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Skagit County Auditor

12/29/2005 Page

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Return Address:
Winston & Strawn LLP
200 Park Avenue
New York, New York 10166

118979-T

LAND TITLE OF SKAGIT COUNTY

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in):
DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING,
SECURITY AGREEMENT AND FINANCING STATEMENT

Reference Number(s) of Documents assigned or released: N/A

Grantor(s) (Last name, first name, initials): FIRST HORIZON GROUP LIMITED
PARTNERSHIP, a Delaware limited partnership

Grantee(s) (Last name first, then first name and initials):
WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association

Legal description (abbreviated: i.e. lot, block, plat or section, township, range): See Exhibit A attached
hereto and made a part hereof. 41a3 Burl SP 1-92 7-34-4

Assessor's Property Tax Parcel/Account Number: See Exhibit A attached hereto and made a part
hereof. P24042, P24037, P24041, P101766

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to
verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW
36.18.010. I understand that the recording processing requirements may cover up or otherwise
obscure some part of the text of the original document.

Signature of Requesting Party

UNOFFICIAL DOCUMENT

This Instrument Prepared By and When Recorded and Return to:

Winston & Strawn LLP
200 Park Avenue
New York, New York 10166
Attn: Corey A. Tessler, Esq.
Horizon
Loan No. 502853853

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

**FIRST HORIZON GROUP LIMITED PARTNERSHIP,
as Borrower**

to

**LAND TITLE COMPANY OF SKAGIT COUNTY,
as Trustee**

FOR THE BENEFIT OF

**WACHOVIA BANK, NATIONAL ASSOCIATION,
as Lender**

County: Skagit
State: Washington



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Skagit County Auditor

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THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Security Instrument") dated as of December 22, 2005, by FIRST HORIZON GROUP LIMITED PARTNERSHIP, a Delaware limited partnership ("Borrower"), having their chief executive offices c/o The Lightstone Group, 326 Third Street, Lakewood, New Jersey 08701, to LAND TITLE COMPANY OF SKAGIT COUNTY ("Trustee") with an address of 111 E. George Hopper Road, Burlington, Washington 98233, for the benefit of WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association ("Lender"), whose address is Commercial Real Estate Services, 8739 Research Drive URP - 4, NC 1075, Charlotte, North Carolina 28262.

WITNESSETH:

WHEREAS, Lender has authorized a loan (hereinafter referred to as the "Loan") to the Borrower in the maximum principal sum of FIFTY-FOUR MILLION AND NO/100 DOLLARS (\$54,000,000.00) (hereinafter referred to as the "Loan Amount"), which Loan is evidenced by that certain promissory note, dated the date hereof (together with any supplements, amendments, modifications or extensions thereof, hereinafter referred to as the "Note") given by Borrower, as maker, to Lender, as payee;

WHEREAS, in consideration of the Loan, the Borrower has agreed to make payments in amounts sufficient to pay and redeem, and provide for the payment and redemption of the principal of, premium, if any, and interest on the Note when due;

WHEREAS, Borrower desires by this Security Instrument to provide for, among other things, the issuance of the Note and for the deposit, deed and pledge by Borrower with, and the creation of a security interest in favor of, Lender, as security for Borrower's obligations to Lender from time to time pursuant to the Note and the other Loan Documents, but specifically excluding the Guaranty (as hereinafter defined); and

WHEREAS, Borrower and Lender intend these recitals to be a material part of this Security Instrument.

WHEREAS, all things necessary to make this Security Instrument the valid and legally binding obligation of Borrower in accordance with its terms, for the uses and purposes herein set forth, have been done and performed.

NOW THEREFORE, to secure the payment of the principal of, prepayment premium (if any) and interest on the Note and all other obligations, liabilities or sums due or to become due under, or advanced in accordance herewith to protect the security of, this Security Instrument, the Note or any other Loan Document, including, without limitation, interest on said obligations, liabilities or sums (said principal, premium, interest and other sums being hereinafter referred to as the "Debt"), and the performance of all other covenants, obligations and liabilities of the Borrower pursuant to the Loan Documents but specifically excluding the Guaranty, and any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due,



and all renewals, modifications, consolidations, replacements and extensions thereof, Borrower has executed and delivered this Security Instrument; and Borrower has irrevocably granted, and by these presents and by the execution and delivery hereof does hereby irrevocably grant, bargain, sell, alien, demise, release, convey, assign, transfer, deed, hypothecate, pledge, set over, warrant, mortgage and confirm to Trustee, forever in trust WITH POWER OF SALE, all right, title and interest of Borrower in and to all of the following property, rights, interests and estates, whether now owned or hereafter acquired, together with the rights, privileges and appurtenances thereto belonging:

(a) the plot(s), piece(s) or parcel(s) of real property described in **Exhibit A** attached hereto and made a part hereof (individually and collectively, hereinafter referred to as the "Premises");

(b) (i) all buildings, foundations, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements of every kind or nature now or hereafter located on the Premises (hereinafter collectively referred to as the "Improvements"); and (ii) to the extent permitted by law, the name or names, if any, as may now or hereafter be used for each Improvement, and the goodwill associated therewith;

(c) all easements, servitudes, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, ditches, ditch rights, reservoirs and reservoir rights, air rights and development rights, lateral support, drainage, gas, oil and mineral rights, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises or the Improvements and the reversion and reversions, remainder and remainders, whether existing or hereafter acquired, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof and any and all sidewalks, drives, curbs, passageways, streets, spaces and alleys adjacent to or used in connection with the Premises and/or Improvements and all the estates, rights, titles, interests, property, possession, claim and demand whatsoever, both in law and in equity, of Borrower of, in and to the Premises and Improvements and every part and parcel thereof, with the appurtenances thereto;

(d) all machinery, equipment, fittings, apparatus, appliances, furniture, furnishings, tools, fixtures (including, but not limited to, all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, 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, or in, and located on the Premises or the Improvements, or appurtenant thereto, 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, or in the Premises or the Improvements or appurtenant thereto (hereinafter, all of the foregoing items described in this paragraph (d), along with all replacement and additional items installed as contemplated in Section 8.01(e), are collectively called the "Equipment"), all of which, and any replacements, modifications, alterations and additions thereto, to the extent permitted by applicable law,



shall be deemed to constitute fixtures (herein, collectively, the "Fixtures"), and are part of the real estate and security for the payment of the Debt and the performance of Borrower's obligations. To the extent any portion of the Equipment is not real property or Fixtures under applicable law, it shall be deemed to be personal property, and this Security Instrument shall constitute a security agreement creating a security interest therein in favor of Lender under the UCC;

(e) all awards or payments, including interest thereon, which may hereafter be made with respect to the Premises, the Improvements, the Fixtures, or the Equipment, 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 said right), or for a change of grade, or for any other injury to or decrease in the value of the Premises, the Improvements or the Equipment or refunds with respect to the payment of property taxes and assessments, and all other proceeds of the conversion, voluntary or involuntary, of the Premises, Improvements, Equipment, Fixtures or any other Property or part thereof into cash or liquidated claims;

(f) all leases, tenancies, licenses and other agreements affecting the use, enjoyment or occupancy of the Premises, the Improvements, the Fixtures, or the Equipment or any portion thereof now or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code and all reciprocal easement agreements, license agreements and other agreements with Pad Owners (hereinafter collectively referred to as the "Leases"), together with all cash or security deposits, lease termination payments, advance rentals and payments of similar nature and guarantees or other security held by, or issued in favor of, Borrower in connection therewith to the extent of Borrower's right or interest therein and all remainders, reversions and other rights and estates appurtenant thereto, and all base, fixed, percentage or additional rents, and other rents, oil and gas or other mineral royalties, and bonuses, issues, profits and rebates and refunds or other payments made by any Governmental Authority from or relating to the Premises, the Improvements, the Fixtures or the Equipment plus all rents, common area charges and other payments now existing or hereafter arising, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (herein, collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(g) all proceeds of and any unearned premiums on any insurance policies covering the Premises, the Improvements, the Fixtures, the Rents or the Equipment, 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 Premises, the Improvements, the Fixtures or the Equipment and all refunds or rebates of Impositions, and interest paid or payable with respect thereto;

(h) all deposit accounts, securities accounts, funds or other accounts maintained or deposited with Lender, or its assigns, in connection herewith, including, without limitation, the Security Deposit Account (to the extent permitted by law), the Engineering Escrow Account, the Central Account, the Basic Carrying Costs Sub-



Account, the Basic Carrying Costs Escrow Account, the Debt Service Payment Sub-Account, the Recurring Replacement Reserve Sub-Account, the Recurring Replacement Reserve Escrow Account, the Reletting Reserve Sub-Account, the Reletting Reserve Escrow Account, the Operation and Maintenance Expense Sub-Account, the Operation and Maintenance Expense Escrow Account, the Outstanding TILC Escrow Account, the Outstanding TILC Sub-Account, and all monies and investments deposited or to be deposited in such accounts;

(i) all accounts receivable, contract rights, franchises, interests, estate or other claims, both at law and in equity, now existing or hereafter arising, and relating to the Premises, the Improvements, the Fixtures or the Equipment, not included in Rents;

(j) all now existing or hereafter arising claims against any Person with respect to any damage to the Premises, the Improvements, the Fixtures or the Equipment, including, without limitation, damage arising from any defect in or with respect to the design or construction of the Improvements, the Fixtures or the Equipment and any damage resulting therefrom;

(k) all deposits or other security or advance payments, including rental payments now or hereafter made by or on behalf of Borrower to others, with respect to (i) insurance policies, (ii) utility services, (iii) cleaning, maintenance, repair or similar services, (iv) refuse removal or sewer service, (v) parking or similar services or rights and (vi) rental of Equipment, if any, relating to or otherwise used in the operation of the Premises, the Improvements, the Fixtures or the Equipment;

(l) all intangible property now or hereafter relating to the Premises, the Improvements, the Fixtures or the Equipment or its operation, including, without limitation, software, letter of credit rights, trade names, trademarks (including, without limitation, any licenses of or agreements to license trade names or trademarks now or hereafter entered into by Borrower), logos, building names and goodwill;

(m) all now existing or hereafter arising advertising material, guaranties, warranties, building permits, other permits, licenses, plans and specifications, shop and working drawings, soil tests, appraisals and other documents, materials and/or personal property of any kind now or hereafter existing in or relating to the Premises, the Improvements, the Fixtures, and the Equipment;

(n) all now existing or hereafter arising drawings, designs, plans and specifications prepared by architects, engineers, interior designers, landscape designers and any other consultants or professionals for the design, development, construction, repair and/or improvement of the Property, as amended from time to time;

(o) the right, in the name of and on behalf of Borrower, to appear in and defend any now existing or hereafter arising action or proceeding brought with respect to the Premises, the Improvements, the Fixtures or the Equipment as set forth herein and to commence any action or proceeding to protect the interest of Lender in the Premises, the Improvements, the Fixtures or the Equipment as set forth herein;



(p) all agreements, grants of easements and/or rights-of-way, reciprocal easement agreements, permits, declarations of covenants, conditions and restrictions, disposition and development agreements, planned unit development agreements, management or parking agreements, party wall agreements or other instruments affecting the Property and all proceeds or income received with respect thereto; and

(q) all proceeds, products, substitutions and accessions (including claims and demands therefor) of each of the foregoing.

All of the foregoing items (a) through (q), together with all of the right, title and interest of Borrower therein, are collectively referred to as the "Property".

TO HAVE AND TO HOLD the above granted and described Property unto Trustee, in trust, for the proper use and benefit of Lender and the successors and assigns of Lender and/or Trustee, as applicable, in fee simple, forever.

PROVIDED, ALWAYS, and these presents are upon this express condition, if Borrower shall well and truly pay and discharge the Debt and perform and observe the terms, covenants and conditions set forth in the Loan Documents, then these presents and the estate hereby granted shall cease and be void.

AND Borrower covenants with and warrants to Lender that:

ARTICLE I: DEFINITIONS

Section 1.01. Certain Definitions.

For all purposes of this Security Instrument, except as otherwise expressly provided or unless the context clearly indicates a contrary intent:

(i) the capitalized terms defined in this Section have the meanings assigned to them in this Section, and include the plural as well as the singular;

(ii) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and

(iii) the words "herein", "hereof", and "hereunder" and other words of similar import refer to this Security Instrument as a whole and not to any particular Section or other subdivision.

"Adjusted Net Cash Flow" shall mean on any determination date, the Pro-Forma Net Operating Income less (a) the Recurring Replacement Monthly Installment for all of the Cross-collateralized Properties multiplied by twelve (12), (b) the Reletting Reserve Monthly Installment for all of the Cross-collateralized Properties multiplied by twelve (12), and (c) Net Capital Expenditures for all of the Cross-collateralized Properties to be incurred (as estimated by Lender, in its reasonable discretion) for the subsequent twelve (12) month period. The Adjusted Net Cash Flow shall be calculated by Lender in accordance with the terms of this Security Instrument.

"Affiliate" of any specified Person shall mean any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such specified Person.

"Allocated Loan Amount" shall mean the portion of the Loan Amount allocated to each Cross-collateralized Property as set forth on Exhibit F annexed hereto and made a part hereof.

"Annual Budget" shall mean an annual budget submitted by Borrower to Lender in accordance with the terms of Section 2.09 hereof.

"Appraisal" shall mean the appraisal of the Property and all supplemental reports or updates thereto previously delivered to Lender in connection with the Loan.

"Appraiser" shall mean the Person who prepared the Appraisal.

"Approved Annual Budget" shall mean each Annual Budget approved by Lender in accordance with terms hereof.

"Approved Manager Standard" shall mean the standard of business operations, practices and procedures customarily employed by entities which possess the Minimum Manager Credentials.

"Architect" shall have the meaning set forth in Section 3.04(b)(i) hereof.

"Assignment" shall mean the Assignment of Leases and Rents and Security Deposits of even date herewith relating to the Property given by Borrower to Lender.

"Bank" shall mean the bank, trust company, savings and loan association or savings bank designated by Lender, in its sole and absolute discretion, in which the Central Account shall be located.

"Bankruptcy Code" shall mean 11 U.S.C. §101 et seq., as amended from time to time.

"Basic Carrying Costs" shall mean the sum of the following costs associated with the Property: (a) Real Estate Taxes and (b) insurance premiums.

"Basic Carrying Costs Escrow Account" shall mean the Escrow Account maintained pursuant to Section 5.06 hereof.

"Basic Carrying Costs Monthly Installment" shall mean Lender's reasonable estimate of one-twelfth (1/12th) of the annual amount for Basic Carrying Costs. "Basic Carrying Costs Monthly Installment" shall also include, if required by Lender, a sum of money which, together with such monthly installments, will be sufficient to make the payment of each such Basic Carrying Cost at least thirty (30) days prior to the date initially due. Should such Basic Carrying Costs not be ascertainable at the time any monthly deposit is required to be made, the Basic Carrying Costs Monthly Installment shall be determined by Lender in its reasonable discretion on the basis of the aggregate Basic Carrying Costs for the prior Fiscal Year or month or the prior payment period for such cost. As soon as the Basic Carrying Costs are fixed for the then current



Fiscal Year, month or period, the next ensuing Basic Carrying Costs Monthly Installment shall be adjusted to reflect any deficiency or surplus in prior monthly payments. If at any time during the term of the Loan Lender determines that there will be insufficient funds in the Basic Carrying Costs Escrow Account to make payments when they become due and payable, Lender shall have the right to adjust the Basic Carrying Costs Monthly Installment such that there will be sufficient funds to make such payments.

"Basic Carrying Costs Sub-Account" shall mean the Sub-Account of the Central Account established pursuant to Section 5.02 into which the Basic Carrying Costs Monthly Installments shall be deposited.

"Borrower" shall mean Borrower named herein and any successor to the obligations of Borrower.

"Borrower Account" shall mean an Eligible Account maintained in the name of Borrower.

"Business Day" shall mean any day other than (a) a Saturday or Sunday, or (b) a day on which banking and savings and loan institutions in the State of New York or the State of North Carolina are authorized or obligated by law or executive order to be closed, or at any time during which the Loan is an asset of a Securitization, the cities, states and/or commonwealths used in the comparable definition of "Business Day" in the Securitization documents.

"Capital Expenditures" shall mean for any period, the amount expended for items capitalized under GAAP including expenditures for building improvements or major repairs, leasing commissions and tenant improvements.

"Cash Expenses" shall mean for any period, the operating expenses for the Property as set forth in an Approved Annual Budget to the extent that such expenses are actually incurred by Borrower minus payments into the Basic Carrying Costs Sub-Account, the Debt Service Payment Sub-Account, the Reletting Reserve Sub-Account and the Recurring Replacement Reserve Sub-Account.

"Central Account" shall mean an Eligible Account, maintained at the Bank, in the name of Lender or its successors or assigns (as secured party) as may be designated by Lender.

"Closing Date" shall mean the date of the Note.

"Code" shall mean the Internal Revenue Code of 1986, as amended and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto.

"Condemnation Proceeds" shall mean all of the proceeds in respect of any Taking or purchase in lieu thereof.

"Contractual Obligation" shall mean, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or undertaking to which such Person is a party or by which it or any of the property owned by it is bound.



"Control" means, when used with respect to any specific Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities, beneficial interests, by contract or otherwise. The definition is to be construed to apply equally to variations of the word "Control" including "Controlled," "Controlling" or "Controlled by."

"CPI" shall mean "The Consumer Price Index (New Series) (Base Period 1982-84=100) (all items for all urban consumers)" issued by the Bureau of Labor Statistics of the United States Department of Labor (the "Bureau"). If the CPI ceases to use the 1982-84 average equaling 100 as the basis of calculation, or if a change is made in the term, components or number of items contained in said index, or if the index is altered, modified, converted or revised in any other way, then the index shall be adjusted to the figure that would have been arrived at had the change in the manner of computing the index in effect at the date of this Security Instrument not been altered. If at any time during the term of this Security Instrument the CPI shall no longer be published by the Bureau, then any comparable index issued by the Bureau or similar agency of the United States issuing similar indices shall be used in lieu of the CPI.

"Cross-collateralized Mortgage" shall mean each mortgage, deed of trust, deed to secure debt, security agreement, assignment of rents and fixture filing as originally executed or as same may hereafter from time to time be supplemented, amended, modified or extended by one or more indentures supplemental thereto granted by Borrower to Lender as security for the Note.

"Cross-collateralized Property" shall mean each parcel or parcels of real property encumbered by a Cross-collateralized Mortgage as identified on Exhibit G-1 to G-3 attached hereto and made a part hereof; provided, however, at such time, if any, that a Cross-collateralized Mortgage is released by Lender, the property which was encumbered by such Cross-collateralized Mortgage shall no longer constitute a Cross-collateralized Property.

"Current Month" shall mean the period from the eleventh (11th) day of each month through and including the tenth (10th) day of the following month.

"Debt" shall have the meaning set forth in the Recitals hereto.

"Debt Service Coverage" shall mean the quotient obtained by dividing Adjusted Net Cash Flow for all of the Cross-collateralized Properties for the specified period by the sum of the aggregate payments of interest and principal due for such specified period under the Note (determined as of the date the calculation of Debt Service Coverage is required or requested hereunder).

"Debt Service Payment Sub-Account" shall mean the Sub-Account of the Central Account established pursuant to Section 5.02 hereof into which the Required Debt Service Payment shall be deposited.

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

"Default Rate" shall mean the lesser of (a) the highest rate allowable at law and (b) five percent (5%) above the interest rate set forth in the Note.

"Default Rate Interest" shall mean, to the extent the Default Rate becomes applicable, interest in excess of the interest which would have accrued on (a) the Principal Amount and (b) any accrued but unpaid interest, if the Default Rate was not applicable.

"Development Laws" shall mean all applicable subdivision, zoning, environmental protection, wetlands protection, or land use laws or ordinances, and any and all applicable rules and regulations of any Governmental Authority promulgated thereunder or related thereto.

"Eligible Account" shall mean a segregated account which is either (a) an account or accounts maintained with a federal or state chartered depository institution or trust company the long term unsecured debt obligations of which are rated by each of the Rating Agencies (or, if not rated by Fitch, Inc. ("Fitch"), otherwise acceptable to Fitch, as confirmed in writing that such account would not, in and of itself, result in a downgrade, qualification or withdrawal of the then current ratings assigned to any certificates issued in connection with a Securitization) in its second highest rating category at all times (or, in the case of the Basic Carrying Costs Escrow Account, the long term unsecured debt obligations of which are rated at least "AA" (or its equivalent)) by each of the Rating Agencies (or, if not rated by Fitch, otherwise acceptable to Fitch, as confirmed in writing that such account would not, in and of itself, result in a downgrade, qualification or withdrawal of the then current ratings assigned to any certificates issued in connection with a Securitization) or, if the funds in such account are to be held in such account for less than thirty (30) days, the short term obligations of which are rated by each of the Rating Agencies (or, if not rated by Fitch, otherwise acceptable to Fitch, as confirmed in writing that such account would not, in and of itself, result in a downgrade, qualification or withdrawal of the then current ratings assigned to any certificates issued in connection with a Securitization) in its second highest rating category at all times or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal and state authority, or otherwise acceptable (as evidenced by a written confirmation from each Rating Agency that such account would not, in and of itself, cause a downgrade, qualification or withdrawal of the then current ratings assigned to any certificates issued in connection with a Securitization) to each Rating Agency, which may be an account maintained by Lender or its agents. Eligible Accounts may bear interest. The title of each Eligible Account shall indicate that the funds held therein are held in trust for the uses and purposes set forth herein.

"Engineer" shall have the meaning set forth in Section 3.04(b)(i) hereof.

"Engineering Escrow Account" shall mean an Escrow Account established and maintained pursuant to Section 5.12 hereof relating to payments for any Required Engineering Work.

"Engineering Report" shall mean the engineering report for the Property and any supplements or updates thereto, previously delivered to Lender in connection with the Loan.

"Environmental Problem" shall mean any of the following:

- (a) the presence of any Hazardous Material on, in, under, or above all or any portion of the Property;
- (b) the release or threatened release of any Hazardous Material from or onto the Property;
- (c) the violation or threatened violation of any Environmental Statute with respect to the Property; or
- (d) the failure to obtain or to abide by the terms or conditions of any permit or approval required under any Environmental Statute with respect to the Property.

A condition described above shall be an Environmental Problem regardless of whether or not any Governmental Authority has taken any action in connection with the condition and regardless of whether that condition was in existence on or before the date hereof.

"Environmental Report" shall mean the environmental audit report for the Property and any supplements or updates thereto, previously delivered to Lender in connection with the Loan.

"Environmental Statute" shall mean any federal, state or local statute, ordinance, rule or regulation, any judicial or administrative order (whether or not on consent) or judgment applicable to Borrower or the Property including, without limitation, any judgment or settlement based on common law theories, and any provisions or condition of any permit, license or other authorization binding on Borrower relating to (a) the protection of the environment or the health of persons (including employees) from actual or potential exposure (or effects of exposure) to any actual or potential release, discharge, disposal or emission (whether past or present) of any Hazardous Materials or (b) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Materials, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §1101 et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. §7401 et seq., the National Environmental Policy Act of 1975, 42 U.S.C. §4321, the Rivers and Harbors Act of 1899, 33 U.S.C. §401 et seq., the Endangered Species Act of 1973, as amended, 16 U.S.C. §1531 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §651 et seq., and the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §300(f) et seq., and all rules, regulations and guidance documents promulgated or published thereunder.

"Equipment" shall have the meaning set forth in granting clause (d) of this Security Instrument.



"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Security Instrument and, as of the relevant date, any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

"ERISA Affiliate" shall mean any corporation or trade or business that is a member of any group of organizations (a) described in Section 414(b) or (c) of the Code of which Borrower or Guarantor is a member and (b) solely for purposes of potential liability under Section 302(c)(11) of ERISA and Section 412(c)(11) of the Code and the lien created under Section 302(f) of ERISA and Section 412(n) of the Code, described in Section 414(m) or (o) of the Code of which Borrower or Guarantor is a member.

"Escrow Account" shall mean each of the Engineering Escrow Account, the Basic Carrying Costs Escrow Account, the Recurring Replacement Reserve Escrow Account, the Reletting Reserve Escrow Account, the Outstanding TILC Escrow Account, the Old Navy Escrow Account and the Operation and Maintenance Expense Escrow Account, each of which shall be an Eligible Account or book entry sub-account of an Eligible Account.

"Event of Default" shall have the meaning set forth in Section 13.01 hereof.

"Extraordinary Expense" shall mean an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget or allotted for in the Recurring Replacement Reserve Sub-Account or the Reletting Reserve Sub-Account.

"Fiscal Year" shall mean the twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of this Security Instrument, or such other fiscal year of Borrower as Borrower may select from time to time with the prior written consent of Lender.

"Fixtures" shall have the meaning set forth in granting clause (d) of this Security Instrument.

"Force Majeure" shall mean strikes, lockouts, labor disputes, acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental actions, terrorist acts, civil commotion, insurrection, revolution, sabotage or fire or other casualty or other events beyond the reasonable control of Borrower and/or its Affiliates, but Borrower's and/or its Affiliates' lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower and/or its Affiliates.

"GAAP" shall mean generally accepted accounting principles in the United States of America, as of the date of the applicable financial report, consistently applied.

"General Partner" shall mean, if Borrower is a partnership, each general partner of Borrower and, if Borrower is a limited liability company, each managing member of Borrower and in each case, if applicable, each general partner or member of such general partner or managing member.



"Governmental Authority" shall mean, with respect to any Person, any federal or State government or other political subdivision thereof and any entity, including any regulatory or administrative authority or court, exercising executive, legislative, judicial, regulatory or administrative or quasi-administrative functions of or pertaining to government, and any arbitration board or tribunal, in each case having jurisdiction over such applicable Person or such Person's property and any stock exchange on which shares of capital stock of such Person are listed or admitted for trading.

"Guarantor" shall mean any Person guaranteeing, in whole or in part, the obligations of Borrower under the Loan Documents.

"Guaranty" shall mean that certain Guaranty executed and delivered by Prime Outlets Acquisition Group LLC, dated as of the date hereof.

"Hazardous Material" shall mean any flammable, explosive or radioactive materials, hazardous materials or wastes, hazardous or toxic substances, pollutants, asbestos or any material containing asbestos, molds, spores and fungus which may pose a risk to human health or the environment or any other substance or material as defined in or regulated by any Environmental Statutes.

"Impositions" shall mean all taxes (including, without limitation, all real estate, ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible, transaction, privilege or license or similar taxes), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Security Instrument), ground rents, water, sewer or other rents and charges, excises, levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Property and/or any Rent (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a lien upon (a) Borrower (including, without limitation, all franchise, single business or other taxes imposed on Borrower for the privilege of doing business in the jurisdiction in which the Property or any other collateral delivered or pledged to Lender in connection with the Loan is located) or Lender, (b) the Property or any part thereof or any Rents therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Property, or any part thereof, or the leasing or use of the Property, or any part thereof, or the acquisition or financing of the acquisition of the Property, or any part thereof, by Borrower.

"Improvements" shall have the meaning set forth in granting clause (b) of this Security Instrument.

"Indemnified Parties" shall have the meaning set forth in Section 12.01 hereof.

"Independent" shall mean, when used with respect to any Person, a Person who (a) is in fact independent, (b) does not have any direct financial interest or any material indirect financial



interest in Borrower, or in any Affiliate of Borrower or any constituent partner, shareholder, member or beneficiary of Borrower, (c) is not connected with Borrower or any Affiliate of Borrower or any constituent partner, shareholder, member or beneficiary of Borrower as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions and (d) is not a member of the immediate family of a Person defined in (b) or (c) above.

"Initial Engineering Deposit" shall equal the amount set forth on Exhibit B attached hereto and made a part hereof.

"Initial Outstanding TILC Reserve Deposit" shall equal the amount set forth on Exhibit B attached hereto and made a part hereof.

"Initial Reletting Reserve Deposit" shall equal the amount set forth on Exhibit B attached hereto and made a part hereof.

"Initial Recurring Reserve Deposit" shall equal the amount required to be deposited by Borrower into the Recurring Replacement Reserve Escrow Account on the Closing Date as set forth on Exhibit B.

"Insolvency Opinion" shall have the meaning set forth in Section 2.02(g)(xix) hereof.

"Institutional Lender" shall mean any of the following Persons: (a) any bank, savings and loan association, savings institution, trust company or national banking association, acting for its own account or in a fiduciary capacity, (b) any charitable foundation, (c) any insurance company or pension and/or annuity company, (d) any fraternal benefit society, (e) any pension, retirement or profit sharing trust or fund within the meaning of Title I of ERISA or for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisers Act of 1940, as amended, is acting as trustee or agent, (f) any investment company or business development company, as defined in the Investment Company Act of 1940, as amended, (g) any small business investment company licensed under the Small Business Investment Act of 1958, as amended, (h) any broker or dealer registered under the Securities Exchange Act of 1934, as amended, or any investment adviser registered under the Investment Adviser Act of 1940, as amended, (i) any government, any public employees' pension or retirement system, or any other government agency supervising the investment of public funds, or (j) any other entity all of the equity owners of which are Institutional Lenders; provided that each of said Persons shall have net assets in excess of \$1,000,000,000 and a net worth in excess of \$500,000,000, be in the business of making commercial mortgage loans, secured by properties of like type, size and value as the Property and have a long term credit rating which is not less than "BBB-" (or its equivalent) from the Rating Agency.

"Insurance Proceeds" shall mean all of the proceeds received under the insurance policies required to be maintained by Borrower pursuant to Article III hereof.

"Insurance Requirements" shall mean all terms of any insurance policy required by this Security Instrument, all requirements of the issuer of any such policy, and all regulations and then current standards applicable to or affecting the Property or any use or condition thereof,



which may, at any time, be recommended by the Board of Fire Underwriters, if any, having jurisdiction over the Property, or such other Person exercising similar functions.

"Interest Rate" shall have the meaning set forth in the Note.

"Late Charge" shall have the meaning, subject to the provisions of Section 21.02(g) hereof, set forth in Section 13.09 hereof.

"Leases" shall have the meaning set forth in granting clause (f) of this Security Instrument.

"Legal Requirement" shall mean as to any Person, the certificate of incorporation, by-laws, certificate of limited partnership, agreement of limited partnership or other organization or governing documents of such Person, and any law, statute, order, code, ordinance, judgment, decree, injunction, treaty, rule or regulation (including, without limitation, Environmental Statutes, Development Laws and Use Requirements) or determination of an arbitrator or a court or other Governmental Authority and all covenants, agreements, restrictions and encumbrances contained in any instruments, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Lender" shall mean the Lender named herein and its successors or assigns.

"Loan" shall have the meaning set forth in the Recitals hereto.

"Loan Amount" shall have the meaning set forth in the Recitals hereto.

"Loan Documents" shall mean this Security Instrument, the Note, the Assignment, and any and all other agreements, instruments, certificates or documents executed and delivered by Borrower or any Affiliate of Borrower in connection with the Loan.

"Loan Year" shall mean each 365 day period (or 366 day period if the month of February in a leap year is included) commencing on the first day of the month following the Closing Date (provided, however, that the first Loan Year shall also include the period from the Closing Date to the end of the month in which the Closing Date occurs).

"Loss Proceeds" shall mean, collectively, all Insurance Proceeds and all Condemnation Proceeds.

"Major Space Lease" shall mean any Space Lease of a tenant or Affiliate of such tenant where such tenant or such Affiliate leases, in the aggregate, in excess of 6,000 square feet.

"Management Agreement" shall have the meaning set forth in Section 7.02 hereof.

"Manager" shall mean Borrower and any other Person, other than Borrower, which manages the Property on behalf of Borrower.

"Manager Certification" shall have the meaning set forth in Section 2.09 hereof.



"Material Adverse Effect" shall mean any event or condition that has a material adverse effect on (a) the Property, (b) the business, profits, management, operations or condition (financial or otherwise) of Borrower, (c) the enforceability, validity, perfection or priority of the lien or security interest of any Loan Document or (d) the ability of Borrower to perform any material obligations under any Loan Document.

"Maturity", when used with respect to the Note, shall mean the Maturity Date set forth in the Note, as same may be extended in accordance with the Note, or such other date pursuant to the Note on which the final payment of principal, and premium, if any, on the Note becomes due and payable as therein or herein provided, whether at Stated Maturity or by declaration of acceleration, or otherwise.

"Maturity Date" shall mean the Maturity Date set forth in the Note.

"Minimum Manager Credentials" shall mean (i) the employment of a senior executive who has the responsibility for oversight of the Property and has at least seven (7) years' experience in the management of outlet shopping centers and (ii) the management of not less than five (5) outlet shopping center properties (excluding the Cross-collateralized Properties) having an aggregate leasable square footage of not less than the lesser of (a) one million leasable square feet and (b) five (5) times the leasable square feet of the Property.

"Multiemployer Plan" shall mean a multiemployer plan defined as such in Section 3(37) of ERISA to which contributions have been, or were required to have been, made by Borrower, Guarantor or any ERISA Affiliate and which is covered by Title IV of ERISA.

"Net Capital Expenditures" shall mean for any period the amount by which Capital Expenditures during such period exceeds reimbursements for such items during such period from any fund established pursuant to the Loan Documents.

"Net Operating Income" shall mean in each Fiscal Year or portion thereof during the term hereof, Operating Income less Operating Expenses.

"Net Proceeds" shall mean the excess of (a)(i) the purchase price (at foreclosure or otherwise) actually received by Lender with respect to the Property as a result of the exercise by Lender of its rights, powers, privileges and other remedies after the occurrence of an Event of Default, or (ii) in the event that Lender (or Lender's nominee) is the purchaser at foreclosure by credit bid, then the amount of such credit bid, in either case, over (b) all costs and expenses, including, without limitation, all attorneys' fees and disbursements and any brokerage fees, if applicable, incurred by Lender in connection with the exercise of such remedies, including the sale of such Property after a foreclosure against the Property.

"Note" shall have the meaning set forth in the Recitals hereto.

"OFAC List" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.



"Officer's Certificate" shall mean a certificate delivered to Lender by Borrower which is signed on behalf of Borrower by an authorized representative of Borrower which states that the items set forth in such certificate are true, accurate and complete in all respects.

"Old Navy Reserve Escrow Account" shall mean an Escrow Account established and maintained pursuant to Section 5.15 hereof.

"Operating Expenses" shall mean, in each Fiscal Year or portion thereof during the term hereof, all expenses directly attributable to the operation, repair and/or maintenance of the Property including, without limitation, (a) Impositions, (b) insurance premiums, (c) management fees, whether or not actually paid, equal to the greater of the actual management fees or expenses and four percent (4%) of annual "base" or "fixed" Rent due under the Leases and (d) costs attributable to the operation, repair and maintenance of the systems for heating, ventilating and air conditioning the Improvements and actually paid for by Borrower. Operating Expenses shall not include interest, principal and premium, if any, due under the Note or otherwise in connection with the Debt, income taxes, Capital Expenditures, any non-cash charge or expense such as depreciation, amortization or any item of expense otherwise includable in Operating Expenses which is paid directly by any tenant except real estate taxes paid directly to any taxing authority by any tenant or contributions by Borrower to any reserve funds required under the Loan Documents.

"Operating Income" shall mean, in each Fiscal Year or portion thereof during the term hereof, all revenue derived by Borrower arising from the Property including, without limitation, rental revenues (whether denominated as basic rent, additional rent, escalation payments, electrical payments or otherwise) and other fees and charges payable pursuant to Leases or otherwise in connection with the Property, and the proceeds of business interruption, rent or other similar insurance. Operating Income shall not include (a) Insurance Proceeds (other than proceeds of rent, business interruption or other similar insurance allocable to the applicable period) and Condemnation Proceeds (other than Condemnation Proceeds arising from a temporary taking or the use and occupancy of all or part of the applicable Property allocable to the applicable period), or interest accrued on such Condemnation Proceeds, (b) proceeds of any financing, (c) proceeds of any sale, exchange or transfer of the Property or any part thereof or interest therein, (d) capital contributions or loans to Borrower or an Affiliate of Borrower, (e) any item of income otherwise includable in Operating Income but paid directly by any tenant to a Person other than Borrower except for real estate taxes paid directly to any taxing authority by any tenant, (f) any other extraordinary, non-recurring revenues, (g) Rent paid by or on behalf of any lessee under a Space Lease which is the subject of any proceeding or action relating to its bankruptcy, reorganization or other arrangement pursuant to the Bankruptcy Code or any similar federal or state law or which has been adjudicated a bankrupt or insolvent unless such Space Lease has been affirmed by the trustee in such proceeding or action, (h) Rent paid by or on behalf of any lessee under a Space Lease the demised premises of which are not occupied either by such lessee or by a sublessee thereof unless the lessee thereunder has a long-term unsecured debt rating of not less than "BBB+" (or its equivalent) from the Rating Agency, (i) Rent paid by or on behalf of any lessee under a Space Lease in whole or partial consideration for the termination of any Space Lease, (j) rent paid by or on behalf of lessees under month-to-month Space Leases for lessees which have been in occupancy for less than six (6) months, (k) rent paid by or on behalf of any lessee under a Space Lease that is more than thirty (30) days in arrears in



its obligations under such Space Lease, (l) Rents paid by or on behalf of lessees who have given notice that they will be vacating the premises demised under their respective Space Leases more than thirty (30) days prior to the stated expiration date set forth in such Space Leases, or (m) sales tax rebates from any Governmental Authority.

