO COMMENCE SUCH LITIGATION UPON SUCH BORROWER OR ENDORSER OR GUARANTOR AT BORROWER'S ADDRESS SET FORTH ON SCHEDULE A HERETO (AS SUCH ADDRESS MAY BE CHANGED FROM TIME TO TIME).

53. [Reserved.]

54. Miscellaneous.

- (a) Any consent or approval by Lender in any single instance shall not be deemed or construed to be Lender's consent or approval in any like matter arising at a subsequent date, and the failure of Lender to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Lender be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Lender pursuant hereto shall

be narrowly construed to be applicable only to Borrower and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, other than the party to whom such consent or approval was given or reasonably intended to benefit, and any such consent or approval shall not be deemed to constitute Lender a venturer or partner with Borrower nor shall privity of contract be presumed to have been established with any such third party.

- (b) Borrower represents and warrants to Lender that, as of the date hereof, there has not been committed by Borrower any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Borrower's obligations under the Note, this Security Instrument or under any of the other Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Borrower hereby indemnifies Lender and agrees to defend and hold Lender harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this paragraph.
- (c) To the extent there is any direct inconsistency among the Note, this Security Instrument and the other Loan Documents with the Lease (including, but not limited to, any inconsistency regarding cure periods), then the applicable provisions of the Lease shall govern so long as the Lease is in effect and a Lease Default is not then existing. If the Loan Documents contain provisions which are not addressed in the Lease, then the Loan Document provisions shall prevail; provided, further, the Loan Documents shall in all events govern repayment of the Loan, the interest rate on the Loan, Events of Default and Lender's remedies against Borrower and Lease Guarantor.
55. Lender Fees. Borrower will pay, or cause to be paid by a party acceptable to Lender, as the same become due and payable, all fees, disbursements, and other amounts payable to Lender acting in the capacity of Trustee under that certain Declaration of Trust of even date herewith, or any successor trustee thereunder, and all fees, disbursements and other amounts payable to any participants pursuant to the Participation Agreement of even date herewith (the "Participation Agreement") with respect to, among other loans, the Loan, or any other participation agreement entered into by Lender. The exact amount of the fees payable to the Trustee are set forth in a letter from Trustee to KeyBanc Capital Markets dated June 13, 2006, a copy of which has been delivered to Borrower.
56. Intentionally Omitted.
57. Relationship of the Parties. The relationship between Borrower and Lender is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.
58. No Merger. It is the desire and intention of the parties hereto that this Security Instrument and the lien hereof do not merge in fee simple title to the Mortgaged Property.

It is hereby understood and agreed that should Lender acquire any additional or other interests in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in such other or additional interests in or to the Mortgaged Property, toward the end that this Security Instrument may be foreclosed as if owned by a stranger to said other or additional interests.

59. Rights With Respect to Junior Encumbrances. In case of any junior encumbrance whether prohibited or not by the Security Instrument, any person or entity purporting to have or to take a junior mortgage or other lien upon the Mortgaged Property or any interest therein shall, to the extent permitted by applicable law, be subject to the rights of Lender to amend, modify, increase, vary, alter or supplement this Security Instrument, the Note or any of the other Loan Documents, and to extend the maturity date of the indebtedness secured hereby, and to increase the amount of such indebtedness, and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for such indebtedness, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Security Instrument losing its priority over the rights of any such junior lien.
60. Fixture Filing. This Security Instrument shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures and are owned by Borrower. This Security Instrument shall also be effective as a financing statement covering minerals or the like (including oil and gas) and is to be filed for record in the real estate records of the county where the Premises is situated. The mailing address of Borrower and the address of Lender from which information concerning the security interests may be obtained are set forth above and on **Schedule A**, as applicable.
61. After-Acquired Mortgaged Property. All property acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further mortgage, conveyance or assignment become subject to the lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further mortgages, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument. In the case of Mortgaged Property located in California, the provisions of this paragraph 61 shall apply only to after acquired property relating to the property described on **Exhibit A** hereto.
62. No Representation. By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument and the other Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term,



provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Lender.

