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Skagit County Auditor

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PREPARED/DRAFTED BY AND
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

BEST & FLANAGAN LLP
225 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402
Attn: Thomas G. Garry

Order/Escrow No.: IC41191, 1154734, and G105589
Loan No.: 010-00001871

CHICAGO TITLE CO.

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

Reference Number of Related Documents: N/A

Grantor(s): NWCC INVESTMENTS VIII, LLC

Grantee(s): ARTESIA MORTGAGE CAPITAL CORPORATION

Trustee: Chicago Title Insurance Company

Abbreviated Legal Description:

SKAGIT COUNTY: Ptn Tr 9, PLAT OF MOUNT VERNON ACREAGE

KING COUNTY: ALL OF LOTS 12 & 13 AND A PORTION OF LOTS 14 & 15, BLOCK 2,
VOLUME 21 OF PLATS, PAGE 32.

COWLITZ COUNTY: BLOCK: 113A SUBDIVISION: LONGVIEW NO. 11 VOLUME: 6 PAGE: 19

Full Legal Description is on Exhibit A of Document.

Assessor's Property Tax Parcel or Account No.:

SKAGIT COUNTY: 3746-000-009-0202

KING COUNTY: 198020-0140-09

COWLITZ COUNTY: 01692

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

FEB 14 2007

Amount Paid \$
By Skagit Co. Treasurer
Deputy

THIS DOCUMENT IS ALSO TO BE FILED AS A FIXTURE FILING IN THE REAL ESTATE RECORDS OF SKAGIT COUNTY, WASHINGTON, KING COUNTY WASHINGTON, AND COWLITZ COUNTY, WASHINGTON, AND CONSTITUTES A FIXTURE FILING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF WASHINGTON.

COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT,
FIXTURE FILING FINANCING STATEMENT
AND
ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS

THE PROMISSORY NOTE SECURED HEREBY PROVIDES FOR A:
FIXED INTEREST RATE

THIS COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING FINANCING STATEMENT AND ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS (this "Security Instrument") is made and given effective as of February 14, 2007, by NWCC INVESTMENTS VIII, LLC, a Washington limited liability company, as Grantor, whose address is 1420 Fifth Avenue, Suite 2200, Seattle, Washington 98101 ("Borrower," and for purposes of Article 3 hereof, "Assignor"), to Chicago Title Insurance Company, and all successors and assigns, whose address is 701 Fifth Avenue, #3400, Seattle, Washington 98104 (herein called "Trustee"), for the benefit of ARTESIA MORTGAGE CAPITAL CORPORATION, a Delaware corporation, as Beneficiary or Grantee, whose address is 1180 NW Maple Street, Suite 202, Issaquah, Washington 98027, and its successor and assigns (in each case, "Lender," and for purposes of Article 3 hereof, "Assignee").

WHEREAS, Borrower is justly indebted to Lender in the principal sum of Five Million Nine Hundred Thousand and 00/100 Dollars (\$5,900,000.00), pursuant to a certain **Fixed Rate Note** of even date herewith, more particularly described below,

WHEREAS, Lender has required as a condition of making the Loan (as defined below), among other things, that the payment and performance of the Secured Obligations (defined below) be secured by the Property (as defined in this Security Instrument), which Property is located in Skagit County, Washington, King County Washington, and Cowlitz County Washington, and accordingly this Security Instrument is being concurrently recorded in the real estate records of each such counties in the State of Washington,

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Borrower hereby grants a first priority security interest in, and irrevocably gives, grants, transfers, aliens, enfeoffs, conveys, confirms, warrants, assigns, mortgages, bargains, sells and pledges to Trustee, IN TRUST FOREVER, WITH ALL POWERS OF SALE AND STATUTORY RIGHTS, for the benefit and security of Lender, under and subject to the terms and conditions hereinafter set forth, the following property, rights, interests and estates now owned, or hereafter acquired, by Borrower (collectively, the "Property"):

(a) the real property described in Exhibit A attached hereto and made a part hereof (collectively, the "Land"), together with additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the development, ownership or occupancy of such real property, and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;



(b) any and all buildings, structures and other improvements now or hereafter erected, constructed, placed or located on the Land including, without limitation, fixtures, tenements, attachments, appliances, equipment, building systems, machinery, and other articles now or hereafter attached to or used in connection with said buildings, structures and other improvements (collectively, the **"Improvements"**), and any and all additions to, substitutions for or replacements of such Improvements and such Land and all interests, estates or other claims, both in law and equity, which Borrower now has or may hereafter acquire in the Land or the Improvements, including, without limitation, all right, title and interest now owned or hereafter acquired by Borrower in and to any greater estate in the Land or the Improvements;

(c) all easements, tenements, hereditaments, appurtenances, rights-of-way and rights now owned or hereafter acquired by Borrower used or useful in connection with, or located on, under or above all or any part of, the Land or as a means of access thereto, including, without limitation, all rights pursuant to any trackage agreement; all rights to the nonexclusive use of common drive entries; all oil and gas and other hydrocarbons; all minerals, crops, timber and other emblements; water, groundwater, water rights and shares of stock evidencing the same; any and all right, title and interest of Borrower, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Land; and any and all sidewalks, vaults, alleys and strips and gores of land adjacent to or used in connection with the Land (collectively, the **"Appurtenances"**);

(d) all leasehold estate, right, title and interest of Borrower in and to all written and oral leases, subleases, subtenancies, licenses, franchises, usufructs, occupancy agreements and other agreements affecting all or any portion of the Property or the Improvements or the use or occupancy thereof, now or hereafter existing or entered into, whether before or after any proceeding is instituted by or against Borrower under 11 U.S.C. § 101 et seq., as amended (the **"Bankruptcy Code"**), including, without limitation, extensions, renewals and subleases (all of the foregoing, individually, a **"Lease"** and collectively, **"Leases"**), and all rights and claims of any kind that Borrower may have against any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding, and all right, title and interest of Borrower thereunder, including, without limitation, all cash or security deposits, prepaid or advance rentals, and deposits or payments of similar nature which are hereby specifically assigned, transferred and set over to Lender, including, without limitation, all rents, royalties, issues, revenues, profits, proceeds, income and other benefits, including, without limitation, accounts receivable, of, accruing to or derived from such Leases and from the renting, leasing or bailment of Improvements and equipment, including, without limitation, any payments made by tenants under Leases in connection with the termination of any Lease and all oil, gas and other mineral rights, royalties and profits, whether paid or accruing before or after any proceeding is instituted by or against Borrower under the Bankruptcy Code (all of the foregoing, collectively, **"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 Secured Obligations (defined below) and all lease guaranties, letters of credit and any other supporting obligation for any of the Leases (collectively, **"Lease Guaranties"**) given by any guarantor in connection with any of the Leases, and all rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under Lease Guaranties;

(e) all the estate, interest, right, title, other claim or demand, both in law and in equity, including, without limitation, claims or demands with respect to the proceeds of and any unearned premiums on insurance policies in effect with respect to the Property, which Borrower now has or may hereafter acquire in the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Property, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages;

(f) all goods, chattels, construction materials, furniture, furnishings, equipment, machinery, apparatus, appliances, and other items of personal property, whether tangible or intangible, of any kind,



nature or description, whether now owned or hereafter acquired by Borrower, including, without limitation, improvements including, without limitation, furnaces, steam boilers, hot water boilers, oil burners, pipes, radiators, air conditioning and sprinkling systems, gas and electric fixtures, carpets, rugs, shades, awnings, screens, elevators, motors, dynamos, cabinets, and all other furnishings, tools, equipment and machinery, appliances, building supplies, materials, fittings and fixtures of every kind, which is, are or shall hereafter be located upon, attached, affixed to or used or useful, either directly or indirectly, in connection with the complete and comfortable use, occupancy and operation of the Property and Improvements, whether or not any of such personal property is now or becomes a Fixture (defined below), including, without limitation, any and all licenses, permits or franchises used or required in connection with such use, occupancy or operation, together with any and all additions, replacements or substitutions thereto, thereof or therefor, as well as the proceeds thereof or therefrom regardless of form (hereinafter sometimes together referred to as the **"Personal Property"**; such Personal Property shall include, without limitation, all Accounts, Documents, Instruments, Chattel Paper, Goods, Equipment, General Intangibles, Fixtures and Inventory, as those terms are defined in the Uniform Commercial Code of the State where the Property is located);

(g) all plans and specifications, contracts and subcontracts for the construction of any Improvements, density rights, bonds, permits and other development or use entitlements, licenses, guarantees, warranties, causes of action, claims, condemnation proceeds, profits, security deposits, utility deposits, governmental agency fees and deposits and refunds thereof, refunds of taxes or insurance premiums, policies, claims, and proceeds of insurance, claims and proceeds arising from condemnation, vehicles, together with all present and future attachments, accessions, replacements, additions, products and proceeds thereof;

(h) all monies deposited by Borrower, or deposited on behalf of Borrower, with any City, County, public body or agency, irrigation, sewer or water district or company, and any other body or agency, for the installation, or to secure the installation, of any utility pertaining to the Property;

(i) all refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally-registered credits (such as emissions reduction credits), other credits, waivers and payments, whether in cash or in kind, due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (each, a **"Governmental Agency"**) or (ii) any insurance or utility company relating to any or all of the Property or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Property;

(j) all refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Agency for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Borrower with respect to the Property or upon any or all of the Property or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Property;

(k) all monies deposited by Borrower with or for the benefit of Lender pursuant to any reserve, escrow or cash collateral agreements executed by Borrower in favor of Lender;

(l) contract rights, accounts receivable, management agreements, business records;

(m) all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein;

(The Property does not include any equipment, inventory, furniture, furnishings or trade fixtures owned and supplied by tenants of the Property, except to the extent of Borrower's landlord's lien (if any) therein, and except as same may become the property of Borrower as landlord under the terms of their respective Leases.)



FOR THE PURPOSE OF SECURING:

1. repayment of indebtedness in the total principal amount of Five Million Nine Hundred Thousand and 00/100 Dollars (\$5,900,000.00) with interest, additional interest, default interest, late charges, prepayment charges and other sums and charges thereon (the "**Loan**"), evidenced by that certain **Fixed Rate Note**, of even date herewith, and all modifications, extensions, renewals and replacements thereof or judgments thereon (collectively, the "**Note**"), executed by Borrower in favor of Lender, and with a final maturity date of **March 11, 2017**, the terms of which are hereby incorporated herein by reference as though set forth in full;

2. the payment of any additional amounts, with interest thereon, that may be hereafter loaned by Lender to Borrower, which additional loans are evidenced by a promissory note or notes containing a recitation that this Security Instrument secures the payment of such note or notes.

3. payment of all sums advanced by Lender, its successors and assigns, or Trustee to protect, care for or maintain the Property, or any portion thereof, with interest thereon at the Default Rate (as defined in the Note) and all sums advanced by Lender or Trustee under the terms of or for the enforcement of the Loan Documents (defined below), with interest thereon at the Default Rate (as defined in the Note);

4. observance, performance and discharge of every obligation, covenant or agreement of Borrower contained herein or in the Note;

5. observance, performance and discharge of every obligation, covenant and agreement of Borrower contained in any document, instrument or agreement now or hereafter executed by Borrower which recites that the obligations thereunder are secured by this Security Instrument, including, without limitation, payment of all other sums, with interest thereon, which may hereafter be loaned to Borrower, or its successors or assigns, by Lender, or its successors or assigns, when evidenced by a promissory note or notes containing a recitation that they are secured by this Security Instrument;

6. compliance with and performance of each and every material provision of any declaration of covenants, conditions and restrictions pertaining to the Property or any portion thereof; and

7. payment and performance of all obligations of Borrower arising from any and all existing and future agreements with Lender which may afford interest rate protection to all or part of the Loan, when such agreement recites that the obligations thereunder are secured by this Security Instrument.

(The principal of and the interest on the indebtedness evidenced by the Note; all charges, fees and other sums as provided in the Loan Documents; and the principal of and interest on any other indebtedness secured by this Security Instrument and the performance of all of its obligations set forth in the Loan Documents are referred to herein, collectively, as the "**Secured Obligations**".)

PROVIDED, HOWEVER, that if the Secured Obligations shall have been paid in cash and performed in full, then, in such case the Trustee, at Lender's direction, shall, at the request and expense of Borrower, satisfy this Instrument and the estate, right, title and interest of the Trustee and Lender in the Property shall cease, and upon payment to Lender of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, the Trustee and Lender shall release this Instrument and the lien, operation and effect hereof by proper instrument without recourse, covenant or warranty of any nature, express or implied.

The Note, this Security Instrument and any other document or instrument executed by Borrower in connection with the Loan shall be collectively referred to as the "**Loan Documents**." All initially capitalized terms used herein which are defined in the Note shall have the same meaning herein unless the context otherwise requires.



**TO PROTECT THE SECURITY OF THIS SECURITY INSTRUMENT, BORROWER HEREBY
COVENANTS AND AGREES AS FOLLOWS:**

**ARTICLE 1.
COVENANTS AND AGREEMENTS OF BORROWER**

1.01 Payment of Secured Obligations. Borrower shall pay and perform as and when due the Secured Obligations.

1.02 Performance of Other Obligations; Preservation, Maintenance and Management of Property. Borrower shall perform, comply with and abide by each and every one of the covenants, agreements and conditions contained and set forth in the Note and this Security Instrument. Borrower:

- (a) shall keep, or cause to be kept, the Property in good condition and repair;
- (b) shall not remove, demolish or structurally alter, or permit the removal, demolition or structural alteration of any of the Improvements without the prior written consent of Lender; provided, however, Lender's consent shall not be required in connection with cosmetic and non-structural alterations;
- (c) shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Property and promptly restore in like manner any portion of the Improvements which may be damaged or destroyed from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefor;
- (d) shall comply, or cause to be complied with and abide by all laws, ordinances, rules, regulations and orders of governmental authorities now or hereafter affecting the Property or any part thereof or requiring any alterations or improvements to be made thereon, including without limitation, all Environmental Laws (as defined in Section 1.03 hereof), and the Americans with Disabilities Act;
- (e) shall comply, or cause to be complied with and abide by all of its obligations under any covenant, condition, restriction or agreement of record affecting the Property;
- (f) shall not commit or permit any waste or deterioration of the Property;
- (g) shall not allow changes in the use for which all or any part of the Property is intended;
- (h) shall maintain, or cause to be maintained all certificates, licenses and permits necessary to keep the Property operating in conformity with the use for which all or any part of the Property is intended;
- (i) shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent;
- (j) shall insure that at all times the Land constitutes one or more separate legal lots complying with all subdivision or platting laws, ordinances, rules or regulations applicable to the Property, or other laws relating to the division or separation of real property;
- (k) shall insure that at all times the Land is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof;
- (l) shall not abandon the Property; and



(m) shall do any and all other acts which, from the character and use of the Property, may be reasonably necessary to maintain, protect and preserve the Property and protect the security of Lender.

The Property shall be managed by either: (i) Borrower or a person/entity affiliated with Borrower approved by Lender for so long as Borrower or said affiliated person/entity is managing the Property in a commercially prudent and reasonable manner; or (ii) a professional property management company approved by Lender. Management by said affiliated person/entity or professional property management company (in either case, the "**Property Manager**") shall be pursuant to a written agreement approved in form and substance acceptable to Lender (the "**Management Agreement**"). In no event shall any manager be removed or replaced or the terms of any Management Agreement modified or amended without the prior written consent of Lender. Notwithstanding the provisions of any Management Agreement or any other agreement now or hereafter existing or entered into (together with any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements thereof, the "**Management Agreements**") to the contrary, Borrower shall not pay any Property Manager, nor shall any Property Manager accept, total management fees (i.e., on-site and off-site management fees or other compensation, whether monetary or nonmonetary) (collectively, "**Management Fees**") in excess of **four percent (4.0%)** of the effective gross income from the Property per year, nor shall such Management Fees be payable in advance of receipt of such income; provided, (for purposes of the foregoing percent management fee limitation only), "Management Fees" shall not be deemed to include bona fide management fees attributable to managing the portion of Tract C identified in Exhibit A hereof that is used as self-storage space (the "**Self Storage Space**"), and further provided, for purposes of determining "gross income" from the Property for the foregoing four percent (4%) management fee limitation, income from the Self Storage Space shall not be included in the calculation of such "gross income", provided however Borrower shall pay no such management fees for the Self Storage Space unless at the time of such payment all Operating Expenses (as defined below) then due and payable have been paid in full. The Management Agreements and all of the rights and interests thereunder including, without limitation, the rights to Management Fees are and at all times will be subject and subordinate to the Loan and the Loan Documents and to any renewals, extensions, modifications, assignments, replacements, or consolidations thereof, and the rights, privileges and powers of Lender hereunder and thereunder. Such subordination shall be self-operative and no further instrument shall be required to effect such subordination, but Borrower agrees to execute and deliver, and to cause any Property Manager to execute and deliver, any instrument which Lender may deem necessary or appropriate to confirm such subordination. Such subordination means, among other things, that Management Fees shall not be paid or accepted unless all current expenses attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to the Loan and the Loan Documents (collectively, "**Operating Expenses**"), have been paid. In the event (x) of any Event of Default (defined below) under the Loan Documents or under any Management Agreement then in effect, which default is not cured within any applicable grace or cure period, (y) the debt service coverage ratio applicable to the Property is less than 1.15 to 1.00 for the twelve (12) month period immediately preceding the calculation, or (z) of the bankruptcy or insolvency of the manager, or Borrower, if the Property Manager is affiliated with Borrower, Lender shall have the right to immediately terminate, or to direct Borrower to immediately terminate, such Management Agreement and to retain, or to direct Borrower to retain, a new management agent approved by Lender. All Rents generated by or derived from the Property shall first be utilized solely for Operating Expenses, and none of the Rents generated by or derived from the Property shall be diverted by Borrower and utilized for any other purpose unless all such Operating Expenses have been fully paid and satisfied.