"Operation and Maintenance Expense Escrow Account" shall mean the Escrow Account maintained pursuant to Section 5.09 hereof relating to the payment of Operating Expenses (exclusive of Basic Carrying Costs).

"Operation and Maintenance Expense Sub-Account" shall mean the Sub-Account of the Central Account established pursuant to Section 5.02 hereof into which sums allocated for the payment of Cash Expenses, Net Capital Expenditures and approved Extraordinary Expenses shall be deposited.

"Outstanding TILC Escrow Account" shall mean an Escrow Account established and maintained pursuant to Section 5.14 relating to any outstanding tenant allowance under existing Leases and initially funded with the Initial Outstanding TILC Deposit.

"Outstanding TILC Sub-Account" shall mean the Sub-Account of the Central Account established pursuant to Section 5.02 hereof into which the Initial Outstanding TILC Reserve Deposit shall be deposited.

"Pad Owners" shall mean any owner of any fee interest in property contiguous to or surrounded by the Property who has entered into or is subject to a reciprocal easement agreement or other agreement or agreements with Borrower either (a) in connection with an existing or potential improvement on such property or (b) relating to or affecting the Property.

"Payment Date" shall have the meaning set forth in the Note.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established under ERISA, or any successor thereto.

"Permitted Encumbrances" shall have the meaning set forth in Section 2.05(a) hereof.

"Person" shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Plan" shall mean an employee benefit or other plan established or maintained by Borrower, Guarantor or any ERISA Affiliate during the five-year period ended prior to the date of this Security Instrument or to which Borrower, Guarantor or any ERISA Affiliate makes, is obligated to make or has, within the five year period ended prior to the date of this Security Instrument, been required to make contributions (whether or not covered by Title IV of ERISA or Section 302 of ERISA or Section 401(a) or 412 of the Code), other than a Multiemployer Plan.



"Premises" shall have the meaning set forth in granting clause (a) of this Security Instrument.

"Principal Amount" shall mean the Loan Amount as such amount may be reduced from time to time pursuant to the terms of this Security Instrument, the Note or the other Loan Documents.

"Pro-Forma Net Operating Income" shall mean Pro-Forma Operating Income less Pro-Forma Operating Expenses.

"Pro-Forma Operating Expenses" shall mean projected aggregate annualized Operating Expenses for all of the Cross-collateralized Properties based on a trailing twelve (12)-month period as reasonably adjusted by Lender to take into account, among other things, anticipated increases or decreases in Operating Expenses.

"Pro-Forma Operating Income" shall mean the lesser of (i) projected aggregate Operating Income for the Cross-collateralized Properties for the immediately subsequent 12-month period and (ii) actual aggregate Operating Income for the Cross-collateralized Properties for the immediately preceding 12-month period, as increased by scheduled rent increases set forth in the Space Leases and rent anticipated from tenants under Space Leases relating to any portion of the Premises which was previously not occupied provided such tenants are then in occupancy pursuant to Space Leases entered into in accordance with the terms of this Security Instrument and have paid all rents due under the Space Lease without abatement, suspension, deferment, diminution, reduction or other allowances for at least one full calendar month, in each case as determined by Lender based on the most recent rent roll and such other information as is required to be delivered by Borrower pursuant to Section 2.09 hereof and as reasonably adjusted by Lender to take into account, among other things, a vacancy factor equal to the greater of (x) anticipated vacancies for the succeeding 12-month period and (b) actual vacancies during the immediately preceding 12-month period.

"Prohibited Person" means any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America.

"Property" shall have the meaning set forth in the granting clauses of this Security Instrument.

"Property Agreements" shall mean all agreements, grants of easements and/or rights-of-way, reciprocal easement agreements, permits, declarations of covenants, conditions and restrictions, disposition and development agreements, planned unit development agreements, management or parking agreements, party wall agreements or other instruments affecting the Property, including, without limitation any agreements with Pad Owners, but not including any brokerage agreements, management agreements, service contracts, Space Leases or the Loan Documents.

"Rating Agency" shall mean Standard & Poor's Ratings Services, Inc., a division of The McGraw-Hill Company, Inc. ("Standard & Poor's"), Fitch, Inc., and Moody's Investors Service, Inc. ("Moody's"), collectively, and any successor to any of them; provided, however, that at any



time after a Securitization, "Rating Agency" shall mean those of the foregoing rating agencies that from time to time rate the securities issued in connection with such Securitization.

"Real Estate Taxes" shall mean all real estate taxes, assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Security Instrument), water, sewer or other rents and charges, and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Property (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a lien upon the Property or any part thereof or any estate, right, title or interest therein.

"Realty" shall have the meaning set forth in Section 2.05(b) hereof.

"Recurring Replacement Expenditures" shall mean expenditures related to capital repairs, replacements and improvements performed at the Property from time to time.

"Recurring Replacement Monthly Installment" shall mean the amount per month as set forth on Exhibit B attached hereto and made a part hereof.

"Recurring Replacement Reserve Escrow Account" shall mean the Escrow Account maintained pursuant to Section 5.08 hereof relating to the payment of Recurring Replacement Expenditures.

"Recurring Replacement Reserve Sub-Account" shall mean the Sub-Account of the Central Account established pursuant to Section 5.02 hereof into which the Recurring Replacement Monthly Installment shall be deposited.

"Reletting Expenditures" shall mean reasonable and actual out-of-pocket expenditures payable to bona-fide third parties incurred by Borrower relating to reletting of space at the Property and in connection with any brokerage commissions due and payable, or any improvements and replacements required to be made by Borrower (or reasonable and actual out-of-pocket expenditures paid to tenants in connection with any improvements and replacements made by tenants at the Property) under the terms of any Lease to prepare the relevant space for occupancy by the tenant thereunder.

"Reletting Reserve Escrow Account" shall mean the Escrow Account maintained pursuant to Section 5.07 hereof relating to the payment of Reletting Expenditures.

"Reletting Reserve Monthly Installment" shall mean (a) the amount set forth on Exhibit B attached hereto and made a part hereof plus (b) all sums received by Borrower in connection with any cancellation, termination or surrender of any Lease, including, without limitation, any surrender or cancellation fees, buy-out fees, or reimbursements for tenant improvements and leasing commissions.



"Reletting Reserve Sub-Account" shall mean the Sub-Account of the Central Account established pursuant to Section 5.02 hereof into which the Reletting Reserve Monthly Installment shall be deposited.

"Rents" shall have the meaning set forth in granting clause (f) of this Security Instrument.

"Rent Account" shall mean an Eligible Account, maintained at the Bank, in the joint names of Borrower and Lender or its successors or assigns (as secured party) as may be designated by Lender.

"Rent Roll" shall have the meaning set forth in Section 2.05 (o) hereof.

"Required Debt Service Coverage" shall mean a Debt Service Coverage of not less than 1.20:1.0.

"Required Debt Service Payment" shall mean, as of any Payment Date, the amount of interest and principal then due and payable pursuant to the Note, together with any other sums due thereunder, including, without limitation, any prepayments required to be made or for which notice has been given under this Security Instrument, Default Rate Interest and premium, if any, paid in accordance therewith.

"Required Engineering Work" shall mean the immediate engineering and/or environmental remediation work set forth on Exhibit D attached hereto and made a part hereof.

"Retention Amount" shall have the meaning set forth in Section 3.04(b)(vii) hereof.

"Securities Act" shall mean the Securities Act of 1933, as the same shall be amended from time to time.

"Securitization" shall mean a public or private offering of securities by Lender or any of its Affiliates or their respective successors and assigns which are collateralized, in whole or in part, by this Security Instrument.

"Security Deposit Account" shall have the meaning set forth in Section 5.01 hereof.

"Security Instrument" shall mean this Security Instrument as originally executed or as it may hereafter from time to time be supplemented, amended, modified or extended by one or more indentures supplemental hereto.

"Single Purpose Entity" shall mean a corporation, partnership, joint venture, limited liability company, trust or unincorporated association, which is formed or organized solely for the purpose of holding, directly, an ownership interest in the Property or a general partner interest in a Person, does not engage in any business unrelated to the Property, does not have any assets other than those related to its interest in the Property or a general partner interest in such Person, or any indebtedness, other than as permitted by this Security Instrument or the other Loan Documents, has its own separate books and records and has its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person, holds itself out as being a Person separate and apart from any other Person and which otherwise



satisfies the criteria of the Rating Agency, as in effect on the Closing Date, for a special-purpose bankruptcy-remote entity.

"Solvent" shall mean, as to any Person, that (a) the sum of the assets of such Person, at a fair valuation, exceeds its liabilities, including contingent liabilities, (b) such Person has sufficient capital with which to conduct its business as presently conducted and as proposed to be conducted and (c) such Person has not incurred debts, and does not intend to incur debts, beyond its ability to pay such debts as they mature. For purposes of this definition, "debt" means any liability on a claim, and "claim" means (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. With respect to any such contingent liabilities, such liabilities shall be computed in accordance with GAAP at the amount which, in light of all the facts and circumstances existing at the time, represents the amount which can reasonably be expected to become an actual or matured liability.

"Space Leases" shall mean any Lease or sublease thereunder (including, without limitation, any Major Space Lease) or any other agreement providing for the use and occupancy of a portion of the Property as the same may be amended, renewed or supplemented.

"State" shall mean any of the states which are members of the United States of America.

"Stated Maturity", when used with respect to the Note or any installment of interest and/or principal payment thereunder, shall mean the date specified in the Note as the fixed date on which a payment of principal and/or interest is due and payable.

"Sub-Accounts" shall have the meaning set forth in Section 5.02 hereof.

"Substantial Casualty" shall have the meaning set forth in Section 3.04(a)(iv) hereof.

"Taking" shall mean a condemnation or taking pursuant to the lawful exercise of the power of eminent domain.

"Transfer" shall mean the conveyance, assignment, sale, mortgaging, encumbrance, pledging, hypothecation, granting of a security interest in, granting of options with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest (a) in all or any portion of the Property; (b) if Borrower or, if Borrower is a partnership, any General Partner, is a corporation, in the stock of Borrower or any General Partner; (c) if Borrower is a limited or general partnership, joint venture, limited liability company, trust, nominee trust, tenancy in common or other unincorporated form of business association or form of ownership interest, in any Person having a legal or beneficial ownership in Borrower, excluding any legal or beneficial interest in any constituent limited partner, if Borrower is a limited partnership, or in any non-managing member, if Borrower is a limited liability company, unless such interest would, or together with all other direct or indirect interests in Borrower which were previously transferred, aggregate 49% or more of the partnership or



membership, as applicable, interests in Borrower or would result in any Person who, as of the Closing Date, did not own, directly or indirectly, 49% or more of the partnership or membership, as applicable, interests in Borrower, owning, directly or indirectly, 49% or more of the partnership or membership, as applicable, interests in Borrower and excluding any legal or beneficial interest in any General Partner unless such interest would, or together with all other direct or indirect interest in the General Partner which were previously transferred, aggregate 49% or more of the partnership or membership, as applicable, interests in the General Partner (or result in a change in control of the management of the General Partner from the individuals exercising such control immediately prior to the conveyance or other disposition of such legal or beneficial interest) and shall also include, without limitation to the foregoing, the following: an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof or any interest therein for a price to be paid in installments; an agreement by Borrower leasing all or substantially all of the Property to one or more Persons pursuant to a single or related transactions, or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rent; any instrument subjecting the Property to a condominium regime or transferring ownership to a cooperative corporation; and the dissolution or termination of Borrower or the merger or consolidation of Borrower with any other Person. Notwithstanding the foregoing, "Transfer" shall not include (I) a transfer which would otherwise be a Transfer pursuant to clause (c) above with respect to Borrower and Prime Outlets Acquisition Company LLC if David Lichtenstein ("Original Principal") or one or more of David Lichtenstein's family members or a trust formed for the benefit of such family member, as provided in clause (III)(A) of this sentence, continues to own not less than twenty percent (20%) of Borrower and Prime Outlets Acquisition Company LLC (whether directly or through one or more Persons), if provided all of the following conditions are satisfied if (i) written notice of any transfer pursuant to this proviso is given to Lender together with such documents relating to the transfer as Lender may reasonably require, (ii) control over the management and operation of the Property is retained directly or indirectly by Original Principal, (iii) in the event that any Person (a "Principal Transferee") who does not, as of the Closing Date, own or Control, directly or indirectly, 49% or more of the partnership or membership, as applicable, interests in Borrower acquires, directly or indirectly, 49% or more of the partnership or membership, as applicable, interests in Borrower, Lender is furnished an opinion, in form and substance and from counsel reasonably satisfactory to Lender, substantially similar to the Insolvency Opinion which discusses the substantive non-consolidation of Borrower with the Principal Transferee, (iv) no such transfer has any adverse effect either on the Single Purpose Entity status of Borrower under the requirements of any Rating Agency or on the status of Borrower as a continuing legal entity liable for the payment of the Debt and the performance of all other obligations secured hereby, (v) Borrower has delivered a letter from each Rating Agency confirming that any rating issued by the Rating Agency in connection with a Securitization will not, as a result of the transfer, be downgraded from the then current ratings thereof, qualified or withdrawn, (vi) in the event that any Person (together with its Affiliates) acquires a twenty percent (20%) or greater interest, directly or indirectly, in Borrower or there is a change in Control of Borrower, as a result of such transfer, Lender shall have consented to such transfer in its sole and absolute discretion, (II) transfers made by devise or descent or by operation of law upon the death of a partner, member or shareholder of Borrower or General Partner or any Person owning a direct or indirect legal or beneficial interest in Borrower or General Partner if: (i) written notice of any transfer pursuant to this proviso is given to Lender



together with such documents relating to the transfer as Lender may reasonably require, (ii) control over the management and operation of the Property is retained by the Original Principal at all times prior to the death or legal incapacity of the Original Principal and is thereafter assumed by Persons who are acceptable in all respects to Lender in its sole and absolute discretion, (iii) no such transfer by the Original Principal will release the respective estate from any liability as a Guarantor, and (iv) no such transfer, death or other event has any adverse effect either on the Single Purpose Entity status of Borrower under the requirements of any Rating Agency or on the status of Borrower as a continuing legal entity liable for the payment of the Debt and the performance of all other obligations secured hereby, nor (III) subject to the provisions of clauses (I)(i) through (I)(iv) above and provided, that (i) any inter vivos transfer of all or any portion of the Property or any inter vivos transfer or issuance of capital stock (or other ownership interests) in Borrower or General Partner is made in connection with Original Principal's bona fide, good faith estate planning, (ii) Original Principal does not transfer in excess of 49% of its direct or indirect ownership interest in Borrower or, if Original Principal does transfer in excess of 49% of its direct or indirect ownership interests in Borrower, Lender is furnished an opinion, in form and substance and from counsel reasonably satisfactory to Lender, substantially similar to the Insolvency Opinion which discusses the substantive non-consolidation of Borrower with the proposed transferee, and (iii) the Person(s) with Control of Borrower or the management of the Property are (x) the same Person(s) who had such Control and management rights immediately prior to the transfer in question, or (y) reasonably acceptable to Lender, (A) an inter vivos or testamentary transfer of all or any portion of the ownership interest in Borrower to one or more family members of Original Principal or a trust in which all of the beneficial interest is held by one or more family members of Original Principal or a partnership, limited liability company, corporation or other legal entity in which a majority of the capital and profits interests are held by one or more family members of Original Principal, or (B) any inter vivos or testamentary transfer or issuance of capital stock (or other ownership interests) in the General Partner to one or more family members of Original Principal, a trust in which all of the beneficial interest is held by one or more family members of Original Principal or a partnership, limited liability company, corporation or other legal entity in which a majority of the capital and profits interests are held by one or more family members of Original Principal. As used herein, "family members" shall include spouses, children and grandchildren. For purposes of this definition, "Borrower" shall mean individually and/or collectively any of the limited liability companies comprising Borrower.

"Trustee" shall mean the Person or Persons identified in this Security Instrument as the Trustee hereunder and its or their successors and assigns.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State in which the Property is located.

"Unscheduled Payments" shall mean (a) all Loss Proceeds that Borrower has elected or is required to apply to the repayment of the Debt pursuant to this Security Instrument, the Note or any other Loan Documents, (b) any funds representing a voluntary or involuntary principal prepayment and (c) any Net Proceeds.

"Use Requirements" shall mean any and all building codes, permits, certificates of occupancy or compliance, laws, regulations, or ordinances (including, without limitation, health,



pollution, fire protection, medical and day-care facilities, waste product and sewage disposal regulations), restrictions of record, easements, reciprocal easements, declarations or other agreements affecting the use of the Property or any part thereof.

"Welfare Plan" shall mean an employee welfare benefit plan as defined in Section 3(1) of ERISA established or maintained by Borrower, Guarantor or any ERISA Affiliate or that covers any current or former employee of Borrower, Guarantor or any ERISA Affiliate.

"Work" shall have the meaning set forth in Section 3.04(a)(i) hereof.

ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Section 2.01. Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Note and the other Loan Documents, all in lawful money of the United States of America in immediately available funds.

Section 2.02. Representations, Warranties and Covenants of Borrower. Borrower represents, warrants and covenants to Lender:

(a) Organization and Authority. Borrower (i) is a limited liability company, general partnership, limited partnership or corporation, as the case may be, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, (ii) has all requisite power and authority and all necessary licenses and permits to own and operate the Property and to carry on its business as now conducted and as presently proposed to be conducted and (iii) is duly qualified, authorized to do business and in good standing in the jurisdiction where the Property is located and in each other jurisdiction where the conduct of its business or the nature of its activities makes such qualification necessary. If Borrower is a limited liability company, limited partnership or general partnership, each general partner or managing member, as applicable, of Borrower which is a corporation is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation.

(b) Power. Borrower and, if applicable, each General Partner has full power and authority to execute, deliver and perform, as applicable, the Loan Documents to which it is a party, to make the borrowings thereunder, to execute and deliver the Note and to grant to Lender a first lien on and security interest in the Property, subject only to the Permitted Encumbrances.

(c) Authorization of Borrowing. The execution, delivery and performance of the Loan Documents to which Borrower is a party, the making of the borrowings thereunder, the execution and delivery of the Note, the grant of the liens on the Property pursuant to the Loan Documents to which Borrower is a party and the consummation of the Loan are within the powers of Borrower and have been duly authorized by Borrower and, if applicable, the General Partners, by all requisite action (and Borrower hereby represents that no approval or action of any member, limited partner or shareholder, as applicable, of Borrower is required to authorize any of the Loan Documents to which Borrower is a party other than such approval or action that has already been granted or taken) and will constitute the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with their terms, except as enforcement may be stayed or limited by bankruptcy, insolvency or similar laws affecting the enforcement of



creditors' rights generally and by general principles of equity (whether considered in proceedings at law or in equity) and will not (i) violate any provision of its partnership agreement or partnership certificate or certificate of incorporation or by-laws, or operating agreement, or articles of organization, as applicable, or, to its knowledge, any law, judgment, order, rule or regulation of any court, arbitration panel or other Governmental Authority, domestic or foreign, or other Person affecting or binding upon Borrower or the Property, or (ii) violate any provision of any indenture, agreement, mortgage, deed of trust, contract or other instrument to which Borrower or, if applicable, any General Partner is a party or by which any of their respective property, assets or revenues are bound, or be in conflict with, result in an acceleration of any obligation or a breach of or constitute (with notice or lapse of time or both) a default or require any payment or prepayment under, any such indenture, agreement, mortgage, deed of trust, contract or other instrument, or (iii) result in the creation or imposition of any lien, except those in favor of Lender as provided in the Loan Documents to which it is a party.

(d) Consent. Neither Borrower nor, if applicable, any General Partner, is required to obtain any consent, approval or authorization from, or to file any declaration or statement with, any Governmental Authority or other agency in connection with or as a condition to the execution, delivery or performance of this Security Instrument, the Note or the other Loan Documents which has not been so obtained or filed.

(e) Intentionally Deleted.

(f) Other Agreements. Borrower is not a party to nor is otherwise bound by any agreements or instruments which, individually or in the aggregate, are reasonably likely to have a Material Adverse Effect. Neither Borrower nor, if applicable, any General Partner, is in violation of its organizational documents or other restriction or any agreement or instrument by which it is bound, or any judgment, decree, writ, injunction, order or award of any arbitrator, court or Governmental Authority, or any Legal Requirement, in each case, applicable to Borrower or the Property, except for such violations that would not, individually or in the aggregate, have a Material Adverse Effect.

(g) Maintenance of Existence. Borrower and, if applicable, General Partner at all times since their formation have been duly formed and existing and shall preserve and keep in full force and effect their existence as a Single Purpose Entity.

(ii) Borrower and, if applicable, General Partner, at all times since their organization have complied, and will continue to comply, with the provisions of its certificate and agreement of partnership or certificate of incorporation and by-laws or articles of organization and operating agreement, as applicable, and the laws of its jurisdiction of organization relating to partnerships, corporations or limited liability companies, as applicable.

(iii) Borrower and, if applicable, General Partner have done or caused to be done and will do all things necessary to observe organizational formalities and preserve their existence and each Borrower and, if applicable, General Partner will not amend, modify or otherwise change the certificate and agreement of partnership or certificate of incorporation and by-laws or articles of organization and operating agreement, as



applicable, or other organizational documents of Borrower and, if applicable, General Partner without the prior written consent of Lender.

(iv) Borrower and, if applicable, General Partner, have at all times accurately maintained, and will continue to accurately maintain, their respective financial statements, accounting records and other partnership, company or corporate documents separate from those of any other Person, and Borrower will file its own tax returns or, if Borrower and/or, if applicable, General Partner is part of a consolidated group for purposes of filing tax returns, Borrower and General Partner, as applicable will be shown as separate members of such group. Borrower and, if applicable, General Partner have not at any time since their formation commingled, and will not commingle, their respective assets with those of any other Person and will maintain their assets in such a manner such that it will not be costly or difficult to segregate, ascertain or identify their individual assets from those of any other Person. Borrower and, if applicable, General Partner will not permit any Affiliate independent access to their bank accounts. Borrower and, if applicable, General Partner have at all times since their formation accurately maintained and utilized, and will continue to accurately maintain and utilize, their own separate bank accounts, payroll and separate books of account, stationery, invoices and checks.

(v) Borrower and, if applicable, General Partner, have at all times paid, and will continue to pay, their own liabilities from their own separate assets and shall each allocate and charge fairly and reasonably any overhead which Borrower and, if applicable, General Partner, shares with any other Person, including, without limitation, for office space and services performed by any employee of another Person.

(vi) Borrower and, if applicable, General Partner, have at all times identified themselves, and will continue to identify themselves, in all dealings with the public, under their own names and as separate and distinct entities and shall correct any known misunderstanding regarding their status as separate and distinct entities. Borrower and, if applicable, General Partner, have not at any time identified themselves, and will not identify themselves, as being a division of any other Person.

(vii) Borrower and, if applicable, General Partner, have been at all times, and will continue to use commercially reasonable efforts to be, adequately capitalized in light of the nature of their respective businesses; provided, however, in no event shall any direct or indirect member, partner or principal of Borrower be required to make additional capital contributions to any Borrower.

(viii) Borrower and, if applicable, General Partner, (A) have not owned, do not own and will not own any assets or property other than the Property and any incidental personal property necessary for the ownership, management or operation of the Property, (B) have not engaged and will not engage in any business other than the ownership, management and operation of the Property, (C) have not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (X) the Loan, and (Y) unsecured trade and operational debt which (1) is not evidenced by a note, (2) is incurred in the ordinary course of the operation of the



Property, (3) does not exceed in the aggregate two percent (2%) of the Allocated Loan Amount for the Property and (4) which is, unless being contested in accordance with the terms of this Security Instrument, paid prior to the earlier to occur of the forty-fifth (45th) day after the date incurred and the date when due, (D) have not and will not pledge their assets for the benefit of any other Person, and (E) have not made and will not make any loans or advances to any Person (including any Affiliate).

(ix) Neither Borrower nor, if applicable, any General Partner will change its name or principal place of business without giving Lender at least thirty (30) days prior written notice thereof.

(x) Neither Borrower nor, if applicable, any General Partner have, and neither of such Persons will have, any subsidiaries.

(xi) Borrower will preserve and maintain its existence as a general partnership, limited partnership or limited liability company, as applicable as of the Closing Date, which is organized and existing under the laws of the State in which it is organized as of the Closing Date and all material rights, privileges, tradenames and franchises.

(xii) Neither Borrower, nor, if applicable, any General Partner, will merge or consolidate with, or sell all or substantially all of its respective assets to any Person, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution). Neither any Borrower, nor, if applicable, any General Partner will acquire any business or assets from, or capital stock or other ownership interest of, or be a party to any acquisition of, any Person.

(xiii) Borrower and, if applicable, General Partner, have not at any time since their formation assumed, guaranteed or held themselves out to be responsible for, and will not assume, guarantee or hold themselves out to be responsible for the liabilities or the decisions or actions respecting the daily business affairs of their partners, shareholders or members or any predecessor company, corporation or partnership, each as applicable, any Affiliates, or any other Persons. Borrower has not at any time since its formation acquired, and will not acquire, obligations or securities of its partners or shareholders, members or any predecessor company, corporation or partnership, each as applicable, or any Affiliates. Borrower and, if applicable, General Partner, have not at any time since their formation made, and will not make, loans to its partners, members or shareholders or any predecessor company, corporation or partnership, each as applicable, or any Affiliates of any of such Persons. Borrower and, if applicable, General Partner, have no known contingent liabilities nor do they have any material financial liabilities under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which such Person is a party or by which it is otherwise bound other than under the Loan Documents.

(xiv) Borrower has not at any time since its formation entered into and was not a party to, and, will not enter into or be a party to, any transaction with its Affiliates, members, partners or shareholders, as applicable, or any Affiliates thereof except in the ordinary course of business of Borrower on terms which are no less favorable to



Borrower than would be obtained in a comparable arm's length transaction with an unrelated third party.

(xv) If Borrower is a limited partnership or a limited liability company, the General Partner shall be a corporation or limited liability company whose sole asset is its interest in Borrower and the General Partner will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Section 2.02(g) as if such representation, warranty or covenant was made directly by such General Partner.

(xvi) Borrower shall at all times cause there to be at least two (2) duly appointed members of the board of directors or board of managers or other governing board or body, as applicable (an "Independent Director"), of, if Borrower is a corporation or single member limited liability company formed in the State of Delaware, Borrower, and, if Borrower is a limited partnership or multi-member limited liability company, of the General Partner, reasonably satisfactory to Lender who shall not have been at the time of such individual's appointment, and may not be or have been at any time (A) a shareholder, officer, director, attorney, counsel, partner, member or employee of Borrower or any of the foregoing Persons or Affiliates thereof, (B) a customer or creditor of, or supplier or service provider to, Borrower or any of its shareholders, partners, members or their Affiliates, (C) a member of the immediate family of any Person referred to in (A) or (B) above, D) a Person Controlling, Controlled by or under common Control with any Person referred to in (A) through (C) above. A natural person who otherwise satisfies the foregoing definition except for being the Independent Director of a Single Purpose Entity Affiliated with Borrower or General Partner shall not be disqualified from serving as an Independent Director if such individual is at the time of initial appointment, or at any time while serving as the Independent Director, an Independent Director of a Single Purpose Entity Affiliated with Borrower or General Partner if such individual is an independent director provided by a nationally-recognized company that provides professional independent directors.

(xvii) Borrower and, if applicable, General Partner, shall not cause or permit the board of directors or board of managers or other governing board or body, as applicable, of each Borrower or, if applicable, General Partner, to take any action which, under the terms of any certificate of incorporation, by-laws or articles of organization with respect to any common stock, requires a unanimous vote of the board of directors of Borrower, or, if applicable, the General Partner, unless at the time of such action there shall be at least two members who are Independent Directors.

(xviii) Borrower and, if applicable, General Partner shall pay the salaries of their own employees and maintain a sufficient number of employees in light of their contemplated business operations.

(xix) Borrower shall, and shall cause its Affiliates to, conduct its business so that the assumptions made with respect to Borrower in that certain opinion letter relating to substantive non-consolidation dated the date hereof (the "Insolvency Opinion") delivered in connection with the Loan shall be true and correct in all respects.



(h) No Defaults. No Default or Event of Default has occurred and is continuing or would occur as a result of the consummation of the transactions contemplated by the Loan Documents. To the best of Borrower's knowledge, Borrower is not in default beyond any applicable notice and/or grace periods in the payment or performance of any of its Contractual Obligations in any respect.

(i) Consents and Approvals. Borrower and, if applicable, each General Partner, have obtained or made all necessary (i) consents, approvals and authorizations, and registrations and filings of or with all Governmental Authorities and (ii) consents, approvals, waivers and notifications of partners, stockholders, creditors, lessors and other nongovernmental Persons, in each case, which are required to be obtained or made by Borrower or, if applicable, the General Partner, in connection with the execution and delivery of, and the performance by Borrower of its obligations under, the Loan Documents.

(j) Investment Company Act Status, etc. Borrower is not (i) 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, (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

(k) Compliance with Law. (i) Except as previously disclosed to Lender in writing, Borrower has received no notice of violation of any Legal Requirements and (ii) except for such violations which would not, individually or in the aggregate, have a Material Adverse Effect, Borrower is in compliance in all material respects with all Legal Requirements to which it or the Property is subject, including, without limitation, all Environmental Statutes, the Occupational Safety and Health Act of 1970, the Americans with Disabilities Act and ERISA. No portion of the Property has been or will be purchased, improved, fixtured, equipped or furnished with proceeds of any illegal activity and to the best of Borrower's knowledge, no illegal activities are being conducted at or from the Property.

(l) Financial Information. To the best of Borrower's knowledge, all financial data that has been delivered by Borrower to Lender (i) is true, complete and correct in all material respects, (ii) accurately represents the financial condition and results of operations of the Persons covered thereby as of the date on which the same shall have been furnished in all material respects, and (iii) to the extent prepared by an independent certified public accounting firm, has been prepared in accordance with GAAP (or such other accounting basis as is reasonably acceptable to Lender) throughout the periods covered thereby except as disclosed therein. As of the date hereof, neither Borrower nor, if applicable, any General Partner, has any contingent liability, liability for taxes or other unusual or forward commitment not reflected in such financial statements delivered to Lender. Since the date of the last financial statements delivered by Borrower to Lender except as otherwise disclosed in such financial statements or notes thereto, there has been no change in the assets, liabilities or financial position of Borrower nor, if applicable, any General Partner, or in the results of operations of Borrower which would have a Material Adverse Effect. Neither Borrower nor, if applicable, any General Partner, has incurred



any obligation or liability, contingent or otherwise not reflected in such financial statements which would have a Material Adverse Effect.

(m) Transaction Brokerage Fees. Neither Borrower nor Lender have dealt with any financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Security Instrument. **BORROWER HEREBY AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, COSTS AND EXPENSES OF ANY KIND IN ANY WAY RELATING TO OR ARISING FROM (I) A CLAIM BY ANY PERSON THAT SUCH PERSON ACTED ON BEHALF OF BORROWER IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREIN OR (II) ANY BREACH OF THE FOREGOING REPRESENTATION. THE PROVISIONS OF THIS SUBSECTION (M) SHALL SURVIVE THE REPAYMENT OF THE DEBT.**

(n) Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulations T, U or X or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of the Loan Documents.

(o) Pending Litigation. Except as previously disclosed in writing to Lender, there are no actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Property in any court or before any Governmental Authority which if adversely determined either individually or collectively has or is reasonably likely to have a Material Adverse Effect.

(p) Solvency; No Bankruptcy. Borrower and, if applicable, the General Partner, (i) is and has at all times been Solvent and will remain Solvent immediately upon the consummation of the transactions contemplated by the Loan Documents and (ii) is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors and is not contemplating the filing of a petition under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such Person's assets or property and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or, if applicable, the General Partner. None of the transactions contemplated hereby will be or have been made with an intent to hinder, delay or defraud any present or future creditors of Borrower and Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Borrower's assets do not, and immediately upon consummation of the transaction contemplated in the Loan Documents will not, constitute unreasonably small capital to carry out its business as presently conducted or as proposed to be conducted. Borrower does not intend to, nor believe that it will, incur debts and liabilities beyond its ability to pay such debts as they may mature.

(q) Use of Proceeds. The proceeds of the Loan shall be applied by Borrower to, inter alia, (i) satisfy certain secured loans presently encumbering all or a part of the Property and (ii) pay certain transaction costs incurred by Borrower in connection with the Loan. No portion of



the proceeds of the Loan will be used by Borrower for family, personal, agricultural or household use.

(r) Tax Filings. Borrower and, if applicable, each General Partner, have filed all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower and, if applicable, each General Partner. Borrower and, if applicable, each General Partner, believe that their respective tax returns properly reflect the income and taxes of Borrower and said General Partner, if any, for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

(s) Not Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

(t) ERISA. (i) The assets of Borrower and Guarantor are not and will not become treated as "plan assets", whether by operation of law or under regulations promulgated under ERISA. Each Plan and Welfare Plan, and, to the knowledge of Borrower, each Multiemployer Plan, is in compliance in all material respects with, and has been administered in all material respects in compliance with, its terms and the applicable provisions of ERISA, the Code and any other applicable Legal Requirement, and no event or condition has occurred and is continuing as to which Borrower would be under an obligation to furnish a report to Lender under clause (ii)(A) of this Section. Other than an application for a favorable determination letter with respect to a Plan, there are no pending issues or claims before the Internal Revenue Service, the United States Department of Labor or any court of competent jurisdiction related to any Plan or Welfare Plan under which Borrower, Guarantor or any ERISA Affiliate, directly or indirectly (through an indemnification agreement or otherwise), could be subject to any material risk of liability under Section 409 or 502(i) of ERISA or Section 4975 of the Code. No Welfare Plan provides or will provide benefits, including, without limitation, death or medical benefits (whether or not insured) with respect to any current or former employee of Borrower, Guarantor or any ERISA Affiliate beyond his or her retirement or other termination of service other than (A) coverage mandated by applicable law, (B) death or disability benefits that have been fully provided for by fully paid up insurance or (C) severance benefits.

(ii) Borrower will furnish to Lender as soon as possible, and in any event within ten (10) days after Borrower knows or has reason to believe that any of the events or conditions specified below with respect to any Plan, Welfare Plan or Multiemployer Plan has occurred or exists, an Officer's Certificate setting forth details respecting such event or condition and the action, if any, that Borrower or its ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC (or any other relevant Governmental Authority)) by Borrower or an ERISA Affiliate with respect to such event or condition, if such report or notice is required to be filed with the PBGC or any other relevant Governmental Authority:

(A) any reportable event, as defined in Section 4043 of ERISA and the regulations issued thereunder, with respect to a Plan, as to which PBGC has not by regulation waived the requirement of Section 4043(a) of ERISA that it be



notified within thirty (30) days of the occurrence of such event (provided that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA, including, without limitation, the failure to make on or before its due date a required installment under Section 412(m) of the Code and of Section 302(e) of ERISA, shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(d) of the Code), and any request for a waiver under Section 412(d) of the Code for any Plan;

(B) the distribution under Section 4041 of ERISA of a notice of intent to terminate any Plan or any action taken by Borrower or an ERISA Affiliate to terminate any Plan;

(C) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan;

(D) the complete or partial withdrawal from a Multiemployer Plan by Borrower or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA (including the obligation to satisfy secondary liability as a result of a purchaser default) or the receipt by Borrower or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA;

(E) the institution of a proceeding by a fiduciary of any Multiemployer Plan against Borrower or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within thirty (30) days;

(F) the adoption of an amendment to any Plan that, pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA, would result in the loss of tax-exempt status of the trust of which such Plan is a part if Borrower or an ERISA Affiliate fails to timely provide security to the Plan in accordance with the provisions of said Sections; or

(G) the imposition of a lien or a security interest in connection with a Plan.

