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ARCHLAND PROPERTY I, LLC, as Grantor  
(Borrower)

to

DON B. CANNADA, as Deed of Trust Trustee  
and

WACHOVIA BANK, NATIONAL ASSOCIATION, AS PASS THROUGH TRUSTEE,  
as Beneficiary and Grantee  
(Lender)

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

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Dated as of June 1, 2004  
Effective as of the Effective Date on Schedule A

FOR INDEXING INSTRUCTIONS SEE LEGAL DESCRIPTION ATTACHED HERETO

Mississippi  
County of DESOTO

PREPARED BY AND UPON  
RECORDATION RETURN TO:

James R. Nelson  
Chapman and Cutler LLP  
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Chicago, IL 60603  
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## TABLE OF CONTENTS

SECTION	HEADING	PAGE
ARTICLE I	GRANTS .....	1
Section 1.1.	Property Granted .....	1
Section 1.2.	Assignment of Leases and Rents .....	4
Section 1.3.	Security Agreement.....	7
Section 1.4.	Pledge of Monies Held .....	8
Section 1.5.	Fixture Filing .....	8
Section 1.6.	Condition to Grant.....	8
ARTICLE II	DEBT AND OBLIGATIONS SECURED/PAYMENT COVENANTS .....	10
Section 2.1.	Debt .....	10
Section 2.2.	Other Obligations .....	10
Section 2.3.	Payment of Debt.....	11
Section 2.4.	Performance of Other Agreements.....	11
Section 2.5.	Payments.....	11
Section 2.6.	Incorporation by Reference .....	11
ARTICLE III	PROPERTY COVENANTS .....	12
Section 3.1.	Property Use .....	12
Section 3.2.	Insurance.....	12
Section 3.3.	Payment of Taxes, Etc.....	15
Section 3.4.	Condemnation .....	16
Section 3.5.	Restoration.....	17
Section 3.6.	Obligations and Terms Respecting Lease .....	21
Section 3.7.	Maintenance and Use of Property .....	22
Section 3.8.	Waste .....	23
Section 3.9.	Compliance With Law.....	23
Section 3.10.	[Intentionally Omitted].....	24
Section 3.11.	Payment for Labor and Materials.....	24
ARTICLE IV	BORROWING ENTITY COVENANTS.....	25
Section 4.1.	Existence.....	25
Section 4.2.	ERISA.....	25
Section 4.3.	Special Purpose Entity.....	25
Section 4.4.	Change of Name, Identity or Structure .....	28
ARTICLE V	REPRESENTATIONS AND WARRANTIES .....	28
Section 5.1.	Warranty of Title.....	28
Section 5.2.	Legal Status and Authority .....	29
Section 5.3.	Validity of Documents .....	29
Section 5.4.	Litigation .....	29

Section 5.5.	Status of Property .....	29
Section 5.6.	No Foreign Person.....	30
Section 5.7.	Lease.....	30
Section 5.8.	Financial Condition .....	31
Section 5.9.	Business Purposes .....	31
Section 5.10.	Taxes .....	31
Section 5.11.	Mailing Address.....	31
Section 5.12.	Disclosure .....	31
Section 5.13.	Third Party Representations .....	31
Section 5.14.	Illegal Activity .....	32
Section 5.15.	Special Purpose Entity; Indebtedness .....	32
Section 5.16.	ERISA.....	32
Section 5.17.	No Defaults .....	32
Section 5.18.	Governmental Consent.....	32
Section 5.19.	Receipt of Proceeds.....	32
Section 5.20.	Use of Proceeds.....	33
Section 5.21.	Investment Company Act Status.....	33
Section 5.22.	Compliance with Law .....	33
Section 5.23.	Environmental Compliance .....	33
Section 5.24.	Rent .....	34
Section 5.25.	Trading with the Enemy Act.....	34
Section 5.26.	Private Offering .....	34
ARTICLE VI	OBLIGATIONS AND RELIANCE .....	34
Section 6.1.	Relationship of Borrower and Lender .....	34
Section 6.2.	No Reliance on Lender.....	34
Section 6.3.	No Lender Obligations .....	35
Section 6.4.	Reliance .....	35
ARTICLE VII	FURTHER ASSURANCES.....	35
Section 7.1.	Recording of Security Instrument, Etc. ....	35
Section 7.2.	Further Acts, Etc .....	35
Section 7.3.	[Intentionally Omitted].....	36
Section 7.4.	Estoppel Certificates .....	36
Section 7.5.	[Intentionally Omitted].....	37
Section 7.6.	Splitting of Security Instrument.....	37
Section 7.7.	Replacement Documents .....	37
ARTICLE VIII	DUE ON SALE/ENCUMBRANCE .....	37
Section 8.1.	No Sale/Encumbrance .....	37
Section 8.2.	Transfer Definitions .....	38
ARTICLE IX	PREPAYMENT .....	38

ARTICLE X	DEFAULT .....	38
Section 10.1.	Events of Default .....	38
ARTICLE XI	RIGHTS AND REMEDIES.....	41
Section 11.1.	Remedies .....	41
Section 11.2.	Application of Proceeds .....	44
Section 11.3.	Right to Cure Defaults.....	44
Section 11.4.	Actions and Proceedings .....	45
Section 11.5.	Recovery of Sums Required to Be Paid .....	45
Section 11.6.	Examination of Books and Records.....	45
Section 11.7.	Other Rights, Etc.....	45
Section 11.8.	Right to Release Any Portion of the Property .....	46
Section 11.9.	Violations of Law.....	46
Section 11.10.	Right of Entry.....	46
Section 11.11.	Subrogation .....	46
ARTICLE XII	ENVIRONMENTAL HAZARDS .....	46
Section 12.1.	Environmental Covenants.....	46
Section 12.2.	Lender's Rights.....	47
Section 12.3.	Operations and Maintenance Programs.....	48
Section 12.4.	Environmental Definitions .....	48
ARTICLE XIII	INDEMNIFICATION .....	49
Section 13.1.	General Indemnification.....	49
Section 13.2.	[Intentionally Omitted].....	50
Section 13.3.	Duty to Defend; Legal Fees and Other Fees and Expenses.....	50
ARTICLE XIV	WAIVERS .....	50
Section 14.1.	Waiver of Counterclaim .....	50
Section 14.2.	Marshalling and Other Matters .....	50
Section 14.3.	Waiver of Notice.....	50
Section 14.4.	Waiver of Statute of Limitations.....	51
Section 14.5.	Sole Discretion of Lender.....	51
Section 14.6.	Waiver of Trial by Jury .....	51
Section 14.7.	Waiver of Foreclosure Defense .....	51
ARTICLE XV	EXCULPATION .....	51
Section 15.1.	Exculpation .....	51
ARTICLE XVI	NOTICES .....	51
Section 16.1.	Notices.....	51
ARTICLE XVII	CHOICE OF LAW .....	52

Section 17.1.	Choice of Law .....	52
Section 17.2.	Provisions Subject to Law .....	52
ARTICLE XVIII	SECONDARY MARKET .....	53
Section 18.1.	Transfer of Loan.....	53
Section 18.2.	[Intentionally Omitted].....	53
Section 18.3.	Dissemination of Information.....	53
Section 18.4.	Cooperation.....	53
Section 18.5.	Reserves/Escrows.....	55
ARTICLE XIX	COSTS.....	55
Section 19.1.	Performance at Borrower's Expense.....	55
Section 19.2.	Legal fees for Enforcement .....	55
ARTICLE XX	DEFINITIONS .....	55
Section 20.1.	General Usage.....	55
Section 20.2.	Definitions .....	55
ARTICLE XXII	TERMINATION OF SECURITY INSTRUMENT; PARTIAL RELEASES .....	60
ARTICLE XXII	SUBSTITUTION OF PROPERTY .....	61
ARTICLE XXIII	MISCELLANEOUS PROVISIONS.....	61
Section 23.1.	No Oral Change .....	61
Section 23.2.	Liability .....	61
Section 23.3.	Inapplicable Provisions .....	61
Section 23.4.	Duplicate Originals; Counterpart.....	61
Section 23.5.	Headings, Etc.....	61
Section 23.6.	Number and Gender .....	62
ARTICLE XXIV	STATE SPECIFIC PROVISIONS.....	62
Section 24.1.	State Specific Provisions .....	62
ARTICLE XXV	DEED OF TRUST PROVISIONS.....	62
Section 25.1.	Concerning The Deed of Trust Trustee.....	62
Section 25.2.	Deed of Trust Trustee's Fees .....	62
Section 25.3.	Certain Rights .....	62
Section 25.4.	Retention of Money.....	63
Section 25.5.	Perfection of Appointment .....	63
Section 25.6.	Succession Instruments .....	63

ADDENDUM A — State Specific Provisions

EXHIBIT A — Description of Land

SCHEDULE A — Master Schedule

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING STATEMENT (the "*Security Instrument*") as described on Schedule A attached hereto is made as of the date set forth on Schedule A attached hereto, by the Borrower set forth on Schedule A hereto ("*Borrower*" or "*Grantor*") having its principal place of business at the address set forth on Schedule A hereto, as grantor to the Deed of Trust Trustee set forth on Schedule A hereto ("*Deed of Trust Trustee*") having an address set forth on Schedule A hereto, for the benefit of and to Wachovia Bank, National Association, as Pass Through Trustee, having an address at 401 South Tryon Street, 12th Floor, Charlotte, Mecklenberg County, North Carolina 28288-1179, Attn: Corporate Trust Department, as beneficiary and grantee ("*Lender*" or "*Grantee*").

#### RECITALS:

Borrower by its promissory note of even date herewith given to Lender in accordance with the terms and provisions of the Participation Agreement (the "*Participation Agreement*") dated as of the date hereof, by and among Borrower, Tenant and Lender, is indebted to Lender in the principal sum of the Loan Amount set forth on Schedule A attached hereto (the "*Loan Amount*") in lawful money of the United States of America (the "*Note*"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note (the "*Loan*") and due on the date set forth on Schedule A attached hereto (the "*Maturity Date*").

Borrower has leased the Property (described in Section 1.1 below) to McDonald's Corporation, a corporation organized under the laws of the State of Delaware (collectively with its successors and assigns, the "*Tenant*"), under and pursuant to the terms of that certain Amended and Restated Master Ground Lease Agreement dated as of June 1, 2004 (as otherwise heretofore or hereafter amended, modified or supplemented, and together with any other lease of the Property, the "*Lease*") and has or will assign all of its right, title and interest in and to the Lease to Lender.

Borrower desires to secure the payment of the Debt and the performance of all of its obligations under the Note and the Other Obligations. All capitalized terms shall have the meanings ascribed in the Definitions Glossary in Section 20.2.

#### ARTICLE I GRANTS

*Section 1.1. Property Granted.* Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Deed of Trust Trustee for the benefit of Lender, and grant a security interest to Lender in, the following property, rights, interests and estates to the extent, if at all, now owned, or hereafter acquired by Borrower (collectively, the "*Property*"); *provided, however,* Lender acknowledges and agrees that as of the date of execution of this Security Instrument, neither Borrower nor Lender or Deed of Trust Trustee has any interest in the Improvements (hereinafter defined) or the Personal Property (hereinafter

defined) and neither Borrower nor Lender or Deed of Trust Trustee will have any such interest unless and until the Lease terminates and the Improvements and/or the Personal Property are abandoned in accordance with Section 9.2 of the Lease:

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

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

(c) *Improvements*. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "*Improvements*"); *provided, however*, Lender acknowledges and agrees that as of the date of execution of this Security Instrument, neither Borrower nor Lender or Deed of Trust Trustee has any interest in the Improvements and neither Borrower nor Lender or Deed of Trust Trustee will have any such interest unless and until the Lease terminates and such Improvements are abandoned in accordance with Section 9.2 of the Lease;

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

(e) *Fixtures and Personal Property*. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land 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 Land and the Improvements (but excluding any of Tenant's personal property), or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "*Personal Property*"), including the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the

Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "*Uniform Commercial Code*"), superior in lien to the lien of this Security Instrument, and all proceeds and products of all of the above; *provided, however*, Lender acknowledges and agrees that as of the date of execution of this Security Instrument, neither Borrower nor Lender has any interest in any Personal Property and neither Borrower nor Lender will have any such interest unless and until the Lease terminates and the Personal Property is abandoned in accordance with Section 9.2 of the Lease;

(f) *Lease and Rents.* Other than the Excepted Rights and Payments (hereinafter defined), the Lease, and all of Borrower's estate, right, title, interest, claim and demand as landlord in, to and under the Lease, including all guarantees, letters of credit and any other credit support given by any guarantor, cash or securities deposited under the Lease to secure the performance by the Tenant of its obligations thereunder, and all extensions and renewals of the term thereof and all existing or future amendments, supplements or modifications of the Lease (and to any short memorandum form of the Lease executed for recording purposes), together with all rights, powers, privileges, options and other benefits of Borrower as landlord under the Lease, including, without limitation, (a) the immediate and continuing right (whether or not an Event of Default under this Security Instrument shall have occurred and be continuing) to receive and collect all rents (whether as fixed rent, basic rent, percentage rent, additional rent or otherwise), income, revenues, issues, profits, insurance proceeds, condemnation awards, bankruptcy claims, liquidated damages, purchase price proceeds and other payments, tenders and security payable to or receivable by the landlord under the Lease ("*Rents*"); (b) if the Tenant exercises any right, or shall be required, to purchase the Property or the landlord's interest therein, the right and power (such power and right being coupled with an interest) to execute and deliver as agent and attorney-in-fact of the landlord under the Lease, an appropriate deed or other instruments of transfer necessary or appropriate for the conveyance and transfer to the purchaser of the Property or the portion thereof being so purchased, and all interest of the landlord therein and to perform in the name and for and on behalf of the landlord, as such agent and attorney-in-fact, any and all other necessary or appropriate acts with respect to any such purchase, conveyance and transfer; (c) the right to make all waivers, consents, amendments and agreements; (d) the right to give and receive copies of all notices and other instruments or communications; (e) the right to take such action upon the occurrence of an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law; and (f) the right to do any and all other things whatsoever which Borrower or any landlord is or may be entitled to do under the Lease.

(g) *Insurance Proceeds.* All proceeds of and any unearned premiums on any insurance policies covering the 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 Property;

(h) *Condemnation Awards.* All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

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

(j) *Conversion.* All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

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

(l) *Other Agreements.* All agreements, contracts (including, without limitation, any and all interest rate cap agreements, swaps or other interest hedging agreements), certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of an Event of Default, to receive and collect any sums payable to Borrower thereunder;

(m) *Causes of Action.* All causes of action and claims against any Person (including without limitation, all causes of action or claims arising in tort, by contract or for fraud or concealment of material fact) for damages or injury to the Property or in connection with any transaction financed in whole or in part by the proceeds of the Loan ("*Causes of Action*"); and

(n) *Other Rights.* Any and all other rights of Borrower in and to the Property.

*Section 1.2. Assignment of Leases and Rents.* Except for the Excepted Rights and Payments (hereinafter defined) and in addition to, and not in contravention of, the assignment of the Lease set forth in Section 1.1(f) of this Security Instrument, Borrower, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to further secure the payment and performance by Borrower of all obligations under the Note, this Security Instrument and the other Loan Documents, hereby absolutely and unconditionally assigns, transfers and grants to the Lender and (to the extent appropriate) Deed of Trust Trustee for the

benefit of the Lender the following property, rights, interests and estates, to the extent, if at all, now owned, or hereafter acquired, by Borrower:

(a) *Leases*. All existing and future leases, including, without limitation, the Lease, affecting the use, enjoyment, or occupancy of all or any part of the Property, and the right, title and interest of Borrower, its successors and assigns, therein and thereunder.

(b) *Other Leases and Agreements*. All other leases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, together with any extension, renewal or replacement of the same, this assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The Lease, the other leases and other agreements described in Section 1.2(a) and the leases and other agreements described in this Section 1.2(b), together with all other present and future leases and present and future agreements and any amendments, modifications, extensions or renewals thereof, in each case, only to the extent Borrower has an interest therein, are collectively referred to as the "Leases."

(c) *Rents*. All rents, additional rents, revenues, income, proceeds, reimbursable amounts, issues and profits arising from the Leases and any cash or security deposited in connection therewith (including, without limitation, all oil and gas and other mineral royalties and bonuses) payable by any tenant under any of the Leases or otherwise, for or in connection with the use, enjoyment and occupancy of the Property, including, without limitation, Basic Rent and Additional Rent paid by Tenant under the Lease (collectively, the "Rents").