1.03 Hazardous Waste. Borrower at all times shall keep the Property and groundwater of the Property free of Hazardous Substances (defined below), subject to Permitted Uses (defined below). Borrower shall not permit its tenants or any third party to enter the Property to use, generate, manufacture, store, release, threaten release, or dispose of Hazardous Substances in, on or about the Property; provided, however, that Borrower may permit reasonable incidental use and storage of Hazardous Substances on the Property provided that such use and storage complies with the following:

(a) such use and storage shall be limited to customary supplies which are normal incidents of the



ownership and management of real property which is similar to the Property ("**Permitted Uses**"); (b) no such products or supplies create any risk of harm to persons or property, including, without limitation, the Property; and (c) all such products and supplies are used and stored in strict compliance with all applicable Environmental Laws (defined below). Borrower shall give Lender prompt written notice of any claim by any person, entity, or governmental agency that a violation of Environmental Laws has occurred with respect to all or any portion of the Property, or that a release or disposal of Hazardous Substances has occurred on the Property (except Permitted Uses as may be permitted pursuant to the preceding sentence), or that Hazardous Substances are present at the Property or otherwise affect the Property (except Permitted Uses). Borrower, through its professional engineers and at its cost, shall promptly and thoroughly investigate suspected Hazardous Substances contamination of the Property and shall provide to Lender a detailed description of the investigation, and any copies of reports at Borrower's expense. Borrower shall forthwith remove, repair, clean up, and/or detoxify any Hazardous Substances from the Property, to the extent that the presence and/or maintenance of such Hazardous Substances in, on or about the Property constitutes a violation of any federal, state or local law, ordinance, order, decree or regulation now or hereafter in effect and applicable to Borrower or the Property, and whether or not Borrower was responsible for the existence of the Hazardous Substances in, on or about the Property. "**Hazardous Substances**" shall mean (i) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "infectious waste," "biohazardous waste," "toxic substance," "pollutant," "toxic pollutant," and "contaminant," as well as any formulation not mentioned herein intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "EP toxicity," or "TCLP toxicity"; (ii) petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (iii) asbestos in any form; (iv) urea formaldehyde foam insulation; (v) polychlorinated biphenyls (PCBs); (vi) radon; (vii) any other chemical, material, or substance which is (because of its quantity, concentration, or physical or chemical characteristics) limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment; (viii) any "Hazardous Substance" or terms of similar import as defined in the State where Property is located or substances otherwise regulated or controlled in such State because of concerns for health, safety and/or property, and (ix) lead-based paint. "**Environmental Laws**" means any and all requirements of courts (including, without limitation, state courts whose decisions may be based on the common law of the aforementioned State) or governmental authorities relating to health, safety, the environment or to any Hazardous Substances, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"), the Resource Conservation and Recovery Act ("**RCRA**"), the Hazardous Substances Transportation Act, the Toxic Substances Control Act, the Clean Water Act, the Endangered Species Act, the Clean Air Act, the Occupational Safety and Health Act and all similar federal, state and local environmental statutes, ordinances, and the rules, regulations, orders, decrees and guidance documents related thereto, whether any of the foregoing shall not exist or shall hereafter be enacted, decided, promulgated or published.

Borrower represents and warrants to Lender that to the best of Borrower's knowledge, except as set forth in that certain environmental site assessment delivered to Lender in connection with the Loan (the "**Environmental Report**"): (A) during the period of Borrower's ownership of the Property: (1) there has been no use, generation, manufacture, storage, treatment, disposal, discharge, release, or threatened release of any Hazardous Substances by any person on or around the Property except Permitted Uses and strictly in accordance with all applicable Environmental Laws, and, as to tenants or others in possession of the Property, as of the date hereof, with prudent business practices; and (2) there have been no Hazardous Substances transported over or through the Property except in connection with Permitted Uses; (B) after diligent inquiry, Borrower has no knowledge of, or reason to believe that there has been: any use generation, manufacture, storage, treatment, disposal, release, or threatened release of any Hazardous Substance, hazardous waste or other waste by any prior owners or prior occupants of



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the Property or by any third parties onto the Property; or any actual or threatened litigation or claims of any kind by any person relating to these matters; (C) no Hazardous Substances in excess of permitted levels or reportable quantities under applicable Environmental Laws are present in or about the Property or any nearby real property that could migrate to the Property; (D) no underground storage tanks of any kind are or have ever been located in or about the Property; (E) the Property and all operations and activities at, and the use and occupancy of, the Property, comply with all applicable Environmental Laws; (F) Borrower and every person currently having an interest in or conducting operations on the Property has complied with, and is now in strict compliance with, every permit, license, and approval required by all applicable Environmental Laws for all activities and operations at, and the use and occupancy of, the Property, and (G) there are no claims related to Hazardous Substances pending or threatened with regard to the Property or against Borrower or any indemnitor other than Borrower (individually or collectively, "Indemnitor") under the Environmental Indemnity (as hereinafter defined). Borrower represents and warrants that, to the best of Borrower's knowledge, any written disclosure submitted by or on behalf of Borrower to Lender concerning any release or threatened release, past or present compliance by Borrower, or any other person of any Environmental Laws applicable to the Property, and any environmental concerns relating to the Property, was true and complete when submitted and continues to be true and complete as of the date of this Security Instrument.

Borrower (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any Environmental Laws or under any Hazardous Substances-related claim; (2) shall reimburse Lender, on demand, for all costs and expenses incurred by Lender in connection with any review, approval, consent, or inspection relating to the environmental provisions in this Security Instrument together with interest, after demand, at the highest rate permitted under applicable law; and (3) shall indemnify, defend, and hold Lender and Trustee harmless from and against all losses, costs, claims, damages, penalties, liabilities, causes of action, judgments, court costs, attorneys' fees and other legal expenses, costs of evidence of title, cost of evidence of value, and other expenses (collectively, "**Expenses**"), including, without limitation, any Expenses incurred or accruing after the foreclosure of the lien of this Security Instrument, which either may suffer or incur and which directly or indirectly arise out of or are in any way connected with the breach of any environmental provision either in this Security Instrument or in any Loan Document or as a consequence of any release or threatened release or the presence, use, generation, manufacture, storage, disposal, transportation, release, or threatened release of any Hazardous Substances on or about the Property caused or permitted by Borrower, any prior owner or operator of the Property, any adjoining landowner or any other party, including, without limitation, the cost of any required or necessary monitoring, investigation, repair, cleanup, remedy, or detoxification of any Hazardous Substances and the preparation of any closure, remedial action, or other required plans, whether that action is required or necessary by reason of acts or omissions occurring prior to or following the recordation of this Security Instrument. Borrower's obligations will survive the satisfaction, release, or cancellation of the Loan, the release and reconveyance or partial release and reconveyance of this Security Instrument, and the foreclosure of the lien of this Security Instrument or deed in lieu thereof. Notwithstanding anything in this paragraph to the contrary, this paragraph shall not apply to the introduction and initial release of Hazardous Substances on the Property from and after the date that Lender acquires title to the Property through foreclosure or a deed in lieu of foreclosure (the "**Transfer Date**"); provided, however, Borrower shall bear the burden of proof that the introduction and initial release of such Hazardous Substances: (i) occurred subsequent to the Transfer Date, (ii) did not occur as the result of any act or omission of Borrower or its agents, and (iii) did not occur as a result of a continuing leaching, seeping, migration or release of any Hazardous Substances introduced prior to the Transfer Date in, on, under or near the Property.

To the extent permitted by applicable law, Lender or its agents, representatives, and employees may waive its lien against the Property or any portion of it, including, without limitation, the Improvements and the Personal Property, to the extent that the Property is found to be environmentally impaired and to exercise all rights and remedies of an unsecured creditor against Borrower and all of Borrower's assets and property for the recovery of any deficiency and environmental costs, including, without limitation, seeking an attachment order. Borrower will have the burden of proving that Borrower or any related party



(or an affiliate or agent of Borrower or any related party) was not in any way negligent in permitting the release or threatened release of the Hazardous Substances.

Anything contained in this Security Instrument or in the Loan Documents to the contrary notwithstanding, the Expenses will be exceptions to any nonrecourse or exculpatory provision of the Loan Documents, and Borrower will be fully and personally liable for the Expenses. That liability will not be limited to the original principal amount of the obligations secured by this Security Instrument, and Borrower's obligations will survive the foreclosure, deed in lieu of foreclosure, release, reconveyance, or any other transfer of the Property or this Security Instrument. For the purposes of any action brought under this subsection, Borrower waives the defense of laches and any applicable statute of limitations.

Lender and any other person or entity designated by Lender, including, without limitation, any representative of a governmental entity, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including, without limitation, conducting any environmental assessment or audit (the scope of which shall be determined by Lender) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender.

If recommended by the Environmental Report or any other environmental assessment or audit of the Property, Borrower shall establish and comply with an operations and maintenance program with respect to the Property, in form and substance reasonably acceptable to Lender, prepared by an environmental consultant reasonably acceptable to Lender, which program shall address any asbestos containing material or lead based paint that may now or in the future be detected at or on the Property. Without limiting the generality of the preceding sentence, Lender may require (1) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify, (2) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (3) at Borrower's sole expense, supplemental examination of the Property by consultants specified by Lender, (4) access to the Property by Lender, its agents or servicer, to review and assess the environmental condition of the Property and Borrower's compliance with any operations and maintenance program, and (5) variation of the operations and maintenance program in response to the reports provided by any such consultants.

1.04 Funds for Taxes, Insurance and Other Charges. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender, on the day monthly installments of principal and interest are payable under the Note (or on another day designated in writing by Lender) until the Note is paid in full, a sum (herein "**Impounds**") equal to one-twelfth (1/12) of: (a) all real property taxes and assessments (general and special), and all other taxes and assessments of any kind or nature whatsoever, including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property or any portion of it, or become due and payable, and which create, may create or appear to create a lien upon the Property, or any part thereof, or upon any person, property, equipment or other facility used in the operation or maintenance thereof, or any tax or assessment on the Property, or any portion of it, in lieu thereof or in addition thereto, or any license fee, tax or assessment imposed on Lender and measured by or based in whole or in part upon the amount of the outstanding Secured Obligations (collectively, "**Taxes**"); (b) the yearly premium installments for fire and other hazard insurance, rent loss insurance, commercial general liability insurance and such other insurance covering the Property as Lender may require pursuant to Section 1.07 hereof (collectively, "**Insurance Premiums**"); and (c) if this Security Instrument is on a leasehold, the yearly fixed ground rent, if any, under any ground lease affecting the Property or any portion thereof, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Lender may require Borrower to pay to Lender, in advance, such other Impounds for other taxes, charges, premiums, assessments and impositions in connection with Borrower or the Property which



Lender shall reasonably deem necessary to protect Lender's interests (collectively "**Other Impositions**"). (The Taxes, Insurance Premiums, Other Impositions, and other items for which Lender is authorized to collect Impounds hereunder are referred to collectively as "**Impositions**".) Unless otherwise provided by applicable law, Lender may require Impounds for Other Impositions to be paid by Borrower in a lump sum or in periodic installments, at Lender's option. Any waiver by Lender of a requirement that Borrower pays such Impounds may be revoked by Lender at any time upon notice in writing to Borrower.

Lender shall apply the Impounds to pay such Impositions so long as Borrower is not in breach of such rates, ground rent, Taxes, assessments, Insurance Premiums and Other Impositions and so long as Borrower is not in breach of any covenant or agreement in this Security Instrument. Lender shall make no charge to Borrower for holding and applying the Impounds, annually analyzing such accounts, or for verifying and compiling said assessments and bills, unless Lender pays Borrower interest, earnings or profits on the Impounds and applicable law permits Lender to make such a charge. If requested by Lender, Borrower shall cause to be furnished to Lender a tax reporting service contract covering the Property of the type, duration and with a company satisfactory to Lender. Unless applicable law requires interest, earnings or profits to be paid, Lender shall not be required to pay Borrower any interest, earnings or profits on the Impounds. Lender shall give to Borrower, without charge, an annual accounting of the Impounds, showing credits and debits to the Impounds and the purpose for which each debit to the Impounds was made. The Impounds are pledged as additional security for all sums secured by this Security Instrument.

If the Impounds held by Lender at the time of the annual accounting thereof exceed the amounts deemed necessary by Lender to provide for the payment of such Impositions, as they fall due, or exceed the amounts permitted to be held by applicable law, if no Event of Default is in effect under any of the Loan Documents, Lender shall credit such excess Impounds on the next monthly installment or installments of Impounds due. If at any time the amount of the Impounds held by Lender shall be less than is sufficient to pay such Impositions as they fall due, Borrower shall pay to Lender the amount necessary to make up the deficiency within thirty (30) days after notice from Lender to Borrower requesting payment thereof.

Upon the occurrence of any Event of Default under any of the Loan Documents or Borrower's breach of any covenant or agreement of Borrower in this Security Instrument, Lender may apply, in any amount and in any order as Lender shall determine, any Impounds held by Lender at the time of application, (i) to pay Impositions which are now or will hereafter become due, or (ii) as a credit against the sums secured by this Security Instrument. Upon payment in full of all sums secured by this Security Instrument or upon Defeasance (as defined in the Note, if so defined), Lender shall promptly refund to Borrower any Impounds held by Lender.

1.05 Application of Payments. Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Security Instrument shall be applied by Lender in the following order of priority: (i) to interest payable on the Note; (ii) to principal due on the Note; (iii) to interest payable on advances made pursuant to Section 1.14 hereof; (iv) to principal of advances made pursuant to Section 1.14 hereof; (v) to amounts payable to Lender by Borrower under Section 1.04 hereof; and (vi) any other sums secured by this Security Instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to Section 1.14 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this Section 1.05.

1.06 Charges; Liens. Unless Lender shall be collecting (and Borrower shall have paid as required) Impounds pursuant to Section 1.04 above, Borrower shall pay, at Borrower's cost and expense, all Impositions attributable to the Property, the Note, this Security Instrument, or any part thereof or interest therein by Borrower making or causing to be made payment, when due, directly to the payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this Section 1.06, and if Borrower shall make payment directly,



Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall pay and promptly discharge, at Borrower's cost and expense, all liens, encumbrances and charges upon, and the claims of all persons supplying labor or materials to or in connection with, the Property, or any part thereof or interest therein, without regard to whether such lien, encumbrance, charge or claim (in each case a "Claim") is or may be senior and superior to, equal with or junior and inferior to the lien of this Security Instrument. If Borrower shall fail to pay, remove and discharge any such lien, encumbrance, charge or claim, then in addition to any other right or remedy of Lender, Lender may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due or by procuring the discharge of such lien, encumbrance, charge or claim by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Borrower shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing right to discharge any such lien, encumbrance, charge or claim, together with interest thereon from the date of such expenditure at the Default Rate. Notwithstanding the foregoing, Borrower may contest any Claim by appropriate proceedings duly instituted and diligently prosecuted at Borrower's expense. Borrower shall not be obligated to pay any Claim, and Lender shall not have the right to discharge any Claim pursuant to the provisions above, while such contest is pending if the Property is not thereby subjected to imminent loss or forfeiture and, if Borrower has provided evidence that it has paid the amount of such Claim or by procuring the discharge of such Claim by depositing in a court a bond or the amount claimed or otherwise giving security for such Claim, or by procuring such discharge in such manner as is or may be prescribed by law, it deposits one hundred fifty percent (150%) of the amount of such Claim with the Lender or provides other security satisfactory to the Lender in its sole discretion.

Borrower shall give Lender prompt written notice of (a) the proposed creation of any county, municipal, quasi-governmental or other improvement or special district of any nature or (b) any action in respect to such district, which may affect the Property, including, without limitation, any proposed service plan or modification of such plan, proposed organization of such district and election in regard to such organization, the proposed issuance of bonds by such district and election in regard to such issuance and the proposed inclusion of the Property in any such district, and Borrower shall not consent to the creation of any such district or any such action in respect to such district without the prior written consent of Lender, which consent shall not be unreasonably withheld.

1.07 Required Insurance; Delivery of Policies. Borrower shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force, at no expense to Trustee or Lender, policies of insurance in form and amounts, covering such casualties, risks, perils, liabilities and other hazards as provided below. All such insurance policies shall be written by a company or companies authorized and admitted to issue insurance in the State where the Property is located and having a rating of A2 or better for ratings by Moody's Investors Service, Inc., or A or better for ratings by Fitch Investors Service, L.P. or Standard & Poor's Ratings Services.

(a) Borrower shall initially maintain, until Lender shall otherwise indicate in writing, the following insurance:

(1) **Property Insurance.** Borrower, at its sole cost and expense, shall keep all Improvements, boilers and machinery, and all other Personal Property of Borrower now or hereafter situated on the Property insured during the term of this Security Instrument against loss or damage by fire and against loss or damage by other risks now embraced by "Special Form" or "All Risk" coverage, so called, (including without limitation, riot and civil commotion, vandalism, malicious mischief, water, fire, burglary and theft) without any exclusion for terrorism, boiler and machinery coverage (if applicable), flood and/or earthquake insurance (if applicable), all as may be required by Lender, in amounts at all times sufficient to prevent Lender from becoming a co-insurer within the terms of the applicable policies and under applicable insurance law, providing for deductibles (not to exceed the lesser of 1% of the face amount of any such policy or \$10,000), maintained in an amount not less than 100% of the full



replacement cost of the Improvements and betterments and Personal Property (equivalent to the insurable value of the Improvements and Personal Property as determined by an appraisal acceptable to Lender), on an agreed amount basis, without deduction for depreciation and without reference to co-insurance (an insurance to value provision is not permitted in the policy).

(2) **Liability Insurance.** Borrower shall also provide commercial general liability insurance naming Lender as an additional insured. Such insurance shall provide coverage for personal injury, bodily injury, death, and property damage liability, against any and all claims, including all legal liability to the extent insurable and imposed upon Lender, and all court costs, legal fees and expenses. The limits of liability for such insurance coverage shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, and shall be without a deductible.

(3) **Business Income Insurance.** "Business income" and/or "rental income" insurance, each naming Lender as loss payee, in an amount sufficient to avoid any co insurance penalty and to provide proceeds which will cover a period of not less than twelve (12) months from the date of casualty or loss; the term "rental income" shall mean the sum of (A) the total then ascertainable Rents payable under the Leases (defined below) and (B) the total ascertainable amount of all other amounts to be received by Borrower from third parties which are the legal obligation of the tenants under such Leases, reduced to the extent such amounts would not be received because of operating expenses not incurred during a period of non occupancy of that portion of the Property then not being occupied.

(4) **Flood Insurance.** If the Property is now, or hereafter becomes, situated in a federally designated special flood hazard area, then Borrower shall obtain and maintain at all times thereafter, a policy of flood insurance in such amount as Lender may, from time to time require, and shall otherwise comply with the requirements of the National Flood Insurance Program. A Life of Loan Flood Hazard Certificate shall be provided to Lender identifying the Flood Hazard Zone in which the Property is situated.