(iii) Borrower shall not knowingly engage in or permit any transaction in connection with which Borrower, Guarantor or any ERISA Affiliate could be subject to either a civil penalty or tax assessed pursuant to Section 502(i) or 502(l) of ERISA or Section 4975 of the Code, permit any Welfare Plan to provide benefits, including without limitation, medical benefits (whether or not insured), with respect to any current or former employee of Borrower, Guarantor or any ERISA Affiliate beyond his or her retirement or other termination of service other than (A) coverage mandated by applicable law, (B) death or disability benefits that have been fully provided for by paid



up insurance or otherwise or (C) severance benefits, permit the assets of Borrower or Guarantor to become "plan assets", whether by operation of law or under regulations promulgated under ERISA or adopt, amend (except as may be required by applicable law) or increase the amount of any benefit or amount payable under, or permit any ERISA Affiliate to adopt, amend (except as may be required by applicable law) or increase the amount of any benefit or amount payable under, any employee benefit plan (including, without limitation, any employee welfare benefit plan) or other plan, policy or arrangement, except for normal increases in the ordinary course of business consistent with past practice that, in the aggregate, do not result in a material increase in benefits expense to Borrower, Guarantor or any ERISA Affiliate.

(u) Labor Matters. No organized work stoppage or labor strike is pending or, to Borrower's best knowledge, threatened by employees or other laborers at the Property and neither Borrower nor Manager (i) is involved in or, to the best of their knowledge, threatened with any labor dispute, grievance or litigation relating to labor matters involving any employees and other laborers at the Property, including, without limitation, violation of any federal, state or local labor, safety or employment laws (domestic or foreign) and/or charges of unfair labor practices or discrimination complaints; (ii) has engaged in any unfair labor practices within the meaning of the National Labor Relations Act or the Railway Labor Act; or (iii) is a party to, or bound by, any collective bargaining agreement or union contract with respect to employees and other laborers at the Property and no such agreement or contract is currently being negotiated by Borrower, Manager or any of their Affiliates.

(v) Borrower's Legal Status. Borrower's exact legal name that is indicated on the signature page hereto, organizational identification number and place of business or, if more than one, its chief executive office, as well as Borrower's mailing address, if different, which were identified by Borrower to Lender and contained in this Security Instrument, are true, accurate and complete. Borrower (i) will not change its name, its place of business or, if more than one place of business, its chief executive office, or its mailing address or organizational identification number if it has one without giving Lender at least thirty (30) days prior written notice of such change, (ii) if Borrower does not have an organizational identification number and later obtains one, Borrower shall promptly notify Lender of such organizational identification number and (iii) Borrower will not change its type of organization, jurisdiction of organization or other legal structure.

(w) Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws.
(i) None of Borrower, General Partner, any Guarantor, or any Person who owns any equity interest in or Controls Borrower, General Partner or any Guarantor currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and Borrower has implemented procedures, approved by General Partner, to ensure that no Person who now or hereafter owns an equity interest in Borrower or General Partner is a Prohibited Person or Controlled by a Prohibited Person, and (ii) none of Borrower, General Partner, or any Guarantor are in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time



to time. No tenant at the Property currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and, to the best of Borrower's knowledge, no tenant at the Property is owned or Controlled by a Prohibited Person. Borrower has implemented procedures to ensure that no tenant at the Property is a Prohibited Person or owned or Controlled by a Prohibited Person.

Section 2.03. Further Acts, etc. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, deeds of trust or deeds to secure debt, as applicable, assignments, notices of assignments, transfers and assurances as Lender or Trustee shall, from time to time, reasonably require for the better assuring, conveying, assigning, transferring, and confirming unto Lender and Trustee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments to evidence more effectively the lien hereof upon the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Security Instrument and to effect the intent hereof, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof; provided that Lender shall not exercise such power of attorney unless and until Borrower fails to take the required action within five (5) Business Days of demand unless the failure to so exercise it could, in Lender's reasonable judgment, result in a Material Adverse Effect. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other applicable Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

Section 2.04. Recording of Security Instrument, etc. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, at the request of Lender, from time to time, will cause this Security Instrument, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the 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 perfect and protect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Security Instrument, any mortgage, deed of trust or deed to secure debt, as applicable, supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges imposed on, or arising out of or in connection with the execution, delivery and recording of this Security Instrument, any mortgage, deed of



trust or deed to secure debt, as applicable, supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, except where prohibited by law to do so, in which event Lender may declare the Debt to be immediately due and payable. Borrower shall hold harmless and indemnify Lender, and its successors and assigns, against any liability incurred as a result of the imposition of any tax on the making and recording of this Security Instrument.

Section 2.05. Representations and Warranties as to the Property. Borrower represents and warrants with respect to the Property as follows:

(a) **Lien Priority and Perfection.** This Security Instrument is a valid and enforceable (and, upon recordation in the Official Records, will be a perfected) first lien on the Property, free and clear of all encumbrances, security interests, and liens having priority over the lien and security interest of this Security Instrument, except for the items set forth as exceptions to or subordinate matters in the title insurance policy insuring the lien of this Security Instrument, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Security Instrument, materially affect the value or insurability of the Property, impair the use or operation of the Property for the use currently being made thereof or impair Borrower's ability to pay its obligations in a timely manner (such items being the "Permitted Encumbrances").

(b) **Title.** Borrower has, subject only to the Permitted Encumbrances, good, insurable and marketable fee simple title to the Premises, Improvements and Fixtures (collectively, the "Realty") and to all easements and rights benefiting the Realty and has the right, power and authority to mortgage, encumber, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign, and hypothecate the Property. Subject to Permitted Encumbrances, Borrower will preserve its interest in and title to the Property and will forever warrant and defend the same to Lender against any and all claims made by, through or under Borrower and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all Persons whomsoever claiming by, through or under Borrower. The foregoing warranty of title shall survive the foreclosure of this Security Instrument and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Property pursuant to any foreclosure. In addition, there are no outstanding options or rights of first refusal to purchase the Property or Borrower's ownership thereof.

(c) **Taxes and Impositions.** Other than those being contested in accordance herewith, all taxes and other Impositions and governmental assessments due and owing and not delinquent in respect of, and affecting, the Property have been paid. Other than those being contested in accordance herewith, Borrower has paid all Impositions which constitute special governmental assessments in full, except for those assessments which are permitted by applicable Legal Requirements to be paid in installments, in which case all installments which are due and payable have been paid in full. There are no pending, or to Borrower's best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.



(d) Casualty; Flood Zone. Except as set forth in the Engineering Report and Environmental Report, the Realty is in good repair and free and clear of any damage, destruction or casualty (whether or not covered by insurance) that would materially affect the value of the Realty or the use for which the Realty was intended, there exists no structural or other material defects or damages in or to the Property and Borrower has not received any written notice from any insurance company or bonding company of any material defect or inadequacies in the Property, or any part thereof, which would materially and adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond. No portion of the Premises is located in an "area of special flood hazard," as that term is defined in the regulations of the Federal Insurance Administration, Department of Housing and Urban Development, under the National Flood Insurance Act of 1968, as amended (24 CFR § 1909.1) or Borrower has obtained the flood insurance required by Section 3.01(a)(vi) hereof. The Premises either does not lie in a 100 year flood plain that has been identified by the Secretary of Housing and Urban Development or any other Governmental Authority or, if it does, Borrower has obtained the flood insurance required by Section 3.01(a)(vi) hereof.

(e) Completion; Encroachment. All Improvements necessary for the efficient use and operation of the Premises, including, without limitation, all Improvements which were included for purposes of determining the appraised value of the Property in the Appraisal, have been completed and none of said Improvements lie outside the boundaries and building restriction lines of the Premises. Except as set forth in the title insurance policy insuring the lien of this Security Instrument, no improvements on adjoining properties encroach upon the Premises.

(f) Separate Lot. The Premises are taxed separately without regard to any other real estate and constitute a legally subdivided lot under all applicable Legal Requirements (or, if not subdivided, no subdivision or platting of the Premises is required under applicable Legal Requirements), and for all purposes may be mortgaged, encumbered, conveyed or otherwise dealt with as an independent parcel. Except as previously disclosed in writing to Lender, the Property does not benefit from any tax abatement or exemption.

(g) Use. To the best of Borrower's knowledge, the existence of all Improvements, the present use and operation thereof and the access of the Premises and the Improvements to all of the utilities and other items referred to in paragraph (k) below are in compliance in all material respects with all Leases affecting the Property and all applicable Legal Requirements, including, without limitation, Environmental Statutes, Development Laws and Use Requirements. Borrower has not received any notice from any Governmental Authority alleging any uncured violation relating to the Property of any applicable Legal Requirements.

(h) Licenses and Permits. Borrower currently holds and will continue to hold all certificates of occupancy, licenses, registrations, permits, consents, franchises and approvals of any Governmental Authority or any other Person which are material for the lawful occupancy and operation of the Realty or which are material to the ownership or operation of the Property or the conduct of Borrower's business. All such certificates of occupancy, licenses, registrations, permits, consents, franchises and approvals are current and in full force and effect.



(i) Environmental Matters. Borrower has received and reviewed the Environmental Report and has no reason to believe that the Environmental Report contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein or herein, in light of the circumstances under which such statements were made, not misleading.

(j) Property Proceedings. Other than as previously disclosed in writing by Borrower to Lender, there are no actions, suits or proceedings pending or, to Borrower's knowledge, threatened in any court or before any Governmental Authority or arbitration board or tribunal (i) relating to (A) the zoning of the Premises or any part thereof, (B) any certificates of occupancy, licenses, registrations, permits, consents or approvals issued with respect to the Property or any part thereof, (C) the condemnation of the Property or any part thereof, or (D) the condemnation or relocation of any roadways abutting the Premises required for access or the denial or limitation of access to the Premises or any part thereof from any point of access to the Premises, (ii) asserting that (A) any such zoning, certificates of occupancy, licenses, registrations, permits, consents and/or approvals do not permit the operation of any material portion of the Realty as presently being conducted, (B) any material improvements located on the Property or any part thereof cannot be located thereon or operated with their intended use or (C) the operation of the Property or any part thereof is in violation in any material respect of any Environmental Statutes, Development Laws or other Legal Requirements or Space Leases or Property Agreements or (iii) which might (A) affect the validity or priority of any Loan Document or (B) have a Material Adverse Effect.

(k) Utilities. The Premises has rights of access to water, gas and/or electrical supply, storm and sanitary sewerage facilities, other required public utilities (with respect to each of the aforementioned items, by means of either a direct connection to the source of such utilities or through connections available on publicly dedicated roadways directly abutting the Premises or through permanent insurable easements benefiting the Premises), fire and police protection, parking, and means of direct access between the Premises and public highways over recognized curb cuts (or such access to public highways is through private roadways which may be used for ingress and egress pursuant to permanent insurable easements).

(l) Mechanics' Liens. The Property is free and clear of any mechanics' liens or liens in the nature thereof, and no rights are outstanding that under law could give rise to any such liens, any of which liens are or may be prior to, or equal with, the lien of this Security Instrument, except those which are insured against by the title insurance policy insuring the lien of this Security Instrument. No stop notices have been served with respect to any work, labor or materials furnished to or for the benefit of the Property or any portion thereof, and no disputes currently exist with respect to any of such matters.

(m) Title Insurance. Lender has received a lenders' commitment to issue a title insurance policy insuring this Security Instrument as a first lien on the Realty subject only to Permitted Encumbrances.

(n) Insurance. The Property is insured in accordance with the requirements set forth in Article III hereof.



(o) Space Leases.

(i) Borrower has delivered a true, correct and complete schedule of all Space Leases as of the date hereof, which accurately and completely sets forth in all material respects, for each such Space Lease, the following (collectively, the "Rent Roll"): the name and address of the tenant with the lease expiration date, extension and renewal options; the base rent and percentage rent payable; all additional rent and pass through obligations; and the security deposit held thereunder and the location of such deposit

(ii) Each Space Lease constitutes the legal, valid and binding obligation of Borrower and, to the knowledge of Borrower, is enforceable against the tenant thereof. Except as set forth on the Rent Roll or in any estoppel certificate delivered to Lender, no default exists, or with the passing of time or the giving of notice would exist, (A) under any Major Space Lease or (B) under any other Space Leases which would, in the aggregate, have a Material Adverse Effect.

(iii) Except as disclosed to Lender, no tenant under any Space Lease has, as of the date hereof, paid Rent more than thirty (30) days in advance, and the Rents under such Space Leases have not been waived, released, or otherwise discharged or compromised.

(iv) Except as set forth on the Rent Roll or previously disclosed in writing to Lender, all material work to be performed by Borrower under the Space Leases has been substantially performed, all contributions to be made by Borrower to the tenants thereunder have been made except for any held-back amounts, and all other conditions precedent to each such tenant's obligations thereunder have been satisfied.

(v) Except as previously disclosed to Lender in writing or in the Space Leases provided to Lender, there are no options to terminate any Space Lease.

(vi) Except as previously disclosed in writing to Lender, each tenant under a Major Space Lease has entered into occupancy of the demised premises to the extent required under the terms of its Major Space Lease, and each such tenant is open and conducting business with the public in the demised premises. Except as previously disclosed in writing to Lender, to the best knowledge of Borrower, after due inquiry, each tenant under a Lease other than a Major Space Lease has entered into occupancy of its demised premises under its Lease to the extent required under the terms of its Lease and each such tenant is open and conducting business with the public in the demised premises.

(vii) Borrower has delivered to Lender true, correct and complete copies of all Space Leases described in the Rent Roll.

(viii) Each Space Lease is in full force and effect and (except as disclosed on the Rent Roll or in any estoppel certificate delivered to Lender) has not been assigned, modified, supplemented or amended in any way.



(ix) Except as set forth on the Rent Roll, each tenant under each Space Lease is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors.

(x) No Space Lease provides any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Security Instrument or to subject to the Property to any mechanics lien.

(p) Property Agreements.

(i) Borrower has delivered to Lender true, correct and complete copies of all Property Agreements.

(ii) No Property Agreement provides any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Security Instrument.

(iii) To the best of Borrower's knowledge, no default exists or with the passing of time or the giving of notice or both would exist under any Property Agreement which would, individually or in the aggregate, have a Material Adverse Effect.

(iv) Borrower has not received or given any written communication which alleges that a default exists or, with the giving of notice or the lapse of time, or both, would exist under the provisions of any Property Agreement.

(v) No condition exists whereby Borrower or any future owner of the Property may be required to purchase any other parcel of land which is subject to any Property Agreement or which gives any Person a right to purchase, or right of first refusal with respect to, the Property.

(vi) To the best knowledge of Borrower, no offset or any right of offset exists respecting continued contributions to be made by any party to any Property Agreement except as expressly set forth therein. Except as previously disclosed to Lender in writing, no material exclusions or restrictions on the utilization, leasing or improvement of the Property (including non-compete agreements) exists in any Property Agreement.

(vii) All "pre-opening" requirements contained in all Property Agreements (including, but not limited to, all off-site and on-site construction requirements), if any, have been fulfilled, and, to the best of Borrower's knowledge, no condition now exists whereby any party to any such Property Agreement could refuse to honor its obligations thereunder.

(viii) Except as previously disclosed in writing to Lender, all work, if any, to be performed by Borrower under each of the Property Agreements has been substantially performed, all contributions to be made by Borrower to any party to such Property Agreements have been made, and all other material conditions to such party's obligations thereunder have been satisfied.

(q) Personal Property. Borrower has delivered to Lender a true, correct and complete schedule of all personal property, if any, owned by Borrower and located upon the Realty or used in connection with the use or operation of the Realty and Borrower represents that it has good and marketable title to all such personal property, free and clear of any liens or security interests, except for liens and security interests created under the Loan Documents, liens and security interests otherwise disclosed to Lender in writing and disclosed in the title insurance policy insuring the lien of this Security Instrument, and liens and security interests which describe the equipment and other personal property owned by tenants.

(r) Leasing Brokerage and Management Fees. Except as previously disclosed to Lender in writing, there are no brokerage fees or commissions payable by Borrower with respect to the leasing of space at the Property and there are no management fees payable by Borrower with respect to the management of the Property.

(s) Security Deposits. All security deposits with respect to the Property on the date hereof have been transferred to the Security Deposit Account on the date hereof, and Borrower is in compliance with all Legal Requirements relating to such security deposits as to which failure to comply might, individually or in the aggregate, have a Material Adverse Effect.

(t) Appraisal. Borrower has no knowledge that any of the facts or assumptions on which the Appraisal was based are false or incomplete in any material respect and has no information that would reasonably suggest that the fair market value determined in the Appraisal does not reflect the actual fair market value of the Property.

(u) Representations Generally. No representation, warranty or statement of fact made by or on behalf of Borrower in this Security Instrument or in any certificate, document or schedule furnished to Lender pursuant hereto, contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein or herein not misleading (which may be to Borrower's best knowledge where so provided herein). There are no facts presently known to Borrower which have not been disclosed to Lender which would, individually or in the aggregate, have a Material Adverse Effect nor as far as Borrower can foresee might, individually or in the aggregate, have a Material Adverse Effect.

Section 2.06. Removal of Lien. (a) Borrower shall, at its expense, maintain this Security Instrument as a first lien on the Property and shall keep the Property free and clear of all liens and encumbrances of any kind and nature other than the Permitted Encumbrances. Borrower shall, within thirty (30) days following receipt of notice of the filing thereof, promptly discharge of record, by bond or otherwise, any such liens and, promptly upon request by Lender, shall deliver to Lender evidence reasonably satisfactory to Lender of the discharge thereof.

(b) Without limitation to the provisions of Section 2.06(a) hereof, Borrower shall (i) pay, from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Property or any part thereof, (ii) cause to be removed of record (by payment or posting of bond or settlement or otherwise) any mechanics', materialmens', laborers' or other lien on the Property, or any part thereof, or on the revenues, rents, issues, income or profit arising therefrom, and (iii) in general, do or cause to be done, without expense to Lender, everything



reasonably necessary to preserve in full the lien of this Security Instrument. If Borrower fails to comply with the requirements of this Section 2.06(b), then, upon ten (10) Business Days' prior notice to Borrower, Lender may, but shall not be obligated to, pay any such lien, and Borrower shall, within ten (10) Business Days after Lender's demand therefor, reimburse Lender for all sums so expended, together with interest thereon at the Default Rate from the date advanced, all of which shall be deemed part of the Debt. Nothing contained herein shall be deemed a consent or request of Lender, express or implied, by inference or otherwise, to the performance of any alteration, repair or other work by any contractor, subcontractor or laborer or the furnishing of any materials by any materialmen in connection therewith.

(c) Notwithstanding the foregoing, Borrower may contest any lien (other than a lien relating to non-payment of Impositions, the contest of which shall be governed by Section 4.04 hereof) of the type set forth in subparagraph (b)(ii) of this Section 2.06 provided that, following prior notice to Lender (i) Borrower is contesting the validity of such lien with due diligence and in good faith and by appropriate proceedings, without cost or expense to Lender or any of its agents, employees, officers, or directors, (ii) Borrower shall preclude the collection of, or other realization upon, any contested amount from the Property or any revenues from or interest in the Property, (iii) neither the Property nor any part thereof nor interest therein, shall be in any danger of being sold, forfeited or lost by reason of such contest by Borrower, (iv) such contest by Borrower shall not affect the ownership, use or occupancy of the Property, (v) such contest by Borrower shall not subject Lender, Trustee or Borrower to the risk of civil or criminal liability (other than the civil liability of Borrower for the amount of the lien in question), (vi) such lien is subordinate to the lien of this Security Instrument, (vii) Borrower has not consented to such lien, (viii) Borrower has given Lender prompt notice of the filing of such lien and, upon request by Lender from time to time, notice of the status of such contest by Borrower and/or confirmation of the continuing satisfaction of the conditions set forth in this Section 2.06(c), (ix) Borrower shall promptly pay the obligation secured by such lien upon a final determination of Borrower's liability therefor, and (x) Borrower shall deliver written notice of its intent to contest such lien at least thirty (30) days before commencing such contest and also shall deliver to Lender, if requested by Lender, cash, a bond or other security acceptable to Lender equal to 125% of the contested amount pursuant to collateral arrangements reasonably satisfactory to Lender.

Section 2.07. Cost of Defending and Upholding this Security Instrument Lien. If any action or proceeding is commenced to which Lender or Trustee is made a party relating to the Loan Documents and/or the Property or Lender's or Trustee's interest therein or in which it becomes necessary to defend or uphold the lien of this Security Instrument or any other Loan Document, Borrower shall, on demand, reimburse Lender and/or Trustee, as applicable, for all expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender and/or Trustee, as applicable, in connection therewith, and such sum, together with interest thereon at the Default Rate from and after such demand until fully paid, shall constitute a part of the Debt.

Section 2.08. Use of the Property. Borrower will use, or cause to be used, the Property for such use as is permitted pursuant to applicable Legal Requirements including, without limitation, under the certificate of occupancy applicable to the Property, and which is required by the Loan Documents. Borrower shall not suffer or permit the Property or any portion thereof to be used by the public, any tenant, or any Person not subject to a Lease, in a manner as is



reasonably likely to impair Borrower's title to the Property, or in such manner as may give rise to a claim or claims of adverse usage or adverse possession by the public, or of implied dedication of the Property or any part thereof.

Section 2.09. Financial Reports. (a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis reasonably acceptable to Lender) consistently applied, proper and accurate books, tax returns, records and accounts reflecting (i) all of the financial affairs of Borrower and (ii) all items of income and expense in connection with the operation of the Property or in connection with any services, equipment or furnishings provided in connection with the operation thereof, whether such income or expense may be realized by Borrower or by any other Person whatsoever, excepting lessees unrelated to and unaffiliated with Borrower who have leased from Borrower portions of the Premises for the purpose of occupying the same. Lender shall have the right from time to time at all times during normal business hours upon reasonable advance notice to examine such books, tax returns, records and accounts at the office of Borrower or other Person maintaining such books, tax returns, records and accounts and to make such copies or extracts thereof as Lender shall desire. During the continuance of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's and Guarantor's accounting records with respect to the Property, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest.

(b) Borrower will furnish Lender (i) annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower and (ii) on a quarterly basis, within thirty (30) days following the end of each fiscal quarter of Borrower, with a complete copy of Borrower's financial statement consistently applied covering (A) all of the financial affairs of Borrower and (B) the operation of the Property for such Fiscal Year or fiscal quarters, as applicable, and containing a statement of revenues and expenses, a statement of assets and liabilities and a statement of Borrower's equity. Each annual financial statement shall be prepared by an Independent certified public accountant that is reasonably acceptable to Lender in accordance with GAAP (or such other accounting basis reasonably acceptable to Lender). Upon request made in connection with a Securitization of the Loan or after the occurrence of an Event of Default, such annual financial statements shall be audited by an Independent certified public accountant that is reasonably acceptable to Lender in accordance with GAAP. Together with the financial statements required to be furnished pursuant to this Section 2.09(b), Borrower shall furnish to Lender (A) an Officer's Certificate certifying as of the date thereof (1) that the financial statements accurately represent the results of operations and financial condition of Borrower and the Property all in accordance with GAAP (or such other accounting basis reasonably acceptable to Lender) consistently applied, and (2) whether, to the best of such officer's knowledge, there exists a Default under the Note or any other Loan Document executed and delivered by Borrower, and if such event or circumstance exists, the nature thereof, the period of time it has existed and the action then being taken to remedy such event or circumstance and (B) together with the financial statements delivered pursuant to Section 2.09(b)(ii) above, a statement showing (1) Pro-Forma Net Operating Income at the end of the most recent fiscal quarter (subject to verification by Lender in its reasonable discretion) and (2) the calculation of Debt Service Coverage.



(c) Borrower will furnish Lender monthly, within twenty (20) days following the end of each month, with (i) a true, complete and correct cash flow statement with respect to the Property in the form attached hereto as Exhibit C and made a part hereof, showing (A) all cash receipts of any kind whatsoever and all cash payments and disbursements, (B) year-to-date summaries of such cash receipts, payments and disbursements, and (C) Pro Forma Net Operating Income (subject to the verification by Lender) and a calculation of Debt Service Coverage, (ii) a certification of Manager stating that such cash flow statement is true, complete and correct and a list of all litigation and proceedings affecting Borrower or the Property in which the amount involved is \$250,000 or more, if not covered by insurance (or \$2,500,000 or more whether or not covered by insurance), (iii) the sales per square foot for each lessee under the Space Leases to the extent such information is required to be delivered by such lessees and (iv) an occupancy report for the Property.

(d) Borrower will furnish Lender monthly, within twenty (20) days following the end of each month, with a certification of Manager stating that all Operating Expenses with respect to the Property which had accrued as of the last day of the month preceding the delivery of the cash flow statement referred to in clause (c) above have been fully paid or otherwise reserved for by Manager (any such certification or any certification furnished by a Manager pursuant to clause (c) above, a "Manager Certification").

(e) Borrower will furnish Lender annually, within twenty (20) days following the end of each year and within twenty (20) days following receipt of such request therefor, with a true, complete and correct rent roll for the Property, including a list of which tenants are in default under their respective Leases, dated as of the date of Lender's request, identifying each tenant, the monthly rent and additional rent, if any, payable by such tenant, the expiration date of such tenant's Lease, the security deposit, if any, held by Borrower under the Lease, the space covered by the Lease, each tenant that has filed a bankruptcy, insolvency, or reorganization proceeding since delivery of the last such rent roll, the sales per square foot of each tenant, to the extent reported by tenants under the terms of the Leases and the arrearages for such tenant, if any, and such rent roll shall be accompanied by an Officer's Certificate, dated as of the date of the delivery of such rent roll, certifying that such rent roll is true, correct and complete in all material respects as of its date.

(f) Borrower shall furnish to Lender, within thirty (30) days after Lender's request therefor, with such further detailed information with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Lender.

(g) Borrower shall cause Manager to furnish to Lender, within twenty (20) days following the end of each month, a schedule of tenant security deposits showing any activity in the Security Deposit Account for such month, together with a certification of Manager as to the balance in such Security Deposit Account and that such tenant security deposits are being held in accordance with all Legal Requirements.

(h) Borrower will furnish Lender annually, within ninety (90) days after the end of each Fiscal Year, with a report setting forth (i) the Net Operating Income for such Fiscal Year, (ii) the average occupancy rate of the Property during such Fiscal Year, and (iii) the capital



repairs, replacements and improvements performed at the Property during such Fiscal Year and the aggregate Recurring Replacement Expenditures made in connection therewith.

(i) Borrower shall furnish to Lender annually, within thirty (30) days of filing its respective tax return, a copy of such tax return and either a copy of the tax return of Guarantor within such thirty (30) day period or within ninety (90) days after the end of each Fiscal Year, a certificate from an Independent certified public accountant indicating the net worth of the Guarantor.

(j) Borrower shall submit to Lender for Lender's written approval an Annual Budget not later than sixty (60) days prior to the commencement of each Fiscal Year or, with respect to the Fiscal Year in which the Closing Date occurs, within sixty (60) days of the Closing Date, in form satisfactory to Lender setting forth in reasonable detail budgeted monthly operating income and monthly operating capital and other expenses for the Property. Each Annual Budget shall contain, among other things, limitations on management fees, third party service fees, and other expenses as Borrower may reasonably determine. Lender shall have the right to approve such Annual Budget which approval shall not be unreasonably withheld, and in the event that Lender objects to the proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within ten (10) Business Days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall, within four (4) Business Days after receipt of notice of any such objections, revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within seven (7) Business Days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall revise the same in accordance with the process described herein until Lender approves an Annual Budget, provided, however, that if Lender shall not advise Borrower of its objections to any proposed Annual Budget within the applicable time period set forth in this Section, then such proposed Annual Budget shall be deemed approved by Lender. Until such time that Lender approves a proposed Annual Budget, the most recently Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Basic Carrying Costs and utilities expenses. In the event that Borrower must incur an Extraordinary Expense, then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval, which approval may be granted or denied in Lender's reasonable discretion; provided, however, no approval from Lender shall be required if (i) a single Extraordinary Expense is equal to or less than five percent (5%) of the amount set forth in the Approved Annual Budget for expenses related to such Extraordinary Expense, or (ii) if no sum was budgeted for such expense in the Approved Annual Budget, the Extraordinary Expense is less than or equal to five percent (5%) of the Approved Annual Budget, provided that all Extraordinary Expenses in any Fiscal Year do not exceed five percent (5%) of the Approved Annual Budget. The Approved Annual Budget shall be prepared for the Property as well as for all of the Cross-collateralized Properties.

(k) In the event that Borrower fails to deliver any of the financial statements, reports or other information required to be delivered to Lender pursuant to this Section 2.09 on or prior to their due dates, if any such failure shall continue for fifteen (15) days following notice thereof from Lender, without waiving any default arising out of such failure, Borrower shall pay to Lender on each Payment Date for each month or portion thereof that any such financial



statement, report or other information remains undelivered, an administrative fee in the amount of Two Thousand Five Hundred Dollars (\$2,500). Borrower agrees that such administrative fee (i) is a fair and reasonable fee necessary to compensate Lender for its additional administrative costs and increased costs relating to Borrower's failure to deliver the aforementioned statements, reports or other items as and when required hereunder and (ii) is not a penalty.

Section 2.10. Litigation. Borrower will give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened (in writing) against Borrower which might have a Material Adverse Effect.

Section 2.11. Updates of Representations. Borrower shall deliver to Lender within ten (10) Business Days of the request of Lender an Officer's Certificate updating all of the representations and warranties contained in this Security Instrument and the other Loan Documents and certifying that all of the representations and warranties contained in this Security Instrument and the other Loan Documents, as updated pursuant to such Officer's Certificate, are true, accurate and complete as of the date of such Officer's Certificate or shall set forth the exceptions to representations and/or warranties in reasonable detail, as applicable, and, upon Lender's request for further information with respect to such exceptions, shall provide Lender such additional information as Lender may reasonably request. Notwithstanding the foregoing, provided that no Event of Default has occurred and is continuing, Borrower shall not be required to deliver the foregoing Officer's Certificate more than two (2) times in any Loan Year.

ARTICLE III: INSURANCE AND CASUALTY RESTORATION

Section 3.01. Insurance Coverage. Borrower shall, at its expense, maintain the following insurance coverages with respect to the Property during the term of this Security Instrument:

(a) (i) Insurance against loss or damage by fire, casualty and other hazards included in an "all-risk" coverage endorsement or its equivalent, with such endorsements as Lender may from time to time reasonably require and which are customarily required by Institutional Lenders of similar properties similarly situated, including, without limitation, if the Property constitutes a legal non-conforming use, an ordinance of law coverage endorsement which contains "Demolition Cost", "Loss Due to Operation of Law" and "Increased Cost of Construction" coverages, covering the Property in an amount not less than the greater of (A) 100% of the insurable replacement value of the Property (exclusive of the Premises and footings and foundations) and (B) such other amount as is necessary to prevent any reduction in such policy by reason of and to prevent Borrower, Lender or any other insured thereunder from being deemed to be a co-insurer. Not less frequently than once every three (3) years, Borrower, at its option, shall either (A) have the Appraisal updated or obtain a new appraisal of the Property, (B) have a valuation of the Property made by or for its insurance carrier conducted by an appraiser experienced in valuing properties of similar type to that of the Property which are in the geographical area in which the Property is located or (C) provide such other evidence as will, in Lender's sole judgment, enable Lender to determine whether there shall have been an increase in the insurable value of the Property and Borrower shall deliver such updated Appraisal, new appraisal, insurance valuation or other evidence acceptable to Lender, as the case may be, and, if such updated Appraisal, new appraisal, insurance



valuation, or other evidence acceptable to Lender reflects an increase in the insurable value of the Property, the amount of insurance required hereunder shall be increased accordingly and Borrower shall deliver evidence satisfactory to Lender that such policy has been so increased.

(ii) Commercial general liability insurance against claims for personal and bodily injury and/or death to one or more persons or property damage, occurring on, in or about the Property (including the adjoining streets, sidewalks and passageways therein) in such amounts as Lender may from time to time reasonably require (but in no event shall Lender's requirements be increased more frequently than once during each twelve (12) month period) and which are customarily required by Institutional Lenders for similar properties similarly situated, but not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate on a per location basis and, in addition thereto, not less than \$75,000,000 excess and/or umbrella liability insurance shall be maintained for any and all claims.

(iii) Business interruption, rent loss or other similar insurance (A) with loss payable to Lender, (B) covering all risks required to be covered by the insurance provided for in Section 3.01(a)(i) hereof and (C) in an amount not less than 90% of the projected fixed or base rent plus percentage rent for the succeeding eighteen (18) month period based on an occupancy rate of 100%. Such insurance coverage shall provide a six (6) month extended period of indemnity. The amount of such insurance shall be determined upon the execution of this Security Instrument, and not more frequently than once each calendar year thereafter based on Borrower's reasonable estimate of projected fixed or base rent plus percentage rent, from the Property for the next succeeding eighteen (18) months. In the event the Property shall be damaged or destroyed, Borrower shall and hereby does assign to Lender all payment of claims under the policies of such insurance, and all amounts payable thereunder, and all net amounts, shall be collected by Lender under such policies and shall be applied in accordance with this Security Instrument; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to timely pay all amounts due under the Loan Documents.

(iv) Intentionally Deleted.

(v) Insurance against loss or damages from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, pressure vessels or similar apparatus now or hereafter installed at the Property, in such amounts as Lender may from time to time reasonably require and which are then customarily required by Institutional Lenders of similar properties similarly situated.

(vi) Flood insurance in an amount equal to the full insurable value of the Property or the maximum amount available, whichever is less, if the Improvements are located in an area designated by the Secretary of Housing and Urban Development as being "an area of special flood hazard" under the National Flood Insurance Program (i.e., having a one percent or greater chance of flooding), and if flood insurance is available under the National Flood Insurance Act.

(vii) Worker's compensation insurance or other similar insurance which may be required by Governmental Authorities or Legal Requirements.

(viii) Intentionally Deleted.

(ix) Insurance against damage resulting from acts of terrorism, or an insurance policy without an exclusion for damages resulting from terrorism, on terms consistent with the commercial property insurance policy required under subsections (i), (ii) and (iii) above.

(x) Such other insurance as may from time to time be required by Lender and which is then customarily required by Institutional Lenders for similar properties similarly situated, against other insurable hazards, including, but not limited to, malicious mischief, vandalism, mold, spores or fungus, sinkhole and mine subsidence, acts of terrorism, windstorm and/or earthquake, due regard to be given to the size and type of the Premises, Improvements, Fixtures and Equipment and their location, construction and use. Additionally, Borrower shall carry such insurance coverage as Lender may from time to time require if the failure to carry such insurance may result in a downgrade, qualification or withdrawal of any class of securities issued in connection with a Securitization or, if the Loan is not yet part of a Securitization, would result in an increase in the subordination levels of any class of securities anticipated to be issued in connection with a proposed Securitization.

(b) Borrower shall cause any Manager of the Property to maintain fidelity insurance in an amount equal to \$5,000,000 or such lesser amount as Lender shall approve.