(d) *Bankruptcy Claims*. All of Borrower's claims and rights (the "Bankruptcy Claims") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, as the same may be amended.

(e) *Lease Guaranties*. All of Borrower's right, title and interest in and to any and all lease guaranties, letters of credit and any other credit support given in connection with any of the Leases to Borrower or predecessors (individually, a "Lease Guaranty", collectively, the "Lease Guaranties") by any guarantor (individually, a "Lease Guarantor", collectively, the "Lease Guarantors").

(f) *Proceeds*. All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(g) *Other*. Other than the Excepted Rights and Payments, all rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation, (i) the immediate and continuing right to make claims for, receive, collect and receipt for, all Rents payable to or receivable by Borrower under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt, and to do all other things which Borrower or any lessor is or may become entitled to do under

the Leases or the Lease Guaranties; (ii) the right to pursue and collect any claim in bankruptcy proceedings of any tenant; (iii) the right to accept or reject any offer made by a tenant pursuant to its Lease to purchase the Property or any part thereof and any other property subject to a Lease and to perform all other necessary or appropriate acts with respect to such purchases; (iv) the right to make all waivers and agreements, to give and receive all notices, consents and releases, and to take such action upon the happening of a default beyond applicable cure periods, if any, under any Lease as Borrower shall have the right under any of the Leases or at law to take, including the right to commence, conduct and consummate eviction proceedings; (v) the right, at Lender's option to enter upon the Property in person, by agent or by court-appointed receiver; and (vi) Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Security Instrument and any or all other actions designated by Lender for the proper management and preservation of the Property.

This assignment of leases is a perfected present, absolute, direct and unconditional assignment and transfer of all Borrower's right, title and interest in and to, but not obligations under, the Leases and the Rents made in consideration of the loan by Lender to Borrower and as additional security for the repayment of the Debt.

Subject to Applicable Law, (i) the assignment of leases and rents set forth in this Section 1.2 and Section 1.1(f) of this Security Instrument shall run with the land and be good and valid against the Borrower or those claiming by, under or through Borrower, from the date hereof and such assignment shall continue to be operative during the foreclosure or any other proceeding taken to enforce this Security Instrument; (ii) in the event of a sale or foreclosure which shall result in a deficiency, such assignment shall stand as security during the redemption period for the payment of such deficiency; and (iii) Lender and Deed of Trust Trustee shall be permitted, at their respective sole option, to exercise remedies under such assignment separately from remedies exercised against other portions of the Property.

Notwithstanding anything to the contrary contained in this Security Instrument, prior to an Event of Default under this Security Instrument or a default under Section 5.1(a)(v) or (vi) of the Lease, Lender agrees not to take any action under the Lease without the Borrower's prior written consent which consent shall not be unreasonably withheld.

*"Excepted Rights and Payments"* means the following described properties, payments, amounts, rights, interests and privileges:

(i) all payments to Borrower or the Beneficial Owner by Tenant pursuant to any indemnity under the Lease or otherwise which by the terms thereof are payable to Borrower or the Beneficial Owner or their employees, officers, directors, shareholders, members, servants, agents and affiliates thereof, in each such case for their own respective accounts, or obligation to reimburse Borrower for costs expended or incurred by or on behalf of Borrower;

(ii) any insurance proceeds to the extent payable under general public liability policies or otherwise maintained by Tenant pursuant to Section 3.6 of the Lease, which,

by the terms of such policies, are payable directly to Borrower or the Beneficial Owner or their employees, officers, directors, shareholders, members, servants, agents and affiliates thereof, in each such case for their own respective accounts;

(iii) Borrower's right, but not to the exclusion of Lender, (A) to receive from Tenant certificates and other documents and information that Tenant is required to give or furnish to Borrower pursuant to the Lease and (B) to inspect the premises demised under the Lease and all records relating thereto;

(iv) Borrower's right, prior to either an Event of Default under this Security Instrument or a default under Section 5.1(a)(v) or (vi) of the Lease, but not to the exclusion of Lender, to sue for damages or to enforce performance or observance by Tenant under the Lease of the applicable terms, conditions and agreements of the Lease as allowed by the Lease, but not to exercise any remedy (other than a "Put" under Section 5.1(b) of the Lease which Borrower can enforce) that could result in a termination of the Lease or the dispossession of the Tenant from any Property; and

(v) Borrower's right to enter into an amendment or modification of the Lease in the ordinary course of business without the prior written consent of the Lender, provided that no such amendment, modification, waiver, approval or consent to any terms or provisions of the Lease may be made without the prior written consent of Lender, which consent shall not be unreasonably withheld if such amendment, modification, waiver, approval or consent adversely affects the Landlord, but which such consent Lender may withhold in its sole and absolute discretion if such amendment, modification, waiver, approval or consent adversely affects Lender, examples of the latter include without limitation, any amendment or modification that (i) changes the timing of the payment of Basic Rent (as defined in the Lease) or Additional Rent (as defined in the Lease), (ii) reduces the amount of Basic Rent or Additional Rent payable to the Landlord (or any of its assignee) under the Lease (other than as expressly provided by Articles 3 and 5 of the Lease with respect to any Property), (iii) shortens the term of the Lease (other than as expressly provided by Articles 3 and 5 of the Lease with respect to any Property), (iv) removes any Property from the terms of the Lease (other than as expressly provided by Articles 3 and 5 of the Lease with respect to any Property), (v) reduces the value of any Property, (vi) imposes any additional obligations upon the Landlord, (vii) reduces any obligations of the Tenant under the Lease or (viii) changes any terms set forth in Sections 1.4, 2.1, 3.9, 3.10, 4.1, 5, 7, 9.1 or 9.4 of the Lease.

*Section 1.3. Security Agreement.* This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Personal Property and other collateral given as security for the Obligations (whether denominated as part of the Property or otherwise) to the extent that under Applicable Laws the same would be governed by the Uniform Commercial Code (collectively, "UCC

*Collateral*") to the full extent that the Personal Property and other UCC Collateral may be subject to the Uniform Commercial Code.

*Section 1.4. Pledge of Monies Held.* Borrower hereby grants a security interest in and pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Net Proceeds and condemnation awards or payments described in Section 3.5.

*Section 1.5. Fixture Filing.* From the date of its recording, this Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all UCC Collateral constituting part of the Property (as more particularly described in the granting clauses of this Security Instrument) which are or are to become fixtures related to the real estate described herein. For this purpose, see Section I of Schedule A attached hereto.

*Section 1.6. Condition to Grant.* TO HAVE AND TO HOLD the above granted and described Property unto Deed of Trust Trustee for and on behalf of Lender and for the use and benefit of Lender, and Deed of Trust Trustee and the successors and assigns of Lender and Deed of Trust Trustee, forever;

**IN TRUST AND WITH POWER OF SALE, TO SECURE PAYMENT TO LENDER OF THE DEBT AT THE TIME AND IN THE MANNER PROVIDED FOR ITS PAYMENT IN THE NOTE AND IN THIS SECURITY INSTRUMENT.**

*PROVIDED, HOWEVER,* THESE PRESENTS ARE UPON THE EXPRESS CONDITION THAT, IF BORROWER SHALL PAY TO LENDER THE DEBT AND ALL OTHER SUMS DUE UNDER THE NOTE AND THIS SECURITY INSTRUMENT, SHALL PERFORM THE OTHER OBLIGATIONS AS SET FORTH IN THIS SECURITY INSTRUMENT AND SHALL COMPLY WITH EACH AND EVERY COVENANT AND CONDITION SET FORTH HEREIN AND IN THE NOTE, THESE PRESENTS AND THE ESTATE HEREBY GRANTED SHALL CEASE, TERMINATE AND BE VOID AND THIS SECURITY INSTRUMENT SHALL BE CANCELLED AND SURRENDERED.

It is agreed and understood by the parties hereto that, subject to Applicable Law:

1. This Security Instrument is intended to and shall constitute security for the entire Debt.
2. Any part of the security herein described, and any security described in any other mortgage, assignment of lease or other instrument now or hereafter given to secure the Debt, may be released by Lender without affecting the lien hereof on the remainder.
3. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof, or to have the Property hereunder and the property covered by any other mortgage or assignment of lease securing the Note marshalled upon

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

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

5. The assignment of lease made under Section 1.1(f) and Section 1.2 hereof is executed as a present, unconditional and absolute assignment and not merely as collateral security, and the execution and delivery of this Security Instrument shall not in any way impair or diminish any obligations of Borrower as landlord under the Lease nor impair, affect or modify any of the terms and conditions of the Note or the Loan Documents, nor shall any of such obligations be imposed upon Lender, including but not limited to collecting rentals or enforcing performance by the Tenant. Without limiting the generality of the foregoing, Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under the Lease, or under or by reason of this Security Instrument; and it is further understood and agreed that this Security Instrument shall not operate to place responsibility for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Lease, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenant or any other parties, or for any dangerous or defective condition of the Property, or for any negligence of the management, upkeep, or repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. After the occurrence and during the continuance of either an Event of Default under this Security Instrument or a default under Section 5.1(a)(v) or (vi) of the Lease, Lender may, at its option, although it shall not be obligated so to do, after giving written notice to the Tenant and Borrower, perform any Lease covenant for and on behalf of Borrower and may recover any money advanced for any such purpose from Borrower on demand, with interest at the Default Rate (or at the maximum rate permitted by applicable law, whichever is less) from date of advancement. Upon the payment of the principal of (and premium, if any) and all interest on the Note and of all other sums payable on the Note or under the Loan Documents or this Security Instrument and the performance and observance of the provisions thereof, this Security Instrument shall cease and terminate and all the estate, right, title, interest, claim and demand of Borrower in and to the above-described assigned property shall revert to Borrower, and Lender shall at the request of Borrower deliver to Borrower an instrument cancelling the assignment of

Lease set forth in this Security Instrument and reassigning the above-described assigned property to Borrower.

6. Borrower does hereby irrevocably constitute and appoint Lender, its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acceptance for any and all rents, income and other sums which are assigned under this Security Instrument with full power to settle, adjust or compromise any claim thereunder as surely as Borrower could itself do and to endorse the name of Borrower on all commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings either in its own name or in the name of Borrower or otherwise, which the Lender may deem necessary or appropriate to protect and preserve the right, title and interest of the Lender in and to such rents and other sums and the security intended to be afforded by this Security Instrument.

## ARTICLE II DEBT AND OBLIGATIONS SECURED/PAYMENT COVENANTS

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

- (a) the indebtedness evidenced by the Note in lawful money of the United States of America;
- (b) interest, default interest, late charges and other sums, as provided in the Loan Documents;
- (c) the Make-Whole Premium, if any;
- (d) all other monies agreed or provided to be paid by Borrower in the Loan Documents; and
- (e) all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby.

*Section 2.2. Other Obligations.* This Security Instrument and the grants, assignments and transfers made in Article I are also given for the purpose of securing the performance of the following (the "*Other Obligations*"):

- (a) each obligation of Borrower contained herein;
- (b) each obligation of Borrower contained in the other Loan Documents, including without limitation, the Other Security Instruments; and

(c) each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Loan Documents.

*Section 2.3. Payment of Debt.* Borrower shall pay the Debt at the time and in the manner provided in the Note and in this Security Instrument. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively as the "Obligations."

*Section 2.4. Performance of Other Agreements.* Borrower shall observe and perform or cause to be observed and performed 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 Property, or given by Borrower to Lender for the purpose of further securing an Obligation and any amendments, modifications or changes thereto, including without limitation, the Other Security Instruments.

*Section 2.5. Payments.* Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower and Tenant not less than 10 days before any payment date) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks; *provided, however*, Lender shall not be required to accept payment for any Obligation in cash. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due (after the expiration of all applicable notice and cure periods) shall be and continue to be an Event of Default.

*Section 2.6. Incorporation by Reference.* All the covenants, conditions and agreements of Borrower contained in (a) the Note, (b) the Other Security Instruments, (c) that certain Participation Agreement dated on or about the date hereof by and among the Tenant, the Borrower, Golden W Investors Trust, and Golden W Investors Trust II, each a Delaware statutory trust and the Lender (the "*Participation Agreement*"), including without limitation, the provisions of Article VII of the Participation Agreement (the "*Title Indemnity*"), (d) any other documents, agreements or instruments now or hereinafter executed by the Borrower and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note, the Other Obligations or are otherwise executed and delivered by Borrower in connection with the Loan (collectively such documents together with the Note and Security Instrument, the "*Loan Documents*") are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

**ARTICLE III  
PROPERTY COVENANTS**

Borrower covenants and agrees that:

*Section 3.1. Property Use.* The Property shall be used and operated only for lawful purposes as described in the Lease, and for no other use without the prior written consent of Lender.

*Section 3.2. Insurance.* (a) Notwithstanding any of the terms hereinafter contained in this Section, so long as the Lease is in effect (A) the requirements with respect to insurance contained in this Section shall be satisfied if either (1) Tenant is not in default of its obligations under the Lease (after the giving of applicable notice and the expiration of the applicable cure period and after the expiration of Tenant's rights to substitute or purchase the Property under Section 5.1(b) of the Lease) (a "*Lease Event of Default*") with respect to insurance or (2) the Borrower is diligently and continuously pursuing, or assisting Lender in pursuing, all applicable remedies under the Lease and, if applicable, the Title Indemnity, (B) the exercise by Tenant of any right granted to it under the Lease shall not give rise to a default under this Security Instrument if such right is exercised in compliance with the Lease, (C) Lender shall have no greater rights under this Section with respect to the Tenant than Borrower has against the Tenant with respect to such matters under the Lease and (D) in the event of any conflict between the provisions of this Section and the applicable provisions of the Lease, such Lease provisions shall control.

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

(i) *Property Insurance.* Insurance with respect to the Improvements and Personal Property insuring against any peril now or hereafter included within the classification "Cause of Loss – Special Form" (sometimes referred to as "*All Risk of Physical Loss*"), without exclusion for terrorism and together with an "Ordinance and Law" endorsement, in amounts at all times sufficient to prevent Lender from becoming a co-insurer within the terms of the Policies and under Applicable Law, but in any event such insurance shall be maintained in an amount which, after application of deductible, shall be equal to the full insurable value of the Improvements and Personal Property, the term "full insurable value" to mean the actual replacement cost of the Improvements and Personal Property (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, a recognized independent insurance broker or an independent appraiser selected and paid by Borrower and in no event less than the coverage required pursuant to the terms of any Lease (the "*Replacement Cost*");

(ii) *Liability Insurance.* Commercial general liability insurance on the so-called "occurrence" form, including bodily injury, death and property damage liability, insurance against any and all claims, including all legal liability to the extent insurable and imposed upon Lender and all court costs and legal fees and expenses,

arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Property in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property but in any event for a minimum amount of \$5,000,000 (or such higher amount as Lender may reasonably require from time to time) and with a maximum deductible of \$5,000.