(5) **Law and Ordinance Insurance.** If any of the Improvements or the use of the Property shall at any time constitute a legal non-conforming structure or use, Borrower shall obtain an "Ordinance or Law Coverage" or "Enforcement" endorsement, which shall include coverage for (A) loss of value (in an amount no less than 100% of the full replacement cost of the Improvements), (B) demolition and debris removal costs (in an amount not less than 15% of the policy limit or insured value), and (C) increased costs of construction (in an amount not less than 15% of the policy limit or insured value).

(6) **Builder's Risk Insurance.** At all times during which structural construction, repairs or alterations are being made with respect to the Improvements, Borrower shall also maintain or cause to be maintained (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above-mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (1) above written in a so-called builder's risk completed value form (w) on a non-reporting basis, (x) against all risks insured against pursuant to the first sentence of this paragraph, (y) including permission to occupy the Property, and (z) with an Agreed Amount endorsement waiving co-insurance provisions.

(7) **Workers' Compensation Insurance.** If Borrower has employees, Borrower shall also maintain workers' compensation, subject to the statutory limits of the state where the Property is located, and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, with respect to any work or operations on or about the Property.

(b) The original policy or policies and renewals thereof (or, at the sole option of Lender, duplicate originals or certified copies thereof), together with receipts evidencing payment of the premium therefor, shall be deposited with Lender, and Borrower hereby assigns to Lender the proceeds of such policy or policies as additional security for the Secured Obligations. Not more than forty-five (45) days



after closing the Loan, Borrower shall deliver to Lender the original policy or policies (or, at the sole option of Lender, duplicate originals or certified copies thereof). Such insurance may be provided in one policy or separate policies for hazard insurance, rental or business income insurance, general liability, earthquake, environmental or flood (or other special perils) insurance. Each such policy of insurance shall contain a non-contributing loss payable clause and a mortgagee clause in favor of and in form acceptable to Lender for policies referred to under subsections 1.07(a)(1), (3), (4), (5), and (6), and naming Lender as an additional insured for policies referred to under subsections 1.07(a) (2) and (7), and shall provide for not less than thirty (30) days prior written notice to Lender of any intent to modify, cancel, or terminate the policy or policies or the expiration of such policies of insurance, and must include a Lender's Loss Payable endorsement, and such other endorsements as required by Lender, including a replacement cost endorsement and agreed amount endorsement. If the insurance required under this Section 1.07 or any portion thereof is maintained pursuant to a blanket policy, Borrower shall furnish to Lender a certified copy of such policy, together with an original Evidence of Insurance (Acord Form 28) indicating that Lender (and its successors and/or assigns) is an insured under such policy in regard to the Property and showing the amount of coverage apportioned to the Property which coverage shall be in an amount sufficient to satisfy the requirements hereof. Not less than fifteen (15) days prior to the expiration dates of each policy required of Borrower hereunder, Borrower will deliver to Lender a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment and renewal satisfactory to Lender; and in the event of foreclosure of this Security Instrument, any purchaser or purchasers of the Property shall succeed to all rights of Borrower, including, without limitation, any rights to unearned premiums, in and to all insurance policies assigned and delivered to Lender pursuant to the provisions of this Section 1.07.

(c) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right but not the obligation, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and until paid shall be secured by this Security Instrument and shall bear interest at the Default Rate (as hereinafter defined).

1.08 Payment of Premiums. If Lender shall collect and Borrower shall pay in full Impounds for premiums in accordance with the provisions of Section 1.04 above, Borrower shall be deemed to have "paid" the premiums for the purposes of this Section 1.08. In the event Borrower fails to provide, maintain, keep in force or deliver to Lender the policies of insurance required by this Security Instrument or by any Loan Document, Lender may (but shall have no obligation to) procure such insurance or single-interest insurance for such risks covering Lender's interest, and Borrower will pay all premiums thereon and reimburse Lender for all amounts paid or incurred by Lender in connection therewith promptly upon demand by Lender, and until such payment is made by Borrower, the amount of all such premiums shall be added to the principal amount of the Loan and shall bear interest at the Default Rate.

1.09 Casualties; Insurance and Condemnation Proceeds. In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration (defined below) of the Property:

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, or if the Property or any portion thereof is taken in any condemnation or eminent domain proceeding, Borrower shall give prompt notice of such damage or taking to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty or taking, with such alterations as may be approved by Lender (the "Restoration").

(b) The term "**Net Proceeds**" for purposes of this Section 1.09 shall mean: (i) the net amount of all insurance proceeds under the policies carried pursuant to Section 1.07 hereof as a result of such



damage or destruction, after deduction of Lender's reasonable costs and expenses (including, without limitation, attorneys' fees), if any, in collecting the same, or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 1.17 hereof, after deduction of Lender's reasonable costs and expenses (including, without limitation, attorneys' fees), if any, in collecting the same, whichever the case may be. If (i) the Net Proceeds do not exceed \$50,000 (the "**Net Proceeds Availability Threshold**"); (ii) the costs of completing the Restoration as reasonably estimated by Borrower shall be less than or equal to the Net Proceeds; (iii) no Event of Default exists under the Note, this Security Instrument or any of the other Loan Documents; (iv) the Property and the use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances rules and regulations (including, without limitation, laws relating to legal nonconforming structures or uses and all applicable Environmental Laws; (v) (A) if the Net Proceeds are insurance proceeds, less than twenty-five percent (25%) of the total floor area of the Improvements has been damaged or destroyed, or rendered unusable as a result of such fire or other casualty; or (B) if the Net Proceeds are condemnation awards, less than 25% of the Property is taken, such Property that is taken is located along the perimeter or periphery of the Property, no portion of the Improvements is located on such Property, and such taking does not materially impair access to the Property; and (vi) Lender shall be satisfied that any operating deficits, including, without limitation, all scheduled payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower, then the Net Proceeds will be disbursed directly to Borrower for Restoration.

(c) If the Net Proceeds are greater than the Net Proceeds Availability Threshold, such Net Proceeds shall, subject to the provisions of the Leases that are superior to the lien of this Security Instrument or with respect to which subordination and non-disturbance agreements binding upon Lender have been entered into and such subordination and non-disturbance agreements apply to the deposits of Net Proceeds, be forthwith paid to Lender to be held by Lender in a segregated account to be made available to Borrower for the Restoration in accordance with the provisions of this Subsection 1.09(c).

The Net Proceeds held by Lender pursuant to Subsection 1.09(c) hereof shall be made available to Borrower for payment or reimbursement of Borrower's expenses in connection with the Restoration, subject to the following conditions:

(1) no Event of Default exists under the Note, this Security Instrument or any of the other Loan Documents;

(2) Lender shall, within a reasonable period of time prior to a request for an initial disbursement, be furnished with an estimate of the cost of the Restoration accompanied by an independent architect's opinion based on due professional investigation as to such costs and appropriate plans and specifications for the Restoration, such plans and specifications and cost estimates to be subject to Lender's approval, not to be unreasonably withheld or delayed;

(3) the Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Lender, are sufficient to cover the cost of the Restoration as such costs are certified by the independent architect;

(4) Net Proceeds are less than the outstanding principal balance of the Note;

(5) (A) if the Net Proceeds are insurance proceeds, less than sixty percent (60%) of the total floor area of the Improvements has been damaged or destroyed, or rendered unusable as a result of such fire or other casualty; or (B) if the Net Proceeds are condemnation awards, less than 25% of the Property is taken, such Property that is taken is located along the perimeter or periphery of the Property, no portion of the Improvements is located on such Property and such taking does not materially impair access to the Property;



(6) Lender shall be satisfied that any operating deficits, including, without limitation, all scheduled payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower;

(7) Lender shall be satisfied that, upon completion of the Restoration, the gross cash flow and the net cash flow of the Property will be restored to a level sufficient to cover all carrying costs and operating expenses of the Property, including, without limitation, debt service on the Note at a coverage ratio (after deducting all required reserves as required by Lender from net operating income) of at least 1.25 to 1.0, which coverage ratio shall be determined by Lender on the basis of the Applicable Interest Rate (as defined in the Note);

(8) the Restoration can reasonably be completed on or before the earliest to occur of (A) six (6) months prior to the Maturity Date (defined in the Note), (B) the earliest date required for such completion under the terms of any Major Leases (defined below) and (C) such time as may be required under applicable zoning law, ordinance rule or regulation in order to repair and restore the Property to as nearly as possible the condition it was in immediately prior to such fire or other casualty or to such taking, as applicable;

(9) the Property and use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances, rules and regulations including, without limitation, laws relating to legal nonconforming structures or uses and all applicable Environmental Laws; and

(10) each Major Lease in effect as of the date of the occurrence of such fire or other casualty shall remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration.

For purposes hereof, the term "**Major Lease**" shall mean (i) any Lease which (A) provides for rental income representing ten percent (10%) or more of the total rental income for the Property, (B) covers ten percent (10%) or more of the total space at the Property, in the aggregate, or (C) provides for a lease term of more than ten (10) years including options to renew and (ii) any instrument guaranteeing or providing credit support for any Major Lease.

(d) The Net Proceeds held by Lender until disbursed in accordance with the provisions of this Section 1.09 shall constitute additional security for the Secured Obligations. If Borrower is entitled to Net Proceeds pursuant to the terms hereof, the Net Proceeds (other than the Net Proceeds paid under the policy described in Section 1.07(a)(3) hereof for loss of rents or business interruption) shall be disbursed by Lender to, or as directed by, Borrower, in an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration less customary retainage from time to time during the course of the Restoration, not more frequently than once per month, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file the same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company insuring the lien of this Security Instrument. The Net Proceeds paid under the policy described in Section 1.07(a)(3) shall be disbursed by Lender to pay for debt service under the Loan, to pay other expenses incurred by Borrower in connection with the ownership and operation of the Property, and the remainder thereof, to, or as directed by, Borrower to pay for the cost of the Restoration in accordance with this Section 1.09(d). Final payment shall be made after submission to Lender of all licenses, permits, certificates of occupancy and other required approvals of governmental authorization having jurisdiction and Casualty Consultant's (defined below) certification that the Restoration has been fully completed.



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

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency in immediately available funds (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 1.09 shall constitute additional security for the Secured Obligations.

(g) Unless an Event of Default exists, Borrower shall settle any insurance claims with respect to the Net Proceeds which in the aggregate are less than the Net Proceeds Availability Threshold. Lender shall have the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds which in the aggregate are greater than the Net Proceeds Availability Threshold. If an Event of Default exists, Borrower hereby irrevocably empowers Lender, at Lender's sole election, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claims and to collect and to make receipt for any such payment. Notwithstanding the foregoing, Lender's failure to file and prosecute any such claims shall not diminish or impair Lender's rights and remedies against Borrower under the Loan Documents. If the Net Proceeds are received by Borrower, such Net Proceeds shall, until the completion of the related work, be held in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof.

(h) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after (i) the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 1.09, and (ii) the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full and all required permits, licenses, certificates of occupancy and other required approvals of governmental authorities having jurisdiction have been issued, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Security Instrument or any of the other Loan Documents.

(i) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 1.09(h) hereof shall be retained and applied by Lender toward the payment of the Secured Obligations whether or not then due and payable in such order, priority and proportions as Lender shall determine, without Prepayment Charge, or, at Lender's sole election, the same shall be paid, either in whole or in part, to Borrower. If Lender shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Secured Obligations.

1.10 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Security Instrument or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Borrower in and to all policies of insurance required



by Section 1.07 hereof shall inure to the benefit of and pass to the successor in interest to Borrower or the purchaser or grantee of the Property.

1.11 Indemnification; Subrogation; Waiver of Offset.

(a) Notwithstanding any other provisions of this Security Instrument, Lender is not undertaking any obligations, nor shall Lender have any obligations, under the Leases; or with respect to agreements, contracts, certificates, instruments, franchises, permits, licenses and other items which are part of the Property. If Lender or Trustee is made a party to any litigation concerning the Note, this Security Instrument, any of the Loan Documents, the Property or any part thereof or interest therein, or the occupancy of the Property by Borrower, then Borrower shall indemnify, defend and hold Lender and Trustee harmless from all liability by reason of said litigation, including, without limitation, attorneys' fees and expenses incurred by Lender or Trustee as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Lender and Trustee may employ an attorney or attorneys selected by it to protect its rights hereunder, and Borrower shall pay to Lender and Trustee attorneys' fees and costs incurred by Lender and Trustee.

(b) Borrower waives any and all right to claim or recover against Lender, Trustee, or their respective officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Security Instrument.

(c) All sums payable by Borrower pursuant to this Security Instrument or the Note shall be paid without notice, demand, counterclaim, setoff, 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: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property, the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lender, or any action taken with respect to this Security Instrument by any trustee or receiver of Lender, or by any court, in any such proceeding; (v) any claim which Borrower has or might have against Lender; (vi) 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 (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

1.12 Utilities. Borrower shall pay or shall cause to be paid when due all utility charges which are incurred by Borrower for the benefit of the Property and all other assessments or charges of a similar nature, whether or not such charges are or may become liens thereon.

1.13 Actions Affecting Property. Borrower shall promptly give Lender written notice of, and shall appear in and contest, any action or proceeding purporting to affect the Property or any portion thereof or interest therein, or the security of this Security Instrument or the rights or powers of Lender or Trustee; and shall pay all costs and expenses, including, without limitation, the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Lender or Trustee may appear.

1.14 Actions by Trustee or Lender to Preserve Property. If an Event of Default is continuing, Lender and/or Trustee, each at its own election, without obligation so to do, without releasing Borrower from any obligation, and without notice to or demand upon Borrower, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In



connection therewith (without limiting their general powers, whether conferred herein, in any other Loan Documents or by law), Lender and Trustee shall have and are hereby given the right, but not the obligation, (i) to enter upon and take possession of the Property; (ii) to make additions, alterations, repairs and improvements to the Property which they or either of them may consider necessary or proper to keep the Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Property or any portion thereof or interest therein, the security of this Security Instrument or the rights or powers of Lender or Trustee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Security Instrument or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including, without limitation, attorneys' fees and costs or other necessary or desirable consultants. Borrower shall, immediately upon demand therefor by Lender and Trustee or either of them, pay to Lender and Trustee an amount equal to all respective costs and expenses incurred by such party in connection with the exercise of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees and costs and expenses, together with interest thereon from the date of such expenditure at the Default Rate.

1.15 Transfers; Due On Sale/Encumbrance.

(a) **Lender Reliance.** Borrower acknowledges that Lender has examined and relied on the experience of Borrower or its general partners, managing partners, managing members, principals or any direct or indirect legal or beneficial owner of Borrower 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 payment and performance of the Secured Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the payment or the performance of the Secured Obligations, Lender can recover the Secured Obligations by a sale of the Property.

(b) **Transfer Definitions.** For purposes of this Section 1.15, an "**Affiliated Manager**" shall mean any Property Manager in which Borrower, any Guarantor (as hereinafter defined) or any Indemnitor has, directly or indirectly, any legal, beneficial or economic interest; a "**Restricted Party**" shall mean Borrower, any Guarantor, any Indemnitor, or any Affiliated Manager or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, any Guarantor, any Indemnitor, any Affiliated Manager or any non-member manager; a "**Sale**" shall mean a voluntary or involuntary sale, conveyance or transfer of a legal or beneficial interest; and a "**Pledge**" shall mean a pledge of or grant of a security interest in a legal or beneficial interest; the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract, by operation of law, or otherwise.

(c) No Sale/Encumbrance.

(1) Except as is set forth below in Section 1.15(d) with respect to Permitted Transfers (as hereinafter defined), Borrower shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein or permit a Sale or Pledge of an interest in any Restricted Party (collectively a "**Transfer**"), without the prior written consent of Lender, which consent may be withheld at Lender's sole election, regardless of whether the conditions set forth in Subsection 1.15(e) hereof have been satisfied. Without limiting the foregoing, there shall be no subordinate financing placed on any portion of the Property.

(2) A Transfer shall include, without limitation: (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii)



an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation, Sale or Pledge of such corporation's stock or the creation or issuance of new stock in such corporation; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of any general partner or joint venturer, or the Sale or Pledge of the partnership interest of any limited partner, general partner or joint venturer, or the Sale or Pledge of any profits or proceeds relating to such partnership interest, or the creation or issuance of new partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of any managing member or non-member manager (or if no managing member or non-member manager, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest, or the creation or issuance of new membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger or consolidation or the Sale or Pledge of the legal or beneficial interests in such Restricted Party or the creation or issuance of new legal or beneficial interests; (vii) the removal or the resignation of the Property Manager (including, without limitation, an Affiliated Manager) other than in accordance with Section 1.02 hereof; and (viii) without limitation to the foregoing, any Sale or Pledge by any person or entity which directly or indirectly controls Borrower of its direct or indirect controlling interest in Borrower.

(d) **Permitted Transfers.**

(1) Notwithstanding the provisions of Sections 1.15(b) and (c) hereof, the following transfers shall not be deemed to be a Transfer: (i) transfers by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party; (ii) the Sale, in one or a series of transactions, of not more than forty-nine percent (49%) of the stock in a Restricted Party; (iii) the Sale, in one or a series of transactions, of not more than forty-nine percent (49%) of the limited partnership interests or non-managing membership interests, as the case may be, in a Restricted Party; (iv) inter vivos and testamentary transfers of the legal or beneficial interests (including, without limitation, stock, partnership interests and membership interests) in a Restricted Party (A) to an existing owner of a legal or beneficial interest (including, without limitation, a shareholder, limited partner, general partner, joint venturer or member) in such Restricted Party on the date hereof (an "**Existing Owner**"), (B) to a lineal descendant or spouse of an Existing Owner, (C) to a trust, the beneficiary of which is (and so long as any part of the Loan remains unpaid continues to be) an Existing Owner or a lineal descendant or spouse of an Existing Owner, or (D) to a corporation, limited or general partnership, limited liability company or other legal entity which is (and so long as any part of the Loan remains unpaid continues to be) wholly owned and controlled by an Existing Owner; and (v) pursuant to Leases for which Lender's consent is not required in accordance with the provisions of Section 1.26 (b) hereof. Notwithstanding the introductory clause of this paragraph, the transfers described in clauses (i) through (iv) inclusive of this paragraph (collectively, "**Permitted Transfers**") shall be subject to Lender's prior written consent, which consent Lender shall provide upon satisfaction of the conditions set forth in Subsection 1.15(e) hereof.