Section 3.02. Policy Terms. (a) All insurance required by this Article III shall be in the form (other than with respect to Sections 3.01(a)(vi) and (vii) above when insurance in those two sub-sections is placed with a governmental agency or instrumentality on such agency's forms) and amount and with deductibles as, from time to time, shall be reasonably acceptable to Lender, under valid and enforceable policies issued by financially responsible insurers authorized to do business in the State where the Property is located, with a general policyholder's service rating of not less than A- and a financial rating of not less than X as rated in the most currently available Best's Insurance Reports (or the equivalent, if such rating system shall hereafter be altered or replaced) and shall have a claims paying ability rating and/or financial strength rating, as applicable, of not less than "AA" (or its equivalent), or such lower claims paying ability rating and/or financial strength rating, as applicable, as Lender shall, in its sole and absolute discretion, consent to, from a Rating Agency (one of which after a Securitization in which Standard & Poor's rates any securities issued in connection with such Securitization, shall be Standard & Poor's). Originals or certified copies of all insurance policies shall be delivered to and held by Lender. All such policies (except policies for worker's compensation) shall name Lender, its successors and/or assigns as an additional named insured, shall provide for loss payable to Lender, its successors and/or assigns and shall contain (or have attached): (i) standard "non-contributory mortgagee" endorsement or its equivalent relating, inter alia, to recovery by Lender notwithstanding the negligent or willful acts or omissions of Borrower; (ii) a waiver of subrogation endorsement as to Lender; (iii) an endorsement indicating that neither Lender nor Borrower shall be or be deemed to be a co-insurer with respect to any casualty risk insured by



such policies and shall provide for a deductible per loss of an amount not more than the lesser of (x) that which is customarily maintained by owners of similar properties similarly situated and (y) five percent (5%) of the Adjusted Net Cash Flow, and (iv) a provision that such policies shall not be canceled, terminated, denied renewal or amended, including, without limitation, any amendment reducing the scope or limits of coverage, without at least thirty (30) days' prior written notice to Lender in each instance. Not less than thirty (30) days prior to the expiration dates of the insurance policies obtained pursuant to this Security Instrument, originals or certified copies of renewals of such policies (or certificates evidencing such renewals) bearing notations evidencing the payment of premiums or accompanied by other reasonable evidence of such payment (which premiums shall not be paid by Borrower through or by any financing arrangement which would entitle an insurer to terminate a policy) shall be delivered by Borrower to Lender. Borrower shall not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required under this Article III.

(b) If Borrower fails to maintain and deliver to Lender the original policies or certificates of insurance required by this Security Instrument, or if there are insufficient funds in the Basic Carrying Costs Escrow Account to pay the premiums for same, Lender may, at its option, procure such insurance, and Borrower shall pay, or as the case may be, reimburse Lender for, all premiums thereon promptly, upon demand by Lender, with interest thereon at the Default Rate from the date paid by Lender to the date of repayment and such sum shall constitute a part of the Debt.

(c) Borrower shall notify Lender of the renewal premium of each insurance policy and Lender shall be entitled to pay such amount on behalf of Borrower from the Basic Carrying Costs Escrow Account. With respect to insurance policies which require periodic payments (i.e., monthly or quarterly) of premiums, Lender shall be entitled to pay such amounts fifteen (15) days (or such lesser number of days as Lender shall determine) prior to the respective due dates of such installments.

(d) The insurance required by this Security Instrument may, at the option of Borrower, be effected by blanket and/or umbrella policies issued to Borrower covering the Property provided that, in each case, the policies otherwise comply with the provisions of this Security Instrument and allocate to the Property, from time to time (but in no event less than once a year), the coverage specified by this Security Instrument, without possibility of reduction or coinsurance by reason of, or damage to, any other property (real or personal) named therein. If the insurance required by this Security Instrument shall be effected by any such blanket or umbrella policies, Borrower shall furnish to Lender (i) original policies or certified copies thereof, or an original certificate of insurance together with reasonable access to the original of such policy to review such policy's coverage of the Property, with schedules attached thereto showing the amount of the insurance provided under such policies applicable to the Property and (ii) an Officer's Certificate setting forth (A) the number of properties covered by such policy, (B) the location by city (if available, otherwise, county) and state of the properties, (C) the average square footage of the properties, (D) a brief description of the typical construction type included in the blanket policy and (E) such other information as Lender may reasonably request.

Section 3.03. Assignment of Policies. (a) Borrower hereby assigns to Lender the proceeds of all insurance (other than worker's compensation and liability insurance) obtained



pursuant to this Security Instrument, all of which proceeds shall be payable to Lender as collateral and further security for the payment of the Debt and the performance of the Borrowers' obligations hereunder and under the other Loan Documents, and Borrower hereby authorizes and directs the issuer of any such insurance to make payment of such proceeds directly to Lender. Except as otherwise expressly provided in Section 3.04 or elsewhere in this Article III, Lender shall have the option, in its discretion, and without regard to the adequacy of its security, to apply all or any part of the proceeds it may receive pursuant to this Article in such manner as Lender may elect to any one or more of the following: (i) the payment of the Debt, whether or not then due, in any proportion or priority as Lender, in its discretion, may elect, (ii) the repair or restoration of the Property, (iii) the cure of any Event of Default or (iv) the reimbursement of the costs and expenses of Lender incurred pursuant to the terms hereof in connection with the recovery of the Insurance Proceeds. Nothing herein contained shall be deemed to excuse Borrower from repairing or maintaining the Property as provided in this Security Instrument or restoring all damage or destruction to the Property, regardless of the sufficiency of the Insurance Proceeds, and the application or release by Lender of any Insurance Proceeds shall not cure or waive any Default or notice of Default.

(b) In the event of the foreclosure of this Security Instrument or any other transfer of title or assignment of all or any part of the Property in extinguishment, in whole or in part, of the Debt, all right, title and interest of Borrower in and to all policies of insurance required by this Security Instrument shall inure to the benefit of the successor in interest to Borrower or the purchaser of the Property to the extent that such policies are assignable or transferable. If, prior to the receipt by Lender of any proceeds, the Property or any portion thereof shall have been sold on foreclosure of this Security Instrument or by deed in lieu thereof or otherwise, or any claim under such insurance policy arising during the term of this Security Instrument is not paid until after the extinguishment of the Debt, and Lender shall not have received the entire amount of the Debt outstanding at the time of such extinguishment, whether or not a deficiency judgment on this Security Instrument shall have been sought or recovered or denied, then, the proceeds of any such insurance to the extent of the amount of the Debt not so received, shall be paid to and be the property of Lender, together with interest thereon at the Default Rate, and the reasonable attorney's fees, costs and disbursements incurred by Lender in connection with the collection of the proceeds which shall be paid to Lender and Borrower hereby assigns, transfers and sets over to Lender all of Borrower's right, title and interest in and to such proceeds. Notwithstanding any provisions of this Security Instrument to the contrary, Lender shall not be deemed to be a trustee or other fiduciary with respect to its receipt of any such proceeds, which may be commingled with any other monies of Lender; provided, however, that Lender shall use such proceeds for the purposes and in the manner permitted by this Security Instrument. Any proceeds deposited with Lender shall be held by Lender in an interest-bearing account, but Lender makes no representation or warranty as to the rate or amount of interest, if any, which may accrue on such deposit and shall have no liability in connection therewith. Interest accrued, if any, on the proceeds shall be deemed to constitute a part of the proceeds for purposes of this Security Instrument. The provisions of this Section 3.03(b) shall survive the termination of this Security Instrument by foreclosure, deed in lieu thereof or otherwise as a consequence of the exercise of the rights and remedies of Lender hereunder after a Default.

Section 3.04. Casualty Restoration. (a) (i) In the event of any damage to or destruction of the Property, Borrower shall give prompt written notice to Lender (which notice



shall set forth Borrower's good faith estimate of the cost of repairing or restoring such damage or destruction, or if Borrower cannot reasonably estimate the anticipated cost of restoration, Borrower shall nonetheless give Lender prompt notice of the occurrence of such damage or destruction, and will diligently proceed to obtain estimates to enable Borrower to quantify the anticipated cost and time required for such restoration, whereupon Borrower shall promptly notify Lender of such good faith estimate) and, provided that restoration does not violate any Legal Requirements, Borrower shall promptly commence and diligently prosecute to completion the repair, restoration or rebuilding of the Property so damaged or destroyed to a condition such that the Property shall be at least equal in value to that immediately prior to the damage to the extent practicable, in full compliance with all Legal Requirements and the provisions of all Leases, and in accordance with Section 3.04(b) below. Such repair, restoration or rebuilding of the Property are sometimes hereinafter collectively referred to as the "Work".

(ii) Notwithstanding the foregoing provisions of this Section 3.04, upon the occurrence of any damage to or destruction of the Property, provided that such damage or destruction is not a Substantial Casualty, if in Lender's reasonable judgment the cost of repair of or restoration to the Property required as a result of any damage or destruction is less than \$1,000,000 in the aggregate and the Work can be completed in less than one hundred eighty (180) days (but in no event beyond the date which is six (6) months prior to the Maturity Date), then Lender, shall permit Borrower to apply for and receive the Insurance Proceeds directly from the insurer (and Lender shall advise the insurer to pay over such Insurance Proceeds directly to Borrower), to the extent required to pay for any such Work, with any excess thereof to be retained by Borrower.

(iii) Subject to Section 3.04(a)(iv), Lender shall apply any Insurance Proceeds which it may receive towards the Work in accordance with Section 3.04(b) and the other applicable sections of this Article III.

(iv) If (A) an Event of Default shall have occurred and is continuing, (B) Lender is not reasonably satisfied that the Debt Service Coverage, after substantial completion of the Work, will be at least equal to the Required Debt Service Coverage, (C) more than thirty percent (30%) of the reasonably estimated fair market value of the Property is damaged or destroyed, (D) Lender is not reasonably satisfied that the Work can be completed six (6) months prior to Maturity or (E) Lender is not reasonably satisfied that Leases covering at least 75% of the rentable square footage for the Property (immediately prior to such damage or destruction) will not be terminated due to the casualty during and following the restoration, or (F) Lender is not reasonably satisfied that the Work can be completed within twelve (12) months of the damage to or destruction of the Property (each, a "Substantial Casualty"), Lender shall have the option, in its sole discretion to apply any Insurance Proceeds it may receive pursuant to this Security Instrument (less any reasonable cost to Lender of recovering and paying out such proceeds incurred pursuant to the terms hereof and not otherwise reimbursed to Lender, including, without limitation, reasonable attorneys' fees and expenses) to the payment of the Debt, without any prepayment fee or charge of any kind, or to allow such proceeds to be used for the Work pursuant to the terms and subject to the conditions of Section 3.04(b) hereof and the other applicable sections of this Article III.



(v) In the event that Lender elects or is obligated hereunder to allow Insurance Proceeds to be used for the Work, any excess proceeds remaining after completion of such Work shall be applied to the payment of the Debt without any prepayment fee or charge of any kind.

(b) If any Condemnation Proceeds in accordance with Section 6.01(a), or any Insurance Proceeds in accordance with Section 3.04(a), are to be applied to the repair, restoration or rebuilding of the Property, then such proceeds shall be deposited into a segregated interest-bearing bank account at the Bank, which shall be an Eligible Account, held by Lender and shall be paid out from time to time to Borrower as the Work progresses (less any reasonable cost to Lender of recovering and paying out such proceeds, including, without limitation, reasonable attorneys' fees and costs allocable to inspecting the Work and the plans and specifications therefor), subject to Section 5.13 hereof and to all of the following conditions:

(i) An Independent architect or engineer selected by Borrower and reasonably acceptable to Lender (an "Architect" or "Engineer") or a Person otherwise reasonably acceptable to Lender, shall have delivered to Lender a certificate estimating the cost of completing the Work, and, if the amount set forth therein is more than the sum of the amount of Insurance Proceeds then being held by Lender in connection with a casualty and amounts agreed to be paid as part of a final settlement under the insurance policy upon or before completion of the Work, Borrower shall have delivered to Lender (A) cash collateral in an amount equal to such excess, or (B) an unconditional, irrevocable, clean sight draft letter of credit, in form, substance and issued by a bank reasonably acceptable to Lender, in the amount of such excess and draws on such letter of credit shall be made by Lender to make payments pursuant to this Article III following exhaustion of the Insurance Proceeds therefor or (C) a completion bond in form, substance and issued by a surety company reasonably acceptable to Lender.

(ii) If the cost of the Work is reasonably estimated by an Architect or Engineer in a certification reasonably acceptable to Lender to be equal to or exceed five percent (5%) of the Allocated Loan Amount for the Property, such Work shall be performed under the supervision of an Architect or Engineer, it being understood that the plans and specifications with respect thereto shall provide for Work so that, upon completion thereof, the Property shall be at least equal in replacement value and general utility to the Property prior to the damage or destruction.

(iii) Each request for payment shall be made on not less than ten (10) days' prior notice to Lender and shall be accompanied by a certificate of an Architect or Engineer, or, if the Work is not required to be supervised by an Architect or Engineer, by an Officer's Certificate stating (A) that payment is for Work completed or materials delivered in compliance with the plans and specifications, if required under clause (ii) above, (B) that the sum requested is required to reimburse Borrower for payments by Borrower to date, or is due to the contractors, subcontractors, materialmen, laborers, engineers, architects or other Persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums previously paid out by Lender does not exceed the value of the Work done to the date of such certificate, (C) if the sum requested is to cover payment relating to repair and



restoration of personal property required or relating to the Property, that title to the personal property items covered by the request for payment is vested in Borrower (unless Borrower is lessee of such personal property), and (D) that the Insurance Proceeds and other amounts deposited by Borrower held by Lender after such payment is equal to or more than the estimated remaining cost to complete such Work; provided, however, that if such certificate is given by an Architect or Engineer, such Architect or Engineer shall certify as to clause (A) above, and such Officer's Certificate shall certify as to the remaining clauses above, and provided, further, that Lender shall not be obligated to disburse such funds if Lender determines, in Lender's reasonable discretion, that Borrower shall not be in compliance with this Section 3.04(b). Additionally, each request for payment shall contain a statement signed by Borrower stating that the requested payment is for Work satisfactorily done to date or for materials for the Work.

(iv) Each request for payment shall be accompanied by waivers of lien, in customary form and substance, covering that part of the Work for which payment or reimbursement is being requested and, if required by Lender, a search prepared by a title company or licensed abstractor, or by other evidence satisfactory to Lender that there has not been filed with respect to the Property any mechanic's or other lien or instrument for retention of title relating to any part of the Work not discharged of record. Additionally, as to any personal property covered by the request for payment, Lender shall be furnished with evidence of having incurred a payment obligation therefor and such further evidence reasonably satisfactory to assure Lender that UCC filings therefor provide a valid first lien on the personal property.

(v) Lender shall have the right to inspect the Work at all reasonable times upon reasonable prior notice and may condition any disbursement of Insurance Proceeds upon satisfactory compliance by Borrower with the provisions hereof. Neither the approval by Lender of any required plans and specifications for the Work nor the inspection by Lender of the Work shall make Lender responsible for the preparation of such plans and specifications, or the compliance of such plans and specifications of the Work, with any applicable law, regulation, ordinance, covenant or agreement.

(vi) Insurance Proceeds shall not be disbursed more frequently than once every thirty (30) days.

(vii) Until such time as the Work has been substantially completed, Lender shall not be obligated to disburse up to ten percent (10%) of the cost of the Work (the "Retention Amount") to Borrower. Upon substantial completion of the Work, Borrower shall send notice thereof to Lender and, subject to the conditions of Section 3.04(b)(i)-(iv), Lender shall disburse one-half of the Retention Amount to Borrower; provided, however, that the remaining one-half of the Retention Amount shall be disbursed to Borrower when Lender shall have received copies of any and all final certificates of occupancy or other certificates, licenses and permits required for the ownership, occupancy and operation of the Property in accordance with all Legal Requirements. Borrower hereby covenants to diligently seek to obtain any such certificates, licenses and permits. Notwithstanding the foregoing, Lender will release the portion of the Retention Amount being held with respect to any contractor, subcontractor or materialman engaged



in the Work as of the date upon which the Architect or Engineer certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, provided, (A) the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Lender's title policy and (B) if required by Lender, the release of any such portion of the Retention Amount shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(viii) Upon failure on the part of Borrower promptly to commence the Work as provided for herein or to proceed diligently and continuously to completion of the Work, subject to Force Majeure, not to exceed sixty (60) days, which failure shall continue after notice for thirty (30) days, Lender may apply any Insurance Proceeds or Condemnation Proceeds it then or thereafter holds to the payment of the Debt in accordance with the provisions of the Note; provided, however, that Lender shall be entitled to apply at any time all or any portion of the Insurance Proceeds or Condemnation Proceeds it then holds to the extent necessary to cure any Event of Default.

(c) If Borrower (i) within ninety (90) days after the occurrence of any damage to the Property or any portion thereof (or such shorter period as may be required under any Major Space Lease) shall fail to submit to Lender for approval plans and specifications for the Work (approved by the Architect and by all Governmental Authorities whose approval is required), (ii) after any such plans and specifications are approved by all Governmental Authorities, the Architect and Lender, shall fail to promptly commence such Work as provided for herein or (iii) shall fail to diligently prosecute such Work to completion, then, in addition to all other rights available hereunder, at law or in equity, Lender, or any receiver of the Property or any portion thereof, upon five (5) days' prior notice to Borrower (except in the event of emergency in which case no notice shall be required), may (but shall have no obligation to) perform or cause to be performed such Work, and may take such other steps as it reasonably deems advisable. Borrower hereby waives, for Borrower, any claim, other than for gross negligence or willful misconduct, against Lender and any receiver arising out of any act or omission of Lender or such receiver pursuant hereto, and Lender may apply all or any portion of the Insurance Proceeds (without the need to fulfill any other requirements of this Section 3.04) to reimburse Lender and such receiver, for all reasonable costs not reimbursed to Lender or such receiver upon demand together with interest thereon at the Default Rate from the date such amounts are advanced until the same are paid to Lender or the receiver.

(d) Subject to Section 3.04(a)(ii) above, Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to collect and receive any Insurance Proceeds paid with respect to any portion of the Property or the insurance policies required to be maintained hereunder, and to endorse any checks, drafts or other instruments representing any Insurance Proceeds whether payable by reason of loss thereunder or otherwise.

Section 3.05. Compliance with Insurance Requirements. Borrower promptly shall comply with, and shall cause the Property to comply with, all Insurance Requirements, even if



such compliance requires structural changes or improvements or would result in interference with the use or enjoyment of the Property or any portion thereof provided Borrower shall have a right to contest in good faith and with diligence such Insurance Requirements provided (a) no Event of Default shall be continuing during such contest and such contest shall not subject the Property or any portion thereof to any lien or affect the priority of the lien of this Security Instrument, (b) failure to comply with such Insurance Requirements will not subject Lender or any of its agents, employees, officers or directors to any civil or criminal liability, (c) such contest will not cause any reduction in insurance coverage, (d) such contest shall not affect the ownership, use or occupancy of the Property, (e) the Property or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrower, (f) Borrower has given Lender prompt notice of such contest and, upon request by Lender from time to time, notice of the status of such contest by Borrower and/or information of the continuing satisfaction of the conditions set forth in clauses (a) through (e) of this Section 3.05, (g) upon a final determination of such contest, Borrower shall promptly comply with the requirements thereof, and (h) prior to and during such contest, Borrower shall furnish to Lender security satisfactory to Lender, in its reasonable discretion, against loss or injury by reason of such contest or the non-compliance with such Insurance Requirement (and if such security is cash, Lender shall deposit the same in an interest-bearing account and interest accrued thereon, if any, shall be deemed to constitute a part of such security for purposes of this Security Instrument, but Lender (i) makes no representation or warranty as to the rate or amount of interest, if any, which may accrue thereon and shall have no liability in connection therewith and (ii) shall not be deemed to be a trustee or fiduciary with respect to its receipt of any such security and any such security may be commingled with other monies of Lender). Upon completion of any contest, Lender shall return the security, if any, deposited with Lender pursuant to clause (h) of this Section 3.05. If Borrower shall use the Property or any portion thereof in any manner which could permit the insurer to cancel any insurance required to be provided hereunder, Borrower immediately shall obtain a substitute policy which shall satisfy the requirements of this Security Instrument and which shall be effective on or prior to the date on which any such other insurance policy shall be canceled. Borrower shall not by any action or omission invalidate any insurance policy required to be carried hereunder unless such policy is replaced as aforesaid, or materially increase the premiums on any such policy above the normal premium charged for such policy. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Insurance Proceeds lawfully or equitably payable to Lender in connection with the transaction contemplated hereby.

Section 3.06. Event of Default During Restoration. Notwithstanding anything to the contrary contained in this Security Instrument including, without limitation, the provisions of this Article III, if, at the time of any casualty affecting the Property or any part thereof, or at any time during any Work, or at any time that Lender is holding or is entitled to receive any Insurance Proceeds pursuant to this Security Instrument, a Default exists and is continuing (whether or not it constitutes an Event of Default), Lender shall then have no obligation to make such proceeds available for Work and Lender shall have the right and option, to be exercised in its sole and absolute discretion and election, with respect to the Insurance Proceeds, either to retain and apply such proceeds in reimbursement for the actual costs, fees and expenses incurred by Lender in accordance with the terms hereof in connection with the adjustment of the loss and any balance toward payment of the Debt in such priority and proportions as Lender, in its sole discretion, shall deem proper, or towards the Work, upon such terms and conditions as Lender shall



determine, or to cure such Default, or to any one or more of the foregoing as Lender, in its sole and absolute discretion, may determine. If Lender shall receive and retain such Insurance Proceeds, the lien of this Security Instrument shall be reduced only by the amount thereof received, after reimbursement to Lender of expenses of collection, and actually applied by Lender in reduction of the principal sum payable under the Note in accordance with the Note.

Section 3.07. Application of Proceeds to Debt Reduction. (a) No damage to the Property, or any part thereof, by fire or other casualty whatsoever, whether such damage be partial or total, shall relieve Borrower from its liability to pay in full the Debt and to perform its obligations under this Security Instrument and the other Loan Documents.

(b) If any Insurance Proceeds are applied to reduce the Debt, Lender shall apply the same in accordance with the provisions of the Note.

ARTICLE IV: IMPOSITIONS

Section 4.01. Payment of Impositions, Utilities and Taxes, etc. (a) Borrower shall pay or cause to be paid all Impositions prior to the date upon which any fine, penalty, interest or cost for nonpayment is imposed, and furnish to Lender, upon request, receipted bills of the appropriate taxing authority or other documentation reasonably satisfactory to Lender evidencing the payment thereof. If Borrower shall fail to pay any Imposition in accordance with this Section and is not contesting or causing a contesting of such Imposition in accordance with Section 4.04 hereof, or if there are insufficient funds in the Basic Carrying Costs Escrow Account to pay any Imposition, Lender shall have the right, but shall not be obligated, to pay that Imposition, and Borrower shall repay to Lender, on demand, any amount paid by Lender, with interest thereon at the Default Rate from the date of the advance thereof to the date of repayment, and such amount shall constitute a portion of the Debt secured by this Security Instrument and the other Cross-collateralized Mortgages.

(b) Borrower shall, prior to the date upon which any fine, penalty, interest or cost for the nonpayment is imposed, pay or cause to be paid all charges for electricity, power, gas, water and other services and utilities in connection with the Property, and shall, upon request, deliver to Lender receipts or other documentation reasonably satisfactory to Lender evidencing payment thereof. If Borrower shall fail to pay any amount required to be paid by Borrower pursuant to this Section 4.01 and is not contesting such charges in accordance with Section 4.04 hereof, Lender shall have the right, but shall not be obligated, to pay that amount, and Borrower will repay to Lender, on demand, any amount paid by Lender with interest thereon at the Default Rate from the date of the advance thereof to the date of repayment, and such amount shall constitute a portion of the Debt secured by this Security Instrument and the other Cross-collateralized Mortgages.

(c) Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Lender by reason of or in connection with its ownership of any Loan Document or any other instrument related thereto, or resulting from the execution, delivery and recording of, or the lien created by, or the obligation evidenced by, any of them, other than income, franchise and other similar taxes imposed on Lender and shall pay all corporate stamp



taxes, if any, and other taxes, required to be paid on the Loan Documents. If Borrower shall fail to make any such payment within ten (10) days after written notice thereof from Lender, Lender shall have the right, but shall not be obligated, to pay the amount due, and Borrower shall reimburse Lender therefor, on demand, with interest thereon at the Default Rate from the date of the advance thereof to the date of repayment, and such amount shall constitute a portion of the Debt secured by this Security Instrument and the other the Cross-collateralized Mortgages.

Section 4.02. Deduction from Value. In the event of the passage after the date of this Security Instrument of any Legal Requirement deducting from the value of the Property for the purpose of taxation, any lien thereon or changing in any way the Legal Requirements now in force for the taxation of this Security Instrument, the other the Cross-collateralized Mortgages and/or the Debt for federal, state or local purposes, or the manner of the operation of any such taxes so as to adversely affect the interest of Lender, or impose any tax or other charge on any Loan Document, then Borrower will pay such tax, with interest and penalties thereon, if any, within the statutory period; provided, however, such tax payments shall not include such taxes incurred more than ninety (90) days prior to the date Borrower receives Lender's notice of payment. In the event the payment of such tax or interest and penalties by Borrower would be unlawful, or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than sixty (60) days, to declare the Debt immediately due and payable, with no prepayment fee or charge of any kind.

Section 4.03. No Joint Assessment. Borrower shall not consent to or initiate the joint assessment of the Premises or the Improvements (a) with any other real property constituting a separate tax lot and Borrower represents and covenants that the Premises and the Improvements are and shall remain a separate tax lot or (b) with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property as a single lien.

Section 4.04. Right to Contest. Borrower shall have the right, after prior notice to Lender, at its sole expense, to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Lender or any of its agents, employees, officers or directors, the validity, amount or application of any Imposition or any charge described in Section 4.01(b), provided that (a) no Default or Event of Default shall exist during such proceedings and such contest shall not (unless Borrower shall comply with clause (d) of this Section 4.04) subject the Property or any portion thereof to any lien or affect the priority of the lien of this Security Instrument, (b) failure to pay such Imposition or charge will not subject Lender, Trustee or any of their agents, employees, officers or directors to any civil or criminal liability, (c) the contest suspends enforcement of the Imposition or charge (unless Borrower first pays the Imposition or charge), (d) prior to and during such contest, Borrower shall furnish to Lender security satisfactory to Lender, in its reasonable discretion, against loss or injury by reason of such contest or the non-payment of such Imposition or charge (and if such security is cash, Lender may deposit the same in an interest-bearing account and interest accrued thereon, if any, shall be deemed to constitute a part of such security for purposes of this Security Instrument, but Lender (i) makes no representation or warranty as to the rate or amount of interest, if any, which may accrue thereon and shall have no liability in connection therewith and (ii) shall not be deemed to be a trustee or fiduciary with respect to its receipt of any such security



and any such security may be commingled with other monies of Lender), (e) such contest shall not affect the ownership, use or occupancy of the Property, (f) the Property or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrower, (g) Borrower has given Lender notice of the commencement of such contest and upon request by Lender, from time to time, notice of the status of such contest by Borrower and/or confirmation of the continuing satisfaction of clauses (a) through (f) of this Section 4.04, and (h) upon a final determination of such contest, Borrower shall promptly comply with the requirements thereof. Upon completion of any contest, Borrower shall immediately pay the amount due, if any, and deliver to Lender proof of the completion of the contest and payment of the amount due, if any, following which Lender shall return the security, if any, deposited with Lender pursuant to clause (d) of this Section 4.04. Borrower shall not pay any Imposition in installments unless permitted by applicable Legal Requirements, and shall, upon the request of Lender, deliver copies of all notices and bills relating to any Imposition or other charge covered by this Article IV to Lender.

Section 4.05. No Credits on Account of the Debt. Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Impositions assessed against the Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Property, or any part thereof, by reason of this Security Instrument or the Debt. In the event such claim, credit or deduction shall be required by Legal Requirements, Lender shall have the option, by written notice of not less than forty-five (45) days, to declare the Debt immediately due and payable, and Borrower hereby agrees to pay such amounts not later than forty-five (45) days after such notice.

Section 4.06. Documentary Stamps. If, at any time, the United States of America, any State or Commonwealth thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument or any other Loan Document, or impose any other tax or charges on the same, Borrower will pay the same, with interest and penalties thereon, if any.

ARTICLE V: CENTRAL CASH MANAGEMENT

Section 5.01. Cash Flow. Borrower hereby acknowledges and agrees that (i) the Rents (which for the purposes of this Section 5.01 shall not include security deposits from tenants under Leases held by Borrower and not applied towards Rent) derived from the Property and (ii) Loss Proceeds (other than Loss Proceeds that Lender has elected to apply to reduce the Debt in accordance with the terms of Article III hereof) shall be utilized (a) to fund the Basic Carrying Costs Sub-Account, (b) to pay all amounts to become due and payable under the Note by funding the Debt Service Payment Sub-Account, (c) to fund the Recurring Replacement Reserve Sub-Account, (d) to fund the Reletting Reserve Sub-Account, and (e) to fund the Operation and Maintenance Expense Sub-Account, all to the extent provided for herein. Borrower shall collect all security deposits from tenants under valid Leases, which shall be held by Borrower, in accordance with applicable law and in a segregated demand deposit bank account at such commercial or savings bank or banks as may be reasonably satisfactory to Lender (the "Security Deposit Account"). Borrower shall notify Lender of any security deposits held as letters of credit and, upon Lender's request, such letters of credit shall be promptly delivered to Lender.



Borrower shall have no right to withdraw funds from the Security Deposit Account; provided that, prior to the occurrence of an Event of Default, Borrower may withdraw funds from the Security Deposit Account to refund or apply security deposits as required by the Leases or by applicable Legal Requirements. During the continuance of an Event of Default, all withdrawals from the Security Deposit Account must be approved by Lender. Borrower shall cause all Rent which is due and payable to Borrower pursuant to the terms of the Leases (other than security deposits under valid Leases which are held in the Security Deposit Account) to be paid through automated clearing house funds ("ACH"), a check drawn on an account in a bank located in the continental United States which is a member of the New York Clearing House Association or by Federal wire directly to the Rent Account. Borrower shall give each tenant under a Lease an irrevocable direction in the form of Exhibit E attached hereto and made a part hereof to deliver all rent payments made by tenants and other payments constituting Rent directly to the Rent Account and shall deliver copies of such letters to Lender, together with an Officer's Certificate certifying that such letters were delivered to each tenant under the Leases within five (5) days of the Closing Date. Notwithstanding the foregoing, if any Rent is received by Borrower or Manager, then (a) such amounts shall be held in trust for the benefit, and as the property, of Lender, (b) such amounts shall not be commingled with any other funds or property of Borrower or Manager and (c) Borrower or Manager shall deposit such amounts in the Rent Account within one (1) Business Day of receipt. Borrower shall, or shall cause Manager to, give to the bank in which the Rent Account is located an irrevocable written instruction, in form and substance acceptable to, and acknowledged by, Lender, that all funds deposited in the Rent Account shall be automatically transferred through ACH or by Federal wire to the Central Account prior to 2:00 p.m. (New York City time) on each Business Day. Upon execution of any Space Lease after the Closing Date, Borrower shall deliver to Lender a copy of the irrevocable direction letter referred to above, the receipt of which has been acknowledged by the tenant under such Space Lease. Lender may elect to change the financial institution in which the Central Account or the Rent Account shall be maintained; however, Lender shall give Borrower and the bank in which the Rent Account is located not fewer than ten (10) Business Days' prior notice of such change. Neither Borrower nor Manager shall change the bank in which the Rent Account is located or the Rent Account without the prior written consent of Lender. All fees and charges of the bank in which the Central Account is located shall be paid by Borrower.

Section 5.02. Establishment of Accounts. Lender has established the Escrow Accounts and the Central Account in the name of Lender as secured party and Borrower has established the Central Account in the joint names of Lender, as secured party, and Borrower. The Central Account, the Rent Account and the Escrow Accounts shall be under the sole dominion and control of Lender and funds held therein shall not constitute trust funds. Borrower hereby irrevocably directs and authorizes Lender to withdraw funds from the Central Account, the Rent Account and the Escrow Accounts, all in accordance with the terms and conditions of this Security Instrument. Borrower shall have no right of withdrawal in respect of the Central Account, the Rent Account or the Escrow Accounts. Each transfer of funds to be made hereunder shall be made only to the extent that funds are on deposit in the Central Account, the Rent Account or the affected Sub-Account or Escrow Account, and Lender shall have no responsibility to make additional funds available in the event that funds on deposit are insufficient. The Central Account shall contain the Basic Carrying Costs Sub-Account, the Debt Service Payment Sub-Account, the Recurring Replacement Reserve Sub-Account, the Reletting Reserve Sub-Account and the Operation and Maintenance Expense Sub-Account, each of which



accounts shall be Eligible Accounts or book entry sub-accounts of an Eligible Account (each a "Sub-Account" and collectively, the "Sub-Accounts") to which certain funds shall be allocated and from which disbursements shall be made pursuant to the terms of this Security Instrument. In addition, on the date hereof, the Central Account shall also contain (x) a Sub-Account entitled the "Engineering Escrow Sub Account", which shall be funded by Borrower at Closing with the Initial Engineering Deposit set forth on Exhibit B attached hereto (representing the sum applicable to the Required Engineering Work described in Section 5.12 below and on Exhibit D attached hereto, (y) a Sub-Account entitled the "Outstanding TILC Sub-Account" which shall be funded by Borrower at Closing with the Initial Outstanding TILC Deposit set forth on Exhibit B attached hereto and (z) a Sub-Account entitled the "Old Navy Reserve Sub-Account" which shall be funded by Borrower at Closing with the Initial Old Navy Reserve Deposit set forth on Exhibit B attached hereto. Disbursements from the Engineering Sub-Account shall be made in accordance with Section 5.12 hereof. Sums held in the Escrow Accounts may be commingled with other monies held by Lender.

Section 5.03. Permitted Investments. All sums deposited into the Outstanding TILC Escrow Account, Recurring Replacement Reserve Sub-Account, the Reletting Reserve Escrow Account and the Operation and Maintenance Expense Escrow Account shall be held in an interest bearing account but Borrower acknowledges that Lender makes no representation or warranty as to the rate of return. Lender shall not have any liability for any loss in investments of funds in Recurring Replacement Reserve Sub-Account, the Reletting Reserve Escrow, the Outstanding TILC Escrow Account and the Operation and Maintenance Expense Escrow Account and no such loss shall affect Borrower's obligation to fund, or liability for funding, the Central Account and each Sub-Account and Escrow Account, as the case may be. Borrower agrees that Lender shall include all such earnings on the Recurring Replacement Reserve Sub-Account, the Reletting Reserve Escrow Account, the Outstanding TILC Escrow Account and the Operation and Maintenance Expense Escrow Account as income of Borrower (and, if Borrower is a partnership, limited liability company or other pass-through entity, the partners, members or beneficiaries of Borrower, as the case may be) for federal and applicable state and local tax purposes. All interest paid or other earnings on funds deposited into the Recurring Replacement Reserve Sub-Account, the Reletting Reserve Escrow Account, the Outstanding TILC Escrow Account and the Operation and Maintenance Expense Escrow Account made hereunder shall be deposited into the Central Account and shall be allocated to the Recurring Replacement Reserve Sub-Account, the Reletting Reserve Escrow Account, the Outstanding TILC Escrow Account and the Operation and Maintenance Expense Escrow Account. Borrower shall pay all costs, fees and expenses incurred in connection with the establishment and maintenance of, or the disbursement from the Recurring Replacement Reserve Sub-Account, the Reletting Reserve Escrow Account, the Outstanding TILC Escrow Account and the Operation and Maintenance Expense Escrow Account, which sums shall be due and payable by Borrower upon demand and may be deducted by Lender from amounts on deposit in the Central Account or the Escrow Accounts.

Section 5.04. Servicing Fees. At the option of Lender, the Loan may be serviced by a servicer (the "Servicer") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Security Instrument to the Servicer. Provided that no Default has occurred and is continuing, Borrower shall have no obligation to reimburse Lender for servicing fees incurred in connection with the ordinary, routine servicing of the Loan; provided, however,



that Borrower shall reimburse Lender for (a) any and all costs and expenses incurred after the occurrence of a Default and (b) as otherwise provided for in this Security Instrument. Additionally, Borrower shall pay all reasonable servicing fees of Servicer, if any, not to exceed \$500.00 per month, charged in connection with any disbursement of funds from the Escrow Accounts pursuant to the Servicer's then standard conditions and rates.