(iii) *Workers' Compensation Insurance.* To the extent applicable, statutory workers' compensation insurance with respect to any work on or about the Property;

(iv) *Business Interruption.* Business interruption and/or loss of "rental income" insurance in an amount sufficient to avoid any co-insurance penalty and to provide proceeds which will cover a period of not less than twelve (12) months from the date of casualty or loss, containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income returns to the same level it was prior to the loss, or the expiration of twelve (12) months from the date of the loss, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The term "rental income" means for purposes of this Section the sum of (A) the total then ascertainable Rents payable to Borrower under the Leases and (B) the total ascertainable amount of all other amounts to be received by Borrower from third parties which are the legal obligation of the tenants, reduced to the extent such amounts would not be received because of operating expenses not incurred during a period of non-occupancy of that portion of the Property then not being occupied;

(v) *Boiler and Machinery Insurance.* Broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery, and equipment located in, on or about the Property (including "system breakdown coverage") and insurance against loss of occupancy or use arising from any breakdown in such amounts as are generally required by institutional lenders for properties comparable to the Property;

(vi) *Flood Insurance.* If the Improvements are located in a "special flood hazard area" under the Flood Insurance Acts, flood insurance in an amount at least equal to the greater of (A) the Replacement Cost together with business interruption coverage and (B) the maximum limit of coverage available for the Property under the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994, as each may be amended (the "*Flood Insurance Acts*");

(vii) *Builder's Risk Insurance.* At all times during which construction, repairs or alterations are being made with respect to the Improvements which either affect the structure of the Improvements or will cost in excess of 5% of the value of the Property (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in Subsection 3.2(a)(i) written in a

so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsection 3.2(a)(i), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions; and

(viii) *Other Insurance.* Such other insurance with respect to the Property or on any replacements or substitutions or additions or increased coverage limits as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, including, without limitation, sinkhole, mine subsidence, earthquake and environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

(b) All insurance provided for in Subsection 3.2(a) shall be for a term of not less than one (1) year and obtained under valid and enforceable policies (the "*Policies*" or in the singular, the "*Policy*"), and shall be issued by one or more other domestic primary insurer(s) having (i) a Financial Size Category equal to or greater than VII and Policyholders Rating of "A-" or better, as assigned by Alfred M. Best and Company, Inc. or equivalent entity ("*Approved Insurance Companies*"). All insurers providing insurance required by this Security Instrument shall be authorized and admitted to issue insurance in the state in which the Property is located. The Policy referred to in Subsection 3.2(a)(ii) above shall name Lender as an additional insured and the Policies referred to in Subsection 3.2(a) (i), (iv), (v), (vi) and (vii)(B), and as applicable (viii), above shall provide that all proceeds be payable to Lender as set forth in Section 3.5 hereof. The Policies referred to in Subsections 3.2(a)(i), (v), (vi) and (vii)(B) shall also contain: (i) a standard "non-contributory mortgagee" endorsement or its equivalent relating, inter alia, to recovery by Lender notwithstanding the negligent or willful acts or omission of Borrower; (ii) to the extent available at commercially reasonable rates, a waiver of subrogation endorsement as to Lender; and (iii) an endorsement providing for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of similar properties in the general vicinity of the Property, but in no event in excess of \$10,000. All Policies shall contain (i) a provision that such Policies shall not be denied renewal, materially changed (other than to increase the coverage provided), cancelled or terminated, nor shall they expire, without at least thirty (30) days' prior written notice to Lender in each instance; and (ii) include effective waivers by the insurer of all claims for applicable premiums ("*Insurance Premiums*") against any mortgagee, grantee, loss payees, additional insureds and named insureds (other than Borrower). Evidence of insurance with respect to all renewal and replacement Policies shall be delivered to Lender not less than twenty (20) days prior to the expiration date of any of the Policies required to be maintained hereunder which evidence shall bear notations evidencing payment of Insurance Premiums. Originals or evidence of such replacement Policies shall be delivered to Lender promptly after Borrower's receipt thereof but in any case within thirty (30) days after the effective date thereof. If Borrower fails to maintain and deliver to Lender the original Policies or evidence of insurance required by this Security Instrument, Lender may procure such insurance at Borrower's sole cost and expense.

(c) Borrower shall comply with all insurance requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any

condition to exist thereon which would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to this Section 3.2 and shall not purchase any additional amounts of insurance that would cause Lender to become a co-insurer within the terms of the Policies.

(d) Unless Lender requires Borrower to obtain a separate Policy or Policies under Section 3.2(a), the insurance coverage required may be effected under a blanket Policy or Policies covering the Property; *provided* that any such blanket Policy shall specify, except in the case of commercial general liability insurance, the premises address of each building, the portion of the total coverage of such Policy that is allocated to the Property, and shall in any case provide the same protection as would a separate policy insuring only the Property and otherwise comply with all other respects with the requirements of this Section 3.2.

(e) Subject to Section 3.5, Lender may apply the Net Proceeds of any Policies carried under this Section 3.2 as a result of damage or destruction to the Property to the reduction or discharge of the Debt whether or not then due and payable.

(f) In the event of a foreclosure of the Security Instrument or other transfer of title to the Property in extinguishment in whole or in part of the Debt, all right, title and interest of Borrower in and to the Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in Lender or the purchaser at such foreclosure or other transferee in the event of such other transfer of title.

(g) Notwithstanding the foregoing, in lieu of Borrower obtaining the insurance coverages set forth above (hereinafter the "*Borrower Policies*"), if the Tenant satisfies the standards for self-insurance contained in the Lease (collectively, the "*Self-Insurance Standards*"), Lender will permit the Tenant to self-insure. During such time as the Tenant satisfies the Self-Insurance Standards, Borrower will be deemed to be in compliance with the requirements of this Section. Additionally, notwithstanding the foregoing, in lieu of obtaining Borrower Policies, if the Tenant satisfies the insurance requirements set forth in the Lease, and the insurance policies required to be maintained thereunder are procured through any of the Approved Insurance Companies (hereinafter, the "*Lease Policy Requirements*") Borrower will be deemed to be in compliance with the requirements of this Section. If at any time Tenant fails to satisfy the requirements under the Lease with respect to insurance (beyond the applicable cure period thereunder), then Borrower must satisfy the insurance requirements set forth in this Section 3.2.

*Section 3.3. Payment of Taxes, Etc.* (a) Notwithstanding any of the terms hereinafter contained in this Section, so long as the Lease is in effect (A) the requirements with respect to the payment of taxes contained in this Section shall be satisfied if either (1) no Lease Event of Default exists with respect to the payment of taxes or (2) the Borrower is diligently and continuously pursuing, or assisting Lender in pursuing, all applicable remedies under the Lease and, if applicable, the Title Indemnity, (B) the exercise by Tenant of any right granted to it under the Lease shall not give rise to a default under this Security Instrument if such right is exercised in compliance with the Lease, (C) Lender shall have no greater rights under this Section with

respect to the Tenant than Borrower has against the Tenant with respect to such matters under the Lease and (D) in the event of any conflict between the provisions of this Section and the applicable provisions of the Lease, such Lease provisions shall control.

(b) Borrower shall promptly pay or shall cause to be paid by their due date all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "*Taxes*"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "*Other Charges*"), and all charges for utility services provided to the Property as same become due and payable. During any period the Lease is not in effect, Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. During any period the Lease is not in effect, Borrower shall not suffer and shall promptly cause to be paid and discharged (including by bonding) any lien or charge whatsoever which may be or become a lien or charge against the Property.

(c) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, *provided* that (i) no Event of Default has occurred and is continuing under any of the Loan Documents, (ii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost and (v) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, or Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon. Nothing in this Section 3.3(b) shall prohibit the Tenant from contesting the payment of Taxes to the extent the Tenant is permitted to do so under the terms and conditions of the Lease, and Borrower shall not be deemed in default of its obligations hereunder so long as Tenant is diligently contesting the payment of such Taxes.

*Section 3.4. Condemnation.* (a) Notwithstanding any of the terms hereinafter contained in this Section, so long as the Lease is in effect (A) the requirements with respect to condemnation contained in this Section shall be satisfied if either (1) no Lease Event of Default exists with respect to condemnation or (2) the Borrower is diligently and continuously pursuing, or assisting Lender in pursuing, all applicable remedies under the Lease and, if applicable, the Title Indemnity, (B) the exercise by Tenant of any right granted to it under the Lease shall not give rise to a default under this Security Instrument if such right is exercised in compliance with the Lease, (C) Lender shall have no greater rights under this Section with respect to the Tenant than Borrower has against the Tenant with respect to such matters under the Lease, and (D) in

the event of any conflict between the provisions of this Section and the applicable provisions of the Lease (including without limitation with respect to which party is entitled to receive an Award (hereinafter defined)), such Lease provisions shall control.

(b) Borrower shall after its receipt of notice or actual knowledge thereof promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all notices and papers actually received by Borrower in connection with such proceedings. If the Lease is not in effect, Lender may participate in any such proceedings to the extent permitted by law. Upon an Event of Default, Borrower shall deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. If the Lease is not in effect, Borrower shall not make any agreement in lieu of condemnation of the Property or any portion thereof without the prior written consent of Lender in each instance, which consent shall not be unreasonably withheld or delayed in the case of a taking of an insubstantial portion of the Property. 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), and whether or not any award or payment made in any condemnation or eminent domain proceeding (an "Award") is made available to Borrower for Restoration in accordance with Section 3.5, Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. Borrower shall cause the Award made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender. Subject to Section 3.5, Lender may apply any Award to the reduction or discharge of the Debt whether or not then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

*Section 3.5. Restoration.* (a) Notwithstanding any of the terms hereinafter contained in this Section, so long as the Lease is in effect (A) the requirements with respect to restoration of the Property and disposition of condemnation proceeds contained in this Section shall be satisfied if either (1) no Lease Event of Default exists with respect to condemnation or (2) the Borrower is diligently and continuously pursuing, or assisting Lender in pursuing, all applicable remedies under the Lease and, if applicable, the Title Indemnity, (B) the exercise by Tenant of any right granted to it under the Lease shall not give rise to a default under this Security Instrument if such right is exercised in compliance with the Lease, (C) Lender shall have no greater rights under this Section with respect to the Tenant than Borrower has against the Tenant with respect to such matters under the Lease, and (D) in the event of any conflict between the provisions of this Section and the applicable provisions of the Lease, such Lease provisions shall control.

(b) The term "Net Proceeds" for purposes of this Section 3.5 shall mean: (i) the net amount of all insurance proceeds under the Policies carried pursuant to Subsections 3.2(a)(i), (iv), (v), (vi), (vii), and (viii) of this Security Instrument as a result of a condemnation, after deduction of Lender's reasonable costs and expenses (including, but not limited to reasonable legal fees), if any, in collecting the same, or (ii) the net amount of all Awards after deduction of Lender's reasonable costs and expenses (including, but not limited to reasonable legal fees), if any, in collecting the same, whichever the case may be. Subject to the terms of the last sentence of this Section 3.5(a), if (i) no Event of Default shall have occurred and be continuing under any of the Loan Documents; (ii) the Property and the use thereof after the Restoration will be in compliance with, and permitted under, all Applicable Laws; (iii) the Net Proceeds do not exceed \$50,000 (the "*Availability Threshold*"); and (iv) (A) if the Net Proceeds are insurance proceeds, less than 30% of the total floor area of the Improvements has been damaged or destroyed, or rendered unusable as a result of such fire or other casualty, or (B) if the Net Proceeds are condemnation awards, less than 20% of the Land constituting the Property is taken, such Land that is taken is located along the perimeter or periphery of the Property, no portion of the Improvements is located in such Lands, and such taking does not materially impair access to the Property, then the Net Proceeds will be disbursed directly to Borrower.

(c) If the Net Proceeds are not disbursed directly to Borrower or Tenant pursuant to Section 3.5(a), such Net Proceeds shall be forthwith paid to Lender, to be held by Lender in a segregated account to be made available to Borrower for the Restoration in accordance with the provisions of this Subsection 3.5(b).

The Net Proceeds held by Lender pursuant to this Subsection 3.5(b) other than the Net Proceeds paid under the Policy described in Subsection 3.2(a)(iv) (the "*Rental Loss Proceeds*") shall be made available to Borrower for payment or reimbursement of Borrower's expenses in connection with the Restoration, subject to the following conditions:

- (i) no Event of Default shall have occurred and be continuing under any of the Loan Documents;
- (ii) Lender shall, within a reasonable period of time prior to a request for an initial disbursement, be furnished with an estimate of the cost of the Restoration accompanied by an independent architect's opinion based on due professional investigation as to such costs and appropriate plans and specifications for the Restoration, such plans and specifications and cost estimates to be subject to Lender's approval, not to be unreasonably withheld or delayed;
- (iii) the Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Lender, are sufficient to cover the cost of the Restoration as such costs are certified by the independent architect;
- (iv) Net Proceeds are less than the then outstanding principal balance of the Note;

(v) Lender shall be satisfied that, upon the completion of the Restoration, the net cash flow of the Property will be restored to a level sufficient in Lender's sole judgment to cover all carrying costs and operating expenses of the Property, including, without limitation, debt service on the Note and all required replacement reserves, reserves for tenant improvements and leasing commissions;

(vi) the Restoration can reasonably be completed on or before the earliest to occur of (A) six (6) months prior to the Maturity Date, (B) the earliest date required for such completion under the terms of the Lease, and (C) such time as may be required under Applicable Laws in order to repair and restore the Property to as nearly as possible the condition it was in immediately prior to such fire or other casualty or to such taking, as applicable; and

(vii) the Property and its use after the Restoration will be in compliance with, and permitted under, all Applicable Laws.

(c) The Net Proceeds held by Lender until disbursed in accordance with the provisions of this Section 3.5 shall constitute additional security for the Obligations. The Net Proceeds other than the Rental Loss Proceeds shall be disbursed by Lender to, or as directed by, Borrower, in an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration less customary retainage from time to time during the course of the Restoration, not more frequently than once per month, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file the same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company insuring the lien of this Security Instrument. The Rental Loss Proceeds shall be disbursed by Lender to pay for debt service under the loan evidenced by the Note, to pay other expenses incurred by Borrower in connection with the ownership and operation of the Property, and the remainder thereof, to, or as directed by, Borrower to pay for the cost of the Restoration in accordance with this Section 3.5(c). Final payment shall be made after submission to Lender of all licenses, permits, certificates of occupancy and other required approvals of governmental authorization having jurisdiction and a certification of an independent consulting engineer selected by Lender (the "*Restoration Consultant*") that the Restoration has been fully completed.

(d) Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender and the Restoration Consultant, such acceptance not to be unreasonably withheld or delayed. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable legal fees and disbursements and the fees of the Restoration Consultant, shall be paid by Borrower.

(e) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Restoration Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "*Restoration Deficiency*") in immediately available funds with Lender before any further disbursement of the Net Proceeds shall be made. The Restoration Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 3.5 shall constitute additional security for the Obligations.

(f) Except upon the occurrence and continuance of an Event of Default, Borrower shall settle any insurance claims with respect to the Net Proceeds which in the aggregate are less than the Availability Threshold. Lender shall have the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds which in the aggregate are greater than the Availability Threshold. If an Event of Default shall have occurred and be continuing, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim and to collect and to make receipt for any such payment. If the Net Proceeds are received by Borrower, such Net Proceeds shall, until the completion of the related work, be held in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof.

(g) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Restoration Deficiency deposited with Lender after (i) the Restoration Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 3.5, and (ii) the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full and all required permits, licenses, certificates of occupancy and other required approvals of governmental authorities having jurisdiction have been issued, shall be remitted by Lender to Borrower, *provided* no Event of Default shall have occurred and shall be continuing under any of the Loan Documents.

(h) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 3.5(g) shall be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper or, at the discretion of Lender, the same shall be paid, either in whole or in part, to Borrower. If Lender shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Debt.

(i) Notwithstanding any of the terms contained in this Section 3.5, Lender acknowledges that, as of the date of execution of this Security Instrument, neither Borrower nor Lender has any interest in the Improvements and will not acquire any interest in the Improvements unless the Lease is terminated, and accordingly, this Section 3.5 shall not apply unless the Lease is no longer in effect and Borrower has acquired an interest in the Improvements.

*Section 3.6. Obligations and Terms Respecting Lease.* Unless otherwise consented to by Lender in its sole discretion, at all times the Property shall be leased to Tenant under the Lease, *provided* that, to the extent permitted thereby, the Lease may be assigned or the Property sublet by the Tenant upon the terms and conditions set forth in the Lease. Borrower will punctually perform all obligations, covenants and agreements by it to be performed under the Lease strictly in accordance with the terms thereof, and will at all times do all things reasonably necessary to compel performance by the Tenant of all covenants and agreements by it to be performed under the Lease; *provided* that the action or inaction of Borrower to so compel the Tenant to perform shall not affect in any way whether such failure of the Tenant to perform constitutes a Default or Event of Default under this Security Instrument. Borrower will promptly give to Lender copies of all notices of default given to the Tenant under the Lease. Except for Tenant's rights and/or obligations to purchase or substitute a Property pursuant to the Lease, Borrower will take no action and permit no action to be taken by other Persons which will release the Tenant from its obligations and liabilities under the Lease or result in the termination, amendment or modification of, or impair the validity of, the Lease. Neither this Security Instrument nor any action or inaction on the part of Lender shall constitute an assumption on the part of Lender of any obligation to the Tenant or any other person under the Lease. No action or inaction on the part of Borrower shall adversely affect or limit in any way the rights of Lender under this Security Instrument, or, through this Security Instrument, under the Lease.

Borrower will not, except with the prior written consent of Lender, take or suffer to be taken any action or consent to or permit any prepayment or discount of Rent or payment of Rent more than one payment in advance, under the Lease.