(e) **Conditions Precedent.** Lender's consent to any Transfer/Permitted Transfer, regardless of whether Lender has consented to any previous Transfer/Permitted Transfer, is subject to satisfaction of the following conditions precedent:

(1) Lender shall have received, in the case of voluntary Transfer/Permitted Transfer, at least thirty (30) days prior written notice of the Transfer/Permitted Transfer or, in the case of a transfer(s) by devise or descent or by operation of law upon the death of a Restricted Party or the death of a member, partner, trustee, beneficiary or shareholder of a Restricted Party, within thirty (30) days after such Permitted Transfer (the Post-Permitted Transfer Notice Deadline"), together with copies of such documents and information relating to the Transfer/Permitted Transfer as Lender may request, including, without limitation, the Sale documents (including, without limitation, purchase/sale agreement, if any), the



terms and structure of the Sale and the nature and structure of the Sale (including, without limitation, debt/equity structure, if any);

(2) One of the following is satisfied: (i) the Transfer/Permitted Transfer shall not result in a change in the control of any Restricted Party or a change in the control or management of the Borrower and/or the Property; (ii) the person(s) or entity(ies) proposed to assume control of such Restricted Party and the person(s) or entity(ies) proposed to assume control and management of the Borrower and the Property shall be acceptable to Lender in all respects (including, without limitation, financial condition, credit history and management ability/experience and other relevant criteria, all as determined by Lender); or (iii) in the case of a Permitted Transfer described in Subsection 1.15(d)(1)(i), the person(s) or entity(ies) to whom such interest is transferred shall be acceptable to Lender in Lender's commercially reasonable discretion and in the event any of the foregoing proposed person(s) or entity(ies) described in this Subsection 1.15(e)(2)(iii) are not acceptable to Lender in the manner describe herein, Lender shall provide a reasonable opportunity (not to exceed thirty (30) days from the expiration of the Post-Permitted Transfer Notice Deadline in the case of transfer(s) by devise or descent or by operation of law upon the death of Restricted Party or the death of a member, partner, trustee, beneficiary or shareholder of a Restricted Party) for substitute person(s) or entity(ies), acceptable to Lender in the manner described in this Subsection 1.15(e)(2)(iii), to be provided (notwithstanding the provisions of this Section 1.15(e)(2), (x) the Borrower; (y) the spouses and lineal descendants of the individual owners of the membership interests in the Borrower as of the date hereof; and (z) any entity that owns an ownership interest in the Borrower as of the date hereof shall be deemed approved transferees for purposes of this Subsection 1.15(e)(2)(iii));

(3) the Transfer/Permitted Transfer shall not release any Guarantor or Indemnitor or their respective estates from their respective obligations under the Loan Documents;

(4) the Transfer/Permitted Transfer shall not release the Borrower from its obligations under the Note, this Security Instrument, or any other Loan Documents;

(5) the Transfer/Permitted Transfer shall not have any adverse effect either on the Borrower's compliance with the provisions of this Security Instrument, including, without limitation, Section 1.29 (captioned "Single Purpose Entity") and Section 1.30 (captioned "ERISA") hereof, or on the Borrower's status as a continuing legal entity liable for the payment and performance of the Secured Obligations;

(6) the Transfer/Permitted Transfer is not prohibited by federal regulations or other applicable law due to such transfer violating or being inconsistent with the same;

(7) Borrower shall pay all of Lender's costs and expenses, including, without limitation, attorneys' fees and costs, and title insurance costs (if any).

(f) **Lender's Rights.** Lender reserves the right to condition any consent required hereunder upon a modification of the terms hereof (excluding a modification of the interest rate, amortization term, maturity date, or payment schedule) and on an assumption of the Note, this Security Instrument and the other Loan Documents as so modified in connection with the proposed Transfer, payment of an assumption fee (except with respect to Permitted Transfers) of one percent (1%) of the principal balance of the Note (the "**Assumption Fee**"), payment of a \$2,000.00 processing fee (the "**Processing Fee**"), payment of expenses incurred by Lender (including attorneys' fees) in connection with any proposed Transfer (the "**Transfer Expenses**"), the approval by a Rating Agency (defined below) of the proposed transferee, and such other conditions and legal opinions as Lender shall determine to be in the interest of Lender. If the holder of the Note shall be a "real estate mortgage investment conduit" or "**REMIC**" (as such terms are defined in Section 860D of the United States Internal Revenue Code, as amended, and any related United States Treasury Department regulations) (the "**REMIC Trust**"), such opinions shall include, without limitation, an opinion of counsel in form and substance satisfactory to Lender, from



counsel approved by Lender, stating that the tax qualification and status of the REMIC Trust as a REMIC will not be adversely affected or impaired as a result of such modification or assumption. The Transfer Expenses and the Processing Fee shall be payable by Borrower whether or not Lender consents to the Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Secured Obligations immediately due and payable upon a Transfer without Lender's consent. Any Transfer made in contravention of this Section 1.15 shall be null and void and of no force and effect. The provisions of this Section 1.15 shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

(g) **Assumption and Release.** Provided that no Event of Default shall have occurred and shall be continuing, Lender shall consent to a sale of the Property and assumption of the Loan by the purchaser (transferee) and the release of Borrower from liability under the Loan, except for any liability arising or accruing prior to the closing of said assumption, upon (1) Borrower's completion of an assumption application in such form as Lender may require from time to time, (2) Lender's review and approval, which approval shall not be unreasonably withheld, of the creditworthiness and other qualifications of the proposed transferee (including, without limitation, the development, business or management expertise of the proposed transferee, if deemed relevant under the circumstances by Lender in its good faith judgment) under Lender's underwriting criteria at the time of said assumption, (3) the execution by the transferee of an assumption agreement in such form as Lender may require from time to time, and (4) payment to Lender of the Assumption Fee, the Processing Fee and the Transfer Expenses. In addition, in connection with said assumption, but subject to all of the conditions referred to above in this Subsection 1.15(g), Lender shall consent to the release of the Guarantor and Indemnitor, except for any liability arising or accruing prior to the closing of said assumption, provided that Lender approves in writing substitute guarantor(s)/indemnitor(s) acceptable to Lender in its sole discretion in terms of creditworthiness and other qualifications under Lender's underwriting criteria at the time of said assumption, and further provided that such substitute guarantor(s)/indemnitor(s) execute guaranties and/or indemnities in form and content acceptable to Lender.

1.16 Survival of Warranties. Notwithstanding any investigation of the Property, Borrower, Guarantor or Indemnitor by Lender, Borrower acknowledges: (a) that in accepting the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the representations, warranties and covenants of Borrower, Guarantor and Indemnitor contained in any loan application (a "Loan Application") or made to Lender in connection with the Loan or contained in the Loan Documents or incorporated by reference therein (the "Warranties"); (b) that such reliance existed on the part of Lender prior to the date hereof; (c) that the Warranties are a material inducement to Lender in making the Loan; and (d) that Lender would not make the Loan in the absence of the Warranties. All Warranties shall survive the execution and delivery of this Security Instrument and shall remain continuing obligations, representations, warranties and covenants of Borrower so long as any portion of the Secured Obligations remain outstanding.

1.17 Eminent Domain; Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay and perform the Secured Obligations at the time and in the manner provided for its payment and performance in the Note and in this Security Instrument and the Secured Obligations shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Secured Obligations. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided in the Note. Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be applied in accordance with Section 1.09 hereof. In the event



Borrower is not entitled to any award or payment pursuant to Section 1.09 hereof, Borrower shall cause the award or payment to be paid directly to Lender. Lender may apply the award or payment to the reduction or discharge of the Secured Obligations whether or not then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Secured Obligations. If in the event of a total condemnation the award or payment is not sufficient to repay the Note in full, Borrower shall immediately pay any remaining balance, together with all accrued interest thereon. Nothing herein shall be construed to cure or waive any Event of Default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such notice.

1.18 Additional Security. No other security now existing, or hereafter taken, to secure the Secured Obligations shall be impaired or affected by the execution of this Security Instrument and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of the time of payment of the Secured Obligations shall not diminish the force, effect or lien of this Security Instrument and shall not affect or impair the liability of any maker, surety or endorser for the payment of the Secured Obligations. In the event Lender at any time holds additional security for any of the Secured Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently, or after a sale is made hereunder.

1.19 Property Use. The Property shall be used only for commercial retail use, office use and self-storage use, and for no other use without the prior written consent of Lender.

1.20 Successors and Assigns. Without in any way limiting or affecting the provisions of Section 1.15 hereof, this Security Instrument applies to, inures to the benefit of and binds all parties hereto and their respective heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Lender" shall mean the owner and holder of the Note, whether or not named as Lender herein. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents, independent contractors or servicers authorized by Lender.

1.21 Inspections. Lender, or its agents, representatives or employees, are authorized to enter at any reasonable time (and with due regard for rights of tenants) upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts Lender is authorized to perform hereunder or under the terms of any of the Loan Documents. Without limiting the generality of the foregoing, Lender shall have the same right, power and authority to enter and inspect the Property, and the right to appoint a receiver on an *ex parte* basis, to enforce this right to enter and inspect the Property.

1.22 [RESERVED.]

1.23 Lender's Powers. Without affecting the liability of any other person liable for the payment of any obligations herein mentioned, and without affecting the lien or charge of this Security Instrument upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid obligations, Lender may, from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Lender's option any parcel, portion or all of the Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make other arrangements with debtors in relation thereto.

1.24 Books and Records; Financial Statements.



(a) Borrower, any Guarantor and any Indemnitor shall keep (and Borrower shall cause any Guarantor and any Indemnitor to keep) adequate books and records of account in accordance with accounting principles acceptable to Lender, in Lender's commercially reasonable discretion, consistently applied and furnish to Lender:

(1) quarterly and annual (or, if requested by Lender and the Loan has not yet been securitized or sold as a whole loan, monthly) certified rent rolls signed and dated by Borrower accompanied by an officer's certificate, detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease and the term of each Lease, including the expiration date, the extent to which any tenant is in default under any Lease, and any other information as is reasonably required by Lender, within twenty (20) days after the end of each calendar month, thirty (30) days after the end of each fiscal quarter or sixty (60) days after the close of each fiscal year of Borrower, as applicable;

(2) quarterly and annual (or if requested by Lender and the Loan has not yet been securitized or sold as a whole loan, monthly) operating statements of the Property, prepared and certified by Borrower in the form required by Lender, detailing the revenues received, the expenses incurred and the net operating income before and after debt service (principal and interest) and major capital improvements for each month and containing appropriate year to date information, within twenty (20) days after the end of each calendar month, thirty (30) days after the end of each fiscal quarter or sixty (60) days after the close of each fiscal year of Borrower, as applicable;

(3) annual (or if requested by Lender and the Loan has not yet been securitized or sold as a whole Loan, quarterly) balance sheets and profit and loss statements of Borrower, any Guarantor and any Indemnitor in the form required by Lender, prepared and certified by the respective Borrower, Guarantor and Indemnitor within thirty (30) days after the end of each fiscal quarter or sixty (60) days after the close of each fiscal year of Borrower, Guarantor and Indemnitor, as the case may be; and

(4) an annual operating budget presented on a monthly basis consistent with the annual operating statement described above for the Property, including cash flow projections for the upcoming year, and all proposed capital replacements and improvements at least fifteen (15) days prior to the start of each fiscal year.

(5) Borrower shall use its best efforts to obtain and furnish to Lender gross annual sales and sales per square foot information for tenants of the Property designated by Lender. Further, with respect to Leases under which the tenants are obligated to provide financial or sales statements/information to Borrower, as landlord under such Leases, Borrower agrees to promptly provide upon Lender's request all of the statements/information such tenants are obligated to provide to Borrower pursuant to the Lease, provided that the provisions of such Leases or any Subordination Non-Disturbance and Attornment Agreement executed by such tenants in connection with the Loan allow or authorize such statements/information to be provided to Lender or any first lienholder/mortgagee of the Property.

(b) Upon request from Lender, Borrower, any Guarantor and any Indemnitor shall furnish (and Borrower shall cause any Guarantor and any Indemnitor to furnish) in a timely manner to Lender:

(1) if the Property is used for multi-family residential use, a property management report for the Property, showing the number of inquiries made and/or rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender, in reasonable detail and certified by Borrower (or an officer, general partner, member or principal of Borrower if Borrower is not an individual) to be true and complete, but no more frequently than quarterly; and

(2) an accounting of all security deposits held in connection with any Lease of any part of the Property, including the name and identification number of the accounts in which such security



deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to obtain information regarding such accounts directly from such financial institutions.

(c) Borrower, any Guarantor and any Indemnitor shall furnish (and Borrower shall cause any Guarantor and any Indemnitor to furnish) Lender with such other additional financial or management information (including, without limitation, state and federal tax returns) as may, from time to time, be reasonably required by Lender in form and substance satisfactory to Lender.

(d) Borrower, any Guarantor and any Indemnitor shall furnish (and Borrower shall cause any Guarantor and any Indemnitor to furnish) to Lender and its agents convenient facilities for the examination and audit of any such books and records.

(e) Borrower shall pay a late fee of \$500 to Lender each time Borrower fails to deliver the required financial documents set forth above within the time set forth above, if such delivery delinquency continues for ten (10) business days after written notice thereof.

1.25 Borrower Name(s); Matters Affecting Financing Statement Filings. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade-names or fictitious business names under which Borrower intends to operate the Property or any business located thereon and representing and warranting that Borrower does business under no other trade names or fictitious business names with respect to the Property. Borrower will not change any of the following without notifying the Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the prior written consent of the Lender:

- (a) Borrower's name or identity (including, without limitation, its trade name or names);
- (b) if Borrower is an individual, Borrower's principal residence;
- (c) if Borrower is an organization, Borrower's corporate, partnership or other structure;
- (d) if Borrower is an organization, Borrower's jurisdiction of organization (i.e., the jurisdiction, or State, under whose law the Borrower is organized); or
- (e) if Borrower is an organization, Borrower's place of business (if Borrower has only one place of business) or Borrower's chief executive office (if Borrower has more than one place of business).

Upon any change in the matters referred to above (if permitted hereunder), Borrower will, upon request of Lender, execute any financing statement amendments, additional financing statements and other documents required by Lender to reflect such change.

1.26 Leaseholds.

(a) **Space Leases.** Borrower shall deliver to Lender a signed copy of all Leases (other than residential Leases) with respect to the Property or executed counterparts thereof, now existing or hereafter made from time to time, within thirty (30) days of signing, affecting all or any part of the Property, and except as is set forth herein, all Leases now or hereafter entered into with respect to the Property shall be in form and substance subject to the approval of Lender. Borrower shall not, without Lender's prior written consent, execute, modify, surrender or terminate any Lease now existing or hereafter made affecting all or any part of the Property; provided, however, that Borrower may enter into Leases affecting the Property without Lender's consent if such Leases (i) provide for a term of no less than three (3) years and no more than seven (7) years and at least a market rental rate for comparable properties in the geographic area of the Property (as determined by Lender); (ii) have been negotiated at



arms length with a bona fide independent, third-party tenant; (iii) demise not more than fifteen (15%) percent of the lesser of gross square footage of, or total income generated by, the Improvements; (iv) do not contain material modifications from the standard form of Lease previously approved by Lender; (v) do not change the use of the Property in effect at the time the Loan was made; (vi) do not have a materially adverse effect on the value of the Property taken as a whole; and (vii) are subject and subordinate to this Security Instrument and the lessees thereunder agree to attorn to Lender following Lender's succession to Borrower's interest in the Property. If the Property is multifamily, self-storage, or mobile home park, the prior consent of Lender shall not be required in connection with the making, modification or termination of Leases in the ordinary course of business and in the exercise of Borrower's prudent business judgment, provided (i) the term of such Leases (including any renewal or extension term) shall be no less than six (6) months and no more than eighteen (18) months and (ii) the rental rate for such Leases shall be at least a market rental rate for comparable properties in the geographic area of the Property. Borrower shall pay a late fee of \$500 to Lender each time Borrower fails to deliver the required documents set forth above within the time set forth above, if such delivery delinquency continues for ten (10) days after written notice thereof.

1.27 Indemnity. In addition to any other indemnities to Lender specifically provided for in this Security Instrument, Borrower hereby indemnifies and saves Lender and its authorized representatives harmless from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, architects', engineers' and attorneys' fees and all disbursements which may be imposed upon, incurred or asserted against Lender and its authorized representative by reason of: (i) the construction of any Improvements, (ii) any capital improvements, other work or things done in, on or about the Property or any part thereof, (iii) any use, nonuse, misuse, possession, occupation, alteration, operation, maintenance or management of the Property or any part thereof or any street, drive, sidewalk, curb, passageway or space comprising a part thereof or adjacent thereto, (iv) any negligence or willful act or omission on the part of Borrower and its agents, contractors, servants, employees, licensees or invitees, (v) any accident, injury (including, without limitation, death) or damage to any person or property occurring in, on or about the Property or any part thereof, (vi) any lien or claim which may be alleged to have arisen on or against the Property or any part thereof under the laws of the local or state government or any other governmental or quasi-governmental authority or any liability asserted against Lender with respect thereto, (vii) any tax attributable to the execution, delivery, filing or recording of this Security Instrument or the Note, (viii) any contest due to Borrower's actions or failure to act, permitted pursuant to the provisions of this Security Instrument, (ix) any default under the Note or this Security Instrument, (x) any claim by or liability to any contractor or subcontractor performing work or any party supplying materials in connection with the Property, (xi) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (xii) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan.

1.28 Representations and Warranties. Borrower covenants, represents and warrants with and to Trustee and Lender that:

(a) **Borrower Organization.** Borrower is duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and Borrower is duly qualified to transact business and holds all licenses, registrations or other approvals (or is otherwise exempt), in each other jurisdiction in which the conduct of Borrower's business requires such qualification, licenses, registrations or other approvals. Borrower will continuously maintain its existence and good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and Borrower will continuously maintain its qualification to transact business and all licenses, registrations or other approvals (unless otherwise exempt), in each other jurisdiction in which the conduct of Borrower's business requires such qualification, licenses, registrations or other approvals.