63. Lender as Trustee. Notwithstanding anything contained herein, it is expressly understood that Lender is acting as a trustee on behalf of certain investor beneficiaries, and whenever any consent, approval or other action of the Lender is contemplated hereby, Lender may act in accordance with the instructions of the appropriate percentage of such beneficiaries or otherwise in accordance with the terms and provisions of the documents creating and relative to the administration of the trust created by the Declaration and not on its own discretion.

64. [Reserved.]

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

66. Additional Provisions Regarding Ground Lease.

(a) The Borrower shall promptly pay or cause Lessee to pay all rent, additional rent, contingent rent, taxes and all other sums and charges when due and payable under the terms of the Ground Lease, shall fully and promptly perform and observe (or cause to be performed and observed) all of the agreements, terms, covenants, conditions and all other obligations, including but not limited to indemnities and the provision of insurance, required to be performed and observed by the Borrower under the Ground Lease within the grace periods provided therein for the Borrower's performance (in contrast to any additional grace periods provided for therein or by any separate agreement for curative action by the Lender), and shall do (or cause to be done) all things necessary to preserve and keep unimpaired the Borrower's rights under the Ground Lease. Upon demand, the Borrower shall furnish to Lender proof of payment of all sums which the Ground Lease requires Borrower to pay.

(b) The Borrower shall promptly notify Lender in writing of: (i) any default (or alleged default) by the Borrower or the Ground Lessor in the performance or observance of any of the terms, covenants or conditions on the part of the Borrower or the Ground Lessor to be performed or observed under the Ground Lease; (ii) the receipt by the Borrower of any notice or

other writing or communication from the Ground Lessor noting or claiming any default by the Borrower in such performance or observance under the Ground Lease; and (iii) the receipt by the Borrower of any notice from the Ground Lessor of any termination of the Ground Lease pursuant to the terms thereof or otherwise. The Borrower shall promptly cause a copy of each such notice to be delivered to Lender.

(c) If the Borrower fails to observe or perform (or cause to be observed and performed) any covenant or agreement to be observed or performed under the Ground Lease on the part of the Borrower, or if Lender receives from the Ground Lessor any notice of any default by the Borrower thereunder, Lender may rely on such notice and may take any action that Lender in its sole discretion deems necessary or advisable to cure such default, even if the existence of such default or the nature thereof is questioned or denied by the Borrower; provided, however, that Lender shall not take any action to cure such default if, and so long as (i) Borrower shall take all steps necessary to challenge or take any action to cure such default; and (ii) during such challenge or cure: (a) the interests of Lender may in no way be adversely affected, (b) no time limits or grace periods under the Ground Lease would expire which would give Ground Lessor any right or option to terminate the Ground Lease, and (c) no additional right or remedy would become available to Ground Lessor by reason of the deferral by Lender of any action to effect a cure of the claimed default; and (iii) if the default is a default in the payment of a sum of money, Borrower shall post with Lender security acceptable to Lender to pay the amount in dispute. Subject to the rights of Lessee under the Lease, the Borrower hereby expressly grants to Lender the absolute and immediate right to enter in and upon the Premises to such extent and as often as Lender in its sole discretion deems necessary or desirable to prevent or cure any default by the Borrower under the Ground Lease. Lender may pay and expend such sums of money as Lender in its sole discretion deems necessary to so cure any such default under the Ground Lease, and upon so doing shall be subrogated to any and all rights of the Borrower, as lessee, arising in connection with such default or cure thereof and all such sums shall be secured by the lien of this Security Instrument, shall be added to the principal amount of the Debt and shall accrue interest at the Default Rate.

(d) The Borrower shall not: (i) surrender the Ground Lease or terminate, cancel or release, or assign (except as permitted under the Security Instrument) the Ground Lease (nor permit any of the foregoing to occur), whether under Section 365 of the Bankruptcy Code (or any successor provision) or under any similar law or right of any nature, or otherwise; nor (ii) modify, abridge, change, supplement, alter or amend the Ground Lease, either orally or in writing, and no agreement seeking to modify, abridge, change, supplement, alter or amend the Ground Lease shall be valid or binding without the prior written consent of Lender (provided that Lender shall not unreasonably withhold its consent to non-material modifications of the Ground Lease); nor (iii) waive any of its rights against the Ground Lessor under the Ground Lease; nor (iv) subordinate the Ground Lease to any mortgage encumbering any portion of the Premises without obtaining a non-disturbance agreement acceptable to and for the benefit of Lender from the holder of such mortgage; nor (v) agree to or acquiesce in any rejection or termination of the Ground Lease by the Ground Lessor or Ground Lessor's trustee in bankruptcy, whether under Section 365 of the Bankruptcy Code (or any successor provision) or under any similar law or provision, and any such surrender, abandonment, termination, cancellation, release, modification, change, supplement, alteration, amendment, waiver, subordination,

agreement or acquiescence without Lender's prior written consent shall be ineffective as against Lender, and shall constitute a default under this Security Instrument for which no grace or curative period shall apply.