Except for Excepted Rights and Payments, Borrower will not without the prior written consent of Lender:

(a) declare a default or exercise the remedies of the landlord under, or terminate, modify or accept a surrender of, or offer or permit any termination, modification or surrender of, the Lease or create or consent to the creation or existence of any mortgage, deed of trust or other lien to secure the payment of indebtedness upon the landlord's interest under the Lease or any part thereof; or

(b) assign, transfer or hypothecate any rental or other payment due or to become due under the Lease or participate any rental or other payment thereunder, except Borrower's right to receive any payments due it under the Participation Agreement and that certain Pass Through Trust Agreement and Declaration of Trust entered into by Lender as Pass Through Trustee.

Borrower acknowledges that Lender has directed the Tenant in the Participation Agreement to deliver or remit directly to Lender, all Rents (as defined in Section 1.7(f)) now or hereafter due and payable to or receivable by Borrower under the Lease (except for Excepted Rights and Payments), such amounts to be paid directly to Lender in the manner provided therein or in such other manner as Lender may from time to time designate to the extent that Borrower may so designate under the Lease. All payments of Rent received by Lender as a result of the foregoing assignment of Rents shall be applied in the manner provided in Article IV of the Pass

Through Trust Agreement and Declaration of Trust. Borrower hereby agrees to send to Lender copies of all material notices and other material instruments or material communications required or permitted to be given by Borrower under the Lease pursuant thereto relating to consents or waivers for which Lender approval is required, and the exercise of remedies under the Lease or matters which, but for the passage of time or the giving of notice, would constitute an Event of Default.

Except for Excepted Rights and Payments and with respect to a purchase or substitution by Tenant under the Lease, Borrower agrees that it will not enter into any agreement subordinating, amending, supplementing, hypothecating, waiving, discharging or terminating the Lease or this Security Instrument without Lender's prior written consent thereto, and that any attempted subordination, amendment, supplement, hypothecation, waiver, discharge or termination without such consent shall be void. Borrower will not terminate the Lease or take possession of the Property in the event of default without the express prior written consent of Lender. In the event that the Lease shall be amended or supplemented as herein permitted, the Lease as so amended or supplemented shall continue to be subject to the provisions of this Security Instrument without the necessity of any further act by any of the parties hereto.

*Section 3.7. Maintenance and Use of Property.* (a) Notwithstanding any of the terms hereinafter contained in this Section, so long as the Lease is in effect (A) the requirements with respect to the compliance with legal requirements, maintenance, repair, restoration, rebuilding and alterations of the Property, payment of obligations and discharge of liens contained in this Section shall be satisfied if either (1) no Lease Event of Default exists with respect to compliance with legal requirements, maintenance, repair, restoration, rebuilding and alterations of the Property, payment of obligations and discharge of liens or (2) the Borrower is diligently and continuously pursuing, or assisting Lender in pursuing, all applicable remedies under the Lease and the Title Indemnity, (B) the exercise by Tenant of any right granted to it under the Lease shall not give rise to a default under this Security Instrument if such right is exercised in compliance with the Lease, (C) Lender shall have no greater rights under this Section with respect to the Tenant than Borrower has against the Tenant with respect to such matters under the Lease, and (D) in the event of any conflict between the provisions of this Section and the applicable provisions of the Lease, such Lease provisions shall control.

(b) Except as permitted under the terms of the Loan Documents, Borrower shall or shall cause Tenant to (i) subject to Section 3.5 hereof, promptly repair, restore or rebuild any buildings or improvements now or hereafter located on the Property which may become damaged or be destroyed, (ii) keep the Property in good condition and repair, ordinary wear and tear excepted, without waste, and free from all claims, liens, charges and encumbrances other than Permitted Exceptions, (iii) pay when due any liability, indebtedness or other obligation which may be secured by a lien or if unpaid will or could become a lien or other encumbrance on the Property which does not constitute a Permitted Exception, and upon request exhibit satisfactory evidence of the discharge of such lien to Lender, (iv) comply with all requirements of law or municipal ordinances with respect to the Property and the use thereof (including, without limitation, any law or municipal ordinance with respect to environmental protection or hazardous wastes), failure to comply with which would result in any material interference with the use or operation of the Property by Borrower, (v) promptly procure, maintain and comply with, all permits,

licenses and other authorizations required for the use of the Property or any erection, installation, operation and maintenance of the Property or any part thereof, and (vi) make no material alterations in said Property except as required by law or municipal ordinance.

(c) Without the prior written consent of Lender, Borrower shall not, construct upon the Property additional buildings, structures and other improvements or install, assemble and place upon the Property any trade fixtures, signs, furniture, furnishings, equipment, machinery and other tangible personal property used or useful in the business of Borrower or the Tenant, as the case may be, whether or not classified as fixtures under applicable law. To the extent of Borrower's interest, all such buildings, structures and other improvements shall be and remain part of the realty and shall be subject to this Security Instrument. Such trade fixtures, signs, furniture, furnishings, equipment, machinery and other tangible personal property shall be and remain the property of Borrower or the Tenant as the case may be, shall not be deemed part of the Property for purposes of condemnation or casualty, and Borrower or the Tenant, as the case may be, may remove the same from the Property at any time prior to the expiration or earlier termination of this Security Instrument, *provided* that Borrower, at its expense, shall repair or shall cause the Tenant to repair any damage to the Property resulting from such removal to the extent required under the Lease.

(d) Any repair, restoration, rebuilding, substitution, replacement, modification, alteration of or addition to the Property pursuant to this Section 3.7 must not impair the market value or usefulness of the Property for use in the ordinary course of business; shall be performed in a good and workmanlike manner and be expeditiously completed in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto, including to the extent necessary to maintain in full force and effect the policies of insurance required by Section 3.2 hereof. All costs and expenses of each such repair, restoration, rebuilding, substitution, replacement, the discharge of all liens filed against the Property arising out of the same, together with all costs and expenses necessary to obtain any permits or licenses required in connection therewith shall be promptly paid by Borrower or the Tenant.

*Section 3.8. Waste.* As long as the Lease is not in effect, Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. As long as the Lease is not in effect, Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

*Section 3.9. Compliance With Law.* (a) Notwithstanding any of the terms hereinafter contained in Subsections (b), (c) and (e) of this Section 3.9, so long as the Lease is in effect (A) the requirements with respect to the compliance with applicable laws contained in this Section shall be satisfied if either (1) no Lease Event of Default exists with respect to the compliance with applicable laws or (2) the Borrower is diligently and continuously pursuing, or assisting Lender in pursuing, all applicable remedies under the Lease and, if applicable, the Title

Indemnity, (B) the exercise by Tenant of any right granted to it under the Lease shall not give rise to a default under this Security Instrument if such right is exercised in compliance with the Lease, (C) Lender shall have no greater rights under this Section with respect to the Tenant than Borrower has against the Tenant with respect to such matters under the Lease and (D) in the event of any conflict between the provisions of this Section and the applicable provisions of the Lease, such Lease provisions shall control.

(b) Borrower shall promptly comply with all Applicable Laws affecting the Property or the use thereof.

(c) Notwithstanding any provisions set forth herein or in any document regarding Lender's approval of alterations of the Property, without the prior written approval of Lender, Borrower shall not alter the Property in any manner which would (i) materially increase Borrower's responsibilities for compliance with Applicable Laws (ii) adversely affect (x) Borrower's financial condition, (y) the value of the Property or (z) the gross income derived from the Property. Lender's approval of the plans, specifications, or working drawings for alterations of the Property shall create no responsibility or liability on behalf of Lender for their completeness, design, sufficiency or their compliance with Applicable Laws. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of compliance with Applicable Laws from an independent architect, engineer, or other person acceptable to Lender.

(d) Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

(e) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Applicable Laws affecting the Property, *provided* that (i) no Event of Default has occurred and is continuing under any of the Loan Documents; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and shall not constitute a default thereunder; (iii) neither the Property, any part thereof or interest therein, any of the tenants or occupants thereof, nor Borrower shall be affected in any material adverse way as a result of such proceeding; (iv) non-compliance with the Applicable Laws shall not impose civil or criminal liability on Borrower or Lender; (v) Borrower shall have furnished to Lender all other items reasonably requested by Lender.

*Section 3.10. [Intentionally Omitted].*

*Section 3.11. Payment for Labor and Materials.* To the extent Tenant is obligated to do so under the Lease, Borrower will promptly pay, or cause the Tenant to promptly pay in accordance with the terms and provisions of the Lease, when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit

to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions, unless permitted under the terms of any of the Loan Documents.

**ARTICLE IV  
BORROWING ENTITY COVENANTS**

Borrower covenants and agrees that:

*Section 4.1. Existence.* Borrower will continuously maintain (a) its existence and shall not dissolve or permit its dissolution, (b) its rights to do business in the state where the Property is located and (c) its franchises and trade names, if any.

*Section 4.2. ERISA.* (a) It shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*").

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (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:

(a) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(b) Less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

(c) 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) or an investment company registered under the Investment Company Act of 1940.

*Section 4.3. Special Purpose Entity.* (a) Each of the Beneficial Owner (hereinafter defined) and Borrower has not and will not:

(i) engage in any business or activity other than the ownership, operation and maintenance of the Borrower or the Property, as the case may be, and activities incidental thereto, including the Leasing of the Property to the Tenant;

(ii) except as may be required by this transaction, acquire or own any assets other than (A) the Property or its interests in the Borrower, as the case may be, and (B) such incidental Personal Property as may be necessary or appropriate for the operation of the Property;

(iii) to the fullest extent permitted by law, merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the Applicable Laws of the jurisdiction of its organization or formation, or without Lender's consent, which consent shall not be unreasonably withheld, amend, modify, terminate the provisions of its organizational documents or fail to comply with the provisions of its organizational documents; *provided, however*, Lender may withhold its consent in its sole and absolute discretion with respect to any matter relating to the special purpose nature of the Borrower or the Beneficial Owner, including without limitation, dissolution.

(v) own any subsidiary (except as may be required by this transaction), or make any investment in, any Person;

(vi) commingle its assets with the assets of any other Person;

(vii) unless expressly permitted under any of the Loan Documents, incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, unsecured trade payables (which must be incurred in the ordinary course of business relating to the ownership and operation of the Property), *provided* such trade payables (x) do not exceed at any time in the aggregate \$50,000.00, and (y) are paid within thirty (30) days after the date incurred;

(viii) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person;

(ix) enter into any contract or agreement with any general partner, member, shareholder, principal or affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xi) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit

of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xii) make any loans or advances to any Person;

(xiii) fail to file its own tax returns (unless prohibited by Applicable Laws from doing so), if any, as may be required under Applicable Laws, to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division for tax purposes of another taxpayer;

(xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

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

(xvi) if it is a partnership or limited liability company, without the unanimous written consent of all of its partners or members, as applicable, and the written consent of 100% of the members of the board of directors of Borrower including without limitation the Independent Director or if it is a statutory trust, without the unanimous written consent of all of its trustees and the written consent of 100% its beneficial owners including without limitation the Independent Trustee, (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors;

(xvii) fail to allocate shared expenses (including, without limitation, shared office space) and to use separate stationery, invoices and checks;

(xviii) fail to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds; and

(xix) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable.

(b) The organizational documents of Borrower and the Beneficial Owner shall provide that at all times there shall be, with respect to the Borrower, at least one duly appointed member of the board of managers or board of directors (an "*Independent Director*") of Borrower and, with respect to the Beneficial Owner, at least one duly appointed trustee (an "*Independent Trustee*") reasonably satisfactory to Lender who, in each case, shall not have been at the time of such individual's initial appointment, and shall not have been at any time during the preceding five years, and shall not be at any time while serving as a director of such Borrower or as a

trustee of such Beneficial Owner, either (i) a shareholder (or other equity owner) of, or an officer, director, partner, member or employee of, Borrower or Beneficial Owner or any of its respective shareholders, partners, members, subsidiaries or affiliates, (ii) a customer of, or supplier to, Borrower or Beneficial Owner or any of its respective shareholders, partners, members, trustees or affiliates (other than his or her service as an Independent Director, Independent Trustee or similar capacity), (iii) a Person who Controls or is under common Control with any such shareholder, officer, director, partner, member, employee supplier, trustee or customer, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier, trustee or customer.

(c) The organizational documents of Borrower and the Beneficial Owner shall provide that the board of managers, board of trustees or board of directors of Borrower and the Beneficial Owner shall not take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock, requires an unanimous vote of the board of directors of Borrower or, board of trustees Beneficial Owner unless at the time of such action there shall be at least one member of the board of managers or board of directors who is an Independent Director or an Independent Trustee, as the case may be. Borrower or Beneficial Owner will not without the unanimous written consent of its board of managers or board of directors including the Independent Director or the Independent Trustee, as the case may be, on behalf of itself or Borrower or Beneficial Owner (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors.

*Section 4.4. Change of Name, Identity or Structure.* Except as may be expressly permitted under Article XIII, Borrower will not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's or Beneficial Owner's corporate, partnership or other structure or jurisdiction of organization without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's or Beneficial Owner's structure, without first obtaining the prior written consent of Lender.

## ARTICLE V REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

*Section 5.1. Warranty of Title.* Based solely on the representations and warranties, if any, made by Seller, Borrower has title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and that it owns the Land free and clear of all liens, encumbrances and charges whatsoever except for Permitted Exceptions (as defined in the Participation Agreement). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument as such title, validity and priority exists of the date hereof and shall forever warrant and defend the same to Lender against

the claims of all persons whomsoever. Notwithstanding anything to the contrary contained in this Section 5.1, a default under this Mortgage shall not be an Event of Default so long as Borrower is diligently and continuously pursuing, or assisting Lender in pursuing, all applicable remedies under the Lease and the Title Indemnity.

*Section 5.2. Legal Status and Authority.* Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the state where the Property is located, to the extent required by such jurisdiction; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own and lease the Property. Borrower has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to, and to keep and observe all of, the terms of this Security Instrument.

*Section 5.3. Validity of Documents.* (a) The execution, delivery and performance of the Loan Documents and the borrowing evidenced by the Note (i) are within the power and authority of Borrower; (ii) have been authorized by all requisite organizational action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership or trust agreement, articles of organization, operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this Security Instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby), (b) the Loan Documents have been duly executed and delivered by Borrower through the undersigned authorized representative of Borrower and (c) to the best of Borrower's knowledge, the Loan Documents constitute the legal, valid and binding obligations of Borrower.

*Section 5.4. Litigation.* There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower's knowledge, threatened or contemplated against Borrower, that has not been disclosed to Lender by Borrower in writing. Borrower has received no written notice of any action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower's knowledge, threatened or contemplated against or affecting the Property that has not been disclosed to Lender by Borrower in writing.

*Section 5.5. Status of Property.* Since the date on which the Beneficial Owner (hereinafter defined) acquired its direct or indirect interest in the Borrower (a) Borrower has not received written notice that Borrower has failed to obtain (i) all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business, and (ii) all required zoning, building code, land use, environmental

and other similar permits or approvals. Borrower has not received written notice that any of the foregoing are not in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(b) Borrower has no actual knowledge, without independent investigation or inquiry and without imputing to Borrower the knowledge of any third party, that the Property and the present and contemplated use and occupancy thereof violate any Applicable Laws.

(c) Borrower has no actual knowledge, without independent investigation or inquiry and without imputing to Borrower the knowledge of any third party, that the Property is not served by all utilities required for the current or contemplated use thereof, that all utility service is not provided by public utilities and that the Property has not accepted and is not equipped to accept such utility service.

(d) Borrower has no actual knowledge, without independent investigation or inquiry and without imputing to Borrower the knowledge of any third party, that all public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have not been completed, are not serviceable and all-weather and are not physically and legally open for use by the public.

(e) Borrower has no actual knowledge, without independent investigation or inquiry and without imputing to Borrower the knowledge of any third party, that the Property is not served by public water and sewer systems.

(f) Borrower has no actual knowledge, without independent investigation or inquiry and without imputing to Borrower the knowledge of any third party, that the Property is not free from damage caused by fire or other casualty.

(g) Borrower has received no notice of any actual or threatened condemnation or eminent domain proceedings by any public or quasi-public authority.

*Section 5.6. No Foreign Person.* Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations.