(b) **Borrower Authority.** Borrower has all requisite power and authority to enter into the Loan and to execute and deliver the Loan Documents, and to perform all of the obligations required of Borrower thereunder. Borrower is not required to make any filing with, or to obtain any permit, authorization, consent or approval of, any person or entity as a condition to Borrower's entering into the Loan, executing and delivering the Note, this Security Instrument, or any other Loan Documents, or performing all of the obligations required of Borrower thereunder, or if any such required permit, authorization, consent or approval is required, it has been obtained.

(c) **Validity of Documents.** The execution and delivery by Borrower of the Note, this Security Instrument and other Loan Documents, and the performance by Borrower of its obligations thereunder, do not violate any prohibition contained in, conflict with, result in a breach of, give rise to any right of termination, cancellation or acceleration under, constitute a default under, or require any additional approval under (i) Borrower's partnership agreement or any other organizational or constituent document or instrument pursuant to which Borrower was formed or by which Borrower's operations are governed; (ii) any material instrument or agreement to which Borrower is a part or by which Borrower is bound or that affects the Property; or (iii) any law, rule, regulation, ordinance, order, injunction or decree application to Borrower or to the Property or any portion thereof.

(d) **Warranty of Title.** Borrower hereby fully warrants the title to the Property and will defend the same and the validity and priority of the lien and encumbrance of this Security Instrument against the lawful claims of all persons whomsoever. None of the Permitted Encumbrances (defined below), individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Instrument and the Loan Documents, materially and adversely affect the value of the Property, impair the use or operations of the Property or impair Borrower's ability to pay its obligations in a timely manner.

(e) **No Liens or Transfers.** Borrower has not obtained, or agreed to obtain, any loan from any person which could result in the creation of a lien upon the Property, or any part thereof, to secure repayment thereof, except for the lien of the Loan. The Property is free and clear of all liens and encumbrances of any kind, nature or description, save and except only for those matters set forth in a schedule of exceptions to coverage in the title insurance policy approved by Lender and insuring Lender's interest in the Property (the "**Permitted Encumbrances**"). Further, Borrower has not made or permitted any transfer (including, without limitation, a Transfer) which will or could result in subordinate financing being placed on any portion of the Property, and there is no outstanding Sale or Pledge of an interest in a Restricted Party.

(f) **Litigation.** There is not pending against Borrower (or any partner of Borrower, if and to the extent applicable) any petition in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization, liquidation or arrangement under the bankruptcy laws of the United States or of any State thereof, or any other action brought under the aforementioned bankruptcy laws; and there is no action, suit, proceeding or investigation pending or, to Borrower's knowledge, threatened, in any court or before any governmental agency (including, without limitation, condemnation proceedings) involving Borrower (or partner of Borrower, if and to the extent applicable) or the Property or any portion thereof, including, without limitation, any action which would draw into question the validity of the Loan or of Borrower's obligations under the terms of the Note, this Security Instrument or any other Loan Document.

(g) **Status of Property.**

(1) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Improvements is located within such area, Borrower has obtained and will maintain the flood insurance described in Section 1.07 hereof.



(2) The Property and the present and contemplated use and occupancy thereof are in substantial compliance with all applicable zoning ordinances, building codes, land use and Environmental Laws and other similar laws. Without limiting the foregoing, the Property is in substantial compliance with the Americans with Disabilities Act of 1990 (as amended from time to time and any successor statute) and all of the regulations promulgated thereunder. The Land constitutes one or more separate tax lots and one or more separate legal lots in compliance with all applicable subdivision regulations.

(3) All necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(4) The Property is served by all utilities required for the current or contemplated use thereof, and all utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(5) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

(6) The Property is served by public water and sewer systems.

(7) The Property is free from material damage by any cause whatsoever, and any and all repairs required by Lender have been completed.

(8) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(9) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than property owned by tenants) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(10) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all applicable laws.

(11) All the Improvements lie within the boundaries of the Land.

(h) **No Foreign Person.** Borrower is not a "foreign person", "foreign corporation", "foreign partnership", "foreign trust" or "foreign estate" or other foreign entity as those terms are defined in Section 1445 of the United States Internal Revenue Code, as amended, and the related United States Treasury Department regulations.

(i) **Separate Tax Lot.** The Land is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements are assessed and taxed together with the Land or any portion thereof.

(j) **Financial Condition.** Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated. No petition in bankruptcy has ever been filed by or against Borrower, any Guarantor, or any related entity, or any principal, general partner or member thereof, in the last seven (7) years, and neither Borrower, any Guarantor nor any related entity, or any principal, general partner or member thereof, in the last seven (7)



years has ever made any assignment for the benefit of creditors or taken advantage of any insolvency act or any act for the benefit of debtors. All information in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan are accurate, complete and correct in all material respects. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

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

(l) **Taxes.** Borrower and any guarantor of the Loan have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower nor any guarantor of the Loan knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

(m) **No Change in Facts or Circumstances.** All information in all financing statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan are accurate, complete and correct in all respects. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

(n) **Disclosure.** Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

(o) **Illegal Activity.** No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity, and, to the best of Borrower's knowledge, there are no illegal activities or activities relating to any controlled substance at the Property.

(p) **Contracts.** All contracts, agreements, consents, waivers, documents and writings of every kind or character at any time to which Borrower is a party to be delivered to Lender pursuant to any of the provisions of the Loan Documents are valid and enforceable against Borrower and, to the best knowledge of Borrower, are enforceable against all other parties thereto, and, to Borrower's actual knowledge, in all respects are what they purport to be and, to the best knowledge of Borrower, to the extent that any such writing shall impose any obligation or duty on the party thereto or constitute a waiver of any rights which any such party might otherwise have, said writing shall be valid and enforceable against said party in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally.

(q) **Transfer of Property.** To the best of Borrower's knowledge, there is no concurrent or subsequent escrow to be opened or closed upon the closing of the Loan which would have the effect of transferring all or any portion of the Property.

1.29 Single Purpose Entity. Borrower covenants, represents, warrants and agrees that it has not done any of the following and shall not do any of the following:

(a) engage in any business or activity other than the acquisition, development, ownership, operation, leasing and managing and maintenance of the Property, and entering into the Loan and activities incidental thereto;

(b) acquire or own any material assets other than (i) the Property, and (ii) such incidental Personal Property as may be necessary for the operation of the Property;



(c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's consent;

(d) (i) fail to observe its organizational formalities or preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualification to do business in the State where the Property is located, if applicable, or (ii) without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's partnership agreement, articles or certificate of incorporation, articles of organization or similar organizational documents, as the case may be;

(e) own any subsidiary or make any investment in, any person or entity without the consent of Lender;

(f) commingle its assets with the assets of any of its members, general partners, affiliates, principals or of any other person or entity, participate in a cash management system with any other entity or person or fail to use its own separate stationery, invoices and checks;

(g) incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation), other than the Loan, except for trade payables in the ordinary course of its business of owning and operating the Property, provided that such debt (i) is not evidenced by a note, (ii) is paid within sixty (60) days of the date incurred, (iii) does not exceed in the aggregate four percent (4%) of the outstanding principal balance of the Note, and (iv) is payable to trade creditors and in amounts as are normal and reasonable under the circumstances;

(h) fail to pay its debts and liabilities (including, without limitation, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due;

(i) (i) fail to maintain its records (including, without limitation, financial statements), books of account and bank accounts separate and apart from those of the members, general partners, principals and affiliates of Borrower, the affiliates of a member, general partner or principal of Borrower, and any other person or entity, (ii) permit its assets or liabilities to be listed as assets or liabilities on the financial statement of any other entity or person, or (iii) include the assets or liabilities of any other person or entity on its financial statements;

(j) enter into any contract or agreement with any member, general partner, principal or affiliate of Borrower, any Guarantor, or any member, general partner, principal or affiliate thereof (other than a business management services agreement with an affiliate of Borrower, provided that (i) such agreement is acceptable to Lender, (ii) the manager, or equivalent thereof, under such agreement holds itself out as an agent of Borrower, and (iii) the agreement meets the standards set forth in this subsection (j) following this parenthetical), except upon terms and conditions that are commercially reasonable, intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of Borrower, any Guarantor, or any member, general partner, principal or affiliate thereof;

(k) fail to correct any known misunderstandings regarding the separate identity of Borrower or any member, general partner, principal or affiliate thereof or any other person;

(l) guarantee or become obligated for the debts of any other entity or person or hold itself out to be responsible for the debts of another person;

(m) make any loans or advances to any third party, including, without limitation, any member, general partner, principal or affiliate of Borrower, or any member, general partner, principal or affiliate



thereof, and shall not acquire obligations or securities of any member, general partner, principal or affiliate of Borrower, or any member, general partner, or affiliate thereof;

(n) fail to file its own tax returns or, if part of a consolidated group, fail to be shown as a separate member of such group;

(o) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including, without limitation, any member, general partner, principal or affiliate of Borrower, or any member, general partner, principal or affiliate thereof);

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

(q) share any common logo with or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or affiliate of Borrower, (ii) any affiliate of a general partner, principal or member of Borrower, or (iii) any other person or entity;

(r) fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including, without limitation, paying for office space and services performed by any employee of an affiliate;

(s) pledge its assets for the benefit of any other person or entity, other than with respect to the Loan;

(t) fail to maintain a sufficient number of employees in light of its contemplated business operations;

(u) fail to hold its assets in its own name;

(v) if Borrower is a corporation, fail to consider the interests of its creditors in connection with all corporate actions to the extent permitted by applicable law;

(w) have any of its obligations (other than the Loan) guaranteed by an affiliate except Guarantor; or

(x) fail to provide in its (i) articles of organization, certificate of formation and/or operating agreement, as applicable, if Borrower is a limited liability company, (ii) limited partnership agreement if Borrower is a limited partnership or (iii) certificate of incorporation, if Borrower is a corporation, that for so long as the Loan is outstanding pursuant to the Note and this Security Instrument, Borrower shall not file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors without the affirmative vote of all of the general partners/managing members/directors of Borrower.

1.30 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument and the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under either the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or the Internal Revenue Code.



(b) Borrower represents and warrants that, as of the date hereof and throughout the term of this Security Instrument (1) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, (2) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA; (3) Borrower is not and will not be, and transactions by or with Borrower are not and will not be, subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (4) one or more of the following circumstances is and will be true:

(i) Equity interests (as defined in 29 C.F.R. §2510.3-101(b)(1)) in Borrower are publicly-offered securities within the meaning of 29 C.F.R. §2510.3-101(b)(2);

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

(iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e), or an investment company registered under The Investment Company Act of 1940.

At Lender's request from time to time throughout the term of this Security Instrument, Borrower shall deliver to Lender such certifications and other evidence acceptable to Lender of Borrower's compliance with the covenants, representations and warranties contained in this Section 1.30.

ARTICLE 2.

DEFAULT

2.01 Events of Default. The occurrence of any of the following events shall be an Event of Default hereunder (an "**Event of Default**"):

(a) Borrower fails to pay any interest, principal or other monies due under the Note or other Loan Documents on the date any such amount is due;

(b) if any of the Impositions or other charges referred to in Sections 1.04 or 1.06 hereof are not paid when the same is due and payable, except to the extent sums sufficient to pay such Impositions or other charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(c) if the insurance policies required by Section 1.07 hereof are not kept in full force and effect, or if such insurance policies are not delivered to Lender upon request;

(d) any representation or warranty made by Borrower, any Indemnitor or any person guaranteeing payment or performance of the Secured Obligations or any portion thereof (whether one or more, a "**Guarantor**") in connection with the Property, the Loan, or the application for the Loan proves to have been materially false or materially misleading when made, or Borrower or any Guarantor fails to disclose any material fact respecting the Property, the Loan, or the application for the Loan;

(e) any governmental authority takes or institutes any action, which in the sole opinion of Lender, will adversely affect Borrower's condition, operations, or ability to repay the Loan, or will adversely affect any Guarantor's condition, operations, or ability to repay the Loan, if such action remains effective for more than thirty (30) days;

(f) if Borrower violates or does not comply with any of the provisions of special purpose entity requirements set forth in Section 1.29 (captioned "**Single Purpose Entity**") hereof;



(g) Lender fails to have a legal, valid, binding, and enforceable first priority lien in accordance with the terms hereof on the Property;

(h) Borrower becomes insolvent or there is a material adverse change in the assets, liabilities or financial position of Borrower, any general partner, or any Guarantor;

(i) any action or proceeding is commenced by any partner, principal, or member in Borrower which seeks as one of its remedies the dissolution of Borrower or any partner, principal, or member (as applicable) in Borrower;

(j) any governmental authority, or any court at the instance thereof, assumes control over the affairs or operations of, or a receiver or trustee is appointed over, or garnishment shall be issued or made against any substantial part of, the property of Borrower or any guarantor of the Loan;

(k) Borrower or any Guarantor of the Loan admits in writing its inability to pay its debts when due, or makes an assignment for the benefit of creditors; or Borrower or any Guarantor of the Loan applies for or consents to the appointment of any receiver, trustee or similar officer of Borrower or any such Guarantor, as the case may be, or for all or any substantial part of their respective property; or Borrower or any such Guarantor institutes (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debts, dissolution, liquidation, or similar proceedings relating to Borrower or any such Guarantor, as the case may be, or under the laws of any jurisdiction;

(l) a receiver, trustee or similar officer is appointed for Borrower or any Guarantor of the Loan or for all or any substantial part of their respective property without the application or consent of Borrower for any such Guarantor, as the case may be, and such appointment is not discharged within sixty (60) days (whether or not consecutive); or any bankruptcy, insolvency, reorganization, arrangements, readjustment of debt, dissolution, liquidation or similar proceedings is instituted (by petition, application or otherwise) against Borrower or any such Guarantor and shall not be dismissed within sixty (60) days;

(m) any Transfer or Permitted Transfer (as defined in Section 1.15 hereof) occurs without the prior written consent of Lender, including without limitation a Sale, Pledge or an encumbrance of the Property, voluntarily or involuntarily, by any lien or encumbrance other than this Security Instrument;

(n) the termination or dissolution of Borrower, any general partner in Borrower or any Guarantor; or any action or proceeding is commenced which seeks as one of its remedies the dissolution of Borrower or any general partner in Borrower or any Guarantor;

(o) if any default occurs under any guaranty or indemnity executed in connection herewith (including, without limitation, the Environmental Indemnification Agreement executed by Borrower and any other Indemnitor in connection with the Loan [the "**Environmental Indemnity**"]) and such default continues after the expiration of applicable grace periods, if any;

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

(q) if any federal tax lien is filed against Borrower, any member or general partner of Borrower, any Guarantor, or any portion of the Property and same is not discharged of record within thirty (30) days after same as filed; or

(r) if for more than thirty (30) days after notice from Lender, Borrower shall continue to be in default (other than the failure to pay monies due under the Note or the other Loan Documents) under any



term, covenant or condition of the Note, this Security Instrument or the other Loan Documents not set forth in Subsections 2.01(a) through (q) above; provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days.

All notice and cure periods provided herein or in any other Loan Document shall run concurrently with any notice or cure periods provided by applicable laws. All notices and cure periods described herein or in any other Loan Documents shall not be applicable to any event which with the giving of notice, the passage of time or both would constitute an Event of Default, if such event has occurred as of the date on which Lender commences a nonjudicial foreclosure proceeding (if such proceeding is allowed by law) with respect to another Event of Default. Such event shall constitute an independent Event of Default hereunder.

2.02 Acceleration Upon Default; Additional Remedies.

(a) **Remedies.** Upon the occurrence of any Event of Default which is continuing, Lender may or acting by or through Trustee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower in and to the Property, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender or Trustee:

- (1) declare all Secured Obligations to be immediately due and payable;
- (2) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable state or federal law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (3) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable state or federal law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Secured Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Secured Obligations not then due, unimpaired and without loss of priority;
- (4) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (5) subject to the provisions of Section 10 (captioned "**Exculpation**") of the Note, institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents;
- (6) subject to the provisions of Section 10 (captioned "**Exculpation**") of the Note, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (7) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Secured Obligations



and without regard for the solvency of Borrower, any Guarantor, any Indemnitor or of any person, firm or other entity liable for the payment of the Secured Obligations;

(8) subject to any applicable state or federal law, the license granted to Borrower under Section 3.02 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all rent rolls, Leases (including, without limitation, the form Lease and amendments and exhibits), subleases (including, without limitation, the form sublease and amendments and exhibits) and rental and license agreements with the tenants, subtenants and licensees, in possession of the Property or any part or parts thereof; tenants', subtenants' and licensees' money deposits or other property (including, without limitation, any letter of credit) given to secure tenants', subtenants' and licensees' obligations under Leases, subleases or licenses, together with a list of the foregoing; all lists pertaining to current rent and license fee arrears; any and all architects' plans and specifications, licenses and permits, documents, books, records, accounts, surveys and property which relate to the management, leasing, operation, occupancy, ownership, insurance, maintenance, or service of or construction upon the Property and Borrower shall surrender possession thereof and of the Property to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) either require Borrower (A) to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower, or (B) to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vi) apply the receipts from the Property to the payment of the Secured Obligations, in such order, priority and proportions as Lender shall determine after deducting therefrom all expenses (including, without limitation, attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Impositions, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(9) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limitation: (i) the right to take possession of the Personal Property and other UCC collateral or any part thereof, and to take such other measures as Lender or Trustee may deem necessary for the care, protection and preservation of the Personal Property, and other UCC collateral, and (ii) request Borrower at its expense to assemble the Personal Property and other UCC collateral and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Personal Property and other UCC collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(10) apply any sums then deposited in the Impounds and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any other Loan Document to the payment of the following items in any order as determined by Lender:

- (i) Taxes and Other Impositions;
- (ii) Insurance Premiums;
- (iii) interest on the unpaid principal balance of the Note;
- (iv) amortization of the unpaid principal balance of the Note; and

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(v) all other sums payable pursuant to the Note, this Security Instrument and the other Loan Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument;

(11) surrender the insurance policies maintained pursuant to Section 1.07 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Secured Obligations in such priority and proportion as Lender shall determine, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such unearned Insurance Premiums;

(12) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Secured Obligations in such order, priority and proportions as Lender shall determine; or

(13) pursue such other remedies as Lender may have under applicable state or federal law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 2.02(a) hereof to the contrary, if any Event of Default as described in clause (h), (i), (j) or (k) of Section 2.01 hereof shall occur, the entire unpaid Secured Obligations shall be automatically due and payable, without any further notice, demand or other action by Lender.

