

**OPEN-END MORTGAGE**  
**SECURITY AGREEMENT AND**  
**ASSIGNMENT OF LEASES AND RENTS**

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WEC 2000A-1 LLC,  
(Borrower)

to

FIRST SECURITY BANK N.A., AS TRUSTEE  
(Lender)

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Dated as of August 1, 2000

**RECORD AND RETURN TO:**

Lewis A. Burleigh, Esq.  
Day, Berry & Howard LLP  
260 Franklin Street  
Boston, Massachusetts 02110

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**Inst # 2000-35574**

**10/12/2000-35574**  
**08:54 AM CERTIFIED**  
**SHELBY COUNTY JUDGE OF PROBATE**  
**075 HMB 4558.85**

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THIS OPEN-END MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "Security Instrument"), dated as of August 1, 2000, by WEC 2000A-1 LLC, a Delaware limited liability company, having its principal office at 15601 Dallas Parkway, Suite 400, Addison, Texas 75001 ("Borrower"), to First Security Bank N.A., as trustee pursuant to the Declaration of Trust dated as of August 1, 2000, having its principal place of business at 79 South Main Street, Salt Lake City, Utah 84111 ("Lender").

**WITNESSETH:**

To secure the payment of an indebtedness in the principal sum of TWO MILLION EIGHT HUNDRED EIGHTY-THREE THOUSAND EIGHT HUNDRED THIRTY-FOUR AND 87/100 DOLLARS (\$2,883,834.87), lawful money of the United States of America, to be paid with interest according to the terms of those two certain Promissory Notes each dated as of August 1, 2000, one designated Series A-1 with a maturity date of September 10, 2010 and the other designated Series A-2 with a maturity date of January 10, 2023, made by Borrower to Lender (such notes together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Notes") and all other Debt (hereinafter defined), Borrower has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned, and hypothecated and by these presents does hereby mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate unto Lender the Premises (as defined herein) which is described in Exhibit A attached hereto and the buildings, structures, fixtures (except trade fixtures not owned by Borrower), additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Borrower (exclusive of Excepted Rights, as defined in the Assignment) now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter described are collectively referred to herein as the "Mortgaged Property");

(a) all that certain real property described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim and demand whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

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



(c) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Borrower in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "Uniform Commercial Code") superior in priority to the lien of this Security Instrument. In connection with Equipment which is leased to Borrower or which is subject to a lien or security interest which is superior to the lien of this Security Instrument, this Security Instrument shall also cover all right, title and interest of each Borrower in and to all deposits, and the benefit of all payments now or hereafter made with respect to such Equipment;

(d) all awards or payments, including interest thereon, which may hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain or condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(e) all right, title and interest of Borrower in and to (i) Lease dated as of August 1, 2000 (the "Lease") between Borrower, as lessor, and Big B, Inc., an Alabama corporation, as lessee ("Lessee"), (ii) the Corporate Guaranty (the "Lease Guaranty"), dated as of August 1, 2000, by CVS Corporation (the "Lease Guarantor"), relating to the Lease, and (iii) all other leases, subleases (if, and to the extent that Borrower has any rights, title or interest therein), including, without limitation, any assignments thereof (including, without limitation, all guarantees of any such leases, assignment of leases and subleases) and other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property and the Improvements heretofore or hereafter entered into (the "Other Leases"), and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Mortgaged Property (the "Rents"), and all proceeds from the sale or other disposition of the Lease or Other Leases and the right to receive and apply the Rents to the payment of the Debt and the right to receive and apply any payments made to Borrower by the Lessee in connection with any condemnation or casualty, including, without limitation, Lessee's purchase of the Mortgaged Property, to payment of the Debt;

(f) all right, title and interest of Borrower in and to any insurance policies covering the Mortgaged Property or the Lease, including, without limitation, any residual value insurance policy ("Residual Value Policy"), all proceeds thereof and any unearned premiums on any

insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property or any part thereof, subject to and in accordance with the terms and conditions of the Lease;