*Section 5.7. Lease.* Since the date on which the Beneficial Owner acquired its direct or indirect interest in the Borrower, (a) Borrower is the sole owner of the entire lessor's interest in the Lease; (b) the Lease is valid and enforceable and in full force and effect subject to applicable bankruptcy and similar laws affecting creditors' rights; (c) Borrower has no actual knowledge that the Tenant is in default under the Lease; (d) all Basic Rent due has been paid in full; (e) Borrower has not assigned or otherwise pledged or hypothecated any of the Rents reserved in the Lease, except pursuant to this Security Instrument; (f) none of the Rents have been collected for more than one payment in advance (except a security deposit shall not be deemed rent collected in advance); (g) the Tenant has accepted the premises demised under the Lease and taken possession of the same on a rent-paying basis; (h) there exist no offsets or defenses to the payment of any portion of the Rents and Borrower has no monetary obligation to the Tenant

under the Lease; (i) Borrower has received no notice from the Tenant challenging the validity or enforceability of the Lease; (j) Borrower has not entered into any agreements with the Tenant under the Lease other than expressly set forth in the Lease; (k) the Lease is valid and enforceable against Borrower and the Tenant subject to applicable bankruptcy and similar laws affecting creditors' rights; (l) the Lease is in full force and effect; (m) all obligations required to be performed by Borrower under the terms of the Lease as a condition to the commencement and/or payment of rent have been satisfied on or prior to the date hereof; and (n) no brokerage commissions or finders fees are due and payable by Borrower regarding the Lease.

*Section 5.8. Financial Condition.* (a) (i) Borrower is solvent, and no proceeding under Creditors Rights Laws with respect to Borrower has been initiated, and (ii) Borrower has received reasonably equivalent value for the granting of this Security Instrument.

(b) No petition in bankruptcy has been filed by or against Borrower or any related entity, or any principal, general partner or member thereof, in the last seven (7) years, and Borrower and any related entity, or any principal, general partner or member thereof, in the last seven (7) years has not made any assignment for the benefit of creditors or taken advantage of any Creditors Rights Laws.

*Section 5.9. Business Purposes.* The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

*Section 5.10. Taxes.* Since the date on which the Beneficial Owner acquired its direct or indirect interest in the Borrower, Borrower has filed all federal, state, county, municipal, and city income tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them with respect to such income taxes. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

*Section 5.11. Mailing Address.* Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

*Section 5.12. Disclosure.* No written statement prepared by Borrower and furnished by Borrower or Borrower's Special Counsel to Lender in connection with the negotiation of the transactions contemplated by the Loan Agreement, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not materially misleading. There is no fact peculiar to Borrower or Borrower's Special Counsel which Borrower or Borrower's Special Counsel has not disclosed to you in writing which materially affects adversely nor, so far as Borrower or Borrower's Special Counsel can now foresee, will materially affect adversely the properties, business, prospects, profits or condition (financial or otherwise) of Borrower or the ability of Borrower to perform its obligations under the Loan Documents to which it is a party or the Note.

*Section 5.13. Third Party Representations.* Each of the representations and the warranties made by Borrower in any Other Security Document(s) is true and correct in all material respects.

*Section 5.14. Illegal Activity.* Borrower has no actual knowledge that any portion of the Property has been or will be purchased, improved, equipped, fixtured, or furnished with proceeds of any criminal or other illegal activity or that, there are any illegal activities or activities relating to controlled substances at the Property.

*Section 5.15. Special Purpose Entity; Indebtedness.* (a) Except as may be required by this transaction, Borrower does not own any real property or material assets other than the Property and cash and cash-like equivalents and does not engage in any business other than the ownership, leasing and financing of the Property.

(b) Borrower has no indebtedness, guaranties, liabilities or other obligations other than as permitted in the Security Instrument or any of the other Loan Documents.

*Section 5.16. ERISA.* (a) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; and

(b) As of the date hereof and throughout the term of this Security Instrument (i) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

(c) The execution and delivery of this Security Instrument and the issuance of the Note will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Internal Revenue Code of 1986 (as amended).

*Section 5.17. No Defaults.* Borrower has no actual knowledge that any default or Event of Default as defined in the Security Instrument has occurred and is continuing.

*Section 5.18. Governmental Consent.* To the best of Borrower's actual knowledge without imputing to Borrower the knowledge of any third party, no approval, consent or withholding of objection on the part of any regulatory body, state, Federal, state or local, is necessary in connection with the execution and delivery by Borrower of the Security Instrument or any other Loan Documents or the Note or compliance by Borrower with any of the provisions of the Security Instrument or any other Loan Documents or the Note.

*Section 5.19. Receipt of Proceeds.* Borrower has received loan proceeds from Lender in the entire principal amount of the Note proceeds equal to the Loan Amount set forth on Schedule A hereto and there is no requirement for any future advances by Lender under the Loan Documents.

*Section 5.20. Use of Proceeds.* The proceeds from the issuance of the Note will be used to finance the purchase of the Property or the membership interests in Borrower. None of the transactions contemplated in the Loan Agreement (including without limitation thereof, the use of proceeds from the issuance of the Note) will violate or result in the violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulation issued pursuant thereto, including, without limitation, Regulations U, T and X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II. Borrower does not own or intend to carry or purchase any "margin security" within the meaning of said Regulation U. None of the proceeds from the issuance of the Note will be used to purchase any "security" within the meaning of the Securities Exchange Act of 1934, as amended.

*Section 5.21. Investment Company Act Status.* Borrower is not an "investment company," or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

*Section 5.22. Compliance with Law.* Since the date that Beneficial Owner acquired its direct or indirect interest in the Borrower, Borrower has not received written notice that Borrower is in violation of any law, ordinance, governmental rule or regulation to which it is subject nor, has Borrower, received written notice that, the Tenant is in violation of any such laws, ordinances, rules or regulations relating to the Property to which it is subject, the Employee Retirement Income Security Act of 1974, as amended (together with any successor statute and all regulations thereunder, "ERISA"), the violation of which would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Borrower.

*Section 5.23. Environmental Compliance.* Since the date on which the Beneficial Owner acquired its direct or indirect interest in the Borrower, Borrower has not received written notice, that: (a) there are any Hazardous Materials or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with Environmental Laws and with permits issued pursuant thereto (if such permits are required), if any, and (ii) either (A) in amounts not in excess of that necessary to operate the Property or (B) fully disclosed to and approved by Lender in writing pursuant to an Environmental Report; (b) there are any past, present or threatened Releases of Hazardous Materials in violation of any Environmental Law and which would require remediation by a governmental authority in, on, under or from the Property except as described in the Environmental Report; (c) there is any threat of any Release of Hazardous Materials migrating to the Property except as described in the Environmental Report; (d) there is any past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report. Since the date on which Beneficial Owner acquired its direct or indirect interest in Borrower, Borrower does not know of, and has not received, any written or oral notice or other communication from any Person relating to Hazardous Materials in, on, under or from the Property and Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property known to Borrower or contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Materials in, on, under or migrating to or from the Property and/or to the environmental condition of the Property.

*Section 5.24. Rent.* The aggregate amount of the fixed rental installments payable under the Lease will, on each date for the payment thereof set forth in the Lease, be sufficient, if paid when due, to make each payment of the interest and principal due on the Note on the scheduled due date immediately following such rent payment date.

*Section 5.25. Trading with the Enemy Act.* Neither the issuance of the Note nor the use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or the Anti-Terrorism Order or any enabling legislation or executive order relating to any of the same. Without limiting the generality of the foregoing, neither Borrower nor any of its affiliates (a) is or will become a blocked person described in Section 1 of the Anti-Terrorism Order or (b) engages or will engage in any dealings or transactions or be otherwise associated with any such blocked person. For purposes hereof, "Anti-Terrorism Order" means Executive Order No. 13,224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions).

*Section 5.26. Private Offering.* Neither Borrower, directly or indirectly, nor any agent on its behalf has offered or will offer the Note or any Security (as defined in Section 2(1) of the Securities Act of 1933, as amended) to, or has solicited or will solicit an offer to acquire the Note or any similar Security from, or has otherwise approached or will approach or negotiate in respect of the Note or any similar Security with, any person or entity other than Lender and certain other institutional investors, each of whom was offered the Note at private sale for investment and Borrower represents and warrants that neither Borrower, directly or indirectly, nor any agent on its behalf has offered or will offer the Note or any similar Security to, or has solicited or will solicit an offer to acquire the Note or any similar Security from, any person or entity so as to bring the issuance and sale of the Note within the provisions of Section 5 of the Securities Act of 1933, as amended, *provided* that Borrower makes no representation or warranty with respect to the actions of Piper Jaffray & Co. or Morgan Stanley & Co. Incorporated or their respective affiliates.

## ARTICLE VI OBLIGATIONS AND RELIANCE

*Section 6.1. Relationship of Borrower and Lender.* The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

*Section 6.2. No Reliance on Lender.* The members, general partners, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise in connection with the ownership of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

*Section 6.3. No Lender Obligations.* Notwithstanding any provision of the Loan Documents, Lender is not undertaking the performance of (i) any obligations under the Lease, except to collect the rent, service the debt and remit the appropriate cash flow to Borrower; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including without limitation, 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, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

*Section 6.4. Reliance.* Borrower recognizes and acknowledges that in accepting the Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article V and Article XII without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Loan Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article V and Article XII.

## ARTICLE VII FURTHER ASSURANCES

*Section 7.1. Recording of Security Instrument, Etc.* Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, at the expense of the Tenant, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the 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 and perfect the lien or security interest hereof upon, and the interest of Lender and Deed of Trust Trustee in, the Property. Borrower will cause Tenant to pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of any of the Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

*Section 7.2. Further Acts, Etc.* Borrower will, at the cost of Tenant, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring,

conveying, assigning, transferring, and confirming to Lender the Property and rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument, or other Loan Documents, or for filing, registering or recording this Security Instrument, or for complying with Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender, following 10 days' notice to Borrower, to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence or perfect more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 7.2.

*Section 7.3. [Intentionally Omitted]*

*Section 7.4. Estoppel Certificates.* (a) After request by Lender, Borrower, within 5 Business Days after receipt from Tenant of an estoppel certificate, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that the Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (vii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (viii) that the Lease is in full force and effect and has not been modified (or if modified, setting forth all modifications), (ix) the date to which the Rents thereunder have been paid pursuant to the Lease, (x) whether or not, to the actual knowledge of Borrower, without investigation, the Tenant under the Lease is in default under the Lease, and, if, to the actual knowledge of Borrower, the Tenant is in default, setting forth the specific nature of all such defaults, (xi) the amount of security deposits held by Borrower under the Lease and that such amounts are consistent with the amounts required under the Lease, and (xii) as to any other matters reasonably requested by Lender and reasonably related to the Lease, the obligations secured hereby, the Property or this Security Instrument.

(b) Upon request by Lender, Borrower will request an estoppel certificate from Tenant in accordance with the terms of the Lease.

(c) Upon any transfer or proposed transfer contemplated by Section 18.1, at Lender's request, Borrower shall provide an estoppel certificate to the Investor or any prospective Investor in such form, substance and detail as Lender, such Investor or prospective Investor may reasonably require.

(d) After written request by Borrower not more than twice annually, Lender shall furnish Borrower a statement 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, and (iv) a statement regarding whether Lender has delivered to Borrower notice of an Event of Default.

Section 7.5. [Intentionally Omitted].

Section 7.6. *Splitting of Security Instrument.* This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender and at Lender's cost and expense, shall execute, acknowledge and deliver to Lender and/or its designee or designees, substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount secured by this Security Instrument, and containing terms, provisions and clauses (a) no less favorable to Borrower than those contained herein and in the Note, and (b) which do not materially increase Borrower's obligations hereunder, and such other documents and instruments as may be reasonably required by Lender to effect the splitting of the Note and this Security Instrument.

Section 7.7. *Replacement Documents.* Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any of the Loan Documents which is not of public record and, with respect to the Note, an indemnity of Lender with respect thereto, and, in the case of any such mutilation, upon surrender and cancellation of such Loan Document, Borrower will issue, in lieu thereof, a replacement Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor.

#### ARTICLE VIII DUE ON SALE/ENCUMBRANCE

Section 8.1. *No Sale/Encumbrance.* (a) Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (collectively, a "Prohibited Transfer").

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to the Lease or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; or (vi) if a Restricted Party is a trust or nominee trust, any

merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests, or (vii) the removal or the resignation of the managing agent (including, without limitation, an Affiliated Manager).

(c) At all times while the Security Instrument and the Other Security Instruments are outstanding, Golden W Investors Trust I, a Delaware statutory trust that is the sole member or limited partner and indirectly the general partner of the Borrower (the "*Beneficial Owner*") shall own 100% of the equity interests or limited and general partnership interests in Borrower.

(d) Notwithstanding anything to the contrary contained in this Section 8.1, but subject to Section 8.1(c), interests in the Beneficial Owner may be transferred from time to time and at any time.

*Section 8.2. Transfer Definitions.* For purposes of this Article VIII, "Restricted Party" shall mean Borrower, any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, any Affiliated Manager or any non-member manager; and a "Sale or Pledge" shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

#### **ARTICLE IX PREPAYMENT**

The Debt may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note or this Security Instrument.

#### **ARTICLE X DEFAULT**

*Section 10.1. Events of Default.* The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) if any portion of the principal or interest due and owing under the Note is not paid on or before the calendar day that is thirteen (13) days after such payment is due or if the entire Debt is not paid on or before the Maturity Date, along with applicable prepayment premiums, if any;

(b) if Borrower or the Beneficial Owner, if applicable, violates or does not comply with any of the provisions contained in Section 4.3 or Article VIII;

(c) if any representation or warranty of Borrower or the Beneficial Owner, made in the Security Instrument (except as otherwise provided in Section 5.1 of this Security Instrument) or in any other Loan Document, in any guaranty, or in any

certificate, report, financial statement or other instrument or document furnished by Borrower to Lender after the date on which Beneficial Owner acquired its direct or indirect interest in Borrower shall have been false or misleading in any material respect when made;

(d) if Borrower or the Beneficial Owner shall make an assignment for the benefit of creditors or if Borrower or the Beneficial Owner shall admit in writing its inability to pay, or Borrower's or the Beneficial Owner's failure to pay its debts as they become due;

(e) if (i) Borrower or the Beneficial Owner shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors (collectively, "*Creditors Rights Laws*"), seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or the Beneficial Owner shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or the Beneficial Owner any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) calendar days; or (iii) there shall be commenced against Borrower or the Beneficial Owner any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) calendar days from the entry thereof; (iv) Borrower or the Beneficial Owner shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) Borrower or the Beneficial Owner shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(f) so long as the Lease is not in effect and subject to Borrower's right to contest certain liens as provided in Section 3.3(c), if the Property becomes subject to any mechanic's, materialman's or other lien (other than a lien for local real estate taxes and assessments not then due and payable) and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) calendar days after written notice to Borrower (or such lesser period of time under local law in which a judgment creditor is permitted to execute on such judgment);

(g) subject to Borrower's right to contest certain liens as provided in Section 3.3(c), if the Property becomes subject to any lien described in Section 2.3(ii) or (iii) of the Lease and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) calendar days after written notice to Borrower (or

such lesser period of time under local law in which a judgment creditor is permitted to execute on such judgment);

(h) if any federal tax lien is filed against Borrower or the Beneficial Owner and same is not discharged of record within thirty (30) calendar days after same is filed;

(i) subject to Section 3.2(a), the failure of Borrower to maintain or cause to be maintained the insurance required under Section 3.2;

(j) seizure or forfeiture of the Property, or any portion thereof, or Borrower's interest therein, resulting from criminal wrongdoing or other unlawful action of Borrower, the Beneficial Owner or their affiliates, under any federal, state or local law;

(k) if Borrower consummates a transaction which would cause the Security Instrument or Lender's exercise of its rights under the Security Instrument, the Note or the other Loan Documents to constitute a nonexempt prohibited transaction under ERISA or the Code, or result in a violation of federal, state or local law regulating governmental plans, subjecting Lender to liability for a violation of ERISA or a state statute;

(l) [Intentionally Omitted];

(m) if Borrower shall continue to be in default under any other term, covenant or condition of the Security Instrument or any other Loan Documents for thirty (30) calendar days after notice from Lender; provided that if such default cannot reasonably be cured within such thirty (30) calendar day period (other than by the payment of money) and Borrower shall have commenced to cure such default within such thirty (30) calendar day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) calendar day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default;

(n) a Lease Event of Default has occurred and is continuing;

(o) if the Lease is terminated, surrendered, modified or cancelled in violation of the terms hereof and without the prior written consent of Lender;

(p) so long as the Lease is not in effect, if Borrower fails to cure, properly any violations of laws or ordinances affecting or which may be interpreted to affect the Property within thirty (30) days after Borrower has actual knowledge or receives notice of any such violations; *provided, however*, if such violation of laws or ordinances is reasonably susceptible of cure, but not within such thirty (30) day period, then Borrower may be permitted such additional time as shall be required (or such lesser period of time as required by applicable law) to cure such default *provided* that Borrower diligently and continuously pursues such cure and *provided further* that Borrower promptly provides Lender with a written report and evidence reasonably satisfactory to Lender of the progress of Borrower's cure efforts from time to time as requested by Lender;

(q) if any of the factual assumptions contained in the Insolvency Opinion, including, but not limited to, any exhibits attached thereto, were not true and correct as of the date of such Insolvency Opinion or thereafter became untrue or incorrect in any respect (and remain untrue or incorrect for 30 days after the earlier to occur of Borrower acquiring actual knowledge or receiving notice thereof) and in Lender's reasonable judgment, such incorrect assumption would likely result in the substantive consolidation of Borrower with its member or general partner in a bankruptcy; or

(r) if an Event of Default occurs under any Other Security Instrument.