(b) **Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Secured Obligations in such priority and proportions as Lender shall determine.

(c) **Right to Cure Defaults.** Upon the occurrence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender 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 or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Secured Obligations. The cost and expense of any cure hereunder (including, without limitation, attorneys' fees to the extent permitted by law), with interest as provided in this Section 2.02(c) hereof, shall constitute a portion of the Secured Obligations and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender or Trustee in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (defined in the Note), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Secured Obligations and shall be immediately due and payable upon demand by Lender therefor.

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

(e) **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 Secured Obligations as the same become due, without regard to whether or not the balance of the Secured Obligations shall be due, and



without prejudice to the right of Lender or Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

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

(g) **Other Rights, etc.**

(1) The failure of Lender or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (1) the failure of Lender or Trustee to comply with any request of Borrower, any Guarantor or any Indemnitor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (2) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Secured Obligations or any portion thereof, or (3) any agreement or stipulation by Lender extending the time of payment, changing the rate of interest, or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(2) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the insurance policies required pursuant to Section 1.07 hereof, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any portion of the Property, or collateral not in Lender's possession.

(3) Lender may resort for the payment of the Secured Obligations to any other security held by Lender in such order and manner as Lender may elect. Lender or Trustee may take action to recover the Secured Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights of Lender or Trustee 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 or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Lender nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

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

(i) **Violation of Laws.** If the Property is not in compliance with applicable laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.



(j) **Right of Entry.** Lender and its agents shall have the right to enter and inspect the Property at all reasonable times. Except in case of emergency, such entries shall be with reasonable prior notice and shall be with due regard for rights of tenants.

ARTICLE 3.
ASSIGNMENT OF LEASES, RENTS, INCOME AND PROFITS

3.01 Assignment; Priority of Assignment. Borrower (referred to in this Article 3 as "**Assignor**") hereby irrevocably, absolutely, presently and unconditionally grants, sells, assigns, transfers, pledges and sets over to Lender (referred to in this Article 3 as "**Assignee**"):

(a) any and all Leases, together with all of Assignor's right, title and interest in and to the Leases including, without limitation, all modifications, amendments, extensions and renewals of the Leases and all rights and privileges incident thereto and all demands of claims arising thereunder (including, without limitation, any cancellation fees or other premiums collected in connection with the Leases) or under any policies insuring against loss of rents or profits;

(b) all Rents, including, without limitation, expenses paid by tenants; and

(c) all security deposits, guaranties and other security now or hereafter held by Assignor as security for the performance of the obligations of the tenants under such Leases.

The foregoing assignment of Rents and Leases is intended by Assignor and Assignee to create and shall be construed to create a present and absolute assignment to Assignee of all of Assignor's right, title and interest in the Rents and in the Leases and shall not be deemed to create merely an assignment for security only for the payment of any indebtedness or the performance of any obligations of Assignor under any of the Loan Documents. This assignment is included within the text of this Security Instrument for convenience only, but such inclusion shall not derogate from its effectiveness any other assignment of Rents or Leases contained in any other Loan Documents or otherwise and all shall be supplementary to one another.

Nothing contained herein shall operate or be construed to obligate Assignee to perform any of the terms, covenants and conditions contained in any Lease or otherwise to impose any obligation upon Assignee with respect to any Lease, including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the tenant under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such tenant shall have been thereby terminated. Assignor and Assignee further agree that, during the term of this Security Instrument, the Rents shall not constitute property of Assignor (or of any estate of Assignor) within the meaning of 11 U.S.C. §541, as may be amended from time to time.

Assignor hereby represents and warrants that (i) Assignor has good title to the Leases and the full power and right to assign the Leases; (ii) no other persons have any title or interest in the Leases; (iii) the Leases are in full force and effect and have not been modified except as set forth in the certified occupancy statement delivered to and approved by Assignee; (iv) there are no defaults under any of the Leases; (v) no other assignments of all or any portion of the Rents or the Leases exist or remain outstanding; (vi) all Rents due have been paid in full; (vii) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (viii) none of the Rents have been collected for more than one (1) month in advance (except a security deposit shall not be deemed rent collected in advance); (ix) except as disclosed to Lender in writing prior to the funding of the Loan, the property demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (x) there exist no offsets or defenses to the payment of any portion of the Rents; (xi) Assignor has received no notice from any tenant challenging the validity or enforceability of any Lease; (xii) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease; (xiii) the Leases are valid and enforceable



against Assignor and the tenants set forth therein; (xiv) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (xv) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (xvi) each Lease is subordinate to this Security Instrument, either pursuant to its terms or a recordable subordination agreement; (xvii) no Lease has the benefit of a non-disturbance agreement that would be considered unacceptable to prudent institutional lenders; (xviii) all security deposits relating to the Leases reflected on the certified rent roll delivered to Assignee have been collected by Assignor; and (xix) no brokerage commissions or finders fees are due and payable regarding any Lease.

Assignor shall take such action and execute, deliver and record such documents as may be reasonably necessary to evidence such assignment, to establish the priority thereof and to carry out the intent and purpose hereof. If requested by Assignee, Assignor shall execute a specific assignment of any Lease now or hereafter affecting all or any portion of the Property and shall cause the tenant or tenants thereunder to execute, deliver and record a Subordination, Non-Disturbance and Attornment Agreement, in form and substance reasonably satisfactory to Assignee.

Assignor shall faithfully perform and discharge all of Assignor's obligations under the Leases and to enforce all obligations undertaken by tenants thereunder. Assignor shall defend Assignee in any action relating to the Leases and shall indemnify, defend and hold Assignee harmless from and against any claims of tenants or third parties with respect to the Leases. Assignor shall not receive or collect any Rents in advance of the date due or waive or defer any terms of the Leases without the consent of Assignee. Assignor shall not pledge, assign or further encumber the Leases or any Rents or (except as is permitted by Section 1.26(b) above) modify or terminate the Leases, or permit any assignment or sublease thereunder, without Assignee's prior written consent. Assignor irrevocably appoints Assignee its true and lawful attorney-in-fact, at the option of Assignee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Assignor, Trustee or Assignee, for all such Rents, and apply the same to the Secured Obligations.

3.02 Grant of Revocable License to Collect Rents. So long as an Event of Default shall not have occurred and be continuing under this Security Instrument, Assignee hereby grants to Assignor a revocable license to enforce the Leases, to collect the Rents, to apply the Rents to the payment of the costs and expenses incurred in connection with the Property and to any Secured Obligations. If requested by Assignee, Assignor shall (a) give written notice to the tenants under the Leases of the assignment of Rents and Leases by Assignor to Assignee pursuant to Section 3.01 hereof, of the grant of the revocable license by Assignee to Assignor pursuant to this Section 3.02, and of the respective rights of Assignor and Assignee under this Article 3; and (b) obtain such tenants' agreements to be bound by and comply with the provisions of such assignment and grant. All Leases hereafter executed with respect to the Property shall contain a reference to the foregoing assignment and grant and shall state that the tenant executing such Lease shall be bound by and shall comply with the provisions hereof.

3.03 Revocation of License; Assignee's Rights. Upon the occurrence of an Event of Default and at any time thereafter during the continuance thereof, subject to applicable laws, the license granted to Assignor hereunder shall automatically be revoked. Upon such revocation, Assignor shall promptly deliver to Assignee all Rents then held by or for the benefit of Assignor. Assignee, in addition to any other rights granted to Assignee under this Security Instrument, shall have the right: (i) to notify the tenants under the Leases that Assignor's license to collect Rents has been revoked, and, with or without taking possession of the Property, to direct such tenant to thereafter make all payments of Rent and to perform all obligations under its Lease to or for the benefit of Assignee or as directed by Assignee; (ii) to enter upon the Property and to take over and assume the management, operation and maintenance of the Property, to enforce all Leases and collect all Rents due thereunder, to amend, modify, extend, renew and terminate any or all Leases and execute new Leases; and (iii) to perform all other acts which Assignee shall determine to be necessary or desirable to carry out the foregoing. Each tenant under any Lease shall be entitled to rely upon any notice from Assignee and shall be protected with respect to any payment of Rent made pursuant to such notice, irrespective of whether a dispute exists between Assignor



and Assignee with respect to the existence of an Event of Default or the rights of Assignee hereunder. The payment of Rent to Assignee pursuant to any such notice and the performance of obligations under any Lease to or for the benefit of Assignee shall not cause Assignee to assume or be bound by the provisions of such Lease including, without limitation, the duty to return any security deposit to the tenant under such Lease unless and to the extent such security deposit was paid to Assignee by Assignor. Assignor shall indemnify, defend and hold Assignee harmless from and against any and all losses, claims, damage or liability arising out of any claim by a tenant with respect thereto.

3.04 Application of Rents; Security Deposits. All Rents received by Assignee pursuant to this Security Instrument shall be applied by Assignee, as determined by Assignee, to any of the following: (i) the costs and expenses of collection, including, without limitation, attorneys' fees and receivership fees, costs and expenses; (ii) the costs and expenses incurred in connection with the management, operation and maintenance of the Property; (iii) the establishment of reasonable reserves for working capital and for anticipated or projected costs and expenses, including, without limitation, capital improvements which may be necessary or desirable or required by law; and (iv) the payment of any indebtedness then owing by Assignor to Assignee. In connection therewith, Assignor further agrees that all Rents received by Assignee from any tenant may be allocated first, if Assignee so elects, to the payment of all current obligations of such tenant under its Lease and not to amounts which may be accrued and unpaid as of the date of revocation of Assignor's license to collect such Rents. Assignee may, but shall have no obligation to, pursue any tenant for the payment of Rent which may be due under its Lease with respect to any period prior to the exercise of Assignee's rights hereunder or which may become due thereafter. Assignor agrees that the collection of Rents by Assignee and the application of such Rents by Assignee to the costs, expenses and obligations referred to in this Section 3.04 shall not cure or waive any default or Event of Default or invalidate any act (including, without limitation, any sale of all or any portion of the Property now or hereafter securing the Loan) done in response to or as a result of such default or Event of Default or pursuant to any notice of default or notice of sale issued pursuant to any Loan Document.

3.05 No Mortgagee in Possession. Nothing contained in this Security Instrument shall be construed as constituting Assignee a "mortgagee in possession" in absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

ARTICLE 4.

SECONDARY MARKET

4.01 Transfer of Loan. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "**Securities**"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any rating agency ("**Rating Agency**") rating such Securities (collectively, the "**Investor**") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Loan and to Borrower, and the Property, whether furnished by Borrower, or otherwise, as Lender determines necessary or desirable. Borrower shall cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably required by Lender. Borrower shall also furnish and Borrower consents to Lender furnishing to such Investors or such prospective Investors or Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower as may be requested by Lender, any Investor or any prospective Investor or Rating Agency in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Note, this Security Instrument, and the other Loan Documents, or may delegate some or all of such responsibility and/or obligations to a servicer

(including, without limitation, any subservicer or master servicer) or agent. Lender may make such assignment or delegation on behalf of the Investors if the Note is sold or this Security Instrument or the other Loan Documents are assigned. All references to "Lender" in the Loan Documents shall refer to and include any such servicer or agent, to the extent applicable, in each case as designated by Lender from time to time.

4.02 Conversion to Registered Form. At the request and the expense of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "**Registrar**") acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the U.S. Internal Revenue Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligations of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Lender or any other Lender in respect of transfers of the Note and this Security Instrument (other than taxes and governmental charges and fees).

4.03 Estoppel Certificate. Upon any transfer or proposed transfer contemplated by Section 4.01 above, at Lender's request, Borrower, or any guarantors or indemnitors shall provide an estoppel certificate to the Investor or any prospective Investor in such form, substance and detail as Lender, such Investor or prospective Investor may require in their respective commercially reasonable discretion.

ARTICLE 5.

FURTHER ASSURANCES

5.01 Recording of Security Instrument; Other Assurances. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note or deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

5.02 Further Acts. 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, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender and Trustee the Property and rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all applicable laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the



Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this paragraph. Borrower specifically agrees that all power granted to Lender under this Security Instrument may be assigned by Lender to its successors or assigns as holder of the Note.

5.03 Changes in Laws Regarding Taxation; Documentary Stamps.

(a) In the event of the passage after the date of this Security Instrument of any law of the State where the Property is located deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or loans secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, (including, without limitation, a withholding tax) either directly or indirectly, on this Security Instrument, the Note or the Loan, Borrower shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand in Lender, whichever is less, provided, however, that if, in the opinion of the attorneys for Lender, Borrower is not permitted by law to pay such taxes, Lender shall have the right, at its option, to declare the Loan due and payable on a date specified in a prior notice to Borrower of not less than sixty (60) days. Any prepayment made by Borrower pursuant to the terms of this paragraph shall be made without any Prepayment Charge (as defined in the Note).

(b) If at any time the United States of America, any State thereof, or any governmental subdivision of any such State, shall require revenue or other stamps to be affixed to the Note or this Security Instrument, Borrower will, upon demand, pay for the same, with interest and penalties thereon, if any.

ARTICLE 6.

WASHINGTON PROVISIONS/MODIFICATIONS AND OTHER PROVISIONS

6.01 Inconsistencies. In the event of any conflicts between the terms and conditions of this Article 6 and the remainder of this Security Instrument, the terms and conditions of this Article 6 shall govern, but only to the extent of any such conflicts.

6.02 Evasion of Prepayment Terms. If an Event of Default shall occur, a tender of any payment of principal by Borrower, its successors or assigns or by anyone on behalf of Borrower, its successors or assigns, in excess of the amount which would have been payable had the Event of Default not occurred, shall constitute an evasion of the prepayment terms of the Note, as incorporated herein by reference, and shall be deemed to be a voluntary prepayment thereunder and any such payment, to the extent permitted by law, must include the prepayment charge computed in accordance with the terms of the Note.

6.03 Non-Agricultural Property. None of the Property is used principally or at all for agricultural or farming purposes.

6.04 Commercial Purposes. Borrower represents and warrants to Lender that none of the Property constitutes homestead property of Borrower, that this Security Instrument is not granted to secure an obligation incurred primarily for personal, family or household purposes, and that this Security Instrument secures a "commercial loan" as defined in RCW Chapter 61.24.

6.05 Acceleration Upon Default; Additional Remedies. In furtherance of and not in limitation of any other provisions of this Security Instrument, including without limitation Article 2:



Upon the occurrence of an Event of Default, Lender may, at its option, declare all Secured Obligations to be immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Lender may:

(a) **Possession of Property and Receiver.** Enter onto and take possession of the Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in Lender's judgment to manage and operate the Property, and Lender may apply any Rents, royalties, income or profits collected against the Secured Obligations without in any way curing or waiving any Event of Default as to Borrower. Without limiting the foregoing:

(i) Lender shall be entitled to a receiver for the Property (or any portion thereof) and of the rents, issues and profits thereof, and shall be entitled thereto as a matter of right, whether or not notice of sale hereunder has been recorded, without regard to the solvency or insolvency of the Borrower or the then owner of the Property and without regard to the value of the Property, and such receiver may be appointed by any court of competent jurisdiction upon *ex parte* application and without notice (notice being expressly waived hereby), and all rents, issues and profits, income and revenue of and from the Property shall be applied and accounted for as the court appointing such receiver may direct,

(ii) if the appointment of a receiver is made before or after Trustee's or judicial sale and the Lender is the successful bidder, the appointment shall continue until the earlier of redemption from sale, as provided by statute, or issuance of a Trustee's or sheriff's deed even in the event the full indebtedness has been bid,

(iii) if application for appointment of receiver is made after sale, Trustee or Lender shall be entitled to a receiver and shall be entitled thereto as a matter of right, without regard to its bid amount or to the solvency of the Borrower or the then owner of the Property and without regard to the value of the Property, and such receiver may be appointed by any court of competent jurisdiction upon *ex parte* application and without notice (notice being expressly waived hereby), and all rents, issues and profits, income and revenue of and from the Property shall be applied and accounted for as the court appointing such receiver may direct. It is the Borrower's intent that the Trustee or Lender shall be absolutely entitled to the appointment of a receiver even after sale,

(iv) the receiver shall have the power and authority to issue certificates for the purpose of securing the repayment of monies which the receiver may borrow for the purposes of operating, maintaining, preserving and/or enhancing the value of the Property, and particularly, but without limitation the completion or repair and restoration of the Improvements upon the Property. Such certificates shall be secured by a lien against the Property having priority over all other liens, except this Security instrument,

(v) in the event redemption does not occur and subject to order of the court appointing the receiver, the Borrower shall be entitled to any excess funds held by the receiver after first paying from the rents, issues, profit, income and revenues of the Property all court approved costs, expenses and fees of the receiver incurred in the performance of its duties and any sums owed to Lender under the Note, this Security Instrument or any other Loan Document.

(b) **Foreclosure.** Except as provided otherwise by applicable law, file with the Trustee a notice and demand in writing, as provided by law, whereupon it shall and may be lawful for, and the Trustee shall foreclose this Security Instrument and sell and dispose of the Property (en masse or in separate parcels, as said Beneficiary may think best), and all of the right, title and interest of the Borrower therein and thereto at public auction at the front door of the Courthouse in the County(ies) in which the Property or any portion thereof is located, or on said Property or any part thereof, or at any other place then authorized by law, as may be specified in the notice of such sale, for the highest and best price the same will bring, four weeks public notice having been previously given of the time and place of such sale



by advertisement weekly in some newspaper of general circulation at the time published in said County(ies), or upon such other notice as may then be required by law, and shall issue, execute and deliver a Certificate of Purchase, Trustee's Deed or Certificate of Redemption in the manner provided by law to the party entitled thereto. The Trustee's Deed may be in the ordinary form of conveyance. The Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, expenses and costs of making said sale, including attorneys' fees in the amount as hereinafter provided for, pay to the Lender the then existing amount of the indebtedness, rendering the overplus, if any, unto the Borrower, or the successors or assigns of the Borrower. The Lender may purchase the Property, or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

(c) **Offset Rights.** Apply in satisfaction of the Secured Obligations or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property (or any portion thereof), and deposits or other sums credited by or due from Lender to Borrower, including, without limitation, Loss Proceeds, Condemnation Proceeds and Impounds.