(e) In addition to the provisions of subsection (d):

(i) If any action, proceeding, motion or notice shall be commenced or filed in respect of the Ground Lease by any party thereto, in connection with any case under the Bankruptcy Code, Lender shall have the option to conduct and control any such litigation with counsel of Lender's choice. Lender may proceed in its own name or in the name of Borrower in connection with any such litigation, and Borrower agrees to execute any and all powers, authorizations, consents and other documents required by the Lender in connection therewith. Borrower shall, upon demand, pay to Lender all costs and expenses (including reasonable attorneys' fees and costs) paid or incurred by Lender in connection with the prosecution or conduct of any such proceedings. Any such costs and expenses not paid by Borrower as aforesaid shall be secured by the lien of this Security Instrument, shall be added to the principal amount of the Debt and shall accrue interest at the Default Rate. Borrower shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Ground Lease, in any case under the Bankruptcy Code, as amended from time to time, without the prior written consent of Lender.

(ii) Borrower shall promptly after obtaining knowledge thereof, notify Lender orally of any filing by or against the Borrower of a petition under the Bankruptcy Code. Borrower shall thereafter forthwith deliver written notice of such filing to Lender, setting forth any information available to Borrower as of the date of such filing, the court in which such petition was filed, and the relief sought therein. Upon its receipt thereof, Borrower shall promptly deliver to Lender any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating thereto.

(iii) The lien of this Security Instrument attaches to all of the Borrower's rights and remedies at any time arising under or pursuant to Section 365 of the Bankruptcy Code (as tenant under any lease), including, without limitation, all of the Borrower's rights to remain in the possession of the Premises and Improvements in the event of the Ground Lessor's rejection of the Ground Lease. The Borrower shall not, without Lender's prior written consent, elect to treat the Ground Lease as terminated under Section 365 of the Bankruptcy Code. Any such election made without Lender's prior written consent shall be void.

(iv) Borrower hereby unconditionally assigns, transfers and sets over to Lender, to the extent of sums secured by the lien of this Security Instrument, all of Borrower's claims and rights to the payment of damages (including but not limited to the right to any offsets or credits) arising from any rejection of the Ground Lease by Ground Lessor under the Bankruptcy Code. Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents, in any case under the

Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Debt shall have been satisfied and discharged in full. Any amounts received by Lender as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of Lender (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with the exercise of any of its rights or remedies under this Security Instrument. For the purposes of construing Section 365(h) of the Bankruptcy Code, the intention of the parties hereto is that the term "possession" shall mean the right to possession of all of the leased premises demised to the Borrower under the Ground Lease, whether or not all or part of the leased premises is covered by the Lease or any Other Leases.

(v) If there shall be filed by or against the Borrower a petition under the Bankruptcy Code, and the Borrower, as lessee under the Ground Lease, shall determine to reject the Ground Lease pursuant to Section 365 of the Bankruptcy Code, the Borrower shall give the Lender not less than ten days' prior written notice of the date on which the Borrower shall apply to the bankruptcy court for authority to reject the Ground Lease. The Lender shall have the right, but not the obligation, to serve upon the Borrower within such ten day period a notice stating that (A) the Lender demands that the Borrower assume and assign the Lease in question to the Lender pursuant to Section 365 of the Bankruptcy Code and (B) the Lender covenants to cure (or provide adequate assurance of prompt cure of) all defaults and provide adequate assurance of future performance under the Ground Lease. If the Lender serves upon the Borrower the notice described in the preceding sentence, the Borrower shall not seek to reject the Ground Lease and shall comply with the demand provided for in clause (A) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by the Lender of the covenant provided for in clause (B) of the preceding sentence.