(g) subject to the terms and provisions of this Security Instrument, the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Lender in the Mortgaged Property or any part thereof;

(h) all franchises, trade names, trademarks, symbols, service marks, books, records, plans and specifications, contracts, licenses, approvals, consents, subcontracts, service contracts, management contracts, permits and other agreements of any nature whatsoever now or hereafter obtained or entered into by Borrower, or any managing agent of the Mortgaged Property on behalf of Borrower, with respect to the use, occupation, development, construction and/or operation of the Mortgaged Property or any part thereof or the activities conducted thereon or therein, or otherwise pertaining to the Mortgaged Property or any part thereof;

(i) all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Mortgaged Property or any part thereof, and all reserve accounts, accounts for the deposit, collection and/or disbursement of Rents and other accounts now or hereafter in existence with respect to the Loan (hereinafter defined), including, without limitation, all interest reserve accounts and replacement reserve accounts provided for under any documentation entered into or delivered by Borrower in connection with the Loan;

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

(k) all appurtenances in respect of or otherwise relating to the Lease, including, but not limited to, all the estate and rights of the Borrower of, in and to (i) all modifications, extensions and renewals of the Lease and all rights to renew or extend the term thereof, (ii) all of Borrower's rights, if any, pertaining to deposits of the Lessee under the Lease (including lessee security deposits, if any), (iii) all other options, privileges and rights granted and demised to the Borrower under the Lease, (iv) all the right or privilege of the Borrower to terminate, cancel, abridge, surrender, merge, modify or amend the Lease and (v) any and all possessory rights of the Borrower and other rights and/or privileges of possession, including, without limitation, the Borrower's right to elect to take possession of the Mortgaged Property;

(l) all of the Borrower's claims and rights to damages and any other remedies in connection with or arising from the rejection of the Lease by the Lessee or any trustee, custodian or receiver pursuant to the U.S. Bankruptcy Code, as amended (the "Bankruptcy Code") in the event that there shall be filed by or against the Lessee any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereafter in effect;



(m) all of Borrower's interest in and to all minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Premises;

(n) all present and future monetary deposits given by Borrower to any public or private utility with respect to utility services furnished to any part of the Premises or the Improvements;

(o) all right, title and interest of Borrower in and to all building materials, supplies and equipment now or hereafter placed on the Premises or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Premises or the Improvements;

(p) all right, title and interest of Borrower in and to all refunds and rebates of taxes and assessments relating to the Premises and Improvements (except to the extent such refunds and rebates relate to taxes or assessments paid by the Lessee under the Lease);

(q) all of Borrower's interest in moneys and investments which may from time to time become subject to the lien hereof, including without limitation the Completion Reserve referred to in paragraph 33;

(r) all right, title and interest of Borrower in and to all proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, the proceeds of insurance and condemnation awards; and

(s) all other or greater rights and interests of every nature in the Premises or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever, provided that Excepted Payments, as defined in the Assignment, (exclusive of the proceeds of public liability insurance payable to Borrower) shall be part of the Mortgaged Property only during the continuance of an Event of Default hereunder.

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

(i) The full and prompt payment of the principal amount evidenced by the Notes, together with interest thereon at the rate or rates set forth therein and, if applicable, the Prepayment Consideration (as defined in the Notes);

(ii) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any of the Loan Documents (hereinafter defined) and the payment of all other sums therein covenanted to be paid;

(iii) Any and all additional advances made by Lender pursuant to this Security Instrument or the other Loan Documents to protect or preserve the Mortgaged Property or the lien or security interest created hereby on the Mortgaged Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower remains the owner of the Mortgaged Property at the time of such advances);

(iv) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof, it being contemplated by Borrower and Lender that Borrower may hereafter become so indebted to Lender, but expressly excluding the indebtedness evidenced by the New Notes (as defined in Section 19(b) hereof; and

(v) Payment and performance of all modifications, amendments, extensions, consolidations, and renewals, however evidenced, of any of the obligations described in (i) through (iv) above.