(d) **Cure of Default.** Without releasing Borrower from any obligation hereunder or under the Loan Documents or waiving any Event of Default, Lender may cure any Event of Default. In connection therewith, Lender may enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the Property, Improvements or the Leases, including, without limitation (i) paying, purchasing, contesting or compromising any encumbrance, charge, lien, or claim, real property taxes and assessments and all other taxes and assessments of any kind or nature whatsoever affecting the Property, (ii) paying any Insurance Premiums and (iii) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing. Should Lender make any such payments, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, and said amount shall bear interest from the date of expenditure at the Default Rate specified in the Note until repaid.

(e) **Uniform Commercial Code Remedies.** Exercise any and all rights of a secured party under the Uniform Commercial Code that is in effect in the State where the Property is located with respect to all of the Property which is subject thereto and in conjunction with, in addition to or in substitution for those rights and remedies

(i) take possession of, assemble and collect the Personal Property or render it unusable by Borrower, and

(ii) require Borrower to assemble the Personal Property and make it available at any place Lender may designate so as to allow Lender to take possession or dispose of the Personal Property.

Written notice mailed to Borrower, as provided herein, ten (10) days prior to the date of public sale of the Personal Property or prior to the date after which private sale of the Personal Property will be made, shall be deemed to have been a public sale conducted in a commercially reasonable manner. In the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Personal Property and other parts of the Property may, at the option of Lender, be sold in parts or as a whole. The Personal Property and the Property may be sold together by decree of Trustee under the power of sale granted hereby or by a decree of the court in any judicial sale. It shall not be necessary that Lender take possession of the Personal Property prior to the time that any sale pursuant to the provisions of this subparagraph is conducted and it shall not be necessary that the Personal Property be present at the location of such sale.

A CARBON, PHOTOGRAPH OR OTHER REPRODUCTION OF THIS SECURITY INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS SECURITY INSTRUMENT SHALL BE SUFFICIENT FOR FILING AS A FINANCING STATEMENT. THIS SECURITY INSTRUMENT



IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDING WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE COUNTY(IES) WHERE THE PROPERTY IS SITUATED. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED ARE SET FORTH ON THE COVER SHEET HEREOF.

(f) **Judicial Actions.** Commence and maintain an action or actions in any court of competent jurisdiction at law or in equity to foreclose this Security Instrument as a mortgage pursuant to the laws of the State of Washington or to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. Borrower agrees that any one action shall not abate or be a bar to or waiver of Lender's right to institute or maintain any other, provided that Lender shall have only one payment and satisfaction of the Secured Obligations.

(g) **Manner of Sale.** Cause any or all of the Property to be sold in any manner permitted by Applicable Laws.

(h) **Subrogation.** Have and exercise all rights and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including without limitation, any rights or remedies under any mechanics' or vendors' lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note or advances under this Security Instrument whether or not released of record.

(i) **Other.** Exercise any other right or remedy available under laws or in equity, or under the Loan Documents. Take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Property and its ability to collect the indebtedness evidenced and/or secured by the Loan Documents as are available under Applicable Laws. Without limiting the generality of the foregoing, to the extent permitted by RCW 61.24.100 or as otherwise permitted by the Applicable Laws, Lender may seek and obtain a deficiency judgment following the completion of a trustee's sale of all or part of the Property.

Any sums advanced by Lender under this Section 6.05 shall bear interest at the Default Rate specified in the Note, shall be payable by Borrower on demand and, together with such interest, shall be secured by this Security Instrument.

6.06 General Remedies Provisions. In furtherance of and not in limitation of any other provisions of this Security Instrument, including without limitation Article 2:

(a) **Multiple Sales.** Several sales may be made pursuant to Section 6.05 without exhausting Lender's right to such remedy for any unsatisfied part of the indebtedness and without exhausting the power of sale or power to exercise such remedy for any other part of the indebtedness, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Section 6.05, and the proceeds thereof do not fully pay and satisfy the indebtedness, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the indebtedness, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made.

(b) **Cumulative Remedies.** All of the rights, remedies and options set forth in Section 6.05 or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of or exclusion of any other right, remedy, option or security held by Lender.



(c) **Right to Purchase.** At any sale or sales of the Property (or portions thereof) pursuant to Section 6.05, Lender shall have the right to purchase the Property (or a portion thereof) being sold, and in such cases the right to credit the amount of the bid made therefore (to the extent necessary to satisfy such bid) against the amount of the indebtedness then due.

(d) **Right to Terminate Proceedings.** Lender may, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Section 6.04, terminate, without prejudice to Lender, such proceedings or actions.

(e) **No Waiver or Release.** Lender may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Lender in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of lender to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Lender and no extension of the time for the payment of the whole or any part of the indebtedness or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Lender's interest in the Property or the liability of Borrower to pay the indebtedness.

(f) **Waivers and Agreements Regarding Remedies.** To the full extent Borrower may do so, Borrower hereby:

(i) agrees that Lender may in its discretion sell all the Personal Property and the Property and Improvements together or in parts, in one or more sales, and in any sequence Lender selects. It is the specific intent of Borrower and Lender that Lender, at its option, may cause the Property to be sold in a single sale. The Trustee, or the Court if by judicial sale, is hereby authorized, upon the election of Lender, to conduct or order a sale of both the items of Personal Property and the Property and Improvements. The Lender's rights hereunder or under any of the other Loan Documents may be enforced alternatively, successively or cumulatively,

(ii) waives all rights and claims Borrower may now have as a homestead exemption or which may be hereafter acquired and to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any law pertaining to the marshaling of assets, the sale in inverse order of alienation, the homestead exemption, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of the Loan Documents to a sale of the Property for the collection of the indebtedness without any prior or different resort for collection, or the right of the Lender to the payment of the indebtedness out of proceeds of sale of the Property in preference to every other claimant whatsoever,

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which the action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding sentence, is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's action,

(iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties.



(g) **Lender's Discretion.** To the extent allowed by law:

Lender may exercise its options and remedies under any of the Loan Documents at its sole unfettered election. Without limiting the foregoing and by way of amplification, with respect to any right or remedy available to Lender under this Security Instrument, the Note and the other Loan Documents which arises upon or may be exercised at any time after the occurrence of an Event of Default, or with respect to the Lender's determination as to whether a circumstance or event constitutes an Event of Default under the Loan Document, Lender and Borrower agree that the provisions of this Security Instrument, the Note and the other Loan Documents shall be strictly construed as written to afford the Lender the full benefit of all such provisions, and Lender and Borrower disclaim and expressly waive the applicability of the implied covenant of good faith and fair dealing. Lender and Borrower intend with respect to such matters that Lender shall be entitled to exercise Lender's choices relating to the enforcement of any rights or remedies following an Event of Default in Lender's sole discretion and solely with regard to Lender's subjective determination of what is in the best interests of Lender and without regard to the reasonableness or not of such right or remedy as it might affect the Borrower. Borrower acknowledges that it has adequate protections regarding defaults based upon notice provisions and rights to cure expressly stated in this Security Instrument, the Note and pursuant to applicable statutes.

(h) **Sales.** In the event of a sale or other disposition of the Property pursuant to Section 2.02, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property (or portion thereof) sold, but without any covenant, or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value.

The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefore as herein provided.

(i) **Attorneys' Fees and Costs Upon Foreclosure.** In the event foreclosure be made by Trustee under the power of sale granted under this Security Instrument, reasonable attorneys', legal clerks' and assistants' and paralegals' fees shall be allowed as part of the cost of foreclosure, but in the event foreclosure proceedings be made through the courts, attorneys', legal clerks' and assistants' and paralegals' fees in any amount determined by the court to be reasonable shall be taxed by the court as a part of the costs of such foreclosure proceedings. In addition to such attorneys' and other fees, Lender shall be entitled to (and Borrower shall pay), immediately and without demand, together with interest thereon at the Default Rate, all costs and expenses incurred in connection with the collection and satisfaction of the indebtedness or otherwise evidenced or secured by the Loan Documents, and in supervision, administration, preservation, protection of and realization upon the Property, or any other security, including without limitation, court costs, public trustee's fees, appraisal fees, survey costs, environmental inspection fees and costs, property management and receiver's fees and costs, and expert fees and costs of every nature, interest on funds advanced by Lender, and other costs incurred by Lender, whether incurred with or without or in any connection with litigation, judicial or non-judicial foreclosure, appeals, bankruptcy proceedings, and any other judicial or non-judicial proceeding.

6.07 Fair Value. To the extent the Deed of Trust Act of the State of Washington (RCW Chapter 61.24, as now existing or hereafter amended) or other statute requires or authorizes determination of the "fair value" of the Property ("Fair Value") in connection with enforcement of a deficiency against Borrower or any other party liable for repayment of the obligations secured by this Security Instrument, the term "fair market value" or "fair value" shall include those matters required by law and shall also include the additional factors set forth below. For purposes of this Security Instrument, determination of Fair Value shall also include the additional factors set forth below.



(a) The property shall be valued "AS IS" and "WITH ALL FAULTS" and there shall be no assumption of restoration or refurbishment of improvements, if any, after the date of the foreclosure sale, and

(b) An offset to the Fair Value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs relating to the sale of the Property, including but not limited to brokerage commissions, title policy expenses, tax prorations, escrow fees, and other common charges which are incurred by a seller of property.

(c) Borrower shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of Fair Value.

6.08 Assignee Not Lender in Possession. In furtherance of and not in limitation of any other provisions of this Security Instrument, including without limitation Section 3.05:

Nothing herein shall constitute Assignee a "Lender in possession" prior to its actual entry upon and taking possession of the Property and delivery of written notice to the Assignor of its election to be a Lender in possession, entry upon and taking possession by a receiver not constituting possession by Assignee.

6.09 Additional Assignments. The following clause is added at the end of Clause (c) of Section 3.01 of this Security Instrument:

, and including without limitation minimum, additional, percentage and deficiency rents, liquidated damages, Rents coming due during any redemption period, and all monies owed the Assignor as landlord under a Lease for services, materials, leasehold improvements or otherwise furnished or installed pursuant to any Lease.

6.10 Leases of the Property. In furtherance of and not in limitation of any other provisions of this Security Instrument, including without limitation Sections 3.02 and 3.03:

Borrower will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or setoff.

6.11 Enforcement of Assignment of Leases and Rents. In furtherance of and not in limitation of any of the provisions of this Security Instrument, including without limitation Articles 3 and 6:

Lender may enforce the assignment and transfer provisions of Articles 3 and 6 without first resorting to or exhausting any security or collateral for the indebtedness. As used in Articles 3 and 6, the word "lease" shall mean "sublease" if this Security Instrument is on a leasehold. This assignment shall terminate at such time as this Security Instrument ceases to secure payment of indebtedness held by Lender.

6.12 Liability and Authority of the Trustee. The Trustee shall be protected in acting upon any notice, request, consent, demand, statement, note or other paper or document believed by it to be genuine and to have been signed by the party or parties purporting to sign the same. The Trustee shall not be liable for any error of judgment, nor for any act done or step taken or omitted, nor for any mistakes of law or fact, nor for anything which the Trustee may do or refrain from doing in good faith, nor generally shall the Trustee have any accountability hereunder except for willful misconduct or gross negligence. The Trustee may act hereunder and may sell or otherwise dispose of the Property or any part thereof as herein provided, although the Trustee has been, may now be or may hereafter be attorneys, officers, agents or employees of the Lender, in respect of any matter of business whatsoever.



6.13 Expenses During Redemption Period. If this Security Instrument is foreclosed, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the default rate of interest stated in the Note or the highest lawful rate if that is less shall be added to and become a part of the amount required to be paid for redemption from such sale.

6.14 Default Rate. The "highest rate permitted under applicable law" referred to in Section 1.03 shall mean the Default Rate (as defined in the Note) if such a rate is not specified by applicable law.

6.15 For purpose of Article 9 of the Uniform Commercial Code (RCW 62A.9A), the Borrower is the Debtor, Lender is the Secured Party and this Deed of Trust constitutes a Financing Statement.

6.16 The sums described in paragraph 3 on page 5 of this Security Instrument shall specifically exclude such expenses reimbursable by Borrower under that certain Environmental Indemnification Agreement of even date executed by Borrower and MARK MCDONALD in connection herewith ("Indemnity Agreement").

6.17 Notwithstanding anything to the contrary set forth herein or in any other Loan Document, this Security Instrument shall not secure the obligations of Borrower under the Indemnity Agreement, or the substantial equivalent of the Obligations arising under the Indemnity Agreement. All of such obligations (or the substantial equivalents thereof) shall constitute the separate, unsecured full recourse obligations of Borrower and MARK MCDONALD, and shall not be deemed to be evidenced by the Note, or secured by this Security Instrument.

ARTICLE 7. MISCELLANEOUS

7.01 Amendments. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

7.02 Borrower Waiver of Rights; Waiver of Automatic Stay.

(a) Borrower waives to the extent permitted by law, (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Property, (ii) all rights of valuation, appraisal, stay of execution, redemption laws and marshaling in the event of foreclosure of the liens hereby created, (iii) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State where the Property is located pertaining to the rights and remedies of sureties, (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce the Note or any other obligation secured by this Security Instrument, and (v) any rights, legal or equitable, to require marshaling of assets or to require upon foreclosure sales in a particular order. Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein.

(b) WITHOUT LIMITING ANY OF THE FOREGOING SET FORTH IN SUBSECTION (a) ABOVE, BORROWER HEREBY AGREES THAT, IN CONSIDERATION OF LENDER'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, IF BORROWER SHALL (i) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION OR CHAPTER OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR STATUTE: (ii) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY



CODE OR SIMILAR LAW OR STATUTE; (iii) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF FOR DEBTORS; (iv) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR; OR (v) BE THE SUBJECT OF AN ORDER, JUDGMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST ANY BORROWER FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS. THEN, SUBJECT TO COURT APPROVAL, LENDER SHALL THEREUPON BE ENTITLED AND BORROWER HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE AVAILABLE TO LENDER AS PROVIDED IN THE NOTE AND THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND BORROWER HEREBY IRREVOCABLY WAIVES ITS RIGHT TO OBJECT TO SUCH RELIEF.

7.03 Statements by Borrower. Borrower shall, within ten (10) days after written notice thereof from Lender, deliver to Lender (or any person designated by Lender) a written statement, in form satisfactory to Lender, fully acknowledged, stating the unpaid principal of and interest on the Note and any other amounts secured by this Security Instrument and stating whether any offset, counterclaim or defense exists against such sums and the obligations of this Security Instrument.

7.04 Loan Statement Fees. Lender or its authorized loan servicing agent may impose a customary and reasonable service charge for any statement requested by Borrower regarding the Secured Obligations; provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

7.05 Notices. Whenever Borrower, Trustee or Lender shall desire to give or serve any notice, demand, request or other communication with respect to this Security Instrument, each such notice, demand, request or communication shall be given in writing at the address of the intended recipient set forth below by any of the following means: (a) personal service (including, without limitation, service by overnight courier service); (b) electronic communication, whether by telex, telegram, facsimile or telecopying (if confirmed in writing sent by personal service or by registered or certified, first class mail, return receipt requested); or (c) registered or certified, first class mail, return receipt requested:

If to Lender: ARTESIA MORTGAGE CAPITAL CORPORATION
1180 NW Maple Street, Suite 202
Issaquah, Washington 98027
Attn: Servicing Department
Fax: (425) 313-1005

with a copy to: BEST & FLANAGAN LLP
225 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402
Attn: Thomas G. Garry
Fax: (612) 339-5897

If to Borrower: NWCC INVESTMENTS VIII, LLC
1420 Fifth Avenue, Suite 2200,
Seattle, Washington 98101



Attn: Mark McDonald
Phone: (206) 623-4305
Fax: (206) 623-4305

with a copy to:

Alston, Courtnage & Bassetti, LLP
1000 Second Avenue, Suite 3900
Seattle, Washington 98104-1045
Attn: Michael S. Courtnage
Phone: (206) 623-7600
Fax: (206) 623-1752

If to Trustee:

Chicago Title Insurance Company
701 Fifth Avenue, #3400
Seattle, Washington 98104
Attn: Sue Stevens
Fax: (206) 628-9717

Such addresses may be changed by notice to the other parties given in the same manner as provided above. Any notice, demand or request sent pursuant to either subsection (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, and, if sent pursuant to subsection (c) shall be deemed received five (5) days following deposit in the mail.

7.06 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of reference only and are not a part of this Security Instrument.

7.07 Savings Clause; Invalidity of Certain Provisions. Notwithstanding any provisions in the Note or in this Security Instrument to the contrary, the total liability for payments in the nature of interest, including, without limitation, prepayment charges, default interest and late fees, shall not exceed the limits imposed by the laws of the State where the Property is located or the United States of America relating to maximum allowable charges of interest. Lender shall not be entitled to receive, collect or apply, as interest on the Secured Obligations, any amount in excess of the maximum lawful rate of interest permitted to be charged by applicable laws. If Lender ever receives, collects or applies as interest such amount which would be excessive, such interest shall be applied to reduce the unpaid principal balance of the Note, and any remaining excess shall be paid over to person or persons legally entitled thereto. Every provision of this Security Instrument is intended to be severable. In the event any term or provision hereof is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegal or invalid or unenforceable term or provision shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

7.08 Provisions Regarding Trustees. At any time, or from time to time, without liability therefor and without notice to Borrower, upon written request of Lender and presentation of this Security Instrument and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the Secured Obligations (subject to the limitations on recourse set forth in the Note) or the effect of this Security Instrument upon the remainder of the Property, Trustee [or the one acting] may (i) reconvey any part of the Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Property for debts contracted or liability or damages incurred in the management or operation of the Property. All monies 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 monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by it hereunder.

Trustee may resign by giving of notice of such resignation in writing to Lender. If Trustee shall die, resign or become disqualified from acting, or shall fail or refuse to exercise its powers hereunder when requested by Lender so to do, or if for any reason and without cause Lender shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Lender shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Upon appointment by Lender and upon recording of the substitution in the land records of the County(ies) where the Property is located, any new 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 predecessor in the rights hereunder with the same effect as if originally named as Trustee herein.