(f) The Borrower shall require strict and full performance by the Ground Lessor of all the agreements, terms, covenants and conditions required to be performed and observed by the Ground Lessor under the Ground Lease.

(g) Borrower shall promptly notify Lender in writing of any claim, action or proceeding (including, but not limited to, any request for arbitration or institution of such arbitration) made by any party to the Ground Lease, and the progress thereof, and any determination made by the court and/or arbitrators thereunder. Lender shall have the right to participate in any such claim, action or proceedings as an interested party.

(h) Borrower shall use commercially reasonable efforts to obtain from the Ground Lessor under the Ground Lease, and deliver to Lender within thirty (30) days after written demand from the Lender, a statement in writing certifying that the Ground Lease is in full force and effect and the dates to which the ground rent and other charges, if any, have been paid in advance, and stating whether or not, to the best knowledge of Ground Lessor, Borrower is in default in the performance of any covenant, agreement or condition contained in the Ground Lease and if so, specifying each such default of which Ground Lessor has knowledge.

(i) No release or forbearance of any of Borrower's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release the Borrower from any of its

obligations under this Security Instrument, the Note or the other Loan Documents.

(j) Borrower acknowledges and agrees that it shall not have any right to terminate the Ground Lease without the prior written consent of Lender, and any attempt to terminate, or purported exercise of termination, shall be void.

66. STATE-SPECIFIC PROVISIONS.

To the extent of any conflict between the terms and provisions of this paragraph 66 and the terms and provisions otherwise contained in this Security Instrument, the terms and provisions of this paragraph 66 shall govern and control the rights and obligations of the parties. The terms and provisions of this paragraph 66 shall only be operative to the extent that the Mortgaged Property is located within the state specified in the headings set forth below.

**FOR MORTGAGED PROPERTY LOCATED IN ARKANSAS**

[INSERT PROVISIONS ON ADVICE OF LOCAL COUNSEL]

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**FOR MORTGAGED PROPERTY LOCATED IN IDAHO**

For all real property located in Idaho and subject to this Security Instrument, notwithstanding anything herein to the contrary, the respective rights and obligations of Borrower, Deed of Trust Trustee and Lender herein shall be governed by the provisions of Title 45, Chapter 15 of the Idaho Code, concerning trustee, and all references to the term "mortgage" shall be deemed to mean a trust deed, or, as the case may be, grant under a deed of trust; all references to Mortgaged Property shall mean property subject to this Security Instrument as a deed of trust.

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**FOR MORTGAGED PROPERTY LOCATED IN IOWA**

(A) Add to paragraph 15:

Redemption: In the event of foreclosure of this Security Instrument and the sale of the Mortgaged Property by sheriff's sale in said foreclosure proceeding:

(i) If the Mortgaged Property, subject of this Security Instrument, covers less than ten (10) acres and Lender waives in the foreclosure action any rights to a deficiency judgment against Borrower, the redemption period shall be reduced to six (6) months, consistent with the provisions of Section 628.26, Code of Iowa, or any revision or successor thereof;

(ii) If the Mortgaged Property, subject of this Security instrument, covers less than ten (10) acres, the Court in the foreclosure action affirmatively finds that such property has been abandoned by the owners and those persons personally liable thereunder at the time of such

foreclosure, and Lender waives in the foreclosure action any rights to a deficiency judgment against Borrower, the redemption period shall be reduced to sixty (660) days, consistent with the provisions of Section 628.27, Code of Iowa, or any revision or successor thereof; and

(iii) If the Mortgaged Property, subject of this Security Instrument, is not used for agricultural purposes, as defined in Iowa Code Section 535.13, and is either not the residence of the Borrower or owner, or is such a residence but is not a single family or a two family dwelling, and the Lender waives its right to a deficiency judgment in the foreclosure action, the redemption period shall be reduced to ninety (90) days, consistent with the provisions of Section 628.28, Code of Iowa, or any revision or successor thereof.

(B) Add to paragraph 54:

(d) Copy. Borrower hereby acknowledges the receipt of a copy of this Security Instrument, together is a copy of each promissory note secured hereby, and all other documents executed by Borrower in connection herewith.