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

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

1. Payment of Debt and Performance of Covenants, Conditions and Agreements. Borrower shall pay the Debt at the time and in the manner provided in the Notes and in the other Loan Documents. Borrower shall perform, observe or comply with all of the covenants, conditions and agreements contained in the Notes, this Security Instrument and any and all other documents (collectively, the "Loan Documents") now or hereafter executed by Borrower and/or others and by or in favor of Lender, which evidence, secure or guarantee all or any portion of the payments due under the Notes or otherwise is executed and/or delivered in connection with the Notes and this Security Instrument. All payments due under the Lease shall be paid directly by Lessee to the Lender when such amounts are due and payable. All such payments received by Lender shall be applied promptly upon receipt, but not less than monthly, as follows: First, all amounts due and payable under the Notes and the other Loan Documents ("Debt Service") shall be paid to or retained by Lender, as the case may be; and Second, except for any payments made in advance of their due date, as long as no uncured Event of Default (hereinafter defined) or payment or bankruptcy default as described in paragraphs 21(a) or 21(i) hereof exists hereunder or under the Notes or any of the other Loan Documents, the balance of funds, if any, shall be paid within five (5) business days after the receipt of good funds by Lender to Borrower by wire transfer of immediately available funds to an account designated by Borrower, which payments to Borrower shall be free of the lien of the Security Instrument and all rights of Lender under the



other Loan Documents, including, without limitation, the Assignment of Lease and Rents delivered to Lender contemporaneously herewith.

2. Warranty of Title; Other Representations. (a) Borrower warrants that Borrower has good and marketable title to the Mortgaged Property and has the right to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that, except for this Security Instrument, Borrower possesses an unencumbered fee estate in the Premises and the Improvements subject to the Lease and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for the Lease, those exceptions shown in the title insurance policy insuring the lien of this Security Instrument and other items as herein expressly permitted (collectively, the "Permitted Exceptions"). The Permitted Exceptions do not and will not materially and adversely affect (a) the ability of Borrower to pay in full the principal and interest on the Notes in a timely manner, or (b) the use of the Premises for the use currently being made thereof, the operation of the Premises as currently being operated, or the value of the Premises. Subject to the Permitted Exceptions, Borrower shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever. The foregoing warranty of title shall survive the foreclosure of this Security Instrument and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Mortgaged Property pursuant to any foreclosure. Upon the recording of this Security Instrument in the county recorder's office of the county where the Premises are located and the filing of appropriate UCC financing statements, Lender will have a valid first lien on the Mortgaged Property, subject only to Permitted Exceptions.

(b) Borrower has not borrowed or received debt financing other than the Debt that has not been heretofore paid in full. Borrower has no known material contingent liabilities. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which it or any of its property is bound, other than obligations incurred in the ordinary course of business and other than obligations under the Loan Documents and the Lease.

(c) There are no pending actions, suits or proceedings, arbitrations or governmental investigations against the Premises, an adverse outcome of which would materially affect Borrower's performance under the Loan Documents.

(d) Borrower (1) has not entered into the transaction or any Loan Document with the actual intent to hinder, delay or defraud any creditor, and (2) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following execution and delivery of the Loan Documents, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably

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

(e) Borrower is not (1) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended; (2) a "holding company" or "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (3) subject to any other federal or state law or regulation which would restrict or regulate its ability to enter into and perform the terms of the Notes and this Security Instrument.

(f) The Premises have adequate rights of access to public ways and are served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary to the continued use and enjoyment of the Improvements as presently used and enjoyed are located in the public right-of-way abutting the mortgaged property, and all such utilities are connected so as to serve the mortgaged property without passing over other property. All roads necessary for the full utilization of the Improvements for their current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subjects of access easements for the benefit of the Premises. If the Premises are not Substantially Complete (as defined in the Lease) at the date of delivery hereof, the representations contained in this paragraph 2(f) shall be true only upon Substantial Completion.

(g) Except as disclosed in the Lender's title insurance policy, there are no pending or, to the knowledge of Borrower, proposed special or other assessments for public improvements or otherwise affecting the Premises.