7.09 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Property, such proceeds have been or will be advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

7.10 Costs and Expenses; Attorneys' Fees for Preparation and Enforcement.

(a) Borrower acknowledges and confirms that Lender shall impose certain customary and reasonable administrative processing and/or commitment fees in connection with (i) the extension, renewal, modification, amendment and termination of the Loan, (ii) the release or substitution of collateral therefor, (iii) obtaining certain consents, waivers and approvals with respect to the Property, or (iv) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance and attornment agreement (the occurrence of any of the above shall be called an "Event"). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority; provided Lender shall only require a reappraisal of the Property after an Event of Default or to comply with applicable law or regulatory requirements. Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such customary and reasonable fees (as the same may be increased or decreased from time to time), and any customary and reasonable additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event or otherwise. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all attorneys' fees and disbursements of Lender.

(b) Borrower shall pay all reasonable attorneys' fees incurred by Lender in connection with (i) the preparation of the Note, this Security Instrument and the other Loan Documents, and (ii) the items set forth in Section 7.10(a) above. In addition, Borrower shall pay to Lender on demand any and all expenses, including, without limitation, reasonable attorneys' fees and costs, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property (including, without limitation, commencing any foreclosure action), whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

As used in this Security Instrument, the terms "attorneys' fees" or "attorneys' fees and costs" or "attorneys' fees, costs and expenses" shall mean the reasonable attorneys' fees and the costs and expenses of counsel to Lender (including, without limitation, in-house counsel employed by Lender).



which may include, without limitation, printing, duplicating, telephone, fax, air freight and other charges, and fees billed for law clerks, paralegals, librarians, expert witnesses and others not admitted to the bar but performing services under the supervision of an attorney and all such fees, costs and expenses incurred with respect to trial, appellate proceedings, arbitrations, out-of-court negotiations, workouts and settlements, and bankruptcy or insolvency proceedings (including, without limitation, seeking relief from stay in bankruptcy proceedings), and whether or not any action or proceeding is brought or is concluded with respect to the matter for which such fees, costs and expenses were incurred, and whether or not the Lender is the prevailing party. Lender shall also be entitled to its attorneys' fees, costs and expenses incurred in any post-judgment action or proceeding to enforce and collect the judgment. This Section 7.10 is separate and several, shall survive the discharge of this Security Instrument, and shall survive the merger of this Security Instrument into any judgment on this Security Instrument.

7.11 No Merger of Lease. If both the Borrower's and tenant's estate under any Lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Security Instrument and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Lender so elects as evidenced by recording a written declaration so stating, and, unless and until Lender so elects, Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien created by this Security Instrument on the Property pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender or any purchaser at 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 tenant or subtenant.

7.12 Governing Law. This Security Instrument shall be governed by and construed in accordance with the laws of the State where the Property is located.

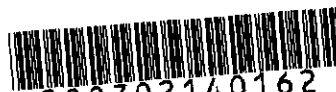
7.13 Joint and Several Obligations. If this Security Instrument is signed by more than one party, all obligations herein contained shall be deemed to be the joint and several obligations of each party executing this Security Instrument. Any married person signing this Security Instrument agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of all obligations contained herein.

7.14 Interpretation. In this Security Instrument the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

7.15 Reconveyance by Trustee. Upon written request of Lender stating that all sums secured hereby have been paid, and upon surrender of this Security Instrument and the Note to Trustee for cancellation and retention and upon payment by Borrower of Trustee's fees, Trustee shall reconvey to Borrower, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Such grantee shall pay Trustee a reasonable fee and Trustee's costs incurred in so reconveying the Property.

7.16 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

7.17 Effect of Security Agreement; Fixture Filing. To the extent of the existence of any Personal Property encumbered by this Security Instrument, this Security Instrument constitutes both (a) a security agreement intended to create a security interest in such Personal Property in favor of Lender;



and, (b) a financing statement filed as a fixture filing in the real estate records of the county(ies) in which the Property is located with respect to any and all Fixtures included within the Personal Property with respect to any goods or other personal property that may now be or hereafter become such fixtures. The information in the subsections below this paragraph is provided in connection with the filing of this Security Instrument as a financing statement as referred to above, and the Borrower hereby represents and warrants such information to be true and complete as of the date of this Security Instrument. This Security Instrument shall be self-operative with respect to such Personal Property, but Borrower shall, upon the request of Lender, execute and deliver to Lender, in form and content satisfactory to Lender, such financing statements, descriptions of property and such further assurances as Lender may determine from time to time to be necessary or desirable to create, perfect, continue and preserve the lien and encumbrances hereof and the security interest granted herein upon and in the Personal Property specifically described herein, or generally described and intended to be the subject of the security interest, lien and encumbrance hereby created, granted and conveyed. Lender, at the expense of Borrower, may cause such statements, descriptions and assurances as provided in this Security Instrument to be recorded and re-recorded, filed and refiled, at such times and in such places as may be required or permitted by law to so create, perfect and preserve the lien and encumbrance hereof upon all of the Personal Property. By signing this Security Instrument, Borrower authorizes Lender to file such financing statements before, on or after the date hereof, and to file such amendments or continuation statements, all as Lender determines necessary or desirable from time to time to perfect or continue the lien of the Lender's security interest in the Personal Property.

(a) The Borrower is the record owner of the real estate described in this Security Instrument. The name and mailing address of the record owner of the real estate described in this Security Instrument is set forth in the first paragraph of this Security Instrument.

(b) The name, mailing address, type of organization and state of formation of the Borrower is set forth in the first paragraph of this Security Instrument. The Organizational Identification Number of the Borrower is **WA602683664**.

(c) The name and mailing address of the Secured Party (Lender) is:

ARTESIA MORTGAGE CAPITAL CORPORATION
1180 NW Maple Street, Suite 202
Issaquah, Washington 98027
Attn: Servicing Department

(d) This document covers goods which are or are to become fixtures.

7.18 Spouse's Separate Property. Any Borrower who is a married person expressly agrees that recourse may be had against his or her separate property, subject to the limitations on recourse set forth in Section 10 of the Note.

7.19 Offsets. No Secured Obligations shall be deemed to have been offset or to be offset or compensated by all or part of any claim, cause of action, counterclaim or cross claim, whether liquidated or unliquidated, which Borrower or any successor to Borrower now or hereafter may have or may claim to have against Lender; and, in respect to the indebtedness now or hereafter secured hereby, Borrower waives, to the fullest extent permitted by law, the benefits of any law which authorizes or permits such offsets.

7.20 Construction of this Security Instrument. Borrower and Lender agree that this Security Instrument shall be interpreted in a fair, equal and neutral manner as to each of the parties.

7.21 Clerical Error. In the event Lender at any time discovers that the Note, any other note secured by this Security Instrument, this Security Instrument or any other Loan Document contains an



error that was caused by a clerical mistake, calculation error, computer malfunction, printing error or similar error, Borrower agrees, upon notice from Lender, to re-execute any documents that are necessary to correct any such error(s). Borrower further agrees that Lender will not be liable to Borrower for any damages incurred by Borrower that are directly or indirectly caused by any such error.

7.22 Lost, Stolen, Destroyed or Mutilated Loan Documents. In the event of the loss, theft or destruction of the Note, any other note secured by this Security Instrument or any other Loan Document, upon receipt of an affidavit from Lender attesting to such occurrence, or in the event of the mutilation of any of the Loan Documents, upon Lender's surrender to Borrower of the mutilated Loan Document, Borrower shall execute and deliver to Lender a Loan Document in form and content identical to, and to serve as a replacement of, the lost, stolen, destroyed, or mutilated Loan Document and such replacement shall have the same force and effect as the lost, stolen, destroyed, or mutilated Loan Document, and may be treated for all purposes as the original copy of such Loan Document.

7.23 Time is of the Essence. Time is of the essence in the performance of each provision of this Security Instrument.

7.24 [Intentionally Deleted].

7.25 RESERVED.

7.26 Exhibits and Riders. The exhibits and riders, if any, attached hereto are incorporated herein by reference and made a part hereof.

7.27 Successors and Assigns. Without in anyway limiting or affecting the provisions of Section 1.15 hereof, all of the terms, covenants, provisions and conditions herein contained shall be for the benefit of, apply to, and bind the heirs, successors and assigns of the Borrower and the Lender, and are intended and shall be held to be covenants running with the Land.

7.28 Declaration of No Offset. The Borrower represents and warrants to the Lender that the Borrower has no knowledge of any offsets, counterclaims or defenses to the principal of the Secured Obligations, or to any part thereof, or the interest thereon, either at law or in equity.

7.29 Entire Agreement. This Security Instrument and the other Loan Documents contain the entire agreement between the Borrower and the Lender relating to or connected with the Loan. Any other agreements relating to or connected with the Loan not expressly set forth in this Security Instrument and/or other Loan Documents are null and void and superseded in their entirety by the provisions of this Security Instrument and the other Loan Documents.

7.30 No Joint Venture or Partnership. The relationship of the Borrower and the Lender created hereby is strictly of debtor-creditor and nothing contained herein or in any other documents or instrument secured hereby shall be deemed or construed to create a partnership or joint venture between Borrower and Lender.

7.31 No Lender Obligations.

(a) Notwithstanding any of the provisions contained herein with respect to Lender taking a security interest in the Leases, Lender is not undertaking the performance of any obligations under the Leases.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note or the other Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted,



consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

7.32 Estoppel Certificates. After request by Lender, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth to the best of Borrower's knowledge after due inquiry, the amount of the original principal amount of the Note, the unpaid principal amount of the Note, the rate of interest of the Note, the terms of payment and maturity date of the Note, the date installments of interest and/or principal were last paid, that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an Event of Default under the Note or this Security Instrument, that the Note and this Security Instrument are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, whether any offsets or defenses exist against the Secured Obligations and, if any are alleged to exist, a detailed description thereof, that all Leases are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if modified, setting forth all modifications), the date to which the Rents thereunder have been paid pursuant to the Leases, whether or not, to the best knowledge of Borrower, any of the tenants under the Leases are in default under the Leases, and, if any of the tenants are in default, setting forth the specific nature of all such defaults, the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and as to any other matters reasonably requested by Lender and reasonably related to the Leases, the Secured Obligations, the Property or this Security Instrument.

7.33 Renewals and Extensions. Any renewal or extension, modification or amendment of the Note and/or this Security Instrument will not operate to release, in any manner, the liability of Borrower or any other party liable for the Loan and their respective successors in interest.

7.34 Incorporation. The terms and conditions of all the other Loan Documents are hereby incorporated by reference.

7.35 Partial Release. Notwithstanding anything to the contrary contained in this Security Instrument, Lender agrees to issue a partial release (a "Partial Release") from the lien of this Security Instrument of one or more of the portions of the Property legally described respectively as "Tract A", "Tract B" and "Tract C" in Exhibit A attached to this Security Instrument, provided that the Lender receives evidence satisfactory to it that all of the following conditions precedent have been satisfied:

- (a) the date of the proposed Partial Release is after the Lockout Expiration Date, as defined in the Note;
- (b) at least forty-five (45) days prior to the date of the proposed partial release, Borrower shall have submitted a written request to Lender specifying which portion of the Property (i.e., Tract A, Tract B, and/or Tract C) Borrower proposes to release (the "Release Property");
- (c) no Event of Default (or any event which after notice, the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing;
- (d) the remainder of the Property (the "Remaining Property") and the Release Property are separate and distinct legally subdivided parcels;
- (e) appropriate agreements or instruments shall have been approved by Lender providing for the transfer of title to the Release Property to a third-party purchaser or an affiliate of Borrower, but in any case, a person or entity other than Borrower;
- (f) delivery to Lender of an endorsement to Lender's title insurance policy covering the Property (the "Title Policy"), insuring Lender that the lien of the Security Instrument is and remains a first



lien against the Remaining Property, not impaired or affected by reason of the release or any other unapproved exceptions to title (i.e., exceptions other than those appearing in the Title Policy and for the Easements), and such other endorsements to the Title Policy as Lender may reasonably require, including without limitation endorsements which amend the date of the Title Policy to be the date/time of the recording of the partial release, amend the insured legal description to be the legal description of only the Remaining Property and amend the Title Policy to delete any title exceptions which do not affect the Remaining Property;

(g) the execution and delivery to Lender of such documents and instruments, in form and content satisfactory to Lender, as are necessary or appropriate to effectuate the partial release and to confirm the Lender's security interest in the portion of the Property remaining in the Remaining Property and to confirm that the release of the Release Property shall not affect any guarantor's obligations under any Guaranty or under this Security Instrument and shall not affect Borrower's obligations under the Note (including without limitation the obligation to make the Monthly Payments);

(h) delivery to Lender of an appraisal of the Remaining Property (i.e., taking into account the release of the Release Property) prepared by a qualified appraiser (as determined by Lender) in form and substance acceptable to Lender which indicates, among other things, that the release of the Release Property will not have a negative impact on the appraised value of the Remaining Property (i.e., such appraised value will be at least as great as the appraised value of the Property as determined by the appraisal obtained by Lender in connection with the Loan origination) and the ratio of the then unpaid Loan balance to the then value of the Remaining Property shall be equal to or less than **0.75** to 1.00;

(i) at the time of the release of the Release Property and after such release, the debt service coverage ratio for the Loan, as calculated by Lender, shall be at least **1.25** to 1.00.

(j) Borrower shall have completed a Partial Defeasance (as defined in the Note), in accordance with the terms and conditions of Section 4 of the Note, with respect to the Release Property.

(k) neither the Borrower nor any of the guarantors or indemnitors of the Loan shall have experienced an adverse change in its/his/her financial condition as reflected in the financial information provided to Lender as of the date of this Security Instrument.

(l) Borrower shall have provided Lender with any documentation, opinion letters and evidence needed or reasonably requested by Lender to comply with this Section 7.35;

(m) receipt by Lender of a REMIC legal opinion and written confirmation from any applicable Rating Agency(ies) (as defined in Section 4.01 of this Security Instrument) that the proposed partial release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such release for any of the Securities (as defined in Section 4.01 of this Security Instrument) which are then outstanding; and

(n) All costs and expenses incurred by Lender in connection with such partial release, including, but not limited to, the review of any and all materials (including without limitation title, survey, zoning, subdivision and appraisal matters) required to be provided in connection therewith (including without limitation Lender's reasonable attorney's fees and expenses) shall have been paid by Borrower, and Borrower shall have paid all other costs and expenses related to the subdivision and the partial release, including without limitation all recording or similar taxes, recording fees, title company charges and title insurance premiums.

[Signatures on Following Page(s)].



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

IN WITNESS WHEREOF, Borrower has executed this Security Instrument effective as of the day and year first above written.

BORROWER:

NWCC INVESTMENTS VIII, LLC,
a Washington limited liability company

By: 

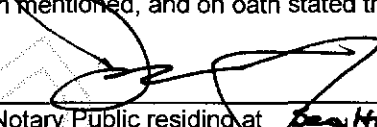
Mark McDonald, Managing Member

State of Washington

County of King

February 7, 2007

On this day personally appeared before me Mark McDonald, to me known to be the Managing Member of NWCC INVESTMENTS VIII, LLC, a Washington limited liability company, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act of and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.


Notary Public residing at Seattle WA
Printed Name: Michael S. Courtlage
My Commission Expires: 11/4/08

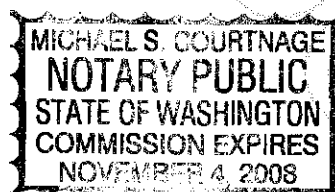


EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

The Property is located in Skagit County, Washington, King County Washington, and Cowlitz County Washington, and is legally described as follows:

Tract A:

PARCEL A:

The West 168 feet of Tract 9, PLAT OF MOUNT VERNON ACREAGE, SKAGIT COUNTY, WASHINGTON, according to the plat thereof, recorded in Volume 3 of Plats, page 102, records of Skagit County, Washington, and the North 29.5 feet of the East 100 feet of the West 268 feet of said Tract 9, Plat of Mount Vernon Acreage.

Situated in Skagit County, Washington.

PARCEL B:

A non-exclusive easement for ingress and egress over and across the North 30 feet of the West 168 feet and across the East 30 feet of the West 168 feet of Tract 8, Plat of Mount Vernon Acreage, Skagit County, Washington, according to the plat thereof, recorded in Volume 3 of Plats, page 102, records of Skagit County, Washington as described in instrument recorded April 1, 1977, under Auditor's File No. 853753, records of Skagit County, Washington.

Situated in Skagit County, Washington.

PARCEL C:

A non-exclusive easement for vehicular and pedestrian ingress, egress, parking and access over and upon the drive aisle portions of Tracts B and C, City of Mount Vernon Short Plat No. MV-26-76, approved September 10, 1976, recorded September 23, 1976 in Volume 1 of Short Plats, page 175, under Auditor's File No. 843161, records of Skagit County, Washington and being a portion of Tracts 9 and 10, Plat of Mount Vernon Acreage, Skagit County, Washington, according to the plat thereof, recorded in Volume 3 of Plats, page 102, records of Skagit County, Washington as disclosed by instrument recorded September 22, 2004, under Auditor's File No. 200409220116, records of Skagit County Washington.

Situated in Skagit County, Washington

Tract B:



UNOFFICIAL DOCUMENT

All of Block 113 as shown by the recorded plat of Longview No. 11 on file at the office of the Auditor of Cowlitz County, Washington, excepting the North portion described as follows:
Beginning at the intersection of the Southwesterly line of Olympia Way with the Easterly line of 16th Avenue as shown by the recorded plat of Longview No. 11; thence South 27° 34' 31" East along the Southwesterly line of Olympia Way 13.56 feet to the True Point of Beginning of this description; thence continuing Southeasterly along the Southwesterly line of Olympia Way 93.24 feet to an intersection with a line that is 10 feet South and parallel to the Southeast wall of the Chamber of Commerce building; thence South 65° 18' 55" West 50.97 feet, more or less, to an intersection with a line that is parallel to and 25 feet Southerly from the Southerly wall of the Chamber of Commerce building; thence North 74° 58' West 35 feet, more or less, to an intersection with the Easterly line of 16 Avenue; thence North 15° 02' East along the Easterly line of 16th Avenue 99.4 feet; thence on a curve to the right having a radius of 5 feet to the True Point of Beginning of this description.

TOGETHER WITH an easement for vehicular and pedestrian ingress and egress and vehicular parking as described under Auditor's File No. 3322795.



Tract C:

LOTS 12 AND 13 AND THE NORTH 15 FEET OF LOTS 14 AND 15, BLOCK 2, A.W. DENNY'S
ADMIRALTY HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 21 OF
PLATS, PAGE(S) 32, IN KING COUNTY, WASHINGTON.

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Skagit County Auditor