Notwithstanding anything contained in this Section 10.1 to the contrary, so long as no other Event of Default has occurred and is continuing under this Security Instrument (other than an Event of Default under this Security Instrument resulting from a Lease Event of Default under Section 5.1(a)(ii), (iii) or (iv) of the Lease), it is understood and agreed that Lender shall not declare the entire Debt to be immediately due and payable, foreclose the lien of this Security Instrument or otherwise exercise the remedies which would result in the exclusion of Borrower from the Property as a result of any Event of Default under this Security Instrument that arises solely by reason of a Lease Event of Default under Section 5.1(a)(ii), (iii) or (iv) of the Lease, so long as Borrower is diligently and continuously pursuing, or at Lender's request, assisting Lender in pursuing, all applicable remedies under the Lease and the Title Indemnity and *provided further* that Borrower promptly provides Lender with a written report and evidence reasonably satisfactory to Lender of the progress of Borrower's cure efforts from time to time as requested by Lender.

With respect to any Lease Event of Default related to a Property, Tenant's consummation of a substitution of such Property or purchase of such Property in accordance with Section 5.1(b) of the Lease shall be deemed to cure the related Event of Default hereunder with respect to such Lease Event of Default.

#### ARTICLE XI RIGHTS AND REMEDIES

*Section 11.1. Remedies.* Upon the occurrence of any Event of Default and subject to the applicable provisions of Addendum A and Applicable Law, Borrower agrees that Lender (or the Deed of Trust Trustee if required by law) may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, 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 (or the Deed of Trust Trustee if required by law) may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender and Deed of Trust Trustee:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any Applicable Law in which case the Property or any

interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law and the terms of the Lease, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

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

(e) subject to the provisions of Article X of the Note, institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained in the Loan Documents;

(f) subject to the provisions of Article X of the Note, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

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

(h) subject to any Applicable Law and the terms of the Lease, Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records, accounts, rent rolls, leases, subleases and rental and license agreements with the tenants, subtenants and licensees in possession of the Property or any part or parts thereof; tenants', subtenants' and licensees' money deposits or other property (including, without limitation, any letter of credit) given to secure tenants', subtenants' and licensees' obligations under leases, subleases or licenses, together with a list of the foregoing; all lists pertaining to current rent and license fee arrears; any and all architects' plans and specifications, licenses and permits, documents, books, records, accounts, surveys and property which relate to the management, leasing, operation, occupancy, ownership, insurance, maintenance, or service of or construction upon the Property and Borrower agrees to surrender possession of the foregoing and of the Property to Lender and Deed of Trust Trustee upon demand, and thereupon Lender (or Deed of Trust Trustee if required by law) may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property

and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) either require Borrower (A) to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower, or (B) to vacate and surrender possession of the Property to Lender (or Deed of Trust Trustee if required by law) or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vi) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable legal fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, Deed of Trust Trustee, and their respective counsel, agents and employees;

(i) exercise 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: (i) the right to take possession of the Personal Property and other UCC Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property and other UCC Collateral, and (ii) request Borrower at its expense to assemble the Personal Property and other UCC Collateral and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property and other UCC 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;

(j) exercise any and all rights and remedies available upon default to Lender at law or in equity as pledgee to apply any sums held in escrow or otherwise by Lender (or Deed of Trust Trustee if required by law) in accordance with the terms of any of the Loan Documents to the payment of the following items in any order in Lender's sole discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; and (v) all other sums payable pursuant to any of the Loan Documents, including, without limitation, advances made by Lender (or Deed of Trust Trustee if required by law) pursuant to the terms of this Security Instrument;

(k) surrender the Policies maintained pursuant to Article III, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is

coupled with an interest and is therefore irrevocable) for Borrower to collect any unearned Insurance Premiums;

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

(m) exercise all rights and remedies under any Causes of Action, whether before or after any sale of the Property by foreclosure, power of sale, or otherwise and apply the proceeds of any recovery to the Debt in accordance with Section 11.2 or to any deficiency under this Security Instrument; or

(n) pursue such other remedies as Lender and/or Deed of Trust Trustee may have under applicable state or federal law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as described in Subsection 10.1 (d) or (e) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender or Deed of Trust Trustee.

*Section 11.2. Application of Proceeds.* The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender or Deed of Trust Trustee pursuant to the Loan Documents, may be applied by Lender or Deed of Trust Trustee, subject to Applicable Law, to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

*Section 11.3. Right to Cure Defaults.* Upon the occurrence of any Event of Default, Lender (or Deed of Trust Trustee if required by law) may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same to cure such Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to the terms of the Lease while the Lease is in full force and effect, Lender (or Deed of Trust Trustee if required by law) is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt. The cost and expense of any cure hereunder (including reasonable legal fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender (or Deed of Trust Trustee) in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (as defined in the Note), for the period after notice from Lender (or Deed of Trust Trustee if required by law) that such cost or expense was incurred to the date of payment to Lender (or Deed of Trust Trustee if required by law). All such costs and expenses incurred by Lender or Deed of Trust Trustee

together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

*Section 11.4. Actions and Proceedings.* Subject to the terms of the Lease, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property, and after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

*Section 11.5. Recovery of Sums Required to Be Paid.* Subject to Applicable Law, Lender or Deed of Trust Trustee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender or Deed of Trust Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

*Section 11.6. Examination of Books and Records.* Lender, its agents, accountants and attorneys shall have the right upon prior written notice (unless an Event of Default exists, in which case no notice shall be necessary), to examine and audit, during reasonable business hours, the records, books, management and other papers of Borrower which pertain to their financial condition or the income, expenses and operation of the Property, subject to the terms of the Lease, at the Property, or at any office regularly maintained by Borrower where the books and records are located. Lender and its agents shall have the right upon notice to make copies and extracts from the foregoing records and other papers.

*Section 11.7. Other Rights, Etc.* (a) The failure of Lender or Deed of Trust Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender or Deed of Trust Trustee to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions of the Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment, changing the rate of interest, or otherwise modifying or supplementing the terms of the Loan Documents.

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

(c) Subject to Applicable Law, (i) Lender (or Deed of Trust Trustee if required by law) may resort for the payment of the Debt to any other security held by Lender or Deed of Trust Trustee in such order and manner as Lender, in its discretion, may elect; (ii) Lender (or Deed of

Trust Trustee if required by law) may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Deed of Trust Trustee thereafter to foreclose this Security Instrument; (iii) the rights of Lender and Deed of Trust Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others; (iv) no act of Lender or Deed of Trust Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision; and (v) Lender and Deed of Trust Trustee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

*Section 11.8. Right to Release Any Portion of the Property.* Lender (or Deed of Trust Trustee if required by law) may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

*Section 11.9. Violations of Law.* If the Property is not in compliance with Applicable Laws and the Lease is not in effect, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

*Section 11.10. Right of Entry.* Subject to the rights of Tenant under the Lease, Lender (or Deed of Trust Trustee if required by law) and its agents shall have the right to enter and inspect the Property at all reasonable times.

*Section 11.11. Subrogation.* If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall, subject to Applicable Law, be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations under the Loan Documents and the performance and discharge of the Other Obligations.

## ARTICLE XII ENVIRONMENTAL HAZARDS

*Section 12.1. Environmental Covenants.* Notwithstanding any of the terms hereinafter contained in this Section, so long as the Lease is in effect (A) the requirements with respect to environmental matters related to the Property contained in this Section shall be satisfied if either (1) no Lease Event of Default exists with respect to environmental matters or (2) the Borrower is

diligently and continuously pursuing, or assisting Lender in pursuing, all applicable remedies under the Lease and, if applicable, the Title Indemnity, (B) the exercise by Tenant of any right granted to it under the Lease shall not give rise to a default under this Security Instrument if such right is exercised in compliance with the Lease, (C) Lender shall have no greater rights under this Section with respect to the Tenant than Borrower has against the Tenant with respect to such matters under the Lease and (D) in the event of any conflict between the provisions of this Section and the applicable provisions of the Lease, such Lease provisions shall control. Borrower covenants and agrees that, so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property, whether by Borrower or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Materials in, on, under or from the Property; (c) there shall be no Hazardous Materials in, on, or under the Property, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required, and (ii) (A) in amounts not in excess of that necessary to operate the Property or (B) fully disclosed to and approved by Lender in writing; (d) Borrower shall keep the Property free and clear of all Environmental Liens; (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender, upon Lender's reasonable belief that the Property is not in full compliance with all Environmental Laws, and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (g) Borrower shall, or shall cause Tenant to, at its or Tenant's sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate remediation of any Hazardous Materials in, on, under or from the Property; and (ii) comply with any Environmental Law; (h) Borrower shall not allow the Tenant or other user of the Property to violate any Environmental Law; and (i) Borrower shall immediately notify Lender in writing after it has become aware of (A) any presence or Release or threatened Release of Hazardous Materials in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien against the Property; (D) any required or proposed remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Materials. Any failure of Borrower to perform its obligations pursuant to this Section 12.1 shall constitute bad faith waste with respect to the Property.

*Section 12.2. Lender's Rights.* Lender and any other Person designated by Lender, including but not limited to any representative of a governmental entity, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to, subject to the terms of the Lease, enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil,

groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender, subject to the terms of the Lease.

*Section 12.3. Operations and Maintenance Programs.* So long as the Lease is not in effect, if recommended by the Environmental Report or any other environmental assessment or audit of the Property, Borrower shall establish and comply with an operations and maintenance program with respect to the Property, in form and substance reasonably acceptable to Lender, prepared by an environmental consultant reasonably acceptable to Lender, which program shall address any asbestos-containing material or lead based paint that may now or in the future be detected at or on the Property. Without limiting the generality of the preceding sentence, Lender may require (a) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify, (b) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (c) at Borrower's sole expense, supplemental examination of the Property by consultants specified by Lender, (d) access to the Property by Lender, its agents or servicer, to review and assess the environmental condition of the Property and Borrower's compliance with any operations and maintenance program, and (e) variation of the operations and maintenance program in response to the reports provided by any such consultants.

*Section 12.4. Environmental Definitions.* "Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, that apply to Borrower or the Property and relate to Hazardous Materials or protection of human health or the environment. "Environmental Liens" means all Liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person. "Environmental Report" means the written reports resulting from the environmental site assessments of the Property delivered to Lender. "Hazardous Materials" shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material", "hazardous waste", "toxic substance", "toxic pollutant", "contaminant", or "pollutant" within the meaning of any Environmental Law. "Release" of any Hazardous Materials includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

**ARTICLE XIII**  
**INDEMNIFICATION**

*Section 13.1. General Indemnification.* Notwithstanding any of the terms hereinafter contained in this Section, so long as the Lease is in effect (A) the requirements with respect to indemnification contained in this Section shall be satisfied if either (1) no Lease Event of Default exists with respect to indemnification or (2) the Borrower is diligently and continuously pursuing, or assisting Lender in pursuing, all applicable remedies under the Lease and, if applicable, the Title Indemnity, (B) the exercise by Tenant of any right granted to it under the Lease shall not give rise to a default under this Security Instrument if such right is exercised in compliance with the Lease, (C) Lender shall have no greater rights under this Section with respect to the Tenant than Borrower has against the Tenant with respect to such matters under the Lease and (D) in the event of any conflict between the provisions of this Section and the applicable provisions of the Lease, such Lease provisions shall control. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Applicable Laws; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Security Instrument. Any amounts payable to Lender by reason of the application of this Section 13.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. The term "Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to legal fees and other costs of defense). The term "Indemnified Parties" shall mean (a) Lender, (b) any prior owner or holder of the Note, (c) any servicer or prior servicer of the Loan, (d) any Investor or any prior Investor in any Participations or Securities, (e) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any Investor or other third party, (f) any receiver or other fiduciary appointed in a foreclosure or other Creditors Rights Laws proceeding, (g) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (h) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties' assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan.

*Section 13.2. [Intentionally Omitted].*

*Section 13.3. Duty to Defend; Legal Fees and Other Fees and Expenses.* Notwithstanding any of the terms hereinafter contained in this Section, so long as the Lease is in effect (A) the requirements with respect to indemnification contained in this Section shall be satisfied if either (1) no Lease Event of Default exists with respect to indemnification or (2) the Borrower is diligently and continuously pursuing, or assisting Lender in pursuing, all applicable remedies under the Lease and, if applicable, the Title Indemnity, (B) the exercise by Tenant of any right granted to it under the Lease shall not give rise to a default under this Security Instrument if such right is exercised in compliance with the Lease, (C) Lender shall have no greater rights under this Section with respect to the Tenant than Borrower has against the Tenant with respect to such matters under the Lease and (D) in the event of any conflict between the provisions of this Section and the applicable provisions of the Lease, such Lease provisions shall control. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Within twenty (20) days after written notice from Lender itemizing the amounts thereof, Borrower shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

#### ARTICLE XIV WAIVERS

*Section 14.1. Waiver of Counterclaim.* Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with any of the Loan Documents, or the Obligations.

*Section 14.2. Marshalling and Other Matters.* Borrower hereby waives, to the extent permitted by law, the benefit of all Applicable Laws now or hereafter in force regarding appraisal, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Law.

*Section 14.3. Waiver of Notice.* Borrower shall not be entitled to any notices of any nature whatsoever from Lender or Deed of Trust Trustee except with respect to matters for which this Security Instrument or any other Loan Document specifically and expressly provides

for the giving of notice by Lender to Borrower and except with respect to matters for which Lender or Deed of Trust Trustee 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 or any other Loan Document does not specifically and expressly provide for the giving of notice by Lender or Deed of Trust Trustee to Borrower.

*Section 14.4. Waiver of Statute of Limitations.* Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

*Section 14.5. Sole Discretion of Lender.* Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision to approve or disapprove all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in the sole discretion of Lender, except as may be otherwise expressly and specifically provided herein.

*Section 14.6. Waiver of Trial by Jury.* BORROWER AND LENDER, BY ACCEPTANCE OF THIS SECURITY INSTRUMENT, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THE LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER OR BORROWER.

*Section 14.7. Waiver of Foreclosure Defense.* Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

#### **ARTICLE XV EXCULPATION**

*Section 15.1. Exculpation.* The provisions of Article X of the Note are hereby incorporated by reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

#### **ARTICLE XVI NOTICES**

*Section 16.1. Notices.* All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (i) certified or registered United States mail, postage prepaid, return receipt requested, or (ii) expedited prepaid delivery service, either overnight delivery service of a nationally recognized courier, commercial or United States Postal Service, with proof of refusal to accept delivery, addressed as follows:

If to the Borrower:	c/o U.S. Realty Advisors, LLC 1370 Avenue of the Americas New York, New York 10019 Attention: David M. Ledy
with copy to:	Proskauer Rose LLP 1585 Broadway New York, New York 10036 Attention: Wendy J. Schriber, Esq.
If to Lender:	Wachovia Bank, National Association, as Pass Through Trustee 401 South Tryor Street, 12th Floor Charlotte, North Carolina 28288-1179 Attention: Corporate Trust
If to Deed of Trust Trustee:	To the address set forth on Schedule A with respect to the Deed of Trust Trustee

Such addresses may be changed by any party in a written notice to the other parties hereto in the manner provided for in this Section. A notice shall be deemed to have been given at the time of delivery or upon refusal to accept delivery on a Business Day by the party which is the intended recipient. A party receiving a notice which does not comply with the technical requirements for notice under this Section may elect to waive any deficiencies and treat the notice as having been properly given.