Section 5.05. Monthly Funding of Sub-Accounts and Escrow Accounts. (a) On or before each Payment Date during the term of the Loan, commencing on the first (1st) Payment Date occurring after the month in which the Loan is initially funded, Borrower shall pay or cause to be paid to the Central Account, Basic Carrying Costs Monthly Installment, the Required Debt Service Payment, the Recurring Replacement Monthly Installment, the Reletting Reserve Monthly Installment and all sums required to be deposited in the Operation and Maintenance Expense Sub-Account and the Curtailment Reserve Sub-Account, if any, pursuant to clauses (i) through (vii) of this Section 5.05(a) and all funds transferred or deposited into the Central Account shall be allocated among the Sub-Accounts as follows and in the following priority:

(i) first, to the Basic Carrying Costs Sub-Account, until an amount equal to the Basic Carrying Costs Monthly Installment for such Current Month has been allocated to the Basic Carrying Costs Sub-Account;

(ii) second, to the Debt Service Payment Sub-Account, until an amount equal to the Required Debt Service Payment for the Payment Date occurring in such Current Month has been allocated to the Debt Service Payment Sub-Account;

(iii) third, to the Recurring Replacement Reserve Sub-Account, until an amount equal to the Recurring Replacement Monthly Installment for such Current Month has been allocated to the Recurring Replacement Reserve Sub-Account;

(iv) fourth, to the Reletting Reserve Sub-Account, until an amount equal to the Reletting Reserve Monthly Installment for such Current Month has been allocated to the Reletting Reserve Sub-Account;

(v) fifth, but only during the occurrence and continuance of an Event of Default, to the Operation and Maintenance Expense Sub-Account in an amount equal to the Cash Expenses, other than management fees payable to Affiliates of Borrower, for such Current Month pursuant to the related Approved Annual Budget;

(vi) sixth, but only during the occurrence and continuance of an Event of Default, to the Operation and Maintenance Expense Sub-Account in an amount equal to the amount, if any, of the Net Capital Expenditures for such Current Month pursuant to the related Approved Annual Budget;

(vii) seventh, but only during the occurrence and continuance of an Event of Default, to the Operation and Maintenance Expense Sub-Account in an amount equal to the amount, if any, of the Extraordinary Expenses approved by Lender for such Current Month.



Provided that (I) no Event of Default has occurred and is continuing and (II) Lender has received the Manager Certification referred to in Section 2.09(d) hereof for the most recent period for which the same is due, Lender agrees that in each Current Month any amounts deposited into or remaining in the Central Account after the Sub-Accounts have been funded in accordance with clauses (i) through (vii) above with respect to the Current Month and any periods prior thereto, shall be disbursed by Lender to Borrower on the Payment Date and, to the extent that funds are available for such purpose, on the fifteenth and twenty-fifth day of each Current Month or, if such days are not Business Days, on the next succeeding Business Day in accordance with Borrower's irrevocable written instruction delivered to Lender on the Closing Date. During the existence of an Event of Default, no funds held in the Central Account shall be distributed to Borrower and Lender shall have the right to apply all or any portion of the funds held in the Central Account or any Sub-Account or any Escrow Account to the Debt in Lender's sole discretion.

(b) On each Payment Date, (i) sums held in the Basic Carrying Costs Sub-Account shall be transferred to the Basic Carrying Costs Escrow Account, (ii) sums held in the Debt Service Payment Sub-Account, together with any amounts deposited into the Central Account that are either (x) Loss Proceeds that Lender has elected to apply to reduce the Debt in accordance with the terms of Article III hereof or (y) excess Loss Proceeds remaining after the completion of any restoration required hereunder, shall be transferred to Lender to be applied towards the Required Debt Service Payment, (iii) sums held in the Recurring Replacement Reserve Sub-Account shall be transferred to the Recurring Replacement Reserve Escrow Account, (iv) sums held in the Reletting Reserve Sub-Account shall be transferred to the Reletting Reserve Escrow Account, and (v) sums held in the Operation and Maintenance Expense Sub-Account shall be transferred to the Operation and Maintenance Expense Escrow Account.

(c) While this Security Instrument is cross-collateralized with the other Cross-collateralized Mortgages, the monies in the Central Account relating to all of the Cross-collateralized Property(s) shall be commingled and the cash management arrangements hereunder and under the other Cross-collateralized Mortgage shall be administered as if it were under one waterfall.

Section 5.06. Payment of Basic Carrying Costs. Borrower hereby agrees to pay all Basic Carrying Costs (without regard to the amount of money in the Basic Carrying Costs Sub-Account or the Basic Carrying Costs Escrow Account). At least ten (10) Business Days prior to the due date of any Basic Carrying Costs, and not more frequently than once each month, Borrower may notify Lender in writing and request that Lender pay such Basic Carrying Costs on behalf of Borrower on or prior to the due date thereof, and, provided that no Event of Default has occurred and that there are sufficient funds available in the Basic Carrying Costs Escrow Account, Lender shall make such payments out of the Basic Carrying Costs Escrow Account before same shall be delinquent. Together with each such request, Borrower shall furnish Lender with bills and all other documents necessary, as reasonably determined by Lender, for the payment of the Basic Carrying Costs which are the subject of such request. Borrower's obligation to pay (or cause Lender to pay) Basic Carrying Costs pursuant to this Security Instrument shall include, to the extent permitted by applicable law, Impositions resulting from future changes in law which impose upon Lender an obligation to pay any property taxes or other



Impositions or which otherwise adversely affect Lender's interests as provided for in this Security Instrument.

Provided that no Event of Default shall have occurred, all funds deposited into the Basic Carrying Costs Escrow Account shall be held by Lender pursuant to the provisions of this Security Instrument and shall be applied in payment of Basic Carrying Costs in accordance with the terms hereof. Should an Event of Default occur, the sums on deposit in the Basic Carrying Costs Sub-Account and the Basic Carrying Costs Escrow Account may be applied by Lender in payment of any Basic Carrying Costs or may be applied to the payment of the Debt or any other charges affecting all or any portion of the Cross-collateralized Properties as Lender in its sole discretion may determine; provided, however, that no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided.

Section 5.07. Reletting Reserve Escrow Account. (a) Borrower hereby agrees to pay all Reletting Expenditures (without regard to the amount of money then available in the Reletting Reserve Sub-Account or the Reletting Reserve Escrow Account). Upon the execution of any Space Lease with respect to which Borrower is obligated to undertake or pay for any Reletting Expenditures, Borrower shall submit to Lender (i) an itemized line item budget (a "Budget") reasonably acceptable to Lender outlining all of the Reletting Expenditures, (ii) a copy of the signed Lease for which said Reletting Expenditures relate, in each case which has an expiration date at least three (3) years after the commencement thereof and which is otherwise in compliance with the provisions of this Security Instrument, (iii) a copy of the plans and specifications, if any, for the proposed Reletting Expenditures and (iv) an Officer's Certificate with respect to the items referred to in clauses (i) through (iii) and setting forth an anticipated completion date for the Reletting Expenditures. Thereafter, provided that no Event of Default has occurred and is continuing and that Lender has received a written request from Borrower for payment or reimbursement of any costs incurred in connection with any Reletting Expenditures, together with (i) unconditional lien waivers (subject only to payment), (ii) a statement from an Architect or Engineer, indicating that such portion of the Reletting Expenditures for which payment or reimbursement is sought has been substantially completed in compliance with all Legal Requirements, (iii) unless Borrower requests disbursement by means of check payable jointly to Borrower and the applicable vendor, copies of bills for such Reletting Expenditures marked "paid in full" (or such other documentation reasonably satisfactory to Lender to establish the payment of the Reletting Expenditures) for the portion due and for which payment or reimbursement is sought, (iv) upon final completion of such Reletting Expenditures, tenant estoppel certificates from the tenant leasing space in the Premises for whom the Reletting Expenditures are being made which indicate, among other things, that the tenant under such Space Lease has been in occupancy and open for business for at least one full calendar month and paid all rents due under the Space Lease without abatement, suspension, deferment, diminution, reduction or other allowances for at least one full calendar month, and (v) such other documentation as may be reasonably requested by Lender to establish that the Reletting Expenditures or portion thereof which are the subject of such request have been completed, all of which are reasonably acceptable in form and substance to Lender, Lender shall disburse to Borrower, to the extent of funds remaining in the Reletting Reserve Escrow Account, any actual expenses incurred in connection with such Reletting Expenditures which were set forth in the approved Budget provided that Borrower may make a request for disbursement of sums from the Reletting Reserve Escrow Account no more than once during any month and any request (other



than the final request) shall be in a minimum amount of \$5,000. With respect to any Reletting Expenditures which relate to brokerage commissions, upon the receipt of (i) copies of bills for such Reletting Expenditures marked "paid in full", (ii) tenant estoppel certificates from the tenant leasing space in the Premises for which Lease the brokerage commissions are due which indicate, among other things, that the tenant under such Space Lease has been in occupancy and open for business for at least one full calendar month and paid all rents due under the Space Lease without abatement, suspension, deferment, diminution, reduction or other allowances for at least one full calendar month and (iii) a copy of the signed Lease for which said Reletting Expenditures relate, in each case which has an expiration date at least three (3) years, all of which are reasonably acceptable to Lender, Lender shall disburse to Borrower any actual expenses incurred in connection with such Reletting Expenditures out of the Reletting Reserve Escrow Account. Lender shall not be required to make any disbursements out of the Reletting Reserve Escrow Account if an Event of Default shall have occurred and is continuing, if more than one such request is made in any month or if sufficient funds are not available in the Reletting Reserve Escrow Account.

(b) In addition, Borrower shall pay to Lender for deposit with Lender all funds received by Borrower in excess of \$50,000 in connection with any cancellation, termination or surrender of any Lease, including, but not limited to, any surrender or cancellation fees, buyout fees, or reimbursements for tenant improvements and leasing commissions ("Termination Payments"); provided, as long as no Event of Default exists, when the applicable space is re-leased pursuant to a Space Lease entered into in accordance with the terms of this Security Instrument, any such Termination Payments on deposit with Lender and remaining after payment of all tenant improvements and leasing commissions in connection with such new Space Lease pursuant to 5.07(a) above shall be paid to Borrower upon the occupancy and the payment of rents due under the new Space Lease for at least one full calendar month

(c) Provided that no Event of Default shall have occurred, all funds deposited into the Reletting Reserve Escrow Account relating to Reletting Expenditures shall be held by Lender pursuant to the provisions of this Security Instrument and shall be applied in payment of Reletting Expenditures. Should an Event of Default occur, the sums on deposit in the Reletting Reserve Sub-Account and the Reletting Reserve Escrow Account may be applied by Lender in payment of any Reletting Expenditures or may be applied to the payment of the Debt or any other charges affecting all or any portion of the Property, as Lender, in its sole discretion, may determine; provided, however, that no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided.

(d) In the event that Borrower holds any letters of credit as security for obligations under Leases, within thirty (30) days (or if any letters of credit may expire within such thirty (30) day period, prior to the expiration of such letter of credit) of the occurrence of a monetary event of default or a material non-monetary event of default under the related Lease, Borrower shall present for draw and use all commercially reasonable efforts to draw the full amount which it is entitled to draw under such letter of credit; provided, however, Borrower shall not be obliged to draw on such letter of credit if (i) Borrower has submitted to Lender a plan of action to resolve any event of default which gave rise to Borrower's right to draw on the applicable letter of credit and Lender shall, in its reasonable discretion, have consented to such plan or Borrower is precluded from making a draw on the applicable letter of credit by applicable



law, and (ii) the term of such letter of credit will not expire prior to the implementation of such submitted plan. Borrower shall deliver to Lender all security deposits which are applied against sums due to Borrower under Leases (including, without limitation, all sums drawn on letters of credits held as security for obligations of tenants under Leases) and Rent paid by or on behalf of any lessee under a Space Lease in whole or partial consideration for the termination, cancellation or surrender of any Space Lease including, without limitation, surrender or cancellation fees, buy-out fees or reimbursements for tenant improvements or leasing commissions, within five (5) Business Days of receipt thereof and all such sums shall be held in the Reletting Reserve Escrow Account and shall be disbursed therefrom as set forth above.

Section 5.08. Recurring Replacement Reserve Escrow Account. Borrower hereby agrees to pay all Recurring Replacement Expenditures with respect to the Property (without regard to the amount of money then available in the Recurring Replacement Reserve Sub-Account or the Recurring Replacement Reserve Escrow Account). Provided that Lender has received written notice from Borrower at least five (5) Business Days prior to the due date of any payment relating to Recurring Replacement Expenditures and not more frequently than once each month, and further provided that no Event of Default has occurred and is continuing, that there are sufficient funds available in the Recurring Replacement Reserve Escrow Account and that Borrower shall have theretofore furnished Lender with lien waivers, copies of bills, invoices and other reasonable documentation as may be required by Lender to establish that the Recurring Replacement Expenditures which are the subject of such request represent amounts due for completed or partially completed capital work and improvements performed at the Property, Lender shall make such payments out of the Recurring Replacement Reserve Escrow Account.

Provided that no Event of Default shall have occurred, all funds deposited into the Recurring Replacement Reserve Escrow Account shall be held by Lender pursuant to the provisions of this Security Instrument and shall be applied in payment of Recurring Replacement Expenditures. Should an Event of Default occur, the sums on deposit in the Recurring Replacement Reserve Sub-Account and the Recurring Replacement Reserve Escrow Account may be applied by Lender in payment of any Recurring Replacement Expenditures or may be applied to the payment of the Debt or any other charges affecting all or any portion of the Cross-collateralized Properties, as Lender in its sole discretion may determine; provided, however, that no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided.

Section 5.09. Operation and Maintenance Expense Escrow Account. Borrower hereby agrees to pay all Operating Expenses with respect to the Property (without regard to the amount of money then available in the Operation and Maintenance Expense Sub-Account or the Operation and Maintenance Expense Escrow Account). All funds allocated to the Operation and Maintenance Expense Escrow Account shall be held by Lender pursuant to the provisions of this Security Instrument. Any sums held in the Operation and Maintenance Expense Escrow Account shall be disbursed to Borrower within five (5) Business Days of receipt by Lender from Borrower of (a) a written request for such disbursement which shall indicate the Operating Expenses (exclusive of Basic Carrying Costs and any management fees payable to Borrower or to Affiliates of Borrower) for which the requested disbursement is to pay and (b) an Officer's Certificate stating that no Operating Expenses with respect to the Property are more than sixty (60) days past due; provided, however, in the event that Borrower legitimately disputes any

invoice for an Operating Expense, and (i) no Event of Default has occurred and is continuing hereunder, (ii) Borrower shall have set aside adequate reserves for the payment of such disputed sums together with all interest and late fees thereon, (iii) Borrower has complied with all the requirements of this Security Instrument relating thereto, and (iv) the contesting of such sums shall not constitute a default under any other instrument, agreement, or document to which Borrower is a party, then Borrower may, after certifying to Lender as to items (i) through (iv) hereof, contest such invoice. Together with each such request, Borrower shall furnish Lender with bills and all other documents necessary for the payment of the Operating Expenses which are the subject of such request. Borrower may request a disbursement from the Operation and Maintenance Expense Escrow Account no more than one (1) time per calendar month. Should an Event of Default occur and be continuing, the sums on deposit in the Operation and Maintenance Expense Sub-Account or the Operation and Maintenance Expense Escrow Account may be applied by Lender in payment of any Operating Expenses for the Property or may be applied to the payment of the Debt or any other charges affecting all or any portion of the Property as Lender, in its sole discretion, may determine; provided, however, that no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided.

Section 5.10. Intentionally Deleted

Section 5.11. Intentionally Deleted

Section 5.12. Performance of Engineering Work. (a) Borrower shall promptly commence and diligently thereafter pursue to completion (without regard to the amount of money then available in the Engineering Escrow Account) the Required Engineering Work prior to the twelve (12) month anniversary of the Closing Date. After Borrower completes an item of Required Engineering Work, Borrower may submit to Lender an invoice therefor with lien waivers and a statement from the Engineer, reasonably acceptable to Lender, indicating that the portion of the Required Engineering Work in question has been completed in compliance with all Legal Requirements, and Lender shall, within twenty (20) days thereafter, although in no event more frequently than once each month, reimburse such amount to Borrower from the Engineering Escrow Account; provided, however, that Borrower shall not be reimbursed more than the amount set forth on Exhibit D hereto as the amount allocated to the portion of the Required Engineering Work for which reimbursement is sought.

(b) From and after the date all of the Required Engineering Work is completed, Borrower may submit a written request, which request shall be delivered together with final lien waivers and a statement from the Engineer, as the case may be, reasonably acceptable to Lender, indicating that all of the Required Engineering Work has been completed in compliance with all Legal Requirements, and Lender shall, within twenty (20) days thereafter, disburse any balance of the Engineering Escrow Account to Borrower. Should an Event of Default occur, the sums on deposit in the Engineering Escrow Account may be applied by Lender in payment of any Required Engineering Work or may be applied to the payment of the Debt or any other charges affecting all or any portion of the Cross-collateralized Property as Lender in its sole discretion may determine; provided, however, that no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided.



Section 5.13. Loss Proceeds. In the event of a casualty to the Property, unless Lender elects or is required pursuant to Article III hereof to make all of the Insurance Proceeds available to Borrower for restoration, Lender and Borrower shall cause all such Insurance Proceeds to be paid by the insurer directly to the Central Account, whereupon Lender shall, after deducting Lender's reasonable costs of recovering and paying out such Insurance Proceeds, including without limitation, reasonable attorneys' fees, apply the same to reduce the Debt in accordance with the terms of the Note; provided, however, that if Lender elects, or is deemed to have elected, or is required to make the Insurance Proceeds available for restoration, all Insurance Proceeds in respect of rent loss, business interruption or similar coverage shall be maintained in the Central Account, to be applied by Lender in the manner as Rent received with respect to the operation of the Property; provided, further, however, that in the event that the Insurance Proceeds with respect to rent loss, business interruption or similar insurance policy are paid in a lump sum in advance, Lender shall hold such Insurance Proceeds in a segregated interest-bearing escrow account, which shall be an Eligible Account, shall estimate, in Lender's reasonable discretion, the number of months required for Borrower to restore the damage caused by the casualty, shall divide the aggregate rent loss, business interruption or similar Insurance Proceeds by such number of months, and shall disburse from such bank account into the Central Account each month during the performance of such restoration such monthly installment of said Insurance Proceeds. In the event that Insurance Proceeds are to be applied toward restoration, Lender shall hold such funds in a segregated bank account at the Bank, which shall be an Eligible Account, and shall disburse same in accordance with the provisions of Section 3.04 hereof. Unless Lender elects, or is required pursuant to Section 6.01 hereof to make all of the Condemnation Proceeds available to Borrower for restoration, Lender and Borrower shall cause all such Condemnation Proceeds to be paid to the Central Account, whereupon Lender shall, after deducting Lender's reasonable costs of recovering and paying out such Condemnation Proceeds, including without limitation, reasonable attorneys' fees, apply same to reduce the Debt in accordance with the terms of the Note; provided, however, that any Condemnation Proceeds received in connection with a temporary Taking shall be maintained in the Central Account, to be applied by Lender in the same manner as Rent received with respect to the operation of the Property; provided, further, however, that in the event that the Condemnation Proceeds of any temporary Taking are paid in a lump sum in advance, Lender shall hold such Condemnation Proceeds in a segregated interest-bearing bank account, which shall be an Eligible Account, shall estimate, in Lender's reasonable discretion, the number of months that the Property shall be affected by such temporary Taking, shall divide the aggregate Condemnation Proceeds in connection with such temporary Taking by such number of months, and shall disburse from such bank account into the Central Account each month during the pendency of such temporary Taking such monthly installment of said Condemnation Proceeds. In the event that Condemnation Proceeds are to be applied toward restoration, Lender shall hold such funds in a segregated bank account at the Bank, which shall be an Eligible Account, and shall disburse same in accordance with the provisions of Section 3.04 hereof. If any Loss Proceeds are received by Borrower, such Loss Proceeds shall be received in trust for Lender, shall be segregated from other funds of Borrower, and shall be forthwith paid into the Central Account, or paid to Lender to hold in a segregated bank account at the Bank, in each case to be applied or disbursed in accordance with the foregoing. Any Loss Proceeds made available to Borrower for restoration in accordance herewith, to the extent not used by Borrower in connection with, or to



the extent they exceed the cost of, such restoration, shall be paid to Borrower promptly following the completion of the Work.

Section 5.14. Outstanding TILC Escrow Account. Provided that no Event of Default has occurred and is continuing, Borrower may submit to Lender a written request for disbursement from the Outstanding TILC Escrow Account in an amount not to exceed the allocated amount for each respective Tenant set forth on Exhibit H annexed hereto relating to the Property located in Osh Kosh, Wisconsin together with (x) copies of all documentation required to be delivered by the applicable Tenant to Borrower under its respective Lease as a prerequisite to such tenant receiving its tenant allowance, (y) a certification by Borrower that the applicable leasing costs have been paid by the applicable tenant, that the applicable tenant is in possession of its demised premises and is paying base rent under its Lease, and that there are no material defaults under the applicable Lease and (z) a copy of the check sent by Borrower to the applicable Tenant evidencing the payment of the tenant allowance; provided, however, that Borrower shall not be reimbursed for more than \$462,000. Notwithstanding the foregoing, Lender shall, upon the Borrower's request, pay such amounts to Borrower and the applicable Tenant by virtue of a joint check without Borrower having to pay the applicable Tenant prior to the submission to Lender of such request. All funds deposited into the Outstanding TILC Escrow Account shall be held by Lender pursuant to the provisions of this Security Instrument and, provided that no Event of Default shall have occurred and be continuing, all such funds shall be applied in payment of Reletting Expenditures with respect to the applicable Tenant. Should an Event of Default occur and be continuing, the sums on deposit in the Outstanding TILC Escrow Account may be applied by Lender in payment of any Reletting Expenditures with respect to the applicable Tenant or may be applied to the payment of the Debt or any other charges affecting all or any portion of the Property, as Lender, in its sole discretion, may determine; provided, however, that no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided. To the extent there are any excess funds remaining in the Outstanding TILC Escrow Account after Borrower has paid all of its obligations to the applicable Tenant, upon Lender's receipt of a written request, which request shall be delivered with a statement from the Borrower that no further tenant allowance obligations exist under this Section 5.16, Lender shall within twenty (20) days thereafter, disburse any of the balance of the Outstanding TILC Escrow Account to Borrower.

Section 5.15. Old Navy Reserve Fund. Contemporaneously herewith, Borrower has deposited \$1,895,000.00 with respect to certain renovation work to be performed at Osh Kosh Outlet in Osh Kosh, Wisconsin. Borrower shall submit a budget within thirty (30) days of the date hereof (the "**Budget**") in connection with the renovation work as same will be more particularly described on said Budget (the "**Old Navy Work**"), which is to be performed by Borrower pursuant to and in accordance with this Section. Amounts so deposited with Lender shall be held by Lender in accordance with this Section hereof. Amounts so deposited in the account in which such amounts are held shall hereinafter be referred to as the "**Old Navy Work Escrow Account**".

(i) Lender shall disburse to Borrower from the Old Navy Work Escrow Account an amount not to exceed \$1,895,000.00, from time to time, but not more frequently than once in any thirty (30) day period, upon satisfaction by Borrower of each of the following conditions as determined by Lender in its sole discretion:



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(a) Borrower shall submit a written request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the applicable item of Old Navy Work to be paid and/or reimbursed to Borrower; (b) on the date such request is received by Lender and on the date such payment is to be made, no Event of Default shall exist and remain uncured; (c) Lender shall have received an Officer's Certificate (i) stating that all items of Old Navy Work to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with (x) all applicable federal, state and local laws, rules and regulations and (y) such Officer's Certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required to commence and/or complete such Old Navy Work, (ii) identifying each Person that supplied materials or labor in connection with the Old Navy Work to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full, such Officer's Certificate to be accompanied by lien waivers and paid invoices or other evidence of payment satisfactory to Lender; (d) at Lender's option, a title search indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender; (e) delivery to Lender of a certification from an inspecting architect, engineer or other consultant reasonably acceptable to Lender describing the completed work and verifying the completion of the work; and (f) Lender shall receive such other evidence as Lender shall reasonably request in order to evidence that the items of Old Navy Work to be funded by the requested disbursement have been completed and are paid for. Each request from the Old Navy Work Reserve Fund must be in increments of not less than \$100,000.00. In no event shall Borrower be entitled to funds in excess of the amounts earmarked for such item of Old Navy Work as set forth in the Budget. Lender may require an inspection of the Property at Borrower's expense prior to making a disbursement in order to verify completion of any items of Old Navy Work for which reimbursement is sought. Prior to any disbursement of funds from the Old Navy Work Escrow Account, Borrower shall submit to Lender the applicable plans and specifications for the Old Navy Work. Lender shall, upon Borrower's request, pay such amounts to Borrower and the applicable vendor or contractor by virtue of a joint check without Borrower having to pay such vendor or contractor prior to the submission to Lender of such request.

(ii) In connection with the construction, equipping and furnishing and/or completion of the Old Navy Work (collectively, the "**Construction**"), Borrower hereby covenants and agrees as follows:

(1) Borrower covenants and agrees (w) to observe all of the obligations, covenants and agreements of Borrower under such documents, instruments, agreements, permits, plans, designs and specifications which pertain or relate to the Construction of the Old Navy Work, (x) to cause to be constructed the Old Navy Work in a good and workmanlike manner and in accordance with all applicable laws, (y) to cause the timely Construction of the Old Navy Work to be substantially in accordance with the applicable project schedules and the Budget and (z) that the Old Navy Work shall be free from any liens or claims of



any and all persons or entities performing services or labor on the Property or furnishing materials thereto, and free from any liens or claims arising out of or relating to taxes and/or assessments levied against the Old Navy Work or the Improvements or any part thereof.

(2) Borrower acknowledges and agrees that Lender (or its agents) shall have the right at all reasonable times upon reasonable notice to enter upon and inspect the Construction of the Old Navy Work. All costs and expenses reasonably incurred in connection with Lender's inspection of the Old Navy Work shall be payable by Borrower upon demand therefor by Lender.

(3) Borrower, upon request by Lender, shall promptly furnish periodic reports to Lender (including any and all reports prepared by Lender's engineer) on the progress of the Construction of the Old Navy Work and the estimated completion date therefor, stating that such Construction of the Old Navy Work is proceeding substantially in accordance with the applicable project schedules and plans and specifications and identifying the costs expended to date in connection therewith.

(4) In connection with the Construction of the Old Navy Work (i) Borrower shall fully and punctually pay and discharge (x) any and all costs, expenses and liabilities for, or incurred in connection with, the Construction of the Old Navy Work in accordance with the Budget and all applicable plans and specifications as and when the same become due and payable or which, if unpaid, are or may become liens on the Property and/or the Improvements, and (y) all taxes and assessments payable with respect to the Property, and (ii) the Improvements shall be and remain free and clear of all liens from any and all persons or entities furnishing materials, labor or services for or in connection with the Construction of the Old Navy Work.

(5) It shall be an Event of Default under this Agreement if Borrower does not comply with the covenants contained in this Section 5.15 (the "**Old Navy Work Default**"). Upon the occurrence of such Old Navy Work Default or any other Event of Default under this Security Instrument, Lender, at its option, may withdraw all of the amounts contained in the Old Navy Work Escrow Account and Lender may retain and/or apply such funds either (x) to Completion of the Old Navy Work, (y) to an account for the benefit of Lender to be held as additional security for the Loan, or (z) toward payment of the Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the amounts contained in the Old Navy Work Escrow Account shall be in addition to all other rights and remedies provided to Lender under this Security Instrument and the other Loan Documents.

ARTICLE VI: CONDEMNATION

Section 6.01. Condemnation. (a) Borrower shall notify Lender promptly of the commencement or threat of any Taking of the Property or any portion thereof. Lender is hereby



irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain the proceeds of any such Taking and to make any compromise or settlement in connection with such proceedings (subject to Borrower's reasonable approval, except after the occurrence of an Event of Default, in which event Borrower's approval shall not be required), subject to the provisions of this Security Instrument; provided, however, that Borrower may participate in any such proceedings and shall be authorized and entitled to compromise or settle any such proceeding with respect to Condemnation Proceeds in an amount less than five percent (5%) of the Allocated Loan Amount. Borrower shall execute and deliver to Lender any and all instruments reasonably required in connection with any such proceeding promptly after request therefor by Lender. Except as set forth above, Borrower shall not adjust, compromise, settle or enter into any agreement with respect to such proceedings without the prior consent of Lender. All Condemnation Proceeds are hereby assigned to and shall be paid to Lender. With respect to Condemnation Proceeds in an amount in excess of five percent (5%) of the Allocated Loan Amount, Borrower hereby authorizes Lender to compromise, settle, collect and receive such Condemnation Proceeds, and to give proper receipts and acquittance therefor. Subject to the provisions of this Article VI, Lender may apply such Condemnation Proceeds (less any cost to Lender of recovering and paying out such proceeds, including, without limitation, reasonable attorneys' fees and disbursements and costs allocable to inspecting any repair, restoration or rebuilding work and the plans and specifications therefor) toward the payment of the Debt or to allow such proceeds to be used for the Work.

(b) "Substantial Taking" shall mean (i) a Taking of such portion of the Property that would, in Lender's reasonable discretion, leave remaining a balance of the Property which would not under then current economic conditions, applicable Development Laws and other applicable Legal Requirements, permit the restoration of the Property so as to constitute a complete, rentable facility of the same type as existed prior to the Taking, having adequate ingress and egress to the Property, the Leases of which covering 75% of the square footage of the Property immediately prior to such Taking will not be terminated due to the Taking during and following the restoration of such Property and being capable of producing a projected Net Operating Income (as reasonably determined by Lender) yielding a projected Debt Service Coverage therefrom for the next two (2) years of not less than the Required Debt Service Coverage or (ii) a Taking which occurs less than two (2) years prior to the Maturity Date or (iii) a Taking which Lender is not reasonably satisfied could be repaired within twelve (12) months and at least six (6) months prior to the Maturity Date or (iv) a Taking of fifteen percent (15%) or more of the Property.

(c) In the case of a Substantial Taking, Condemnation Proceeds shall be payable to Lender in reduction of the Debt but without any prepayment fee or charge of any kind and, if Borrower elects to apply any Condemnation Proceeds it may receive pursuant to this Security Instrument to the payment of the Debt, Borrower may prepay the balance of the Debt without any prepayment fee or charge of any kind.

(d) In the event of a Taking which is less than a Substantial Taking, Borrower at its sole cost and expense (whether or not the award shall have been received or shall be sufficient for restoration) shall proceed diligently to restore, or cause the restoration of, the remaining Improvements not so taken, to maintain a complete, rentable, self-contained fully



operational facility of the same sort as existed prior to the Taking in as good a condition as is reasonably possible. In the event of such a Taking, Lender shall receive the Condemnation Proceeds and shall pay over the same:

(i) first, provided no Default shall have occurred and be continuing, to Borrower to the extent of any portion of the award as may be necessary to pay the reasonable cost of restoration of the Improvements remaining, and

(ii) second, to Lender, in reduction of the Debt without any prepayment premium or charge of any kind.

If one or more Takings in the aggregate create a Substantial Taking, then, in such event, the sections of this Article VI above applicable to Substantial Takings shall apply.

(e) In the event Lender is obligated to or elects to make Condemnation Proceeds available for the restoration or rebuilding of the Property, such proceeds shall be disbursed in the manner and subject to the conditions set forth in Section 3.04(b) hereof. If, in accordance with this Article VI, any Condemnation Proceeds are used to reduce the Debt, they shall be applied in accordance with the provisions of the Note and, with no prepayment fee or charge of any kind. Borrower shall promptly execute and deliver all instruments requested by Lender for the purpose of confirming the assignment of the Condemnation Proceeds to Lender. Application of all or any part of the Condemnation Proceeds to the Debt shall be made in accordance with the provisions of Sections 3.06 and 3.07 hereof. No application of the Condemnation Proceeds to the reduction of the Debt shall have the effect of releasing the lien of this Security Instrument until the remainder of the Debt has been paid in full. In the case of any Taking, Lender, to the extent that Lender has not been reimbursed by Borrower, shall be entitled, as a first priority out of any Condemnation Proceeds, to reimbursement for all costs, fees and expenses reasonably incurred in the determination and collection of any Condemnation Proceeds. All Condemnation Proceeds deposited with Lender pursuant to this Section, until expended or applied as provided herein, shall be held in accordance with Section 3.04(b) hereof and shall constitute additional security for the payment of the Debt and the payment and performance of Borrower's obligations, but Lender shall not be deemed a trustee or other fiduciary with respect to its receipt of such Condemnation Proceeds or any part thereof. All awards so deposited with Lender shall be held by Lender in an Eligible Account, but Lender makes no representation or warranty as to the rate or amount of interest, if any, which may accrue on any such deposit and shall have no liability in connection therewith. For purposes hereof, any reference to the award shall be deemed to include interest, if any, which has accrued thereon.

ARTICLE VII: LEASES AND RENTS

Section 7.01. Assignment. (a) Borrower does hereby bargain, sell, assign and set over unto Lender, all of Borrower's interest in the Leases and Rents. The assignment of Leases and Rents in this Section 7.01 is an absolute, unconditional and present assignment from Borrower to Lender and not an assignment for security and the existence or exercise of Borrower's license (revocable by Lender only during the continuance of an Event of Default) to collect Rent shall not operate to subordinate this assignment to any subsequent assignment. The exercise by Lender of any of its rights or remedies pursuant to this Section 7.01 shall not be deemed to make



Lender a mortgagee-in-possession. In addition to the provisions of this Article VII, Borrower shall comply with all terms, provisions and conditions of the Assignment.

(b) So long as there shall exist and be continuing no Event of Default, Borrower shall have a revocable license to take all actions with respect to all Leases and Rents, present and future, including the right to collect and use the Rents, subject to the terms of this Security Instrument and the Assignment.

(c) In a separate instrument Borrower shall, as requested from time to time by Lender, assign to Lender or its nominee by specific or general assignment, any and all Leases, such assignments to be in form and content reasonably acceptable to Lender, but subject to the provisions of Section 7.01(b) hereof. Borrower agrees to deliver to Lender, within thirty (30) days after Lender's request, a true and complete copy of every Lease and, within ten (10) Business Days after Lender's request, a complete list of the Leases, certified by Borrower to be true, accurate and complete and stating the demised premises, the names of the lessees, the Rent payable under the Leases, the date to which such Rents have been paid, the material terms of the Leases, including, without limitation, the dates of occupancy, the dates of expiration, any Rent concessions, work obligations or other inducements granted to the lessees thereunder, and any renewal options.

(d) The rights of Lender contained in this Article VII, the Assignment or any other assignment of any Lease shall not result in any obligation or liability of Lender to Borrower or any lessee under a Lease or any party claiming through any such lessee or constitute an assumption by Lender of any such liability or obligation.

(e) At any time during the continuance of an Event of Default, the license granted hereinabove may be revoked by Lender, and Lender or a receiver appointed in accordance with this Security Instrument may enter upon the Property, and collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper.

(f) In addition to the rights which Lender may have herein, upon the occurrence and during the continuance of any Event of Default, Lender, at its option, may require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be used and occupied by Borrower and may require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

Section 7.02. Management of Property.

(a) Borrower shall manage the Property or cause the Property to be managed in a manner which is consistent with the Approved Manager Standard. The Manager (other than Borrower) shall at all times meet the Minimum Manager Credentials. All Space Leases shall provide for rental rates comparable to then existing local market rates and terms and conditions which constitute good and prudent business practice and are consistent with prevailing market terms and conditions, and shall be arm's length transactions. All Space Leases shall be on a



form previously approved by Lender with such commercially reasonable changes as are consistent with the standards of other similarly situated owners when compared with terms and conditions of leases in similarly situated shopping centers in similar context at the time in question, taking into account, inter alia, the type, creditworthiness and bargaining power of the prospective tenant and the location and size of the space covered by the proposed Lease, and shall provide that they are subordinate to this Security Instrument and that the lessees thereunder attorn to Lender. Borrower shall deliver copies of all Leases, amendments, modifications and renewals thereof to Lender. All proposed Space Leases for the Property shall be subject to the prior written approval of Lender, not to be unreasonably withheld or delayed, provided, however that Borrower may enter into new Space Leases with unrelated third parties without obtaining the prior consent of Lender provided that: (i) the leases conform with the requirements of this Section 7.02; (ii) the space to be leased pursuant to such proposed Lease, together with any other space which is leased to the proposed tenant or an Affiliate thereof, does not exceed 6,000 square feet; and (iii) the term of the proposed lease does not exceed six (6) years and, inclusive of all extensions and renewals, does not exceed ten (10) years. Lender's consent to any Lease shall be deemed given, if the first correspondence from Borrower to Lender requesting such approval is in an envelope marked "PRIORITY" and contains a bold-faced, conspicuous legend at the top of the first page thereof stating that "IF YOU FAIL TO RESPOND TO OR TO EXPRESSLY DENY THIS REQUEST FOR APPROVAL IN WRITING WITHIN TEN (10) BUSINESS DAYS, YOUR APPROVAL MAY BE DEEMED GIVEN", and is accompanied by the information and documents required above and any other information reasonably requested by Lender in writing prior to the expiration of such ten (10) Business Day period in order to adequately review the same has been delivered and, if Lender fails to respond or to expressly deny such request for approval in writing within the ten (10) Business Day period a second notice is delivered to Lender from Borrower in an envelope marked "PRIORITY" requesting approval containing a bold-faced, conspicuous legend at the top of the first page thereof stating that "IF YOU FAIL TO RESPOND TO OR EXPRESSLY DENY THIS REQUEST FOR APPROVAL IN WRITING WITHIN FIVE (5) BUSINESS DAYS, YOUR APPROVAL SHALL BE DEEMED GIVEN" and Lender fails to respond or to expressly deny each request for approval within the five (5) Business Day period.