(e) Business Purpose. Borrower warrants that the Mortgaged Property is not used for agricultural purposes as defined in Iowa Code section 535.13 and that the Mortgaged Property is not agricultural land as defined in Iowa Code section 9H.1. Further, Borrower warrants that the Mortgaged Property is not a one-family or two-family dwelling and that the Debt secured by this Security Instrument does not constitute a consumer credit transaction as defined in Iowa Code section 537.1301(11).

(f) Protective Advances. This Security Instrument secures credit in the amount set forth in the "Witnesseth" clause at the beginning of this document plus up to \$250,000 of advances made by Lender to pay taxes, insurance premiums, security personnel and/or maintenance costs.

\*\*\*\*\*

**FOR MORTGAGED PROPERTY LOCATED IN NEBRASKA**

(a) *Inconsistent Provisions.* In the event that any provision in this Security Instrument shall be inconsistent with any applicable provision of the law of Nebraska governing foreclosure or exercise of a power of sale under a deed of trust including the Nebraska Trust Deeds Act (herein collectively called the "Nebraska Laws"), the provisions of the Nebraska Laws shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Nebraska Laws.

(b) *Rights and Remedies Upon Default.* If any provision of this Security Instrument shall grant to Deed of Trust Trustee or Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Deed of Trust Trustee or Lender under the Nebraska Laws in the absence of such provision, Deed of Trust Trustee or Lender, as the case may be, shall be vested with the rights granted in the Nebraska Laws to the full extent permitted thereby and other applicable law.

(c) *Costs, Fees and Expenses of Deed of Trust Trustee and Lender.* Without limiting the generality of the foregoing, all costs, fees and expenses incurred by Deed of Trust Trustee and Lender, to the extent reimbursable under the Nebraska Laws, whether incurred before or after any decree or judgment of foreclosure, and whether or not provided for elsewhere in this Security Instrument or in any of the other Loan Documents, shall be added to the Debt secured by this Security Instrument or by the judgment of foreclosure.

(d) *Request of Notice.* The parties hereto request a copy of any notice of default or notice of sale hereunder be mailed to them at the address set forth in the first paragraph of this Security Instrument.

(e) *Deed of Trust Trustee's Sale.* Should Lender elect to foreclose by exercise of the power of sale contained herein, Lender shall notify Deed of Trust Trustee. Upon receipt of such notice from Lender, Deed of Trust Trustee shall cause the Deed of Trust Trustee's interest in the Mortgaged Property to be sold, and the proceeds distributed, all in the manner provided by the Nebraska Trust Deeds Act, and shall cause to be recorded, published and delivered to Borrower such notice of default and notice of sale as may then be required by law and by this Security Instrument. Deed of Trust Trustee shall, without demand on Borrower, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale has been given as required by law, sell the Mortgaged Property at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate lots or parcels or items as Deed of Trust Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Deed of Trust Trustee shall deliver to the purchaser or purchasers at such sale its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied, from the Deed of Trust Trustee. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Deed of Trust Trustee or Lender, may purchase at such sale, and Borrower hereby covenants to warrant and defend the title of such purchaser or purchasers.

As may be permitted by law, Deed of Trust Trustee shall apply the proceeds of the sale to payment, in the following order, of (i) the costs and expenses of exercising the power of sale, including the payment of the Deed of Trust Trustee's fees actually incurred, not to exceed 1% of the outstanding principal balance of the Debt, plus attorney's fees and other expenses incurred by the Deed of Trust Trustee in connection with performing its duties under this Security Instrument, (ii) all other sums then secured hereby, (iii) junior trust deeds, mortgages, or other lienholders, and (iv) the remainder, if any, to the person or persons legally entitled thereto.

Trustee may postpone the sale of all or any portion of the Trust Property from time to time in accordance with the Nebraska Trust Deeds Act.

(f) *Reconveyance.* Upon payment of all sums secured by this Security Instrument, Lender shall request Deed of Trust Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing indebtedness secured by this Security Instrument to Deed of Trust Trustee. Deed of Trust Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto.