#### ARTICLE XVII CHOICE OF LAW

*Section 17.1. Choice of Law.* This Security Instrument and any determination of deficiency judgments shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located and applicable laws of the United States of America.

*Section 17.2. Provisions Subject to Law.* All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any Applicable Law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under any Applicable Law.

**ARTICLE XVIII  
SECONDARY MARKET**

*Section 18.1. Transfer of Loan.* Lender may, at any time, sell, transfer or assign the Loan Documents, or grant participations therein (the "*Participations*") or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "*Securities*").

*Section 18.2. [Intentionally Omitted].*

*Section 18.3. Dissemination of Information.* Lender may forward to each purchaser, transferee, assignee, or servicer of, and each participant, or investor in, the Loan, or any Participations and/or Securities or any of their respective successors (collectively, the "*Investor*") or any Rating Agency rating the Loan, or any Participations and/or Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, and the Property, including financial statements, whether furnished by Borrower or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under Applicable Laws to prohibit such disclosure, including but not limited to any right of privacy.

*Section 18.4. Cooperation.* (a) Borrower acknowledges that Lender may (i) sell, transfer or assign the Note and other Loan Documents to a trust or to one or more investors as a whole loan in a rated or unrated public offering or private placement; (ii) grant participation interests in the Note to one or more investors in a rated or unrated public offering or private placement; (iii) deposit this Security Instrument, the Note and other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets in a rated or unrated public offering or private placement; or (iv) otherwise sell the Note or interests therein to investors in a rated or unrated public offering or private placement (the transactions referred to in clauses (i) through (iv) are hereinafter referred to as "*Secondary Market Transactions*"). Borrower shall reasonably cooperate in good faith with Lender (but shall not be obligated to incur any out-of-pocket expense) (or otherwise incur any liability in connection therewith) to effect any such Secondary Market Transaction and to implement all requirements imposed by any Rating Agency involved in any Secondary Market Transaction, including:

(i) making available to Lender all readily available information concerning Borrower's business and operations which Lender may reasonably request, including financial information relating to the Property and such other information and documents relating to Borrower, Tenant, the Lease or the Property as Lender may reasonably request; and

(ii) at Lender's cost and expense, making all structural or other changes to the Note, modifying any documents evidencing or securing the Note, modifying the organizational documents of Borrower, using reasonable efforts to cause the modification of the Lease, delivering opinions of counsel acceptable to the Rating Agencies and addressing such matters as the Rating Agencies may require; *provided, however*, that

Borrower will not be required to modify any material term of the Note or other documents if such modification would adversely affect Borrower in any material respect.

Borrower must provide such information and documents as are in Borrower's possession, custody, or control or which Borrower may obtain without unreasonable effort relating to Borrower, any guarantor, the Property, the Lease and Tenant as Lender or any Rating Agency may reasonably request in connection with a Secondary Market Transaction. Lender may provide to prospective investors any information in its possession, including, financial statements relating to Borrower, the Property and Tenant, and Lender may share such information with the investment banking firms, Rating Agencies, accounting firms, law firms and other third-party advisory firms involved with the Note or the Secondary Market Transaction. It is understood that the information provided by Borrower to Lender may ultimately be incorporated into the offering documents for the Secondary Market Transaction and thus such information may be disclosed to various investors in connection with the Secondary Market Transaction. Lender may rely on the information supplied by or on Borrower's behalf.

(b) If any Secondary Market Transaction includes the preparation of a preliminary and final private placement memorandum, offering circular or prospectus, Borrower agrees to provide in connection with such Secondary Market Transaction, a certificate certifying to Lender that Borrower has carefully examined the portion of such memorandum, offering circular or prospectus relating to Borrower and that such sections will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading with respect to Borrower. Further, if any Secondary Market Transaction includes the preparation of such memorandum, offering circular or prospectus which requires disclosure about Borrower, BORROWER, TO THE EXTENT PERMITTED BY LAW, HEREBY INDEMNIFIES THE INDEMNIFIED PARTIES FROM AND AGAINST ANY INDEMNIFIED LIABILITIES WHICH MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED OR AWARDED AGAINST ANY INDEMNIFIED PARTY TO THE EXTENT ANY SUCH INDEMNIFIED LIABILITY IS BASED UPON ANY UNTRUE STATEMENT OF ANY MATERIAL FACT CONTAINED IN SUCH SECTIONS REVIEWED AND CERTIFIED BY BORROWER OR IS BASED UPON THE OMISSION TO STATE THEREIN A MATERIAL FACT REQUIRED TO BE STATED IN SUCH SECTIONS OR NECESSARY TO MAKE THE STATEMENTS IN SUCH SECTIONS, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING; *provided, however*, that Borrower will be liable in any such case under the preceding indemnification only to the extent that any such Indemnified Liability is based upon any such untrue statement or omission made therein in reliance upon and in conformity with information furnished to Lender by or on behalf of Borrower. Nothing contained herein shall impose liability upon Borrower for any Indemnified Liability arising out of or based upon an untrue statement of any material fact contained in any statement, report or document provided to Lender on behalf of Borrower by a party who is not an Affiliate of Borrower (a "*Third Party Report*") or arising out of or based upon the omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, unless Borrower has actual knowledge that such Third Party Report contains such untrue statement or omission. This indemnity agreement is in addition to any liability which Borrower may otherwise have, and shall survive payment in full of the Debt or any termination or satisfaction of the Lien of the Security Instrument.

*Section 18.5. Reserves/Escrows.* In the event that Participations or Securities are issued in connection with the Loan, all funds held by Lender in escrow or pursuant to reserves in accordance with the Loan Documents shall be deposited in “eligible accounts” at “eligible institutions” and invested in “permitted investments” as then defined and required by the Rating Agencies.

## ARTICLE XIX COSTS

*Section 19.1. Performance at Borrower’s Expense.* Borrower acknowledges and confirms that Lender shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement (the occurrence of any of the above shall be called an “Event”). Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), which may be imposed by Lender from time to time, upon the occurrence of any Event. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable legal fees of Lender.

*Section 19.2. Legal fees for Enforcement.* (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with the items set forth in Section 19.1 above, and (b) Borrower shall pay to Lender on demand any and all expenses, including legal fees incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable under the Loan Documents, or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

## ARTICLE XX DEFINITIONS

*Section 20.1. General Usage.* 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.

*Section 20.2. Definitions.*

“All Risk of Physical Loss” is defined in Section 3.2(i).

“Anti-Terrorism Order” is defined in Section 5.28.

“Applicable Laws” shall mean all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations and court orders and is expressly deemed to include all Environmental Laws.

"*Approved Insurance Companies*" is defined in Section 3.2(b).

"*Availability Threshold*" is defined in Section 3.6(a).

"*Award*" is defined in Section 3.5.

"*Bankruptcy Claims*" is defined in Section 1.2(d).

"*Beneficial Owner*" is defined in Section 8.1(c).

"*Borrower*" shall mean each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein.

"*Borrower Policies*" is defined in Section 3.2(g).

"*Borrower's Special Counsel*" shall mean Proskauer Rose LLP.

"*Business Day*" is defined as any day other than a Saturday or Sunday or other day on which the banks in New York, New York are authorized or required to be closed.

"*Causes of Action*" is defined in Section 1.1(n).

"*Closing Date*" means the date the Loan is made by the Lender to the Borrower.

"*Control*" is defined in Section 8.2.

"*Controlling Interest*" in any Person means (i) 50% or more of the capital stock, partnership interests, limited partnership interests, membership interests or other equity interest of such Person, or (ii) any interest in such Person that allows the holder thereof to Control such Person.

"*Creditors Rights Laws*" is defined in Section 10.1(e).

"*Debt*" is defined in Section 2.1.

"*Deed of Trust Trustee*" is defined in the introductory paragraph and includes any substitute of the estates, properties, powers, trusts and rights conferred upon Deed of Trust Trustee pursuant to this Security Instrument.

"*Default Prepayment*" is defined in Section 9.3.

"*Environmental Indemnity*" is defined in Section 13.4.

"*Environmental Law*" is defined in Section 12.4.

"*Environmental Liens*" is defined in Section 12.4.

“*Environmental Report*” is defined in Section 12.4.

“*ERISA*” is defined in Section 4.2.

“*Event*” is defined in Section 19.1.

“*Event of Default*” is defined in Section 10.1.

“*Excepted Rights and Payments*” is defined in Section 1.2.

“*Flood Insurance Acts*” is defined in Section 3.2(a)(vi).

“*full insurable value*” is defined in Section 3.2(a)(i).

“*GAAP*” is defined in Section 3.11.

“*Hazardous Materials*” is defined in Section 12.4.

“*Improvements*” is defined in Section 1.1(c); *provided, however*, as used throughout this Security Instrument, the term Improvements shall, at any time, include only such Improvements in which the Borrower then has an ownership interest.

“*Indemnified Parties*” is defined in Section 13.1.

“*Independent Director*” is defined in Section 4.3(b).

“*Insolvency Opinion*” shall mean the legal opinion delivered by Borrower’s Special Counsel relating to issues of non-consolidation delivered in connection with the closing hereof.

“*Insurance Premiums*” is defined in Section 3.2(b).

“*Investor*” is defined in Section 18.3.

“*Land*” is defined in Section 1.1(a).

“*Late Fee*” is defined in the Note.

“*Lease*” is defined in the Recitals.

“*Lease Event of Default*” is defined in Section 3.2(a).

“*Lease Guarantor*” is defined in Section 1.2 (e).

“*Lease Guaranty*” is defined in Section 1.2 (e).

“*Lease Policy Requirements*” is defined in Section 3.2(g).

*“legal fees”* shall mean any and all counsel, attorney, paralegal and law clerk fees and disbursements, including, but not limited to fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender to third parties in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder or any other Loan Document.

*“Lender”* is defined in the introductory paragraph to this Security Instrument and includes any subsequent holder of the Note.

*“Loan”* is defined in the Recitals.

*“Loan Amount”* is defined in the Recitals.

*“Loan Documents”* is defined in Section 2.6, and shall include any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements of any of the Loan Documents.

*“Losses”* is defined in Section 13.1.

*“Maturity Date”* is defined in the Recitals.

*“Make Whole Premium”* is defined in Note.

*“Net Proceeds”* is defined in Section 3.6(a).

*“Note”* shall mean the Note and any other evidence of indebtedness secured by this Security Instrument together with all extensions, renewals, modifications, substitutions and amendments thereof.

*“Obligations”* is defined in Section 2.3.

*“Other Charges”* is defined in Section 3.3(a).

*“Other Obligations”* is defined in Section 2.2.

*“Other Security Instruments”* shall mean the separate mortgages, deeds of trust, deeds to secure debt and other security instruments entered into by Borrower to or for the benefit of Lender to further secure the Debt encumbering each of the properties leased by Borrower to Tenant under the Lease, including any Substitute Parcel (as defined in the Lease).

*“Participation Agreement”* is defined in Section 2.6.

*“Participations”* is defined in Section 18.1.

*“PCBS”* is defined in Section 12.4.

*"Permitted Exceptions"* is defined in Section 5.1.

*"permitted investments"* is defined in Section 18.5.

*"Person"* shall mean an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity.

*"Personal Property"* is defined in Section 1.1(e); *provided, however*, as used throughout this Security Instrument, the term Personal Property shall, at any time, include only such Personal Property in which the Borrower then has an ownership interest.

*"Policy"* is defined in Section 3.2(b).

*"Prohibited Transfer"* is defined in Section 8.1(a).

*"Property"* is defined in Section 1.1 and shall include any portion of the Property and any interest therein; *provided, however*, as used throughout this Security Instrument, the term Property shall, at any time, include only such Property in which the Borrower then has an ownership interest.

*"Rating Agency"* is defined in Section 3.2(b).

*"Release"* is defined in Section 12.4.

*"rental income"* is defined in Section 3.2(a)(iv).

*"Rental Loss Proceeds"* is defined in Section 3.6(b).

*"Rents"* is defined in Section 1.1(f).

*"Replacement Cost"* is defined in Section 3.2(a)(i).

*"Restoration"* shall mean any restoration, rebuilding, repair or replacement of the Property by Borrower or Tenant in connection with a condemnation or casualty of the Property.

*"Restoration Consultant"* is defined in Section 3.6(c).

*"Restoration Deficiency"* is defined in Section 3.6(e).

*"Restricted Party"* is defined in Section 8.2.

*"Sale or Pledge"* is defined in Section 8.2.

*"Secondary Market Transactions"* is defined in Section 18.4(a).

*"Securities"* is defined in Section 18.1.

“*Security Instrument*” is defined in the introductory paragraph.

“*Self-Insurance Standards*” is defined in Section 3.2(g).

“*Seller*” is defined in Section 2.6.

“*special flood hazard area*” is defined in Section 7.5.

“*Taxes*” is defined in Section 3.3(a).

“*Tenant*” is defined in the Recitals.

“*Third Party Report*” is defined in Section 18.4(b).

“*Title Indemnity*” is defined in Section 2.6.

“*UCC Collateral*” is defined in Section 1.3.

“*Uniform Commercial Code*” is defined in Section 1.1(e).

#### ARTICLE XXI

#### TERMINATION OF SECURITY INSTRUMENT; PARTIAL RELEASES

(a) Upon payment in full of the Debt, the Lender shall release this Security Instrument and the lien hereof by proper instrument or instruments in recordable form delivered to Borrower.

(b) This Security Instrument shall terminate and the Property (but only such Property) shall be released from the lien of this Security Instrument and the other Loan Documents upon any of (i) the termination of the Lease with respect to such Property pursuant to the Tenant’s exercise of (A) a Condemnation Purchase Option under Section 3.3(a) of the Lease or (B) a Regular Purchase Option under Section 3.10(b) of the Lease and the payment in full to the Lender of the amounts required to be paid pursuant to Article VII (b) of the Note, (ii) the termination of the Lease with respect to such Property (but only such Property) pursuant to the Tenant’s exercise of a Substitution Option Election under Section 3.3(a), 3.9 or 5.1(b) of the Lease and the complete satisfaction of the terms set forth in Article XXII hereof, (iii) the termination of the Lease with respect to such Property pursuant to the Tenant’s exercise of an Early Purchase Option under Section 3.10(a) of the Lease and the payment in full to the Lender of the amounts required to be paid pursuant to Article VII (c) of the Note, or (iv) the termination of the Lease with respect to such Property (but only such Property) pursuant to the Put under Section 5.1(b) of the Lease and the payment in full to the Lender of the amounts required to be paid pursuant to Article VII (d) of the Note. Upon the termination of this Security Instrument with respect to any Property as provided in the immediately preceding sentence, (i) each of the Borrower and Lender, at the expense of the Tenant, shall execute and deliver such release, notice or other document as Borrower may reasonably request with respect to such Property for the purpose of evidencing such release of the lien hereof in accordance with the terms of the Lease

and the terms hereof, and (ii) the Borrower shall immediately transfer title to and possession of such Property to the Tenant or other third party in accordance with the terms of the Lease.

## ARTICLE XXII SUBSTITUTION OF PROPERTY

If at any time Lender shall receive a Substitution Option Election (as defined in the Lease), the Lender, at Tenant's sole cost and expense, shall reasonably cooperate with the Borrower and the Tenant to effect any such Substitution (as defined in the Lease) and this Security Instrument shall be amended such that the Property shall be released from the lien of this Security Instrument but only so long as (i) Tenant shall certify that Lender shall have a duly perfected first priority lien on the Substitute Parcel, (ii) all of the terms and conditions set forth in Section 3.9 of the Lease (which terms are incorporated herein in their entirety) shall have been fulfilled and (ii) the terms and conditions in the Other Loan Documents, including, without limitation, the Participation Agreement shall have been fulfilled.

## ARTICLE XXIII MISCELLANEOUS PROVISIONS

*Section 23.1. 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.

*Section 23.2. 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.

*Section 23.3. 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.

*Section 23.4. Duplicate Originals; Counterpart.* This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

*Section 23.5. Headings, Etc.* The headings and captions of various Articles and Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

*Section 23.6. Number and Gender.* 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.

**ARTICLE XXIV  
STATE SPECIFIC PROVISIONS**

*Section 24.1. State Specific Provisions.* Addendum A attached hereto and incorporated herein by reference contains provisions specifically relating to the state in which the Property is located. To the extent such Addendum A conflicts with the terms set forth above, the provisions of the Addendum A shall control.