(b) Borrower (i) shall observe and perform all of its material obligations under the Leases pursuant to applicable Legal Requirements and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall receive under the Leases; (iii) shall, consistent with the Approved Manager Standard, enforce all of the terms, covenants and conditions contained in the Leases to be observed or performed; (iv) shall not collect any of the Rents under the Leases more than one (1) month in advance (except that Borrower may collect in advance (A) such security deposits as are permitted pursuant to applicable Legal Requirements and are commercially reasonable in the prevailing market and (B) all rent deemed "additional rent" under the Leases); (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents except as otherwise expressly permitted pursuant to this Security Instrument; (vi) shall not cancel or terminate any of the Space Leases or accept a surrender thereof in any manner inconsistent with the Approved Manager Standard; (vii) shall not convey, transfer or suffer or permit a conveyance or transfer of all or any part of the Premises or the Improvements or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; (viii) shall not alter, modify or change the



terms of any guaranty of any Major Space Lease or cancel or terminate any such guaranty in any manner inconsistent with the Approved Manager Standard; (ix) shall, in accordance with the Approved Manager Standard, make all reasonable efforts to seek lessees for space as it becomes vacant and enter into Leases in accordance with the terms hereof; (x) shall not materially modify, alter or amend any Major Space Lease or Property Agreement without Lender's consent, which consent will not be unreasonably withheld or delayed; (xi) shall notify Lender promptly if any Pad Owner shall cease business operations or of the occurrence of any event of which it becomes aware affecting a Pad Owner or its property which might have any material effect on the Property; and (xii) shall, without limitation to any other provision hereof, execute and deliver at the reasonable request of Lender all such further assurances, confirmations and assignments in connection with the Property as are required herein and as Lender shall from time to time reasonably require.

(c) All security deposits of lessees, whether held in cash or any other form, shall be treated by Borrower as trust funds, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower in the Security Deposit Account. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under applicable Legal Requirements shall be maintained in full force and effect unless replaced by cash deposits as hereinabove described shall, if permitted pursuant to Legal Requirements, at Lender's option, name Lender as payee or mortgagee thereunder or be fully assignable to Lender and shall, in all respects, comply with applicable Legal Requirements and otherwise be reasonably satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing. During the continuance of any Event of Default, Borrower shall, upon Lender's request, if permitted by applicable Legal Requirements, turn over the security deposits (and any interest thereon) to Lender to be held by Lender in accordance with the terms of the Leases and all Legal Requirements.

(d) Lender shall, upon request of Borrower, enter into a subordination, nondisturbance and attornment agreement ("SNDA") with respect to each proposed tenant entering into a Lease in compliance with the requirements of this Security Instrument provided that such Lease is (i) with a tenant occupying at least 6,000 square feet of the Premises or is with an existing tenant pursuant to a Lease dated prior to the Closing Date which provides that the tenant thereunder is entitled to an SNDA or with any tenant which is renting space on a national basis which leases at least 2,000 square feet of the Premises, (ii) with a tenant reasonably approved by Lender in writing prior to Borrower's execution of any such Lease and (iii) on the standard form of Lease previously approved in writing by Lender with such commercially reasonable changes as are consistent with the Approved Manager Standard. Any SNDA executed by Lender shall be in Lender's then standard form with such changes as Lender shall agree to and provide that in the event Lender or any purchaser at foreclosure shall succeed to Borrower's interest in the Property, the Leases of such tenants will remain in full force and effect and be binding upon Lender or such purchaser and such tenant as though each were original parties thereto.

(e) Borrower covenants and agrees with Lender that (i) the Property will be managed at all times by Borrower in accordance with Borrower's organizational documents or by a Manager pursuant to a management agreement approved by Lender (the "Management Agreement"), (ii) after Borrower has knowledge of a fifty percent (50%) or more change in



control of the ownership of Manager, Borrower will promptly give Lender notice thereof (a "Manager Control Notice") and (iii) the Management Agreement (or in the case Borrower is acting as Manager, Borrower's right to manage the Property) may be terminated by Lender at any time for cause (including, but not limited to, Manager's gross negligence, misappropriation of funds, willful misconduct or fraud) or at any time following (A) the occurrence of an Event of Default, or (B) the receipt of a Manager Control Notice, or (C) the date upon which the Debt Service Coverage is 1.10:1.0 or less. In the event of any such termination, a substitute managing agent shall be appointed by Borrower, subject to Lender's prior written approval, which may be given or withheld in Lender's sole discretion and which may be conditioned on, inter alia, a letter from each Rating Agency confirming that any rating issued by the Rating Agency in connection with a Securitization will not, as a result of the proposed change of Manager, be downgraded from the then current ratings thereof, qualified or withdrawn. Borrower may from time to time appoint a successor manager to manage the Property with Lender's prior written consent which consent shall not be unreasonably withheld or delayed, provided that any such successor manager shall be a reputable management company which meets the Minimum Manager Credentials and each Rating Agency shall have confirmed in writing that any rating issued by the Rating Agency in connection with a Securitization will not, as a result of the proposed change of Manager, be downgraded from the then current ratings thereof, qualified or withdrawn. Borrower further covenants and agrees that Borrower shall require Manager (or any successor managers) to maintain at all times during the term of the Loan worker's compensation insurance as required by Governmental Authorities.

ARTICLE VIII: MAINTENANCE AND REPAIR

Section 8.01. Maintenance and Repair of the Property; Alterations; Replacement of Equipment. Borrower hereby covenants and agrees:

(a) Borrower shall not (i) desert or abandon the Property, (ii) change the use of the Property or cause or permit the use or occupancy of any part of the Property to be discontinued if such discontinuance or use change would violate any zoning or other law, ordinance or regulation; (iii) consent to or seek any lowering of the zoning classification, or greater zoning restriction affecting the Property; or (iv) take any steps whatsoever to convert the Property, or any portion thereof, to a condominium or cooperative form of ownership.

(b) Borrower shall, at its expense, (i) take good care of the Property including grounds generally, and utility systems and sidewalks, roads, alleys, and curbs therein, and shall keep the same in good, safe and insurable condition and in compliance with all applicable Legal Requirements, (ii) promptly make or cause to be made all repairs to the Property, above grade and below grade, interior and exterior, structural and nonstructural, ordinary and extraordinary, unforeseen and foreseen, and maintain the Property in a manner appropriate for the facility and (iii) not commit or suffer to be committed any waste of the Property or do or suffer to be done anything which will increase the risk of fire or other hazard to the Property or impair the value thereof. Borrower shall keep the sidewalks, vaults, gutters and curbs comprising, or adjacent to, the Property, clean and free from dirt, snow, ice, rubbish and obstructions. All repairs made by Borrower shall be made with first-class materials, in a good and workmanlike manner, shall be equal or better in quality and class to the original work and shall comply with all applicable Legal Requirements and Insurance Requirements. To the extent any of the above obligations are



obligations of tenants under Space Leases or Pad Owners or other Persons under Property Agreements, Borrower may fulfill its obligations hereunder by causing such tenants, Pad Owners or other Persons, as the case may be, to perform their obligations thereunder. As used herein, the terms "repair" and "repairs" shall be deemed to include all necessary replacements.

(c) Borrower shall, except in connection with tenant improvement work under Space Leases entered into in accordance with the terms of this Security Instrument, not demolish, remove, construct, or, except as otherwise expressly provided herein, restore, or alter the Property or any portion thereof which could diminish the value of the Property nor consent to or permit any such demolition, removal, construction, restoration, addition or alteration which would diminish the value of the Property without Lender's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed.

(d) Borrower represents and warrants to Lender that (i) there are no fixtures, machinery, apparatus, tools, equipment or articles of personal property attached or appurtenant to, or located on the Property, except for the Equipment and equipment leased by Borrower for the management, operation or maintenance of the Property in accordance with the Loan Documents; (ii) the Equipment and the leased equipment constitute all of the fixtures, machinery, apparatus, tools, equipment and articles of personal property necessary to the proper operation and maintenance of the Property; and (iii) all of the Equipment is free and clear of all liens, except for the lien of this Security Instrument and the Permitted Encumbrances. All right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals and appurtenances to the Property hereafter acquired by, or released to, Borrower or constructed, assembled or placed by Borrower in the Property, and all changes and substitutions of the security constituted thereby, shall be and, in each such case, without any further mortgage, encumbrance, conveyance, assignment or other act by Lender or Borrower, shall become subject to the lien and security interest of this Security Instrument as fully and completely, and with the same effect, as though now owned by Borrower and specifically described in this Security Instrument, but at any and all times Borrower shall execute and deliver to Lender any documents Lender may reasonably deem necessary or appropriate for the purpose of specifically subjecting the same to the lien and security interest of this Security Instrument.

(e) Notwithstanding the provisions of this Security Instrument to the contrary, Borrower shall have the right, at any time and from time to time, to remove and dispose of Equipment which may have become obsolete or unfit for use or which is no longer useful in the management, operation or maintenance of the Property. Borrower shall promptly replace any such Equipment so disposed of or removed with other Equipment of equal value and utility, free of any security interest or superior title, liens or claims; except that, if replacement of the Equipment so removed or disposed of is not necessary or desirable for the proper management, operation or maintenance of the Property, Borrower shall not be required to replace the same. All such replacements or additional equipment shall be deemed to constitute "Equipment" and shall be covered by the security interest herein granted.



ARTICLE IX: TRANSFER OR ENCUMBRANCE OF THE PROPERTY

Section 9.01. Other Encumbrances. Borrower shall not further encumber or permit the further encumbrance in any manner (whether by grant of a pledge, security interest or otherwise) of the Property or any part thereof or interest therein, including, without limitation, of the Rents therefrom. In addition, Borrower shall not further encumber and shall not permit the further encumbrance in any manner (whether by grant of a pledge, security interest or otherwise) of Borrower or any direct or indirect interest in Borrower except as expressly permitted pursuant to this Security Instrument.

Section 9.02. No Transfer. (a) Borrower acknowledges that Lender has examined and relied on the expertise of Borrower and, if applicable, each General Partner, in owning and operating properties such as the Property in agreeing to make the Loan and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property. Borrower shall not Transfer, nor permit any Transfer, without the prior written consent of Lender, which consent Lender may withhold in its sole and absolute discretion other than pursuant to Space Leases as provided herein. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

(b) Notwithstanding any provision of this Security Instrument to the contrary, no person or entity may, after the date hereof, become an owner of a direct or indirect interest in any entity comprising Borrower, which interest exceeds forty-nine percent (49%), without Lender's written consent in each instance and receipt by Lender of (x) written confirmation that any rating issued by such Rating Agency in connection with the Securitization will not, as a result of the proposed Transfer, be downgraded from the then current ratings thereof, qualified or withdrawn, and (y) a substantive non-consolidation opinion in form and substance acceptable to Lender.

(c) The non-managing members or limited partners of Borrower (or to the extent Borrower is a single member limited liability company, the single member of Borrower) may incur indebtedness and obtain such loan from a third party lender reasonably acceptable to Lender (a "Mezzanine Debt") and its incurrence of such Mezzanine Debt shall not constitute a default or result in payment of any fee to Lender under the Loan Documents so long as: (a) Lender receives not less than forty-five (45) days prior written notice of the incurrence of such Mezzanine Debt, (b) the security granted in connection with such indebtedness consists of a pledge of the non-managing member or limited partner interests of Borrower (or, to the extent Borrower is a single member limited liability company, the single member of Borrower may pledge its interest in and to Borrower) (in no event may any managing member or general partner pledge its interest in and to Borrower), (c) the Property has a debt service coverage ratio on the date the Mezzanine Debt is incurred of not less than 1.15:1.0 for the aggregate sum of the indebtedness secured hereby and the Mezzanine Debt, calculated as the ratio of (x) net operating income as reasonably determined by Lender from the Property for the preceding 12 calendar months, and (y) the principal and interest actually paid under the Loan to Lender with respect to



such period plus the annual principal and interest payable under the proposed Mezzanine Debt, (d) the aggregate sum of the indebtedness secured hereby and the Mezzanine Debt does not exceed a loan-to-value ratio of eighty-eight percent (88%) of the appraised value of the Property pursuant to a current appraisal reasonably acceptable to Lender (provided, however, no new appraisal shall be required if Mezzanine Debt is incurred within nine (9) months of the date hereof), (e) the lender of the Mezzanine Debt is reasonably acceptable to Lender and executes and delivers an intercreditor agreement to Lender in form and substance reasonably acceptable to Lender and such mezzanine lender (the "Intercreditor Agreement"), (f) the Mezzanine Debt is subordinate in time and in right to the indebtedness secured hereby pursuant to the Intercreditor Agreement, (g) the Mezzanine Debt is not cross defaulted or cross collateralized with any other properties or loans other than the loan secured hereby, (h) the terms, conditions and structure of and documentation for the Mezzanine Debt are approved by Lender, which approval shall not be unreasonably withheld or delayed, (i) the Mezzanine Debt has a maturity date that is coterminous with or longer than the term of the loan secured hereby, (j) Lender has received written confirmation from each Rating Agency that the implementation of the Mezzanine Debt will not result in a qualification, downgrade, or withdrawal of the then-current ratings assigned by the Rating Agency to the securities issued in connection with a secondary market transaction, (l) if requested by Lender, Borrower and/or Borrower shall execute and deliver any and all documents, instruments, agreements or opinions as reasonably requested by Lender in connection with the Mezzanine Debt including any amendments or modifications to the Loan Documents in connection with such Mezzanine Debt, (m) the lender of the Mezzanine Debt does not have any recourse against the Borrower and executes and delivers to Lender documentation in form and substance reasonably acceptable to Lender evidencing same, (n) Borrower pays all of Lender's out-of-pocket costs and expenses in connection with the Mezzanine Debt and (o) Borrower satisfies such other conditions as Lender shall require in its reasonable discretion.

Section 9.03. Due on Sale. Lender may declare the Debt immediately due and payable upon any Transfer or further encumbrance without Lender's consent without regard to whether any impairment of its security or any increased risk of default hereunder can be demonstrated. This provision shall apply to every Transfer or further encumbrance of the Property or any part thereof or interest in the Property or in Borrower regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer or further encumbrance of the Property or interest in Borrower.

Section 9.04. Permitted Transfer. (A) Notwithstanding the foregoing provisions of this Article IX, the sale, conveyance or transfer of the Cross-collateralized Properties in their entirety, except as otherwise set forth in Section 9.04(B) (hereinafter, "Sale") shall be permitted hereunder provided that each of the following terms and conditions are satisfied:

(a) no Event of Default is then continuing hereunder or under any of the other Loan Documents;

(b) Lender shall have consented to the Sale, provided, however, such consent shall not be unreasonably withheld and, if the proposed Sale is to occur at any time after a Securitization, each Rating Agency shall have delivered written confirmation that any rating issued by such Rating Agency in connection with the Securitization will not, as a result of the proposed Sale, be downgraded from the then current ratings thereof, qualified or withdrawn;



provided, however, that no request for consent to the Sale will be entertained by Lender if the proposed Sale is to occur within sixty (60) days of any contemplated sale of the Loan by Lender, whether in connection with a Securitization or otherwise;

(c) Borrower gives Lender written notice of the terms of the proposed Sale not less than forty-five (45) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Lender (i) all such information concerning the proposed transferee of the Property (hereinafter, "Buyer") as Lender would require in evaluating an initial extension of credit to a borrower and Lender determines, in its reasonable discretion that the Buyer is acceptable to Lender in all respects and (ii) a non-refundable application fee equal to \$7,500;

(d) Borrower pays Lender, concurrently with the closing of such Sale, a non-refundable assumption fee in an amount equal to one quarter of one percent (.25%) of the then outstanding Loan Amount together with all reasonable out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Lender in connection with the Sale;

(e) Buyer assumes all of the obligations under the Loan Documents and, prior to or concurrently with the closing of such Sale, Buyer executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions as Lender may require;

(f) Borrower and Buyer execute, without any cost or expense to Lender, new financing statements or financing statement amendments and any additional documents reasonably requested by Lender;

(g) Borrower delivers to Lender, without any cost or expense to Lender, such endorsements to Lender's title insurance policy, hazard insurance policy endorsements or certificates and other similar materials as Lender may deem necessary at the time of the Sale, all in form and substance reasonably satisfactory to Lender, including, without limitation, an endorsement or endorsements to Lender's title insurance policy insuring the lien of this Security Instrument, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in subparagraph (e) of this Section, with no additional exceptions added to such policy, and insuring that fee simple title to the Property is vested in Buyer;

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

(i) subject to the provisions of Section 18.32 hereof, such Sale is not construed so as to relieve Borrower of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale, and Borrower executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to



evidence and effectuate the ratification of said personal liability; provided that, upon the closing of such Sale, if Borrower and Buyer have satisfied each of the terms of this Section 9.04, as reasonably determined by Lender, Lender shall release Borrower from all obligations arising after the closing of such Sale. Additionally, if a replacement guarantor acceptable to Lender in its reasonable discretion executes a guaranty identical in substance to the guaranty executed by Guarantor in connection with the Loan (the "Guaranty"), Lender shall release the existing Guarantor from any liabilities under the Guaranty arising after the closing of such Sale;

(i) such Sale is not construed so as to relieve any Guarantor of its obligations under any guaranty or indemnity agreement executed in connection with the Loan and each such Guarantor executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of each such guaranty agreement, provided that if Buyer or a party associated with Buyer approved by Lender in its sole discretion assumes the obligations of the current Guarantor under its guaranty and Buyer or such party associated with Buyer, as applicable, executes, without any cost or expense to Lender, a new guaranty in similar form and substance to the existing guaranty and otherwise satisfactory to Lender, then Lender shall release the current Guarantor from all obligations arising under its guaranty after the closing of such Sale; and

(k) Buyer is a Single Purpose Entity and Lender receives a non-consolidation opinion relating to Buyer from Buyer's counsel, which opinion is in form and substance acceptable to Lender.

(B) Notwithstanding anything to the contrary contained herein, subject to the last sentence of clause (B), Borrower shall have the right to transfer the Property located in Fremont, Indiana (the "Fremont Property") in connection with an assumption by a Buyer who is unaffiliated with Borrower pursuant to Section 9.04(A) of this Security Instrument so long as: (i) subject to clause (viii) below of this Clause (B), Borrower complies with all of the terms and conditions of Section 9.04(A) (other than with respect to Section 9.04(A)(d) and Borrower cooperates with Lender to release the lien of this Security Instrument against the Fremont Property (it being the intent that the Fremont Property to be assumed shall be released from the cross-collateralization pursuant to this Security Instrument and the other Cross-collateralized Mortgages), (ii) after giving such effect to such release, the Debt Service Coverage Ratio (as determined by Lender in its sole discretion) for the Cross-collateralized Properties in the aggregate which will remain subject to the lien of the Cross-Collateralized Mortgages shall not be less than the greater of (x) the Debt Service Coverage Ratio for all of the Cross-collateralized Properties (including the Fremont Property) at the time of the Closing Date and (y) the Debt Service Coverage Ratio for all of the Cross-collateralized Properties (including the Fremont Property) immediately preceding the transfer of the Fremont Property to be released, (iii) the Debt Service Coverage Ratio (as determined by Lender in its sole discretion) for the Fremont Property being transferred and assumed shall not be less than the greater of (x) the Debt Service Coverage Ratio for all of the Cross-collateralized Properties (including the Fremont Property) at the time of the Closing Date and (y) the Debt Service Coverage Ratio for all of the Cross-collateralized Properties (including the Fremont Property) immediately preceding the transfer of the Fremont Property to be released, (iv) after giving effect of such release, the aggregate loan to value ratio for the remaining Cross-collateralized Properties not being assumed by the prospective transferee which will remain subject to the lien of the Cross-collateralized Mortgages



shall not exceed 80% as determined by Lender in its reasonable discretion, (v) the loan-to-value ratio for the Fremont Property being transferred and assumed shall not exceed 80% as determined by Lender in its reasonable discretion (which loan-to-value ratio in clauses (iv) and (v) shall be based upon a then current appraisal in form and substance acceptable to Lender, which appraisal shall be waived if such assumption occurs within six (6) months of the valuation date contained in the appraisal delivered to Lender in connection with the closing of the Loan), (vi) the Borrower shall execute any and all documentation required in connection with the assumption required by Lender in its sole discretion, including any amendments or modifications to this Security Instrument, the other Cross-Collateralized Mortgages and the other Loan Documents, (vii) Borrower defeases the Note in the amount of the Release Premium (as hereinafter defined), which amount shall be applied to partially defease the Note secured by the remaining Cross-collateralized Properties in accordance with Section 1.05 thereof, (viii) Borrower shall pay a fee to Lender of one quarter of one (1/4%) percent of the Allocated Loan Amount relating to the Fremont Property together with all costs and expenses in connection with such assumption, (ix) Borrower shall comply with all requirements of Section 1.05 of the Note with respect to defeasance and (x) Buyer shall execute any and all documentation required by Lender in its sole and absolute discretion including, without limitation, a new note in the amount of the Allocated Loan Amount of the Fremont Property, a deed of trust or mortgage, an assignment of leases and rents, a central account agreement, a rent account agreement, and, Buyer shall cause a guarantor to execute a guaranty agreement, all of which shall be substantially in the form of such documents delivered by Borrower and any guarantor of Borrower in connection herewith. Except as set forth below, (x) no transfer and assumption shall be permitted under this Section 9.04(B) until such time as a defeasance shall be permitted under the Note and (y) Lender shall not approve such assumption if Lender determines that the Fremont Property (including any review of lease rollovers) would not qualify as collateral for a loan encumbered solely by such Fremont Property. For purposes hereof, Release Premium shall mean with respect to the Fremont Property, an amount such that, after giving effect to such release, (i) the Debt Service Coverage Ratio (as defined in this Security Instrument) for the Cross-collateralized Properties not subject to an assumption (the "**Remaining Property**") shall be not less than the greater of (x) the Debt Service Coverage Ratio for the Cross-collateralized Properties (including the Fremont Property) at the time of the closing of the Loan and (y) the Debt Service Coverage Ratio of all Cross-collateralized Properties (including the Fremont Property) immediately prior to the transfer; and (ii) the loan-to-value ratio as determined by Lender for the Remaining Property shall not exceed the lesser of (x) 80% and (y) the loan-to-value ratio as determined by Lender for all of the Cross-collateralized Properties (including the Fremont Property) determined immediately prior to the transfer, which loan-to-value ratio will be based upon a then current appraisal in form and substance acceptable to Lender which appraisal shall be waived if such assumption occurs within six months of the valuation date in the appraisal received by Lender in connection with closing of the Loan.

In connection with the transfer and assumption of only the Fremont Property, if the proposed release occurs prior to the Lockout Expiration Date (as defined in the Note), the Debt shall be prepaid in part by payment of the Release Premium plus an amount equal to the Yield Maintenance Premium (as defined in the Note) based upon such partial paydown in which event the Fremont Property shall be released from the cross collateralization under the Cross-collateralized Mortgages.



ARTICLE X: CERTIFICATES

Section 10.01. Estoppel Certificates. (a) After request by Lender, Borrower, within fifteen (15) days and at its expense, will furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, and the unpaid principal amount of the Note, (ii) the rate of interest of the Note, (iii) the date payments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Debt, and if any are alleged, the nature thereof, (v) that the Note and this Security Instrument have not been modified or if modified, giving particulars of such modification and (vi) to the best of Borrower's knowledge, that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default.

(b) Within fifteen (15) days after written request by Borrower, Lender shall furnish to Borrower a written statement confirming the amount of the Debt, the maturity date of the Note and the date to which interest has been paid.

(c) Borrower shall use all commercially reasonable efforts to obtain estoppel certificates from tenants in form and substance reasonably acceptable to Lender or in form and substance as provided in the applicable Leases, but, provided no Event of Default has occurred and is continuing, in no event shall Borrower be required to deliver estoppel certificates more than twice during any Loan Year.

ARTICLE XI: NOTICES

Section 11.01. Notices. Any notice, demand, statement, request or consent made hereunder shall be in writing and delivered personally or sent to the party to whom the notice, demand or request is being made by Federal Express or other nationally recognized overnight delivery service, as follows and shall be deemed given when delivered personally or one (1) Business Day after being deposited with Federal Express or such other nationally recognized delivery service:

If to Lender: To Lender, at the address first written above,

with a copy to: Winston & Strawn LLP
200 Park Avenue
New York, New York 10166
Attention: Corey A. Tessler, Esq.

If to Borrower: To Borrower, at the address first written above,

with a copy to: Herrick Feinstein LLP
2 Park Avenue
New York, New York 10016
Attention: Sheldon Chanales, Esq.

If to Trustee: To Trustee at the address first written above



or such other address as either Borrower, Trustee or Lender shall hereafter specify by not less than ten (10) days prior written notice as provided herein; provided, however, that notwithstanding any provision of this Article to the contrary, such notice of change of address shall be deemed given only upon actual receipt thereof. Rejection or other refusal to accept or the inability to deliver because of changed addresses of which no notice was given as herein required shall be deemed to be receipt of the notice, demand, statement, request or consent.

ARTICLE XII: INDEMNIFICATION

Section 12.01. Indemnification Covering Property. In addition, and without limitation, to any other provision of this Security Instrument or any other Loan Document, Borrower shall protect, indemnify and save harmless Lender, Trustee and their successors and assigns, and each of their agents, employees, officers, directors, stockholders, partners and members (collectively, "Indemnified Parties") for, from and against any claims, demands, penalties, fines, actual liabilities, settlements, actual damages, actual costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise, whether incurred or imposed within or outside the judicial process, including, without limitation, reasonable attorneys' fees and disbursements imposed upon or incurred by or asserted against any of the Indemnified Parties by reason of (a) ownership of this Security Instrument, the Assignment, the Property or any part thereof or any interest therein or receipt of any Rents; (b) any accident, injury to or death of any person or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, parking areas, streets or ways; (c) any use, nonuse or condition in, on or about, or possession, alteration, repair, operation, maintenance or management of, the Property or any part thereof or on the adjoining sidewalks, curbs, parking areas, streets or ways; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Security Instrument or the Assignment; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (f) any claim by brokers, finders or similar Persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof; (g) any Imposition including, without limitation, any Imposition attributable to the execution, delivery, filing, or recording of any Loan Document, Lease or memorandum thereof; (h) any lien, security interest, or claim arising on or against the Property or any part thereof under any Legal Requirement or any liability asserted against any of the Indemnified Parties with respect thereto; (i) any claim arising out of or in any way relating to any tax or other imposition on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents unless otherwise set forth herein; (j) a Default under Sections 2.02(f) or 2.02(g) hereof, (k) the failure of any Person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with the Loan, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the Loan; or (l) the claims of any lessee or any Person acting through or under any lessee or otherwise arising under or as a consequence of any Lease prior to the time Lender may have taken possession of the Property. Notwithstanding the foregoing provisions of this Section 12.01 to the contrary, Borrower shall have no obligation to indemnify the Indemnified Parties pursuant to this Section 12.01 for liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses relative to the foregoing which result



from Lender's, and its successors' or assigns', willful misconduct or gross negligence. Any amounts payable to Lender by reason of the application of this Section 12.01 shall constitute a part of the Debt secured by this Security Instrument and the other Loan Documents and shall become immediately due and payable and shall bear interest at the Default Rate from the date the liability, obligation, claim, cost or expense is sustained by Lender, as applicable, until paid. The provisions of this Section 12.01 shall survive the termination of this Security Instrument whether by repayment of the Debt, foreclosure or delivery of a deed in lieu thereof, assignment or otherwise. In case any action, suit or proceeding is brought against any of the Indemnified Parties by reason of any occurrence of the type set forth in (a) through (l) above, Borrower shall, at Borrower's expense, resist and defend such action, suit or proceeding or will cause the same to be resisted and defended by counsel at Borrower's expense for the insurer of the liability or by counsel designated by Borrower (unless reasonably disapproved by Lender promptly after Lender has been notified of such counsel); provided, however, that nothing herein shall compromise the right of Lender (or any other Indemnified Party) to appoint its own counsel at Borrower's expense for its defense with respect to any action which, in the reasonable opinion of Lender or such other Indemnified Party, as applicable, presents a conflict or potential conflict between Lender or such other Indemnified Party that would make such separate representation advisable. Any Indemnified Party will give Borrower prompt notice after such Indemnified Party obtains actual knowledge of any potential claim by such Indemnified Party for indemnification hereunder. The Indemnified Parties shall not settle or compromise any action, proceeding or claim as to which it is indemnified hereunder without notice to, and provided that no Event of Default has occurred and is continuing, consultation with, Borrower.

ARTICLE XIII: DEFAULTS

Section 13.01. Events of Default. The Debt shall become immediately due at the option of Lender upon any one or more of the following events ("Event of Default"):

- (a) if the final payment or prepayment premium, if any, due under the Note shall not be paid on Maturity;
- (b) if any monthly payment of interest and/or principal due under the Note (other than the sums described in (a) above) shall not be fully paid on the date upon which the same is due and payable thereunder;
- (c) if payment of any sum (other than the sums described in (a) above or (b) above) required to be paid pursuant to the Note, this Security Instrument or any other Loan Document shall not be paid within seven (7) Business Days after Lender delivers written notice to Borrower that same is due and payable thereunder or hereunder;
- (d) if Borrower, Guarantor or, if Borrower or Guarantor is a partnership, any general partner of Borrower or Guarantor, or, if Borrower or Guarantor is a limited liability company, any member of Borrower or Guarantor, shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower, Guarantor or any such general partner or member;
- (e) if the insurance policies required hereunder are not kept in full force and effect, or if the insurance policies are not assigned and delivered to Lender as herein provided;



(f) if Borrower or Guarantor attempts to assign its rights under this Security Instrument or any other Loan Document or any interest herein or therein, or if any Transfer occurs other than in accordance with the provisions hereof;

(g) if any representation or warranty of Borrower or Guarantor made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or agreement furnished to Lender shall prove false or misleading in any material respect as of the date the representation or warranty was made;

(h) if Borrower, Guarantor or any general partner of Borrower or Guarantor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due;

(i) if a receiver, liquidator or trustee of Borrower, Guarantor or any general partner of Borrower or Guarantor shall be appointed or if Borrower, Guarantor or their respective general partners shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to by, or acquiesced in by, Borrower, Guarantor or their respective general partners or if any proceeding for the dissolution or liquidation of Borrower, Guarantor or their respective general partners shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Guarantor or their respective general partners, as applicable, upon the same not being discharged, stayed or dismissed within sixty (60) days or if Borrower, Guarantor or their respective general partners shall generally not be paying its debts as they become due;

(j) if Borrower shall be in default beyond any notice or grace period, if any, under any other mortgage or deed of trust or deed to secure debt or security agreement covering any part of the Property without regard to its priority relative to this Security Instrument; provided, however, this provision shall not be deemed a waiver of the provisions of Article IX prohibiting further encumbrances affecting the Property or any other provision of this Security Instrument;

(k) if the Property becomes subject (i) to any lien or security interest which is superior to the lien of this Security Instrument, other than a lien for real estate taxes and assessments not due and payable, or (ii) to any mechanic's, materialman's or other lien which is or is asserted to be superior to the lien of this Security Instrument, and such lien shall remain undischarged (by payment, bonding, or otherwise) for ten (10) days unless contested in accordance with the terms hereof;

(l) if Borrower discontinues the operation of the Property or any part thereof for reasons other than repair or restoration arising from a casualty or condemnation for ten (10) days or more;

(m) except as permitted in this Security Instrument, any material alteration, demolition or removal by, on behalf or with the consent of Borrower of any of the Improvements without the prior consent of Lender;

(n) if Borrower consummates a transaction which would cause this Security Instrument or Lender's rights under this Security Instrument, the Note or any other Loan



Document to constitute a non-exempt prohibited transaction under ERISA or result in a violation of a state statute regulating government plans subjecting Lender to liability for a violation of ERISA or a state statute;

(o) if an Event of Default shall occur under any of the other the Cross-collateralized Mortgages;

(p) if Borrower breaches any provision of Article IX or Section 2.02(g) of this Security Instrument; or

(q) if a default shall occur under any of the other terms, covenants or conditions of the Note, this Security Instrument or any other Loan Document, other than as set forth in (a) through (p) above, for ten (10) days after notice from Lender in the case of any default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other default or an additional ninety (90) days if Borrower is diligently and continuously effectuating a cure of a curable non-monetary default, other than as set forth in (a) through (p) above.

Section 13.02. Remedies. (a) Upon the occurrence and during the continuance of any Event of Default, Lender may, in addition to any other rights or remedies available to it hereunder or under any other Loan Document, at law or in equity, take such action, without notice or demand, as it reasonably deems advisable to protect and enforce its rights against Borrower and in and to any Property or any one or more of the Cross-collateralized Properties including, but not limited to, the following actions, each of which may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting any other rights and remedies of Lender hereunder, at law or in equity: (i) declare all or any portion of the unpaid Debt to be immediately due and payable; provided, however, that upon the occurrence of any of the events specified in Section 13.01(i), the entire Debt will be immediately due and payable without notice or demand or any other declaration of the amounts due and payable; or (ii) bring, or instruct Trustee to bring, an action to foreclose this Security Instrument and without applying for a receiver for the Rents, but subject to the rights of the tenants under the Leases, enter into or upon the Property or any part thereof, either personally or by its agents, nominees or attorneys, and dispossess Borrower and its agents and servants therefrom, and thereupon Lender may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat, (B) make alterations, additions, renewals, replacements and improvements to or on the Property or any part thereof, (C) exercise all rights and powers of Borrower with respect to the Property or any part thereof, 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 earnings, revenues, rents, issues, profits and other income of the Property and every part thereof, and (D) apply the receipts from the Property or any part thereof to the payment of the Debt, after deducting therefrom all expenses (including, without limitation, reasonable attorneys' fees and disbursements) reasonably incurred in connection with the aforesaid operations and all amounts necessary to pay the Impositions, insurance and other charges in connection with the Property or any part thereof, as well as just and reasonable compensation for the services of Lender's third-party agents; or (iii) have an appraisal or other valuation of the Property or any part thereof

performed by an Appraiser (and Borrower covenants and agrees it shall cooperate in causing any such valuation or appraisal to be performed) and any cost or expense incurred by Lender in connection therewith shall constitute a portion of the Debt and be secured by this Security Instrument and shall be immediately due and payable to Lender with interest, at the Default Rate, until the date of receipt by Lender; or (iv), sell, or instruct Trustee to sell, the Property or institute, or instruct Trustee to institute, proceedings for the complete foreclosure of this Security Instrument, or take such other action as may be allowed pursuant to Legal Requirements, at law or in equity, for the enforcement of this Security Instrument in which case the Property or any part thereof may be sold for cash or credit in one or more parcels; or (v) with or without entry, and to the extent permitted and pursuant to the procedures provided by applicable Legal Requirements, institute proceedings for the partial foreclosure of this Security Instrument, or take such other action as may be allowed pursuant to Legal Requirements, at law or in equity, for the enforcement of this Security Instrument for the portion of the Debt then due and payable, subject to the lien of this Security Instrument continuing unimpaired and without loss of priority so as to secure the balance of the Debt not then due; or (vi) sell, or instruct Trustee to sell, the Property or any part thereof and any or 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 whole or in parcels, in any order or manner, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, at the discretion of Lender, and in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien on the remaining portion of the Property; or (vii) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained in the Loan Documents, or any of them; or (viii) recover judgment on the Note or any guaranty either before, during or after (or in lieu of) any proceedings for the enforcement of this Security Instrument; or (ix) apply as a matter of strict right, or direct Trustee to apply, ex parte, for the appointment of a custodian, trustee, receiver, keeper, liquidator or conservator of the Property or any part thereof, irrespective of the adequacy of the security for the Debt and without regard to the solvency of Borrower or of any Person liable for the payment of the Debt, to which appointment Borrower does hereby consent and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Rent with respect to any of the Property pursuant to this Security Instrument or the Assignment; or (x) require, at Lender's option, Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Property occupied by Borrower and may require Borrower to vacate and surrender possession to Lender of the Property or to such receiver and Borrower may be evicted by summary proceedings or otherwise; or (xi) without notice to Borrower (A) apply all or any portion of the cash collateral in any Sub-Account and Escrow Account, including any interest and/or earnings therein, to carry out the obligations of Borrower under this Security Instrument and the other Loan Documents, to protect and preserve the Property and for any other purpose permitted under this Security Instrument and the other Loan Documents and/or (B) have all or any portion of such cash collateral immediately paid to Lender to be applied against the Debt in the order and priority set forth in the Note; or (xii) pursue any or all such other rights or remedies as Lender may have under applicable law or in equity; provided, however, that the provisions of this Section 13.02(a) shall not be construed to extend or modify any of the notice requirements or



grace periods provided for hereunder or under any of the other Loan Documents. Borrower hereby waives, to the fullest extent permitted by Legal Requirements, any defense Borrower might otherwise raise or have by the failure to make any tenants parties defendant to a foreclosure proceeding and to foreclose their rights in any proceeding instituted by Lender.