(h) The Improvements are not located in a flood hazard area as defined by the Federal Insurance Administration.

(i) No statement of fact made by Borrower in the Loan Documents contains any untrue statement of material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed which adversely affects, nor as far as Borrower can foresee, might adversely affect the business, operations or condition (financial or otherwise) of Borrower.

### 3. Insurance.

(a) During the time that the Lease is in effect, Borrower shall cause the Mortgaged Property at all times during the entire term of this Security Instrument to be insured by either Borrower or Lessee for the mutual benefit of Borrower and Lender against loss or damage by fire and against loss or damage by other risks and hazards covered by a standard "all risk" insurance policy, as specified in the Lease, together with such other insurance as is required to be maintained by Borrower or Lessee under the Lease. In the event that the Lease is no longer



in effect, the amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Mortgaged Property and owned by Borrower from time to time, without reduction for depreciation, but excluding footings and foundations and parts of the Mortgaged Property to the extent not insurable. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Lender's election, by reference to such indices, appraisals or information as Lender determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items which are part of the Mortgaged Property, the cost of replacing the same, in each case, with inflation guard coverage to reflect the effect of inflation. Each such policy or policies, if so required, shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Lender's reasonable approval. The premiums (the "Insurance Premiums") for the policies of insurance carried in accordance with this paragraph (the "Policies") shall be paid annually in advance if paid by Borrower or, if paid by Lessee pursuant to the Lease, at such other times required of Lessee under the Lease.

(b) Unless such insurance is being provided by the Lessee under the Lease, Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain during the entire term of this Security Instrument the following Policies:

(i) Flood insurance if any part of the Improvements is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount equal to at least the then full replacement value of the Mortgaged Property or the amount of flood insurance available under said Act, whichever is less.

(ii) Comprehensive general liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages on an "occurrence basis" with minimum combined single limit coverage of not less than \$5,000,000.

(iii) Insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, sprinkler systems, high pressure piping and machinery, elevators and escalators, if any, and other similar equipment installed in the Improvements, in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements which policies shall insure against physical damage to and loss of occupancy and use of the Improvements arising out of an accident or breakdown covered thereunder.

(iv) During the period of any construction on the Premises or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed



Value” or “Course of Construction” insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount reasonably approved by Lender and Worker’s Compensation Insurance covering all persons engaged in such construction, renovation or alteration.

(v) Loss of rents or loss of business income insurance in amounts sufficient to compensate Borrower for all Rents during a period of not less than one (1) year in which the Mortgaged Property may be damaged or destroyed.

(vi) Such other insurance as may from time to time be reasonably and customarily required by Lender in order to protect its interests in the Mortgaged Property.

(c) All Policies (i) shall be issued by an insurer satisfactory to Lender in its sole discretion and having an AA2 or equivalent claims paying ability rating, (ii) shall contain the standard New York mortgagee or equivalent non-contribution clause naming Lender as the person to which all payments made by such insurance company shall be paid and assuring continuance of coverage notwithstanding foreclosure and change of title to the Mortgaged Property or use of the Mortgaged Property for a more hazardous purpose, (iii) shall be maintained throughout the term of this Security Instrument without cost to Lender, (iv) shall be evidenced by certificates of insurance which shall be delivered to Lender, (v) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said Policies and that Lender shall receive at least 30 days prior written notice of any modification or cancellation, and (vi) shall be reasonably satisfactory in form and substance to Lender and shall be reasonably approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Not later than 10 days prior to the expiration date of each of the Policies, Borrower shall deliver to Lender satisfactory evidence of the renewal of each Policy.

(d) Borrower shall be deemed to be in compliance with all insurance requirements hereunder if Lessee is in compliance with the provisions of the Lease regarding insurance requirements (including the self-insurance provisions of the Lease).