**ARTICLE XXV  
DEED OF TRUST PROVISIONS**

*Section 25.1. Concerning the Deed of Trust Trustee.* Deed of Trust Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Deed of Trust Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Deed of Trust Trustee's reasonable satisfaction. Deed of Trust Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Deed of Trust Trustee in accordance with the terms hereof. Deed of Trust Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender. Lender may remove Deed of Trust Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Deed of Trust Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Deed of Trust Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Deed of Trust Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Deed of Trust Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

*Section 25.2. Deed of Trust Trustee's Fees.* Borrower shall pay all reasonable costs, fees and expenses incurred by Deed of Trust Trustee and Deed of Trust Trustee's agents and counsel in connection with the performance by Deed of Trust Trustee of Deed of Trust Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

*Section 25.3. Certain Rights.* With the approval of Lender, Deed of Trust Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or

the Other Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Deed of Trust Trustee, and Deed of Trust Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Deed of Trust Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Deed of Trust Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Deed of Trust Trustee to take to protect or enforce Lender's rights hereunder. Deed of Trust Trustee shall not be personally liable in case of entry by Deed of Trust Trustee, or anyone entering by virtue of the powers herein granted to Deed of Trust Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Deed of Trust Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Deed of Trust Trustee hereunder, believed by Deed of Trust Trustee in good faith to be genuine. Deed of Trust Trustee shall be entitled to reimbursement for actual expenses incurred by Deed of Trust Trustee in the performance of Deed of Trust Trustee's duties hereunder and to reasonable compensation for such of Deed of Trust Trustee's services hereunder as shall be rendered.

*Section 25.4. Retention of Money.* All moneys received by Deed of Trust Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Deed of Trust Trustee shall be under no liability for interest on any moneys received by Deed of Trust Trustee hereunder.

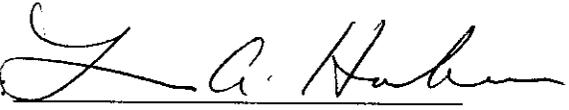
*Section 25.5. Perfection of Appointment.* Should any deed, conveyance, or instrument of any nature be required from Borrower by any Deed of Trust Trustee or substitute trustee to more fully and certainly vest in and confirm to the Deed of Trust Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Deed of Trust Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

*Section 25.6. Succession Instruments.* Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Deed of Trust Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Deed of Trust Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Deed of Trust Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Deed of Trust Trustee to the substitute trustee so appointed in the Deed of Trust Trustee's place.

IN WITNESS WHEREOF, this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing Statement has been executed by Grantor the day and year first above written.

GRANTOR:

ARCHLAND PROPERTY I, LLC, a Delaware  
limited liability company

By: 

Name: Laurie Hawkes

Title: Authorized Signatory

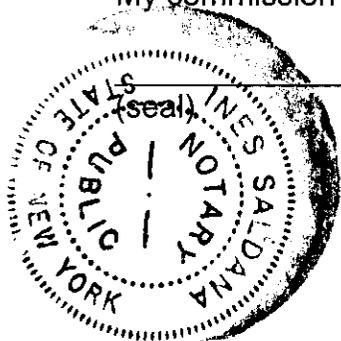
## ACKNOWLEDGMENT

STATE OF NEW YORK  
 COUNTY OF NEW YORK

Personally appeared before me, the undersigned authority in and for the said county and state, on this 22 day of June, 2004, within my jurisdiction, the within named Laurie Hawkes, who acknowledged that she is the Authorized Signatory of Archland Property I, LLC, a Delaware\* limited liability company, and that for and on behalf of the said limited liability company, and as its act and deed she executed the above and foregoing instrument, after first having been duly authorized by said limited liability company so to do. \*Member-Managed

  
 (NOTARY PUBLIC)

My commission expires:



INES SALDANA-OLESEN  
 Notary Public, State of New York  
 No. 01SA0035878  
 Qualified in Bronx County  
 Commission Expires January 10, 2006

ACKNOWLEDGMENT (MISSISSIPPI)

**SCHEDULE A  
MASTERSCHEDULE**

**SECTION I:**

- (a) Name and address of debtor: Archland Property I, LLC  
c/o U.S. Realty Advisors, LLC  
1370 Avenue of the Americas  
New York, New York 10019  
Attention: David M. Ledy

Organizational Number: 3813538

- (b) Name and address of secured party: Wachovia Bank, National Association,  
as Pass Through Trustee  
401 South Tryon Street, 12th Floor  
Charlotte, North Carolina 28288-1179  
Attention: Corporate Trust Department

- (c) This Security Instrument covers goods which are or are to become fixtures.

(d) The debtor is the record owner of the real estate described on Exhibit A attached hereto.

**SECTION II:**

Effective Date: June 29, 2004

Security Instrument: Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of June 1, 2004 from the borrower described below to the Deed of Trust Trustee described below for the benefit of the Lender described below:

Loan Amount: \$213,306,000

Maturity Date: December 15, 2028

Deed of Trust Trustee Name: Don B. Cannada

Deed of Trust Trustee Notice Address: Don B. Cannada  
210 East Capitol Street  
Jackson, Mississippi 39201

Borrower Name: Archland Property I, LLC

Borrower description: a Delaware limited liability company

Borrower Notice Address: Archland Property I, LLC  
c/o U.S. Realty Advisors, LLC  
1370 Avenue of the Americas  
New York, New York 10019  
Attention: David M. Ledy

Lender Name: Wachovia Bank, National Association, as Pass Through Trustee pursuant to the Pass Through Trust Agreement and Declaration of Trust dated as of Effective Date

Lender Description: a national banking association

Lender Notice Address: Wachovia Bank, National Association,  
as Pass Through Trustee  
401 South Tryon Street, 12th Floor  
Charlotte, North Carolina 28288-1179  
Attention: Corporate Trust Department

Lease Description: Amended and Restated Master Ground Lease Agreement dated as of June 1, 2004 between Borrower, as landlord and Lessee, as tenant

Lessee Name: McDonald's Corporation

Lessee Notice Address: McDonald's Corporation  
One McDonald's Plaza  
Oak Brook, Illinois 60523  
Attention: Director, US Legal Department Master Lease Program

Property Location: See attached legal description(s)

County: DESOTO

Store Number: See attached legal description(s)

## STATE SPECIFIC PROVISIONS

If the Property is located in Mississippi, the provisions set forth in this Addendum A shall be made a part of the Security Instrument to which this addendum is attached.

This addendum (this "Addendum") is attached to and made a part of the foregoing Security Instrument. To the extent of any conflict between the terms and provisions of this Addendum and the terms and provisions of the Security Instrument, the terms and provisions of this Addendum shall govern and control the rights and obligations of the parties.

At the option of Beneficiary this Security Instrument may be foreclosed in any manner now provided by Mississippi law, and the Deed of Trust Trustee, or the agent or successor of Deed of Trust Trustee, at the request of the Beneficiary, may sell the Property or any part of the Property at one or more public sales at the courthouse of the county in which the Property or any part of the Property is situated, at public outcry, to the highest bidder for cash, and in bar of the right and equity of redemption, statutory right of redemption, homestead, dower, appraisement, stay, elective share and all other rights and exemptions of every kind, all of which are hereby expressly waived by Borrower, in order to pay the Obligations and all expenses of sale and of all proceedings in connection therewith, including reasonable attorney's fees, after advertising the time, place and terms of sale at least once a week for three (3) consecutive weeks preceding the date of such sale in some newspaper published in the county in which the Property is located, or if no newspaper is printed in such county, then in a newspaper of general circulation therein, and by posting one notice of such sale at the courthouse where such sale is to be held. At any such public sale, Deed of Trust Trustee may execute and deliver to the purchaser a conveyance of the Property or any part of the Property in fee simple. Beneficiary shall have the right to enforce any of its remedies set forth herein without notice to Borrower, except for such notice as may be required by law. In the event of any sale under this Security Instrument by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Beneficiary in its sole discretion may elect, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Property are sold or Obligations are paid in full. Any person, including the Deed of Trust Trustee and Beneficiary may purchase at any sale. Said sale may be adjourned by the Deed of Trust Trustee, or his agent or successors, and reset at a later date without additional publication; *provided* that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set or last adjourned. Any sale or sales may be made by an agent acting for the Deed of Trust Trustee and his appointment need not be in writing. In the event of any sale of the Property as authorized herein, all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the non-payment of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as *prima facie* evidence that the facts so stated or recited are true.

Borrower waives the provisions of Section 89-1-55 of the Mississippi Code of 1972 as amended, if any, as far as this section restricts the right of the Deed of Trust Trustee to offer at

ADDENDUM A  
(to Security Instrument)

sale more than 160 acres at a time. If any portion of the Property is situated in two or more counties, or in two judicial districts of the same county, the Deed of Trust Trustee shall have full power to select in which county, or judicial district, the sale of that portion of the Property is to be made, newspaper advertisement published and notice of sale posted, and the Deed of Trust Trustee's selection shall be binding upon the Borrower and the Beneficiary.

## EXHIBIT "A"

Lot 1, Whispering Woods Commercial Subdivision, situated in Sections 25 and 26, Township 1 South, Range 6 West, in DeSoto County, Mississippi as shown on plat of record in Plat Book 76, Page 32, in the Office of the Chancery Clerk of DeSoto County, Mississippi, to which plat reference is made for a more particular description.

Together with a 50 foot ingress/egress easement as shown on plat in Plat Book 76, Page 32 in the Office of the Chancery Clerk of DeSoto County, Mississippi.

Together with a 30' Rear Access Easement described as follows:

LEGAL DESCRIPTION OF A 30 FOOT WIDE INGRESS EGRESS EASEMENT OF LAND LOCATED IN PART OF THE NORTHWEST, AND SOUTHWEST QUARTERS OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 6 WEST, OLIVE BRANCH, DESOTO COUNTY, MISSISSIPPI, AND IS FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 1 SOUTH, RANGE 6 WEST; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 1534.78 FEET TO A POINT IN HACKS CROSS ROAD; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 12.83 FEET TO A POINT (CONCRETE RIGHT OF WAY MONUMENT FOUND 2.71 FEET SOUTH OF CORNER); THENCE AROUND A CURVE TO THE RIGHT HAVING A RADIUS OF 2924.78 FEET, DELTA ANGLE OF 00 DEGREES 30 MINUTES 29 SECONDS, CHORD BEARING SOUTH 07 DEGREES 28 MINUTES 57 SECONDS WEST, CHORD DISTANCE 25.94 FEET, AND A LENGTH OF 25.94 FEET TO A 1/2" REBAR SET ON THE EAST RIGHT OF WAY LINE OF HACKS CROSS ROAD; THENCE AROUND A CURVE TO THE RIGHT HAVING A RADIUS OF 2924.78 FEET, DELTA ANGLE OF 01 DEGREES 48 MINUTES 00 SECONDS, CHORD BEARING SOUTH 08 DEGREES 38 MINUTES 15 SECONDS WEST, CHORD DISTANCE 91.97 FEET, AND A LENGTH OF 91.97 FEET TO A CONCRETE RIGHT OF WAY MONUMENT FOUND ON SAID EAST RIGHT OF WAY LINE; THENCE SOUTH 09 DEGREES 32 MINUTES 18 SECONDS WEST 165.48 FEET TO A 1/2" REBAR SET; THENCE SOUTH 80 DEGREES 27 MINUTES 42 SECONDS EAST 63.31 FEET TO A 1/2" REBAR SET; THENCE SOUTH 89 DEGREES 19 MINUTES 00 SECONDS EAST 158.12 FEET TO A 1/2" REBAR SET, ALSO BEING THE TRUE POINT OF BEGINNING FOR THE HEREIN DESCRIBED EASEMENT; THENCE NORTH 00 DEGREES 41 MINUTES 00 SECONDS EAST 538.93 FEET TO A POINT; THENCE NORTH 86 DEGREES 32 MINUTES 29 SECONDS EAST 38.87 FEET TO A POINT; THENCE NORTH 00 DEGREES 00 MINUTES 02 SECONDS EAST 37.29 FEET TO A POINT ON SOUTH LINE OF A 40' WIDE INGRESS EGRESS EASEMENT AS PER TRACT II DEED BOOK 375, PAGE 628; THENCE ALONG SAID LINE NORTH 86 DEGREES 39 MINUTES 39 SECONDS EAST 30.05 FEET TO A POINT ON SAID LINE; THENCE SOUTH 00 DEGREES 00 MINUTES 02 SECONDS WEST 37.64 FEET TO A POINT; THENCE SOUTH 88 DEGREES 52 MINUTES 28 SECONDS WEST 86.21 FEET TO A POINT; THENCE SOUTH 00 DEGREES 41 MINUTES 00 SECONDS WEST 558.87 FEET TO A POINT; THENCE NORTH 89 DEGREES 19 MINUTES 00 SECONDS WEST 30.00 FEET TO A POINT; THENCE NORTH 00 DEGREES 41 MINUTES 00 SECONDS EAST 30.00 FEET TO A POINT OF BEGINNING.

As shown of the survey of Russell & Company dated September 27, 2001.

**Exhibit "A"**

Lot No. 7 of the South Lake Commercial Subdivision, Second Addition, in Section 36, Township 1 South, Range 8 West, City of Southaven, DeSoto County, Mississippi, according to the plat of said subdivision on file in Plat Book 61, Page 19, in the Office of the Chancery Clerk of DeSoto County, Mississippi.

Being more particularly described as follows: Commencing at the accepted Northeast corner of Section 36, Township 1 South, Range 8 West, City of Southaven, DeSoto County, Mississippi, being the intersection of the centerline of Goodman Road (Mississippi No. 302) with the centerline of Airways Boulevard; thence run West for a distance of 341.69 feet; thence run south for a distance of 69.54 feet to an iron pin and the POINT OF BEGINNING; thence run South  $00^{\circ}39'47''$  East for a distance of 201.43 feet to an iron pin; thence continue South  $00^{\circ}39'47''$  East for a distance of 20.08 feet to an iron pin; thence run South  $81^{\circ}38'16''$  West for a distance of 192.22 feet to an iron pin; thence run North  $00^{\circ}08'18''$  West for a distance of 251.5 feet to an iron pin on the South right of way line of Goodman Road (Mississippi No. 302); thence run along said South right of way line as follows: South  $88^{\circ}25'04''$  East for a distance of 108.38 feet to an iron pin; North  $89^{\circ}19'03''$  East for a distance of 79.89 feet to the Point of Beginning.

All lying and being in the Northeast Quarter of Section 36, Township 1 South, Range 8 West, City of Southaven, DeSoto County, Mississippi.

Together with all easements, rights, appurtenances, all buildings and improvements now located on the property and all of Seller's rights, title and interest in all public ways adjoining the property.

## EXHIBIT A

Lot 1, Civic Center Commercial Subdivision, Phase I, situated in Section 12, Township 2 South, Range 8 West, City of Southaven, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 76, Pages 28-29, in the office of the Chancery Clerk of DeSoto County, Mississippi and further described as follows:  
COMMENCING at the Northeast corner of Section 12 runs thence West, 2,202 feet to a set iron pin and cap located 45 feet from the centerline of Church Road, in the Right-of-Way of said road, and being the POINT OF BEGINNING for the tract herein described; thence with the Right-of-Way of said road South 00 degrees 15 minutes 22 seconds East, 35.13 feet to concrete Right-of-Way monument; thence continuing with the Right-of-Way of said road South 84 degrees 39 minutes 00 seconds East, 174.42 feet to a set iron pin and cap at the northwest corner of Bessie Payton, Deed Book 287, Page 144.; thence with the west line of Payton, South 10 degrees 08 minutes 59 seconds East, 278.10 feet to a set iron pin and cap; thence with the partition line South 79 degrees 51 minutes 00 seconds West, 212.10 feet to a set iron pin and cap; thence with a partition curve to the right having a radius of 455.00 feet, an arc length of 178.36 feet and along a chord length North 11 degrees 03 minutes 43 seconds West, 177.22 feet to a set iron pin and cap; thence continuing with the partition line North 00 degrees 10 minutes 06 seconds East, 173.63 feet to a set iron pin and cap; thence with a partition curve to the right having a radius of 15.00 feet, an arc length of 23.52 feet, and along a chord length North 45 degrees 04 minutes 54 seconds East, 21.18 feet to a set iron pin and cap; thence North 89 degrees 57 minutes 57 seconds East, 4.45 feet to the Point of Beginning and containing 1.500 acres or 65,343.54 square feet, more or less.

023-0236  
Southaven, MS