(b) Any time after an Event of Default Lender (or the Trustee, at the request of Lender), shall have the power, to the extent permitted by applicable law, to sell the Property or any part thereof at public auction, in such manner, at such time and place, upon such terms and conditions, and upon such public notice as Lender may deem best for the interest of Lender, or as may be required or permitted by applicable law, consisting of advertisement (if required by law) in a newspaper of general circulation in the jurisdiction and for such period as applicable law may require and at such other times and under the power of sale herein granted or by such other methods, if any, as may be required or permitted by law to convey the Property or portions thereof in one or more sales in fee simple by Trustee's deed to and at the cost of the purchaser, who shall not be liable to see to the application of the purchase money. The proceeds or avails of any sale made under or by virtue of this Section 13.02, together with any other sums which then may be held by Lender (or the Trustee) under this Security Instrument, whether under the provisions of this Section 13.02 or otherwise, shall, to the extent permitted by applicable law, be applied as follows:

First: To the payment of the third-party costs and expenses reasonably incurred in connection with any such sale and to advances, fees and expenses, including, without limitation, title service guaranty fees, reasonable fees and expenses of Lender's and Trustee's legal counsel as applicable, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances reasonably made or incurred by Lender under this Security Instrument, together with interest as provided herein on all such advances made by Lender, and all Impositions, except any Impositions or other charges subject to which the Property shall have been sold;

Second: To the payment of the whole amount then due, owing and unpaid under the Note for principal and interest thereon, with interest on such unpaid principal at the Default Rate from the date of the occurrence of the earliest Event of Default that formed a basis for such sale until the same is paid;

Third: To the payment of any other portion of the Debt required to be paid by Borrower pursuant to any provision of this Security Instrument, the Note, or any of the other Loan Documents; and

Fourth: The surplus, if any, to Borrower or such other Persons as may be legally entitled thereto, unless otherwise required by Legal Requirements.

Lender (or the Trustee, as applicable) and any receiver or custodian of the Property or any part thereof shall be liable to account for only those rents, issues, proceeds and profits actually received by it.

(c) Lender may adjourn from time to time any sale by it to be made under or by virtue of this Security Instrument by announcement at the time and place appointed for such sale



or for such adjourned sale or sales and, except as otherwise provided by any applicable provision of Legal Requirements, Lender or Trustee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Lender (or the Trustee) under or by virtue of this Section 13.02, Lender or Trustee, as applicable, or any officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, granting, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Lender is hereby irrevocably appointed the true and lawful attorney-in-fact of Borrower (coupled with an interest), in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold pursuant to this Section 13.02 and for that purpose Lender (or the Trustee) may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more Persons with like power, Borrower hereby ratifying and confirming all that its said attorney-in-fact or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Borrower, if so requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to Lender, or to such purchaser or purchasers all such instruments as may be advisable, in the sole judgment of Lender, for such purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 13.02, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the property and rights so sold, and shall, to the fullest extent permitted under Legal Requirements, be a perpetual bar, both at law and in equity against Borrower and against any and all Persons claiming or who may claim the same, or any part thereof, from, through or under Borrower.

(e) In the event of any sale made under or by virtue of this Section 13.02 (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or a judgment or decree of foreclosure and sale), the entire Debt immediately thereupon shall, anything in the Loan Documents to the contrary notwithstanding, become due and payable.

(f) Upon any sale made under or by virtue of this Section 13.02 (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or a judgment or decree of foreclosure and sale), Lender may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and the costs of the action.

(g) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Property or any part thereof or upon any other property of Borrower shall release the lien of this Security Instrument upon the Property or any part thereof, or any liens, rights, powers or remedies of Lender hereunder, but such liens, rights, powers and remedies of Lender shall continue unimpaired until all amounts due under the Note, this Security Instrument and the other Loan Documents are paid in full.



(h) Upon the exercise by Lender (or the Trustee at the request of Lender) of any power, right, privilege, or remedy pursuant to this Security Instrument which requires any consent, approval, registration, qualification, or authorization of any Governmental Authority, Borrower agrees to execute and deliver, or will cause the execution and delivery of, all applications, certificates, instruments, assignments and other documents and papers that Lender or any purchaser of the Property may be required to obtain for such governmental consent, approval, registration, qualification, or authorization and Lender is hereby irrevocably appointed the true and lawful attorney-in-fact of Borrower (coupled with an interest), in its name and stead, to execute all such applications, certificates, instruments, assignments and other documents and papers.

Section 13.03. Payment of Debt After Default. If, following the occurrence of any Event of Default, Borrower shall tender payment of an amount sufficient to satisfy the Debt in whole or in part at any time prior to a foreclosure sale of the Property, and if at the time of such tender prepayment of the principal balance of the Note is not permitted by the Note or this Security Instrument, Borrower shall, in addition to the entire Debt, also pay to Lender all amounts due Lender under Section 1.5(b) of the Note. If at the time of such tender, prepayment of the principal balance of the Note is permitted, such tender by Borrower shall be deemed to be a voluntary prepayment of the principal balance of the Note and Borrower shall, in addition to the entire Debt, also pay to Lender the applicable prepayment consideration specified in the Note and this Security Instrument.

Section 13.04. Possession of the Property. Upon the occurrence of any Event of Default hereunder and the acceleration of the Debt or any portion thereof, Borrower, if an occupant of the Property or any part thereof, upon demand of Lender, shall immediately surrender possession of the Property (or the portion thereof so occupied) to Lender, and if Borrower is permitted to remain in possession, the possession shall be as a month-to-month tenant of Lender and, on demand, Borrower shall pay to Lender monthly, in advance, a reasonable rental for the space so occupied and in default thereof Borrower may be dispossessed. The covenants herein contained may be enforced by a receiver of the Property or any part thereof. Nothing in this Section 13.04 shall be deemed to be a waiver of the provisions of this Security Instrument making the Transfer of the Property or any part thereof without Lender's prior written consent an Event of Default.

Section 13.05. Interest After Default. If any amount due under the Note, this Security Instrument or any of the other Loan Documents is not paid within any applicable notice and grace period after same is due, whether such date is the stated due date, any accelerated due date or any other date or at any other time specified under any of the terms hereof or thereof, then, in such event, Borrower shall pay interest on the amount not so paid from and after the date on which such amount first becomes due at the Default Rate; and such interest shall be due and payable at such rate until the earlier of the cure of all Events of Default or the payment of the entire amount due to Lender, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclose this Security Instrument. All unpaid and accrued interest shall be secured by this Security Instrument as part of the Debt. Nothing in this Section 13.05 or in any other provision of this Security Instrument shall constitute an extension of the time for payment of the Debt.



Section 13.06. Borrower's Actions After Default. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by Lender to obtain judgment for the Debt, or of any other nature in aid of the enforcement of the Loan Documents, Borrower will (a) after receipt of notice of the institution of any such action, waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding, and (b) if required by Lender, consent to the appointment of a receiver or receivers of the Property or any part thereof and of all the earnings, revenues, rents, issues, profits and income thereof.

Section 13.07. Control by Lender After Default. Notwithstanding the appointment of any custodian, receiver, liquidator or trustee of Borrower, or of any of its property, or of the Property or any part thereof, to the extent permitted by Legal Requirements, Lender shall be entitled to obtain possession and control of all property now and hereafter covered by this Security Instrument and the Assignment following the occurrence of an Event of Default in accordance with the terms hereof.

Section 13.08. Right to Cure Defaults. (a) Upon the occurrence of any Event of Default, Lender or its agents 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 in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender and its agents are authorized to enter upon the Property or any part thereof for such purposes, or appear in, defend, or bring any action or proceedings to protect Lender's interest in the Property or any part thereof or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 13.08, shall constitute a portion of the Debt and shall be immediately due and payable to Lender upon demand. All such costs and expenses incurred by Lender or its agents in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period from the date so demanded to the date of payment to Lender. All such costs and expenses incurred by Lender or its agents together with interest thereon calculated at the above rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument.

(b) If Lender makes any payment or advance that Lender is authorized by this Security Instrument to make in the place and stead of Borrower (i) relating to the Impositions or tax liens asserted against the Property, Lender may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any of the Impositions or the tax liens or claims thereof; (ii) relating to any apparent or threatened adverse title, lien, claim of lien, encumbrance, claim or charge, Lender will be the sole judge of the legality or validity of same; or (iii) relating to any other purpose authorized by this Security Instrument but not enumerated in this Section 13.08, Lender may do so whenever, in its judgment and discretion, the payment or advance seems necessary or desirable to protect the Property and the full security interest intended to be created by this Security Instrument. In connection with any payment or advance made pursuant to this Section 13.08, Lender has the option and is authorized, but in no event shall be obligated, to obtain a continuation report of title prepared by a title insurance company. The payments and the advances made by Lender pursuant to this Section 13.08 and the cost and expenses of said



title report will be due and payable by Borrower on demand, together with interest at the Default Rate, and will be secured by this Security Instrument.

Section 13.09. Late Payment Charge. If any portion of the Debt is not paid in full on or before the day on which it is due and payable hereunder Borrower shall pay to Lender an amount equal to five percent (5%) of such unpaid portion of the Debt ("Late Charge") to defray the expense incurred by Lender in handling and processing such delinquent payment, and such amount shall constitute a part of the Debt; provided, that no late charge shall be due and payable if Borrower fails to repay the Loan evidenced hereby upon the Maturity Date (whether by acceleration or otherwise).

Section 13.10. Recovery of Sums Required to Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due and payable hereunder (after the expiration of any grace period or the giving of any notice herein provided, if any), without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 13.11. Marshalling and Other Matters. Borrower hereby waives, to the fullest extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement, redemption (both equitable and statutory) and homestead laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Nothing herein or in any other Loan Document shall be construed as requiring Lender to resort to any particular Cross-collateralized Property for the satisfaction of the Debt in preference or priority to any other Cross-collateralized Property but Lender may seek satisfaction out of all the Cross-collateralized Properties or any part thereof in its absolute discretion. 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, whether equitable or statutory and on behalf of each and every Person acquiring any interest in or title to the Property or any part thereof subsequent to the date of this Security Instrument and on behalf of all Persons to the fullest extent permitted by applicable law.

Section 13.12. Tax Reduction Proceedings. After an Event of Default, Borrower shall be deemed to have appointed Lender as its attorney-in-fact to seek a reduction or reductions in the assessed valuation of the Property for real property tax purposes or for any other purpose and to prosecute any action or proceeding in connection therewith. This power, being coupled with an interest, shall be irrevocable for so long as any part of the Debt remains unpaid and any Event of Default shall be continuing.

Section 13.13. General Provisions Regarding Remedies.

(a) Right to Terminate Proceedings. Lender or Trustee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in Section 13.02 at any time before the conclusion thereof, as determined in Lender's sole discretion and without prejudice to Lender or Trustee.



(b) No Waiver or Release. The failure of Lender or Trustee to exercise any right, remedy or option provided in the Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation contained in the Loan Documents. No acceptance by Lender of any payment after the occurrence of an Event of Default and no payment by Lender of any payment or obligation for which Borrower is liable hereunder shall be deemed to waive or cure any Event of Default. No sale of all or any portion of the Property, no forbearance on the part of Lender, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Lender to Borrower or any other Person, shall operate to release or in any manner affect the interest of Lender in the Property or the liability of Borrower to pay the Debt. No waiver by Lender shall be effective unless it is in writing and then only to the extent specifically stated.

(c) No Impairment; No Releases. The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Lender may grant with respect to any of the Debt; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant with respect to the Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

(d) Effect on Judgment. No recovery of any judgment by Lender and no levy of an execution under any judgment upon any Property or any portion thereof shall affect in any manner or to any extent the lien of the other Cross-collateralized Mortgages upon the remaining Cross-collateralized Properties or any portion thereof, or any rights, powers or remedies of Lender hereunder or thereunder. Such lien, rights, powers and remedies of Lender shall continue unimpaired as before.

ARTICLE XIV: COMPLIANCE WITH REQUIREMENTS

Section 14.01. Compliance with Legal Requirements. (a) Borrower shall promptly comply with all present and future Legal Requirements, foreseen and unforeseen, ordinary and extraordinary, whether requiring structural or nonstructural repairs or alterations including, without limitation, all zoning, subdivision, building, safety and environmental protection, land use and development Legal Requirements, all Legal Requirements which may be applicable to the curbs adjoining the Property or to the use or manner of use thereof, and all rent control, rent stabilization and all other similar Legal Requirements relating to rents charged and/or collected in connection with the Leases. Borrower represents and warrants that the Property to the best of Borrower's knowledge is in compliance in all material respects with all Legal Requirements as of the date hereof, no notes or notices of violations of any Legal Requirements have been entered or received by Borrower and there is no basis for the entering of such notes or notices.

(b) Borrower shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Lender, the validity or application of any Legal Requirement and to suspend compliance therewith if permitted under applicable Legal Requirements, provided (i) failure to comply therewith may not subject Lender to any civil or criminal liability, (ii) prior to and during such contest, Borrower shall furnish to Lender security reasonably satisfactory to Lender, in its discretion, against loss or injury by reason of such contest or non-compliance with such Legal Requirement, (iii) no Default or Event of



Default shall exist during such proceedings and such contest shall not otherwise violate any of the provisions of any of the Loan Documents, (iv) such contest shall not (unless Borrower shall comply with the provisions of clause (ii) of this Section 14.01(b)) subject the Property to any lien or encumbrance the enforcement of which is not suspended or otherwise affect the priority of the lien of this Security Instrument; (v) such contest shall not affect the ownership, use or occupancy of the Property; (vi) the Property or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrower; (vii) Borrower shall give Lender prompt notice of the commencement of such proceedings and, upon request by Lender, notice of the status of such proceedings and/or confirmation of the continuing satisfaction of the conditions set forth in clauses (i) - (vi) of this Section 14.01(b); and (viii) upon a final determination of such proceeding, Borrower shall take all steps necessary to comply with any requirements arising therefrom.

(c) Borrower shall at all times comply with all applicable Legal Requirements with respect to the construction, use and maintenance of any vaults adjacent to the Property. If by reason of the failure to pay taxes, assessments, charges, permit fees, franchise taxes or levies of any kind or nature, the continued use of the vaults adjacent to Property or any part thereof is discontinued, Borrower nevertheless shall, with respect to any vaults which may be necessary for the continued use of the Property, take such steps (including the making of any payment) to ensure the continued use of vaults or replacements.

Section 14.02. Compliance with Recorded Documents; No Future Grants. Borrower shall promptly perform and observe or cause to be performed and observed, all of the terms, covenants and conditions of all Property Agreements and all things necessary to preserve intact and unimpaired any and all appurtenances or other interests or rights affecting the Property.

ARTICLE XV: PREPAYMENT

Section 15.01. Prepayment. Except as set forth in Section 1.5 of the Note, no prepayment of the Debt may be made in whole or in part.

ARTICLE XVI: ENVIRONMENTAL COMPLIANCE

Section 16.01. Covenants, Representations and Warranties. (a) Borrower has not, at any time, and, to Borrower's best knowledge after due inquiry and investigation, except as set forth in the Environmental Report, no other Person has at any time, handled, buried, stored, retained, refined, transported, processed, manufactured, generated, produced, spilled, allowed to seep, leak, escape or leach, or pumped, poured, emitted, emptied, discharged, injected, dumped, transferred or otherwise disposed of or dealt with Hazardous Materials on, to or from the Premises or any other real property owned and/or occupied by Borrower (other than in compliance with all Legal Requirements), and Borrower does not intend to and shall not use the Property or any part thereof or any such other real property for the purpose of handling, burying, storing, retaining, refining, transporting, processing, manufacturing, generating, producing, spilling, seeping, leaking, escaping, leaching, pumping, pouring, emitting, emptying, discharging, injecting, dumping, transferring or otherwise disposing of or dealing with Hazardous Materials, except for use and storage for use of heating oil, cleaning fluids, pesticides and other substances customarily used in the operation of properties that are being used for the



same purposes as the Property is presently being used, provided such use and/or storage for use is in compliance with the requirements hereof and the other Loan Documents and does not give rise to liability under applicable Legal Requirements or Environmental Statutes or be the basis for a lien against the Property or any part thereof. In addition, without limitation to the foregoing provisions, Borrower represents and warrants that, to the best of its knowledge, after due inquiry and investigation, except as previously disclosed in writing to Lender or in the Environmental Report or Engineering Report, there is no asbestos in, on, over, or under all or any portion of the fire-proofing or any other portion of the Property.

(b) Borrower, after due inquiry and investigation, knows of no seepage, leak, escape, leach, discharge, injection, release, emission, spill, pumping, pouring, emptying or dumping of Hazardous Materials into waters on, under or adjacent to the Property or any part thereof or any other real property owned and/or occupied by Borrower, or onto lands from which such Hazardous Materials might seep, flow or drain into such waters, except as disclosed in the Environmental Report.

(c) Borrower shall not permit any Hazardous Materials to be handled, buried, stored, retained, refined, transported, processed, manufactured, generated, produced, spilled, allowed to seep, leak, escape or leach, or to be pumped, poured, emitted, emptied, discharged, injected, dumped, transferred or otherwise disposed of or dealt with on, under, to or from the Property or any portion thereof at any time, except for use and storage for use of heating oil, ordinary cleaning fluids, pesticides and other substances customarily used in the operation of properties that are being used for the same purposes as the Property is presently being used, provided such use and/or storage for use is in compliance with the requirements hereof and the other Loan Documents and does not give rise to liability under applicable Legal Requirements or be the basis for a lien against the Property or any part thereof.

(d) Borrower represents and warrants that no actions, suits, or proceedings have been commenced, or are pending, or to the best knowledge of Borrower, are threatened with respect to any Legal Requirement governing the use, manufacture, storage, treatment, transportation, or processing of Hazardous Materials with respect to the Property or any part thereof. Borrower has received no notice of, and, except as disclosed in the Environmental Report, after due inquiry, has no knowledge of any fact, condition, occurrence or circumstance which with notice or passage of time or both would give rise to a claim under or pursuant to any Environmental Statute pertaining to Hazardous Materials on, in, under or originating from the Property or any part thereof or any other real property owned or occupied by Borrower or arising out of the conduct of Borrower, including, without limitation, pursuant to any Environmental Statute.

(e) Borrower has not waived any Person's liability with regard to Hazardous Materials in, on, under or around the Property, nor has Borrower retained or assumed, contractually or by operation of law, any other Person's liability relative to Hazardous Materials or any claim, action or proceeding relating thereto.

(f) In the event that there shall be filed a lien against the Property or any part thereof pursuant to any Environmental Statute pertaining to Hazardous Materials, Borrower shall, within sixty (60) days or, in the event that the applicable Governmental Authority has commenced steps to cause the Premises or any part thereof to be sold pursuant to the lien, within fifteen (15) days,



from the date that Borrower receives notice of such lien, either (i) pay the claim and remove the lien from the Property, or (ii) furnish (A) a bond satisfactory to Lender in the amount of the claim out of which the lien arises, (B) a cash deposit in the amount of the claim out of which the lien arises, or (C) other security reasonably satisfactory to Lender in an amount sufficient to discharge the claim out of which the lien arises.

(g) Borrower represents and warrants that (i) except as disclosed in the Environmental Report, Borrower has no knowledge of any violation of any Environmental Statute or any Environmental Problem in connection with the Property, nor has Borrower been requested or required by any Governmental Authority to perform any remedial activity or other responsive action in connection with any Environmental Problem and (ii) neither the Property nor any other property owned by Borrower is included or, to Borrower's best knowledge, after due inquiry and investigation, proposed for inclusion on the National Priorities List issued pursuant to CERCLA by the United States Environmental Protection Agency (the "EPA") or on the inventory of other potential "Problem" sites issued by the EPA and has not otherwise been identified by the EPA as a potential CERCLA site or included or, to Borrower's knowledge, after due inquiry and investigation, proposed for inclusion on any list or inventory issued pursuant to any other Environmental Statute, if any, or issued by any other Governmental Authority. Borrower covenants that Borrower will comply with all Environmental Statutes affecting or imposed upon Borrower or the Property.

(h) Borrower covenants that it shall promptly notify Lender of the presence and/or release of any Hazardous Materials and of any request for information or any inspection of the Property or any part thereof by any Governmental Authority with respect to any Hazardous Materials and provide Lender with copies of such request and any response to any such request or inspection. Borrower covenants that it shall, in compliance with applicable Legal Requirements, conduct and complete all investigations, studies, sampling and testing (and promptly shall provide Lender with copies of any such studies and the results of any such test) and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials in, on, over, under, from or affecting the Property or any part thereof in accordance with all such Legal Requirements applicable to the Property or any part thereof to the satisfaction of Lender.

(i) Following the occurrence of an Event of Default that is continuing hereunder, and without regard to whether Lender shall have taken possession of the Property or a receiver has been requested or appointed or any other right or remedy of Lender has or may be exercised hereunder or under any other Loan Document, Lender shall have the right (but no obligation) to conduct such investigations, studies, sampling and/or testing of the Property or any part thereof as Lender may, in its discretion, determine to conduct, relative to Hazardous Materials. All costs and expenses incurred in connection therewith including, without limitation, consultants' fees and disbursements and laboratory fees, shall constitute a part of the Debt and shall, upon demand by Lender, be immediately due and payable and shall bear interest at the Default Rate from the date so demanded by Lender until reimbursed. Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all such investigations, studies, samplings and/or testings including, without limitation, providing all relevant information and making knowledgeable people available for interviews.



(j) Borrower represents and warrants that, except as disclosed in the Environmental Report, all paint and painted surfaces existing within the interior or on the exterior of the Improvements are not flaking, peeling, cracking, blistering, or chipping, and do not contain lead or are maintained in a condition that prevents exposure of young children to lead-based paint, as of the date hereof, and that the current inspections, operation, and maintenance program at the Property with respect to lead-based paint is consistent with FNMA guidelines and sufficient to ensure that all painted surfaces within the Property shall be maintained in a condition that prevents exposure of tenants to lead-based paint. To Borrower's knowledge, there have been no claims for adverse health effects from exposure on the Property to lead-based paint or requests for the investigation, assessment or removal of lead-based paint at the Property.

(k) Borrower represents and warrants that except in accordance with all applicable Environmental Statutes and as disclosed in the Environmental Report, (i) no underground treatment or storage tanks or pumps or water, gas, or oil wells are or have been located about the Property, (ii) no PCBs or transformers, capacitors, ballasts or other equipment that contain dielectric fluid containing PCBs are located about the Property, (iii) no insulating material containing urea formaldehyde is located about the Property and (iv) no asbestos-containing material is located about the Property.

Section 16.02. Environmental Indemnification. Borrower shall defend, indemnify and hold harmless the Indemnified Parties for, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise, whether incurred or imposed within or outside the judicial process, including, without limitation, reasonable attorneys' and consultants' fees and disbursements and investigations and laboratory fees arising out of, or in any way related to any Environmental Problem, including without limitation:

(a) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release or threat of release of any Hazardous Materials in, on, over, under, from or affecting the Property or any part thereof whether or not disclosed by the Environmental Report;

(b) any personal injury (including wrongful death, disease or other health condition related to or caused by, in whole or in part, any Hazardous Materials) or property damage (real or personal) arising out of or related to any Hazardous Materials in, on, over, under, from or affecting the Property or any part thereof whether or not disclosed by the Environmental Report;

(c) any action, suit or proceeding brought or threatened, settlement reached, or order of any Governmental Authority relating to such Hazardous Material whether or not disclosed by the Environmental Report; and/or

(d) any violation of the provisions, covenants, representations or warranties of Section 16.01 hereof or of any Legal Requirement which is based on or in any way related to any Hazardous Materials in, on, over, under, from or affecting the Property or any part thereof including, without limitation, the cost of any work performed and materials furnished in order to comply therewith whether or not disclosed by the Environmental Report.



Notwithstanding the foregoing provisions of this Section 16.02 to the contrary, Borrower shall have no obligation to indemnify Lender for liabilities, claims, damages, penalties, causes of action, costs and expenses relative to the foregoing which result directly from Lender's willful misconduct or gross negligence. Any amounts payable to Lender by reason of the application of this Section 16.02 shall be secured by this Security Instrument and shall, upon demand by Lender, become immediately due and payable and shall bear interest at the Default Rate from the date so demanded by Lender until paid.

This indemnification shall survive the termination of this Security Instrument whether by repayment of the Debt, foreclosure or deed in lieu thereof, assignment, or otherwise. The indemnity provided for in this Section 16.02 shall not be included in any exculpation of Borrower or its principals from personal liability provided for in this Security Instrument or in any of the other Loan Documents. Nothing in this Section 16.02 shall be deemed to deprive Lender of any rights or remedies otherwise available to Lender, including, without limitation, those rights and remedies provided elsewhere in this Security Instrument or the other Loan Documents. The foregoing indemnity shall specifically not include any such costs relating to Hazardous Materials which are initially placed on, in or under any of the Properties after foreclosure or other taking of title of such Properties by Lender or its successors or assigns.

ARTICLE XVII: ASSIGNMENTS

Section 17.01. Participations and Assignments. Lender shall have the right to assign this Security Instrument and/or any of the Loan Documents, and to transfer, assign or sell participations and subparticipations (including blind or undisclosed participations and subparticipations) in the Loan Documents and the obligations hereunder to any Person; provided, however, that no such participation shall increase, decrease or otherwise affect either Borrower's or Lender's obligations under this Security Instrument or the other Loan Documents or increase the Debt.

ARTICLE XVIII: MISCELLANEOUS

Section 18.01. Right of Entry. Lender and its agents shall have the right to enter and inspect the Property or any part thereof at all reasonable times, and, except in the event of an emergency, upon reasonable notice and to inspect Borrower's books and records and to make abstracts and reproductions thereof.

Section 18.02. Cumulative Rights. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled, subject to the terms of this Security Instrument, to every right and remedy now or hereafter afforded by law.

Section 18.03. Liability. If Borrower consists of more than one Person, the obligations and liabilities of each such Person hereunder shall be joint and several.

Section 18.04. Exhibits Incorporated. The information set forth on the cover hereof, and the Exhibits annexed hereto, are hereby incorporated herein as a part of this Security Instrument with the same effect as if set forth in the body hereof.

Section 18.05. Severable Provisions. If any term, covenant or condition of the Loan Documents including, without limitation, the Note or this Security Instrument, is held to be invalid, illegal or unenforceable in any respect, such Loan Document shall be construed without such provision.

Section 18.06. Duplicate Originals. This Security Instrument may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

Section 18.07. No Oral Change. The terms of this Security Instrument, together with the terms of the Note and the other Loan Documents, constitute the entire understanding and agreement of the parties hereto and supersede all prior agreements, understandings and negotiations between Borrower and Lender with respect to the Loan. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any 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 18.08. Waiver of Counterclaim, Etc. BORROWER HEREBY WAIVES THE RIGHT TO ASSERT A COUNTERCLAIM, OTHER THAN A COMPULSORY COUNTERCLAIM, IN ANY ACTION OR PROCEEDING BROUGHT AGAINST IT BY LENDER OR ITS AGENTS, AND WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER OR IN ANY COUNTERCLAIM BORROWER MAY BE PERMITTED TO ASSERT HEREUNDER OR WHICH MAY BE ASSERTED BY LENDER OR ITS AGENTS, AGAINST BORROWER, OR IN ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS SECURITY INSTRUMENT OR THE DEBT.

Section 18.09. Headings; Construction of Documents; etc. The table of contents, headings and captions of various paragraphs of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof. Borrower acknowledges that it was represented by competent counsel in connection with the negotiation and drafting of this Security Instrument and the other Loan Documents and that neither this Security Instrument nor the other Loan Documents shall be subject to the principle of construing the meaning against the Person who drafted same.

Section 18.10. Sole Discretion of Lender. Whenever Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Lender and shall be final and conclusive, except as may be otherwise specifically provided herein.



Section 18.11. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

Section 18.12. Covenants Run with the Land. All of the grants, covenants, terms, provisions and conditions herein shall run with the Premises, shall be binding upon Borrower and shall inure to the benefit of Lender, subsequent holders of this Security Instrument and their successors and assigns. Without limitation to any provision hereof, the term "Borrower" shall include and refer to the borrower named herein, any subsequent owner of the Property, and its respective heirs, executors, legal representatives, successors and assigns. The representations, warranties and agreements contained in this Security Instrument and the other Loan Documents are intended solely for the benefit of the parties hereto, shall confer no rights hereunder, whether legal or equitable, in any other Person and no other Person shall be entitled to rely thereon.

Section 18.13. Applicable Law. THIS SECURITY INSTRUMENT WAS NEGOTIATED IN NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE WERE DISBURSED FROM NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PREMISES IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS, AND THE DEBT OR OBLIGATIONS ARISING HEREUNDER.

Section 18.14. Security Agreement. (a) (i) This Security Instrument is both a real property mortgage, deed to secure debt or deed of trust, as applicable, and a "security agreement" within the meaning of the UCC. 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, and Borrower hereby grants to Lender a security interest in all portions of the Property constituting personal property or fixtures under the UCC. This Security Instrument is filed as a fixture filing and covers goods which are or are to become fixtures on the Property. Borrower by executing and delivering this Security Instrument has granted to Lender, as security for the Debt, a security interest in the Property to the full extent that the Property may be subject to the UCC (said portion of the Property so subject to the UCC being called in this Section 18.14 the



"Collateral"). If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender following an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any disposition pursuant to the UCC of so much of the Collateral as may constitute personal property shall be considered commercially reasonable if made pursuant to a public sale which is advertised at least twice in a newspaper in which sheriff's sales are advertised in the county where the Premises is located. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral given to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. It is not necessary that the Collateral be present at any disposition thereof. Lender shall have no obligation to clean-up or otherwise prepare the Collateral for disposition.

(ii) The mention in a financing statement filed in the records normally pertaining to personal property of any portion of the Property shall not derogate from or impair in any manner the intention of this Security Instrument. Lender hereby declares that all items of Collateral are part of the real property encumbered hereby to the fullest extent permitted by law, regardless of whether any such item is physically attached to the Improvements or whether serial numbers are used for the better identification of certain items. Specifically, the mention in any such financing statement of any items included in the Property shall not be construed to alter, impair or impugn any rights of Lender as determined by this Security Instrument or the priority of Lender's lien upon and security interest in the Property in the event that notice of Lender's priority of interest as to any portion of the Property is required to be filed in accordance with the UCC to be effective against or take priority over the interest of any particular class of persons, including the federal government or any subdivision or instrumentality thereof. No portion of the Collateral constitutes or is the proceeds of "Farm Products", as defined in the UCC.

(iii) If Borrower is at any time a beneficiary under a letter of credit now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (A) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (B) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case, that the proceeds of any drawing under the letter to credit are to be applied as provided in this Security Instrument.



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(iv) Borrower and Lender acknowledge that for the purposes of Article 9 of the UCC, the law of the State of New York shall be the law of the jurisdiction of the bank in which the Central Account is located.

(v) Lender may comply with any applicable Legal Requirements in connection with the disposition of the Collateral, and Lender's compliance therewith will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(vi) Lender may sell the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title, possession, quiet enjoyment or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(vii) If Lender sells any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of Borrower. In the event the purchaser of the Collateral fails to fully pay for the Collateral, Lender may resell the Collateral and Borrower will be credited with the proceeds of such sale.

(b) Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Lender, as secured party, or, to the extent permitted under the UCC, unsigned, in connection with the Collateral covered by this Security Instrument.

Section 18.15. Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property in its own name or, if required by Legal Requirements or, if in Lender's reasonable judgment, it is necessary, in the name and on behalf of Borrower, which Lender believes will adversely affect the Property or this Security Instrument and to bring any action or proceedings, in its name or in the name and on behalf of Borrower, which Lender, in its reasonable discretion, decides should be brought to protect its interest in the Property.

Section 18.16. Usury Laws. This Security Instrument and the Note are subject to the express condition, and it is the expressed intent of the parties, that at no time shall Borrower be obligated or required to pay interest on the principal balance due under the Note at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of such maximum rate, such rate of interest shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. No application to the principal balance of the Note pursuant to this Section 18.16 shall give rise to any requirement to pay any prepayment fee or charge of any kind due hereunder, if any.

Section 18.17. Remedies of Borrower. In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Security Instrument or the Loan Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.

Section 18.18. Offsets, Counterclaims and Defenses. Any assignee of this Security Instrument, the Assignment and the Note shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to the Note, the Assignment or this Security Instrument which Borrower may otherwise have against any assignor of this Security Instrument, the Assignment and the Note and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon this Security Instrument, the Assignment or the Note and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 18.19. No Merger. If Borrower's and Lender's estates become the same including, without limitation, upon the delivery of a deed by Borrower in lieu of a foreclosure sale, or upon a purchase of the Property by Lender in a foreclosure sale, this Security Instrument and the lien created hereby shall not be destroyed or terminated by the application of the doctrine of merger and in such event Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates; and, as a consequence thereof, upon the foreclosure of the lien created by this Security Instrument, any Leases or subleases then existing and created by Borrower shall not be destroyed or terminated by application of the law of merger or as a result of such foreclosure unless Lender or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any Lease or sublease unless Lender or such purchaser shall give written notice thereof to such lessee or sublessee.

Section 18.20. Restoration of Rights. In case Lender shall have proceeded to enforce any right under this Security Instrument by foreclosure sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder with respect to the Property subject to the lien hereof.

Section 18.21. Waiver of Statute of Limitations. The pleadings of any statute of limitations as a defense to any and all obligations secured by this Security Instrument are hereby waived to the full extent permitted by Legal Requirements.

Section 18.22. Advances. This Security Instrument shall cover any and all advances made pursuant to the Loan Documents, rearrangements and renewals of the Debt and all extensions in the time of payment thereof, even though such advances, extensions or renewals be evidenced by new promissory notes or other instruments hereafter executed and irrespective of whether filed or recorded. Likewise, the execution of this Security Instrument shall not impair or affect any other security which may be given to secure the payment of the Debt, and all such additional security shall be considered as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of time of payment of the Debt



shall not diminish the force, effect or lien of this Security Instrument and shall not affect or impair the liability of Borrower and shall not affect or impair the liability of any maker, surety, or endorser for the payment of the Debt.

Section 18.23. Application of Default Rate Not a Waiver. Application of the Default Rate shall not be deemed to constitute a waiver of any Default or Event of Default or any rights or remedies of Lender under this Security Instrument, any other Loan Document or applicable Legal Requirements, or a consent to any extension of time for the payment or performance of any obligation with respect to which the Default Rate may be invoked.

Section 18.24. Intervening Lien. To the fullest extent permitted by law, any agreement hereafter made pursuant to this Security Instrument shall be superior to the rights of the holder of any intervening lien or security interest.

Section 18.25. No Joint Venture or Partnership. Borrower and Lender intend that the relationship created hereunder be solely that of mortgagor and mortgagee or grantor and beneficiary or borrower and lender, as the case may be. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

Section 18.26. Time of the Essence. Time shall be of the essence in the performance of all obligations of Borrower hereunder.