(g) *Future Advances.* This Security Instrument is given to secure not only existing Debt as of the date hereof, but also Debt arising as a result of future advances (whether such advances are obligatory or made at the option of Lender or otherwise) made by Lender pursuant to this Security Instrument or any of the Loan Documents, to the same extent as if such future advances were made on the date of the execution of this Security Instrument. Borrower hereby agrees that it shall not execute or file or record any notice limiting the amount of optional future advances secured by this Security Instrument, and no such notice shall be of any force and effect whatsoever unless Lender shall have consented thereto in a writing signed by Lender and recorded in the public records of the county in which the Mortgaged Property is situated.

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**FOR MORTGAGED PROPERTY LOCATED IN NEW MEXICO**

[INSERT PROVISIONS ON ADVICE OF LOCAL COUNSEL]

\*\*\*\*\*

**FOR MORTGAGED PROPERTY LOCATED IN SOUTH DAKOTA**

[INSERT PROVISIONS ON ADVICE OF LOCAL COUNSEL]

\*\*\*\*\*

**FOR MORTGAGED PROPERTY LOCATED IN TEXAS**

[INSERT PROVISIONS ON ADVICE OF LOCAL COUNSEL]

\*\*\*\*\*

**FOR MORTGAGED PROPERTY LOCATED IN UTAH**

[INSERT PROVISIONS ON ADVICE OF LOCAL COUNSEL]