Section 18.27. Borrower's Obligations Absolute. Borrower acknowledges that Lender and/or certain Affiliates of Lender are engaged in the business of financing, owning, operating, leasing, managing, and brokering real estate and in other business ventures which may be viewed as adverse to or competitive with the business, prospect, profits, operations or condition (financial or otherwise) of Borrower. Except as set forth to the contrary in the Loan Documents, all sums payable by Borrower hereunder shall be paid without notice or demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any Taking of the Property or any portion thereof or any other Cross-collateralized Property; (b) any restriction or prevention of or interference with any use of the Property or any portion thereof or any other Cross-collateralized Property; (c) any title defect or encumbrance or any eviction from the Premises or any portion thereof by title paramount or otherwise; (d) any bankruptcy proceeding relating to Borrower, any General Partner, or any guarantor or indemnitor, or any action taken with respect to this Security Instrument or any other Loan Document by any trustee or receiver of Borrower or any other Cross-collateralized Borrower or any such General Partner, guarantor or indemnitor, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Lender; (f) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower or any other Cross-collateralized Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing.



Section 18.28. Publicity. All promotional news releases, publicity or advertising by Manager, Borrower or their respective Affiliates through any media intended to reach the general public shall not refer to the Loan Documents or the financing evidenced by the Loan Documents, or to Lender or to any of its Affiliates without the prior written approval of Lender or such Affiliate, as applicable, in each instance, such approval not to be unreasonably withheld or delayed. Lender shall be authorized to provide information relating to the Property, the Loan and matters relating thereto to rating agencies, underwriters, potential securities investors, auditors, regulatory authorities and to any Persons which may be entitled to such information by operation of law.

Section 18.29. Securitization Opinions. In the event the Loan is included as an asset of a Securitization by Lender or any of its Affiliates, Borrower shall, within fifteen (15) Business Days after Lender's written request therefor, at Lender's sole cost and expense, deliver opinions in form and substance and delivered by counsel reasonably acceptable to Lender and each Rating Agency, as may be reasonably required by Lender and/or each Rating Agency in connection with such securitization. Borrower's failure to deliver the opinions required hereby within such ten (10) Business Day period shall constitute an "Event of Default" hereunder.

Section 18.30. Intentionally Deleted.

Section 18.31. Securitization Financials. Borrower covenants and agrees that, upon Lender's written request therefor in connection with a Securitization, Borrower shall, at Lender's sole cost and expense, promptly deliver audited financial statements and related documentation prepared by an Independent certified public accountant that satisfy securities laws and requirements for use in a public registration statement (which may include up to three (3) years of historical audited financial statements).

Section 18.32. Exculpation. Notwithstanding anything herein or in any other Loan Document to the contrary, except as otherwise set forth in this Section 18.32 to the contrary, Lender shall not enforce the liability and obligation of Borrower or (a) if Borrower is a partnership, its constituent partners or any of their respective partners, (b) if Borrower is a trust, its beneficiaries or any of their respective Partners (as hereinafter defined), (c) if Borrower is a corporation, any of its shareholders, directors, principals, officers or employees, or (d) if Borrower is a limited liability company, any of its members, managers, officers or directors (the Persons described in the foregoing clauses (a) - (d), as the case may be, are hereinafter referred to as the "Partners") to perform and observe the obligations contained in this Security Instrument or any of the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or the Partners, except that Lender may bring a foreclosure action, action for specific performance, or other appropriate action or proceeding (including, without limitation, an action to obtain a deficiency judgment) solely for the purpose of enabling Lender to realize upon (i) Borrower's interest in the Property, (ii) the Rent to the extent received by Borrower (or received by its Partners) after the occurrence of an Event of Default and not either delivered to Lender (or Lender's agent) or applied to ordinary and necessary expenses of owning and operating the Property (the "Recourse Distributions") and (iii) any other collateral given to Lender under the Loan Documents (the collateral described in the foregoing clauses (i) - (iii) is hereinafter referred to as the "Default Collateral"); provided, however, that any judgment in any such action or proceeding shall be enforceable against Borrower or the Partners, as the



case may be, only to the extent of any such Default Collateral. The provisions of this Section shall not, however, (a) impair the validity of the Debt evidenced by the Note or in any way affect or impair the lien of this Security Instrument or any of the other Loan Documents or the right of Lender to foreclose this Security Instrument following the occurrence of an Event of Default; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Security Instrument; (c) affect the validity or enforceability of the Note, this Security Instrument, or any of the other Loan Documents, or impair the right of Lender to seek a personal judgment against the Guarantor; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of the Assignment; (f) impair the right of Lender to bring suit for a monetary judgment against Borrower with respect to any losses resulting from fraud, material misrepresentation, or failure to disclose a material fact, any untrue statement of a material fact or omission to state a material fact in the written materials and/or information provided to Lender or any of its affiliates by or on behalf of Borrower, Guarantor or any of their Affiliates in connection with this Security Instrument, the Note or the other Loan Documents, and the foregoing provisions shall not modify, diminish or discharge the liability of Borrower, Guarantor or any of their Affiliates with respect to same; (g) impair the right of Lender to bring suit for a monetary judgment against Borrower to obtain the Recourse Distributions received by Borrower including, without limitation, the right to bring suit for a monetary judgment to proceed against Guarantor to the extent of Guarantor's liability under any guaranty delivered by Guarantor and the foregoing provisions shall not modify, diminish or discharge the liability of Borrower or Guarantor with respect to same; (h) impair the right of Lender to bring suit for a monetary judgment against Borrower with respect to any losses resulting from Borrower's misappropriation of tenant security deposits or Rent (other than rent deemed "additional rent" under the Leases) collected more than one (1) month in advance, and the foregoing provisions shall not modify, diminish or discharge the liability of Borrower with respect to same; (i) impair the right of Lender to obtain Loss Proceeds due to Lender pursuant to this Security Instrument to the extent actually paid by the insurer; (j) impair the right of Lender to enforce the provisions of Sections 2.02(g), 16.01 or 16.02, inclusive of this Security Instrument, even after repayment in full by Borrower of the Debt or to bring suit for a monetary judgment against Borrower with respect to any losses resulting from any obligation set forth in said Sections; (k) prevent or in any way hinder Lender from exercising, or constitute a defense, or counterclaim, or other basis for relief in respect of the exercise of, any other remedy against any or all of the collateral securing the Note as provided in the Loan Documents; (l) impair the right of Lender to bring suit for a monetary judgment against Borrower with respect to any losses resulting from any misappropriation or conversion of Loss Proceeds, and the foregoing provisions shall not modify, diminish or discharge the liability of Borrower with respect to same; (m) impair the right of Lender to sue for, seek or demand a deficiency judgment against Borrower solely for the purpose of foreclosing the Property or any part thereof, or realizing upon the Default Collateral; provided, however, that any such deficiency judgment referred to in this clause (m) shall be enforceable against Borrower and Guarantor only to the extent of any of the Default Collateral; (n) impair the ability of Lender to bring suit for a monetary judgment against Borrower with respect to any losses resulting from arson or physical waste to or of the Property or damage to the Property in each case resulting from the intentional acts or intentional omissions of Borrower, Guarantor or any of their Affiliates; (o) impair the right of Lender to bring a suit for a monetary judgment against Borrower in the event of the exercise of any right or remedy under any federal, state or local forfeiture laws resulting in the loss of the lien of this



Security Instrument, or the priority thereof, against the Property; (p) be deemed a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt; (q) impair the right of Lender to bring suit for monetary judgment against Borrower with respect to any losses resulting from any claims, actions or proceedings initiated by Borrower (or any Affiliate of Borrower) alleging that the relationship of Borrower and Lender is that of joint venturers, partners, tenants in common, joint tenants or any relationship other than that of debtor and creditor; (r) impair the right of Lender to bring suit for a monetary judgment with respect to any losses resulting from a Transfer in violation of the provisions of Article IX hereof; or (s) impair the right of Lender to bring suit against Borrower for Borrower's failure to pay any valid taxes, assessments, mechanic's liens, materialmen's liens or other liens which could create liens on any portion of the Property superior to the lien or security title of this Security Instrument or the other Loan Documents, except, (1) with respect to any such taxes or assessments, to the extent that funds have been deposited with Lender pursuant to the terms of this Security Instrument specifically for the applicable taxes or assessments and not applied by Lender to pay such taxes and assessments, and (2) to the extent that there is insufficient available cash flow at any time to enable Borrower to pay all operating expenses (including taxes and assessments) then due and payable, necessary property improvement expenditures and amounts due and payable under the Loan Documents (as demonstrated to the reasonable satisfaction of Lender) and Borrower applies all available cash flow to the payment of any one or more of the foregoing items. The provisions of this Section 18.32 shall be inapplicable to Borrower if (a) any proceeding, action, petition or filing under the Bankruptcy Code, or any similar state or federal law now or hereafter in effect relating to bankruptcy, reorganization or insolvency, or the arrangement or adjustment of debts, shall be filed by, consented to or acquiesced in by or with respect to Borrower, or if Borrower shall institute any proceeding for its dissolution or liquidation, or shall make an assignment for the benefit of creditors or (b) Borrower or any Affiliate contests or interferes with Lender's enforcement of its rights and remedies hereunder or under the Loan Documents by asserting any defense (x) as to the validity of the obligations under the Loan Documents or in any way relating to the structure of the Borrower or the enforceability of Lender's rights and remedies under the Loan Documents, or (y) for the purpose of delaying, hindering or impairing Lender's rights and remedies under the Loan Documents (collectively, a "Contest") (provided that if any such Person obtains a non-appealable order successfully asserting a Contest, Borrower shall have no liability under this clause (b)), in which event Lender shall have recourse against all of the assets of Borrower including, without limitation, any right, title and interest of Borrower in and to the Property.

Section 18.33. Intentionally Deleted

Section 18.34. Intentionally Deleted

Section 18.35. Borrower hereby covenants and agrees to undertake any and all work required to correct the fire code and sign violations at the Fremont Property located in Oshkosh, Wisconsin.

Section 18.36. Cooperation. (a) Borrower covenants and agrees that in the event the Loan is to be included as an asset of a Securitization, Borrower shall (a) gather any information



reasonably required by the Rating Agencies in connection with such a Securitization, (b) at Lender's request, meet with representatives of the Rating Agency to discuss the business and operations of the Property, and (c) cooperate with the reasonable requests of each Rating Agency and Lender in connection with all of the foregoing as well as in connection with all other matters and the preparation of any offering documents with respect thereof, including, without limitation, entering into any amendments or modifications to this Security Instrument or to any other Loan Document which may be requested by Lender to conform to Rating Agency or market standards for a Securitization provided that no such modification shall modify (a) the interest rate payable under the Note, (b) the stated maturity of the Note, (c) the amortization of principal under the Note, (d) Section 18.32 hereof, (e) any other material economic term of the Loan or (f) any provision, the effect of which would materially increase Borrower's obligations or materially decrease Borrower's rights under the Loan Documents. Borrower acknowledges that the information provided by Borrower to Lender may be incorporated into the offering documents for a Securitization. Lender and each Rating Agency shall be entitled to rely on the information supplied by, or on behalf of, Borrower and Borrower indemnifies and holds harmless the Indemnified Parties, their Affiliates and each Person who controls such Persons within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act of 1934, as same may be amended from time to time, for, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise, whether incurred or imposed within or outside the judicial process, including, without limitation, reasonable attorneys' fees and disbursements (including, without limitation, reasonable attorney's fees and expenses, whether incurred within or outside the judicial process) that arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such information or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, or in light of the circumstances under which they were made, not misleading.

(b) Further, Borrower shall cooperate at no cost to Borrower or Guarantor, with Lender and its affiliates in connection with any such sale of the Loan by mortgage backed pass through certificates, participations, securities or pari passu notes evidencing whole or component interests therein through one of more public or private offerings, including, but not limited to:

(i) (i) separating the Loan into two or more separate notes (or components that correspond to one or more tranches of the certificates/securities created in a Securitization) or participation interests. Such notes or components or participation interests may be assigned different interest rates, so long as the weighted average of such interest rates equals the interest rate on the Note. Additionally, Lender may split the Loan into a senior/subordinated participation structure;

(ii) (ii) obtaining ratings from two or more Rating Agencies;

(iii) (iii) making or causing to be made reasonable changes or modifications to the loan documentation, organizational documentation, opinion letters and other documentation;



(iv) (iv) reviewing prepared offering materials relating to the Property, Borrower, Guarantor and the Loan;

(v) (v) delivering updated information on the Borrower, Guarantor and the Property;

(vi) (vi) participating in investor or Rating Agency meetings if requested by Lender;

(vii) permitting adjustment of Lender's security interest to permit a senior/subordinate or other structure to enhance a Securitization, participation interest or a distribution of the Loan; and

(viii) restructuring of the Loan and/or a reduction of the Loan Amount with the imposition of a mezzanine loan in the corresponding amount to be reduced, which mezzanine loan shall be secured by a pledge of ownership interests in the Borrower or the members of Borrower. Such notes or components may be assigned different interest rates, so long as the weighted average of such interest rates equals the interest rate on the Note. Notwithstanding the foregoing, any restructuring of the Loan in accordance with this subsection shall be at Lender's sole cost and expense.

Section 18.37. Regulation A/B. (a) If requested by Lender, Borrower shall furnish, or shall cause the applicable tenant to furnish, to Lender financial data and/or financial statements in accordance with Regulation AB (as defined herein) for any tenant of any Property if, in connection with a securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the mortgage loans included or expected to be included, as applicable, in such securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor (as defined herein); provided, however, that in the event the related lease does not require the related tenant to provide the foregoing information, Borrower shall use commercially reasonable efforts to cause the applicable tenant to furnish such information.

(b) If, at the time one or more Disclosure Documents are being prepared for a securitization, Lender expects that Borrower alone or Borrower and one or more affiliates of Borrower collectively, or the Property alone or the Property and any other parcel(s) of real property, together with improvements thereon and personal property related thereto, that is "related", within the meaning of the definition of Significant Obligor, to the Property (a "Related Property") collectively, will be a Significant Obligor, Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB and meeting the requirements thereof, if Lender expects that the principal amount of the Loan, together with any loans made to an affiliate of Borrower or secured by a Related Property that is included in a securitization with the Loan (a "Related Loan"), as of the cut-off date for such securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such securitization and at any time during which the Loan and any Related Loans are included in a securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount



of all mortgage loans included or expected to be included, as applicable, in the securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB and meeting the requirements thereof, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such securitization and at any time during which the Loan and any Related Loans are included in a securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after notice from Lender in connection with the preparation of Disclosure Documents for the securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than seventy-five (75) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Securities Exchange Act of 1934 in connection with or relating to the securitization (an "Exchange Act Filing") is not required. As used herein, "Regulation AB" shall mean Regulation AB under the Securities Act of 1933 and the Securities Exchange Act of 1934 (as amended). As used herein, "Disclosure Document" shall mean a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular, in each case in preliminary or final form, used to offer securities in connection with a securitization. As used herein, "Significant Obligor" shall have the meaning set forth in Item 1101(k) of Regulation AB.

ARTICLE XIX: CONCERNING THE TRUSTEE

Section 19.01. No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Lender and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourse of Lender. Borrower shall pay all costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder, and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 19.02. Certain Rights. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and consult 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 Loan 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 agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or



individual, not regularly in the employ of Trustee (and 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 Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (iv) any and all other lawful action that Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Borrower will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

Section 19.03. Retention of Money. All moneys received by 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 Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 19.04. Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing or verbally to Lender. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Lender shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Lender shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Lender, and if such Lender be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Borrower hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Security Instrument or applicable law.

Section 19.05. Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the 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 19.06. 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 predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute Trustee, the 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 Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

Section 19.07. No Representation by Trustee or Lender. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or 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, neither Trustee nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Lender.

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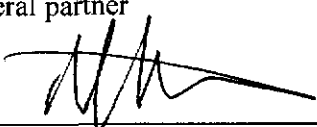


IN WITNESS WHEREOF, Assignor has executed under Seal this Security Instrument on the day and year first hereinabove set forth.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

FIRST HORIZON GROUP LIMITED
PARTNERSHIP,
a Delaware limited partnership

By: First HGI, INC.,
a Delaware corporation
Its general partner

By: 

Name: David Lichtenstein
Title: President



State of ~~New York~~)

) ss: *NS*

County of ~~New York~~)

I certify that I know or have satisfactory evidence that David Lichtenstein is the person who appeared before me, and said person acknowledged that he signed the foregoing instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of First HGI, INC., a Delaware corporation, the general partner of FIRST HORIZON GROUP LIMITED PARTNERSHIP, a Delaware limited partnership, to be the free and voluntary act of said limited partnership for the uses and purposes mentioned in this instrument.

Dated this 22 day of December, 2005.

[SEAL]

[Signature]
Printed Name: Sara Dwyer

Notary Public, State of NJ

My commission: _____

NOTARY
COMMISSION

JERSEY
FEB 14 2006



EXHIBIT A

LEGAL DESCRIPTION

PARCEL "A":

Lots 1 and 3, City of Burlington Short Plat No. 1-92 as approved July 18, 1989, and recorded July 27, 1992, in Volume 10 of Short Plats, page 105, under Auditor's File No. 9207270058, records of Skagit County, Washington; being a portion of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, WM.,

EXCEPT the South 13 feet of Lot 1 thereof.

Situate in the County of Skagit, State of Washington.

PARCEL "B":

Parcel B, City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington; being a portion of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "C":

Parcel A, City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington; being a portion of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "D":

An easement for drainage, as acquired by document recorded under Auditor's File No. 8811230046, records of Skagit County, Washington, over and across the following described property:

The West 20 feet of Lot 3, City of Burlington Short Plat No. 37-76 as approved August 2, 1976, and recorded August 5, 1976, in Volume 1 of Short Plats, page 156, under Auditor's File No. 840316, records of Skagit County, Washington; being a portion of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 6, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington:



PARCEL "E":

An easement acquired by instruments recorded November 23, 1988, under Auditor's File No. 8811230048, records of Skagit County, Washington, for ingress, egress, and utilities, over, under, and across a 36.00 foot strip of land lying 18.00 feet each side of the following described centerline:

Beginning at the Northeast corner of Section 7, Township 34 North, Range 4 East, W.M.; thence South $01^{\circ}34'38''$ East, along the East line of said Section 7 a distance of 13.73 feet; Thence South $86^{\circ}59'04''$ West, 40.01 feet to the true point of beginning, thence continuing South $86^{\circ}59'04''$ West, 56.99 feet to the beginning of a curve to the left having a radius of 170.00 feet; thence Southwesterly along said curve through a central angle of $66^{\circ}32'00''$, an arc distance of 197.41 feet; thence South $20^{\circ}27'04''$ West, 124.00 feet to the beginning of a curve to the right, having a radius of 273.00 feet; thence Southwesterly along said curve through a central angle of $71^{\circ}07'06''$, an arc distance of 338.86 feet; thence North $88^{\circ}25'50''$ West, 150.00 feet to the terminus point of said centerline. (Said easement being appurtenant to Parcels "B" and "C".)

Situate in the County of Skagit, State of Washington.

PARCEL "F":

An easement for ingress, egress, and utilities over, under, and across that area delineated as "Access and Utility Easement" on the Easterly portion of Parcel "B" of City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington. (Said easement is appurtenant to Parcel "C".)

Situate in the County of Skagit, State of Washington.



200512290185

Skagit County Auditor

EXHIBIT B

SUMMARY OF RESERVES

<u>Reserve Items</u>	<u>Initial Deposit Amount</u>	<u>Monthly Installment Amount</u>
Basic Carrying Costs • Taxes • Insurance Premiums	• Taxes \$34,458.82 (Oshkosh) \$26,966.25 (Fremont) \$61,973.91 (Burlington) • Insurance Premiums \$20,842.58 (Oshkosh) \$24,800.16 (Fremont) \$20,755.87 (Burlington)	• Taxes \$34,458.82 (Oshkosh) \$8,988.75 (Fremont) \$20,657.97 (Burlington) • Insurance Premiums \$1,894.78 (Oshkosh) \$2,254.56 (Fremont) \$1,893.20 (Burlington)
Initial Engineering/Environmental Deposits • Immediate Repairs • Environmental Remediation	• Immediate Repairs \$N/A \$10,750 (Fremont) \$183,060 (Burlington) • Environmental Remediation N/A)	N/A
Recurring Monthly Replacement Reserve Deposit	N/A	\$2,254.73 (Oshkosh) \$1,144.62 (Fremont) \$3,045.96 (Burlington)
Reletting Reserve	N/A	\$16,910.44 (Oshkosh) \$14,307.81 (Fremont) \$10,878.44 (Burlington)
Outstanding TILC Escrow Account	\$462,000.00	N/A
Old Navy Reserve	\$1,895,000	N/A



200512290185

Skagit County Auditor

EXHIBIT C

CASH FLOW STATEMENT

Cash Flow Statement for Month of: _____ Property: _____
Location: _____
Year: _____

	Current Month	Year to Date
REVENUE		
Net Rental Revenue		
Other Revenue		
Effective Gross Income		
OPERATING EXPENSES		
Common Area Maintenance		
Payroll		
Administration		
Leasing		
Service		
Clean & Decorate		
Utilities		
Repairs & Maintenance		
Taxes		
Insurance		
Management Fees		
Other		
Total Operating Expenses		
Net Operating Income		

RECURRING EXPENSES

To Include Expenses for: Carpet Replacement, Appliance
Replacement, HVAC/Water Heater Replacement;
Miniblinds/Drapes/Ceiling Fans:



NON-RECURRING EXPENSES

To Include Capital Expenses for: Playground, Major
Signage, Lawns/Trees/Shrubs, Paving/Parking, Roof
Replacement, Carpentry/Siding/Balconies, Exterior Paint,
Major Concrete/Sidewalks, Foundations, Major Exterior,
Boiler Replacement, Major HVAC Replacement, Plumbing
Replace, Electrical Replace, Other Major, Fire & Storm, Ins.
Loss Recovery:

Net Cash Flow _____

Certified By: _____

Name: _____

Title: _____

Management Company: _____



200512290185

Skagit County Auditor

12/29/2005 Page 121 of 132 3:16PM

EXHIBIT D

Required Engineering Work (Fremont)

<u>ITEM</u>	<u>AMOUNT</u>
Asphalt Pavement Crack Routing and Sealing	\$8,600.00
Concrete Flatwork repairs	0
Caulking, Masonry Expansion and Control Joints	0
Replace exterior doors	0
Repair damaged EIFS sections	0
Repoint façade step cracking	0
Replace aluminum coping panels over parapet wall.	0
Subtotal	\$8,600.00
Plus 25% Contingency	\$2,150.00
TOTAL	\$10,750.00

Required Engineering Work (Burlington)

<u>ITEM</u>	<u>AMOUNT</u>
Repair and Replace Roofing per Roofing Contractor Proposal	\$146,448.00
Subtotal	\$146,448.00
Plus 25% Contingency	\$36,622.00
TOTAL	<u>\$183,060.00</u>



EXHIBIT E

Form of Direction Letter

[Letterhead of Landlord]

[Name and Address of tenant]

Re: [Address of Premises]

Dear tenant:

You are hereby directed to make all future payments of rent and other sums due to Landlord under the Lease payable as follows:

Payable To: [] and Wachovia Bank, National Association

If by federal wire transfer:

Bank: Wachovia Bank, NA
ABA #: 053-000-219
Acct Name: []
Acct #: _____
Ref Loan #: _____

If by US Mail:

PO Box _____
Charlotte, NC 28260-1443

If by Overnight Courier:

Wachovia Bank, NA
1525 West WT Harris Blvd
Bldg 2C2 (Ref # _____)
Charlotte, NC 28262
Ref Loan #: _____

Please take particular care in making the check payable only to the above-mentioned names because only checks made payable to the referenced names will be credited against sums due by you to landlord. Until otherwise advised in writing by Landlord and the above-mentioned bank (or its successor), you should continue to make your payments for rent and other sums as directed by the terms of this letter.



Thank you in advance for your cooperation with this change in payment procedures.

By: _____



200512290185

Skagit County Auditor

EXHIBIT F

Initial Allocated Loan Amount and
Cross-collateralized Properties

Cross-collateralized Property
Fremont, Indiana
Burlington, Washington
Oshkosh, Wisconsin

The Allocated Loan Amount
\$13,600,000.00
\$20,400,000.00
\$20,000,000.00



EXHIBIT G-1

(Fremont Indiana Legal Description)

PARCEL 3-95

All that land contained in the, Plat of Valley Crossing Amended Plat Phase #1 as recorded in Plat Book #5, Document # 94-08-0344, recorded August 11, 1994 in the Office of the Recorder of Steuben County, Indiana excepting therefrom Lot "D" and Lot "E" in said Amended Plat; said land described as follows:

Lot A, Valley Crossing, Amended Plat Phase #1, Being in the Southwest Quarter of Section 23, Township 38 North, Range 13 East, Jamestown Township, Steuben County, Indiana, according to the Plat thereof recorded in Plat Book 5, Document #94-08-0344 in the Office of the Recorder of Steuben County, Indiana.

ALSO, Lot B, Valley Crossing, Amended Plat Phase #1, Being in the Southwest quarter of Section 23, Township 38 North, Range 13 East, Jamestown Township, Steuben County, Indiana, according to the Plat thereof recorded in Plat Book 5, Document #94-08-034-4 in the Office of the Recorder of Steuben County, Indiana.

ALSO, Lot C, Valley Crossing, Amended Plat Phase #1, Being in the Southwest quarter of Section 23, Township 38 North, Range 13 East, Jamestown Township, Steuben County, Indiana, according to the Plat thereof recorded in Plat Book 5, Document #94-08-0344 in the Office of the Recorder of Steuben County, Indiana.

Parcel 4-95

A part of the Southwest Quarter of Section 23, Township 38 North, Range 13 East, Jamestown Township, Steuben County, Indiana; described as follows:

Commencing at the Southwest corner of the Southwest Quarter of said Section 23; thence North 00 [10'15" East (assumed bearing) 1298.67 feet along the West line of the Southwest Quarter of said Section 23 to the true point of beginning of this description: thence North 90 [00'00" East 586.15 feet; thence South 61 [16'11" East 569.52 feet to a point on the West line of Valley Crossing Amended Plat Phase #1 as recorded in Plat Book 5, Document #94-08-0344 in the Office of the Recorder of Steuben County, Indiana; thence North 41 [42'31" West 133.28 feet along said West line; thence North 77 [11'45" East 149.73 feet along said West line; thence North 38 [28'30" East 71.96 feet along said West line; thence North 17 [44'55" East 192.82 feet, along said West line; thence North 09 [37'09" East 80.00 feet along said West line; thence 13.93 feet along a 210.00 foot radius curve to the left in said West line, chord of said curve bears South 82 [15'53" East 13.93 feet; thence South 84 [10'55" East 129.74 feet along said West line; thence North 31 [58'57" West 210.87 feet along said West line; thence North 74 [34'59" West 153.90 feet along said West line; thence North 58 [07'16" West 126.35 feet along said West line; thence North 10 [08'29" West 63.78 feet along said West line; thence North 67 [21'29" East 191.79 feet along said West line; thence North 71 [20'35" East 93.97 feet along said West line; thence South



55 [04'07" East 79.18 feet along said West line; thence South 21 [39'43" West 123.04 feet along said West line; thence North 50 [51'33" East 37.63 feet along said West line; thence North 55 [00'00" East 344.77 feet along said West line to the South right-of-way line of the Indiana Toll Road; thence North 79 [49'14" West 314.68 feet along said South right-of-way line to a concrete right-of-way marker; thence North 32 [42'46" West 56.21 feet along said South right-of-way line to a concrete right-of-way marker; thence 1409.97 feet along a 3958.93 foot radius curve to the right in said South right-of-way line to a concrete right-of-way marker on the West line of the Southwest quarter of said Section 23; the chord of said curve bears North 66 [16'29" West 1402.53 feet; thence South 00 [10'15" West 1356.94 feet along said West line back to the true point of beginning, containing 32.161 acres subject to legal highways and easements of record.

ALSO, A strip of land in the Southwest quarter of Section 23, Township 38 North, Range 13 East, Jamestown Township, Steuben County, Indiana, being eighty (80) feet wide, lying forty (40) feet on either side of the following described centerline and said centerline produced; said centerline described as follows:

Commencing at the Southeast corner of the Southwest quarter of said Section 23; thence North 90 [00'00" West (assumed bearing) 562.55 feet along the South line of said Southwest quarter; thence North 00 [00'00" East 60.00 feet to the North right-of-way line of State Road #120; thence North 47 [10'39" East 94.80 feet along said North right-of-way line to the West right-of-way line of Relocated Old U.S. #27; thence North 12 [34'05" West 550.00 feet along said West right-of-way line; thence North 10 [25'37" West 267.52 feet along said West right-of-way line; thence 386.23 feet along a 662.95 foot radius curve to the right in said West right-of-way line to the true point of beginning of this centerline description; said chord of curve bears North 04 [07'48" East 380.79 feet; thence North 69 [10'55" West 136.99 feet along said centerline; thence 149.14 feet along a 569.68 foot radius curve to the left in said centerline, said chord of curve bears North 76 [40'55" West 148.72 feet; thence North 84 [10'55" West 466.22 feet along said centerline; thence 16.58 feet along a 250.00 foot radius curve to the right in said centerline, said chord of curve bears North 82 [16'53" West 16.58 feet, said point being the terminus of said centerline.

ALSO, the 15.5624 acre Preserve Area of Valley Crossing Amended Plat Phase #1 a part of the Southwest quarter of Section 23, Township 38 North, Range 13 East, Jamestown Township, Steuben County, Indiana according to the plat thereof recorded in Plat Book 5 Document #94-08-0344 in the Office of the Recorder of Steuben County, Indiana.

PARCEL 1-95

A part of the Northwest quarter of Section 26, Township 38 North, Range 13 East, Jamestown Township, Steuben County, Indiana, described as follows:

Commencing at the Northeast corner of the Northwest quarter of said Section 26; thence North 90 [00'00" West 1032.01 feet along the North line of the Northwest quarter of said Section 26; thence South 00 [00'00" West 50.00 feet to a point on the South right-of-way line of State Road #120 and being the true point of beginning of this description; thence North 90 [00'00" East



269.46 feet along said South right-of-way line; thence South 84 [15'27" East 100.44 feet along said South right-of-way line; thence North 90 [00'00" East 200.00 feet along said South right-of-way line; thence South 55 [03'36" East 95.11 feet to the Westerly right-of-way line of State Road #27; thence South 10 [08'39" West 138.79 feet along said Westerly right-of-way line; thence South 89 [59'16" East 74.69 feet along said Westerly, right-of-way line; thence South 19 [58'58" East 220.10 feet along said Westerly right-of-way line; thence South 05 [20'07" East 353.91 feet along said Westerly right-of-way line; thence South 90 [00'00" West 191.75 feet; thence South 11 [40'52" West 60.0 feet; thence North 90 [00'00" East 194.33 feet to the Westerly right-of-way line of State Road 327; thence South 11 [48'36" West 456.47 feet along said Westerly right-of-way line; to the North line of Cranston's Reef Subdivision; thence North 89 [38'29" West 705.08 feet; along said North line; thence North 00 [06'24" East 649.61 feet; thence South 90 [00'00" West 370.02 feet; thence South 74 [00'00" West 20.0 feet; thence South 80 [19'22" West 216.43 feet; thence South 64 [03'22" West 65.11 feet; thence North 80 [27'11" West 54.82 feet; thence North 79 [55'08" West 150.77 feet; thence North 14 [01'29" West 25.08 feet; thence North 00 [12'32" West 220.00 feet; thence South 85 [26'32" West 240.08 feet; to the East line of George Street in the Plat of Pokagon Hills Addition; thence North 00 [18'37" East 421.56 feet along said East line to the South right-of-way line of State Road #120; thence South 90 [00'00" East 1108.67 feet along said South right-of-way line back to the true point of beginning.



Exhibit G-2

(Burlington, Washington Legal Description)

PARCEL "A":

Lots 1 and 3, City of Burlington Short Plat No. 1-92 as approved July 18, 1989, and recorded July 27, 1992, in Volume 10 of Short Plats, page 105, under Auditor's File No. 9207270058, records of Skagit County, Washington; being a portion of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, WM.,

EXCEPT the South 13 feet of Lot 1 thereof.

Situate in the County of Skagit, State of Washington.

PARCEL "B":

Parcel B, City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington; being a portion of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "C":

Parcel A, City of Burlington Short Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County, Washington; being a portion of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "D":

An easement for drainage, as acquired by document recorded under Auditor's File No. 8811230046, records of Skagit County, Washington, over and across the following described property:

The West 20 feet of Lot 3, City of Burlington Short Plat No. 37-76 as approved August 2, 1976, and recorded August 5, 1976, in Volume 1 of Short Plats, page 156, under Auditor's File No. 840316, records of Skagit County, Washington; being a portion of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 6, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington:



PARCEL "E":

An easement acquired by instruments recorded November 23, 1988, under Auditor's File No. 88I1230048, records of Skagit County, Washington, for ingress, egress, and utilities, over, under, and across a 36.00 foot strip of land lying 18.00 feet each side of the following described centerline:

Beginning at the Northeast corner of Section 7, Township 34 North, Range 4 East, W.M.;
thence South $01^{\circ}34'38''$ East, along the East line of said Section 7 a distance of 13.73 feet;
Thence South $86^{\circ}59'04''$ West, 40.01 feet to the true point of beginning,
thence continuing South $86^{\circ}59'04''$ West, 56.99 feet to the beginning of a curve to the left having
a radius of 170.00 feet;
thence Southwesterly along said curve through a central angle of $66^{\circ}32'00''$, an arc distance of
197.41 feet;
thence South $20^{\circ}27'04''$ West, 124.00 feet to the beginning of a curve to the right, having a radius
of 273.00 feet;
thence Southwesterly along said curve through a central angle of $71^{\circ}07'06''$, an arc distance of
338.86 feet;
thence North $88^{\circ}25'50''$ West, 150.00 feet to the terminus point of said centerline. (Said
easement being appurtenant to Parcels "B" and "C".)

Situate in the County of Skagit, State of Washington.

PARCEL "F":

An easement for ingress, egress, and utilities over, under, and across that area delineated as
"Access and Utility Easement" on the Easterly portion of Parcel "B" of City of Burlington Short
Plat No. B-1-92 as approved June 2, 1992, and recorded June 11, 1992, in Volume 10 of Short
Plats, pages 88 and 89, under Auditor's File No. 9206110001, records of Skagit County,
Washington. (Said easement is appurtenant to Parcel "C".)

Situate in the County of Skagit, State of Washington.

Exhibit G-3

(Oshkosh, Wisconsin Legal Description)

A part of the South East 1/4 of the SOUTH EAST 1/4 and a part of the North East 1/4 of the SOUTH EAST 1/4 of Section Thirty-three (33), Township Eighteen (18) North, of Range Sixteen (16) East, in the Thirteenth Ward, City of Oshkosh, Winnebago County, Wisconsin, being more particularly described as follows:

Commencing at the Southeast corner of the South East 1/4 of said Section Thirty-three (33); thence North 89°53'38" West along the South line of the South East 1/4 of said Section Thirty-three (33), 174.00 feet to the point of beginning; thence continuing North 89°53'38" West along the South line of the South East 1/4 of said Section Thirty-three (33), 1164.28 feet; thence North 00°03'03" West along the West line of the South East 1/4 of the South East 1/4 of said Section Thirty-three (33), 1211.36 feet; thence South 89°37'30" East, 583.00 feet; thence North 00°03'03" West, 305.00 feet; thence South 89°37'30" East, 661.23 feet to the West right of way line of Washburn Street; thence South 00°08'11" West along the West right of way line of Washburn Street, 873.36 feet; thence North 89°52'27" West, 204.72 feet; thence South 00°06'45" West, 28.52 feet; thence South 88°21'40" West, 8.92 feet; thence South 00°20'57" West, 68.75 feet; thence South 89°39'03" East, 5.75 feet; thence South 00°20'57" West, 7.00 feet; thence North 89°39'03" West, 5.75 feet; thence South 00°20'57" West, 99.02 feet; thence South 61°05'13" East, 11.17 feet; thence South 89°53'38" East, (recorded as South 89°52'27" East), 204.47 feet to the West right of way line of Washburn Street; thence South 00°08'11" West along the West right of way line of Washburn Street, 338.30 feet (recorded as 338.34 feet); thence South 19°09'32" West along said right of way line, 24.05 feet; thence South 45°07'16" West along said right of way line, 95.00 feet to the point of beginning.



200512290185
Skagit County Auditor

EXHIBIT H

<u>Tenant</u>	<u>Tenant Improvement Allowance</u>
Old Navy	\$432,000
Pendletown	\$ 30,000