**[Remainder of page intentionally left blank/Signature page follows]**



**BORROWER:**

JL Holdings \_\_, LLC

By: \_\_\_\_\_

Name: Kenneth A Freed, President

**[ACKNOWLEDGMENT]**

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**EXHIBIT A**

**LEGAL DESCRIPTION**

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**EXHIBIT A**

**CHILIS #17**

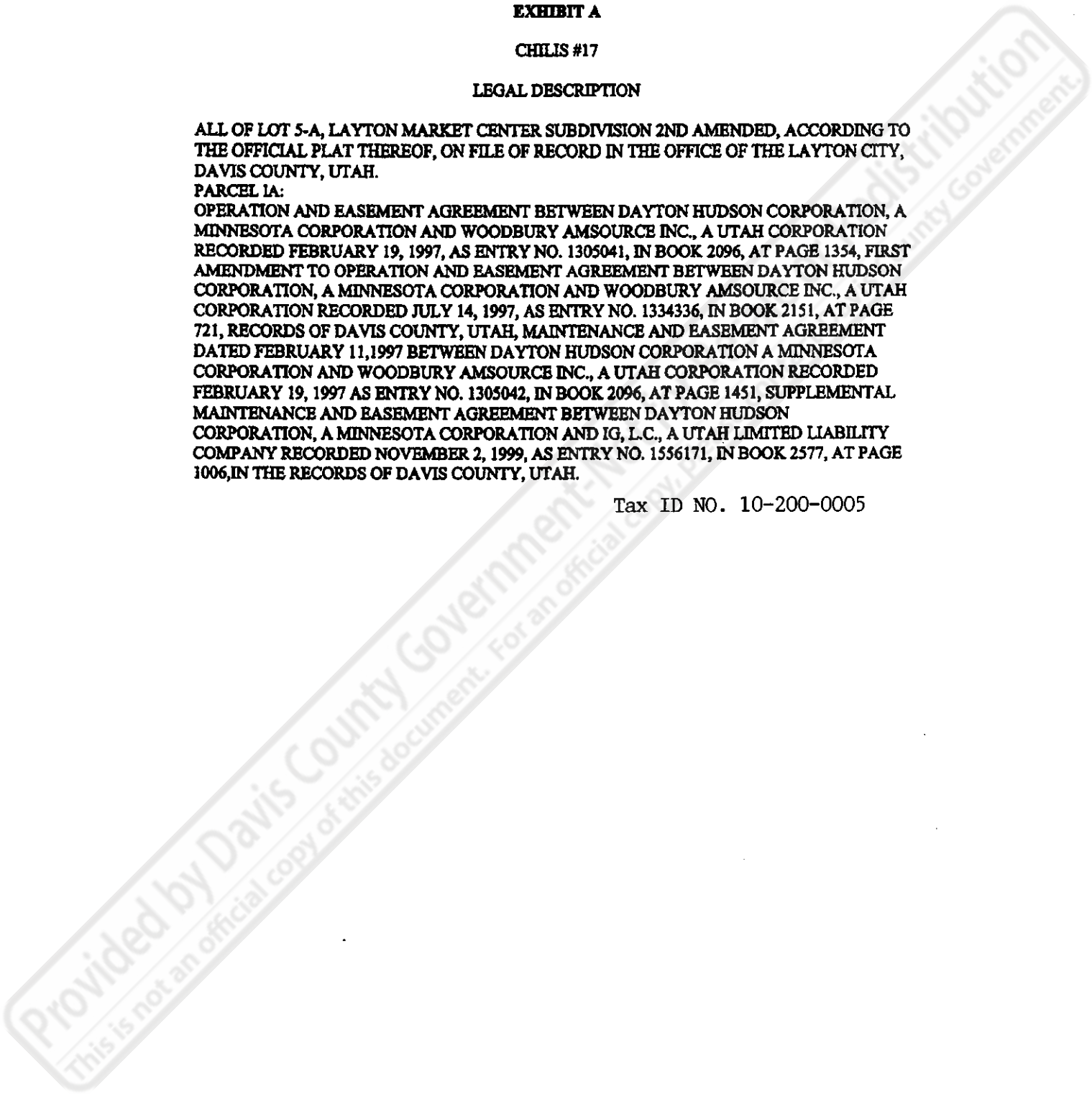
**LEGAL DESCRIPTION**

**ALL OF LOT 5-A, LAYTON MARKET CENTER SUBDIVISION 2ND AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE OF RECORD IN THE OFFICE OF THE LAYTON CITY, DAVIS COUNTY, UTAH.**

**PARCEL 1A:**

**OPERATION AND EASEMENT AGREEMENT BETWEEN DAYTON HUDSON CORPORATION, A MINNESOTA CORPORATION AND WOODBURY AMSOURCE INC., A UTAH CORPORATION RECORDED FEBRUARY 19, 1997, AS ENTRY NO. 1305041, IN BOOK 2096, AT PAGE 1354, FIRST AMENDMENT TO OPERATION AND EASEMENT AGREEMENT BETWEEN DAYTON HUDSON CORPORATION, A MINNESOTA CORPORATION AND WOODBURY AMSOURCE INC., A UTAH CORPORATION RECORDED JULY 14, 1997, AS ENTRY NO. 1334336, IN BOOK 2151, AT PAGE 721, RECORDS OF DAVIS COUNTY, UTAH, MAINTENANCE AND EASEMENT AGREEMENT DATED FEBRUARY 11, 1997 BETWEEN DAYTON HUDSON CORPORATION A MINNESOTA CORPORATION AND WOODBURY AMSOURCE INC., A UTAH CORPORATION RECORDED FEBRUARY 19, 1997 AS ENTRY NO. 1305042, IN BOOK 2096, AT PAGE 1451, SUPPLEMENTAL MAINTENANCE AND EASEMENT AGREEMENT BETWEEN DAYTON HUDSON CORPORATION, A MINNESOTA CORPORATION AND IG, L.C., A UTAH LIMITED LIABILITY COMPANY RECORDED NOVEMBER 2, 1999, AS ENTRY NO. 1556171, IN BOOK 2577, AT PAGE 1006, IN THE RECORDS OF DAVIS COUNTY, UTAH.**

Tax ID NO. 10-200-0005




IN WITNESS WHEREOF, Borrower has caused this Security Instrument to be duly executed as of the date first above set forth.

BORROWER:

**JL HOLDINGS III, LLC**, a Delaware limited liability company

By: Jaylor Holdings III, LLC, a Nevada limited liability company

Its: Sole Manager and Sole Member

By:   
 Kenneth A. Freed, President

STATE OF CALIFORNIA )  
 ) ss  
 COUNTY OF CONTRA COSTA )

On June 21, 2006, before me, DAVID LAU, Notary Public for the State of California, personally appeared:

KENNETH A. FREED

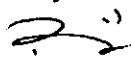
\_\_\_\_\_ personally known to me  
 -OR-  
 proved to me on the basis of satisfactory evidence



(Place Notary Seal Above)

to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
 \_\_\_\_\_  
 Signature of Notary Public

**SCHEDULE A**

**GROUND LEASE DESCRIPTION**

Ground Lease dated August 29, 1997 between Hawkins-Smith & Hawkins LLC, as Ground Lessor, and Sydran Fund Services III, L.P. as Ground Lessee.

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