(e) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give, or cause to be given, prompt notice thereof to Lender. Except as otherwise provided in the Lease, Borrower shall not settle or adjust or permit the settlement or adjustment of any insurance claim without Lender’s prior written consent. All insurance proceeds required to be applied to restoration and repair of the Mortgaged Property under the Lease shall be held and disbursed in accordance with the provisions of the Lease for such restoration and repair subject to compliance with the following conditions: (i) no Disqualifying Default (as defined in the Lease) or Lease Default (as defined in paragraph 21(p) hereof), then exists (ii) Borrower or Lessee, as the case may be, proceeds promptly after the insurance claims are settled with the restoration or repair; and (iii) the restoration or repair is performed in compliance with the Lease and all applicable laws, rules and regulations. All insurance proceeds not required to be disbursed for repair and restoration of the Mortgaged Property pursuant to the provisions of the Lease (the “Net Award”) shall be paid to Lessee,

subject to the terms of the Lease; provided that if a Disqualifying Default or Lease Default then exists, the Net Award will be paid to Lender and shall be applied by Lender toward payment of the Debt and such application shall not be subject to the Prepayment Consideration (as defined in the Notes).

(f) Borrower acknowledges Lender's right to obtain (either itself or by its agents, servicers, nominees or attorneys) at the expense of Borrower any insurance required hereunder should Borrower fail to or cause Lessee to do so as required hereunder.

(g) Notwithstanding anything to the contrary contained in this paragraph 3, if a casualty shall affect the Mortgaged Property as provided in Section 13(d) of the Lease, and Lessee serves notice and makes a rejectable offer (the "Rejectable Offer") to purchase the remaining portion of Mortgaged Property at the Stipulated Loss Value (as defined in the Lease) Borrower shall at its option, either (1) accept the Rejectable Offer or (2) reject the Rejectable Offer, provided that Borrower shall in no event reject the Rejectable Offer unless immediately prior to such rejection becoming effective, Borrower pays the Debt in full (excluding the Prepayment Consideration), in which case Lender shall give its consent of the rejection to Lessee. If the Rejectable Offer is accepted, Stipulated Loss Value, as defined in the Lease, proceeds shall be used to prepay the Debt in full in immediately available funds in accordance with the terms of the Notes.

(h) Borrower agrees to pay, or cause to be paid, fees and expenses in connection with inspections and appraisals required pursuant to the Residual Value Policy.

#### 4. Payment of Taxes, etc.

(a) All taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") shall be paid by Borrower or Lessee on or prior to the date the same become due and payable. Borrower shall deliver, or cause to be delivered by Lessee, to Lender, promptly upon Lender's written request, evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever ("Prohibited Encumbrances") which may be or become a lien or charge against the Mortgaged Property, subject to paragraph 4(b) hereof, provided however, that the lien of ad valorem real estate taxes need not be discharged until the last day that the related taxes may be paid without incurring an interest or penalty. Borrower shall furnish, or cause to be furnished, to Lender or its designee receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) Subject to the terms of the Lease (provided that no Lease Default then exists) after prior written notice to Lender, Borrower may, and after notice to Borrower and Lender, Lessee may, to the extent permitted under the Lease, at its own expense, contest, or permit to be



contested, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, Other Charges or Prohibited Encumbrances, provided that (i) Borrower is not in default under the Notes or this Security Instrument, (ii) such proceeding shall suspend the collection of the Taxes, Other Charges or Prohibited Encumbrances from Borrower and from the Mortgaged Property, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder if contested by Borrower, or under the Lease if contested by Lessee, (iv) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost during the pendency of such contest, and (v) if a Lease Default then exists or if the Lease is not in existence, Borrower or Lessee shall post a bond or other security with and acceptable to Lender in its discretion in an amount equal to 125% of the amount being contested.

5. Escrow Fund. Borrower shall, during the existence of an Event of Default (unless the Lessee under the Lease is paying such sums directly to the taxing authority or insurer, as applicable) or during any period that the Lease is not in effect, at the option of Lender or its designee, pay to Lender on the first day of each calendar month one-twelfth of the amount reasonably estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, the Taxes and Other Charges and the Insurance Premiums (the "Escrow Fund"). The Escrow Fund, if any, and the payments of interest or principal or both, payable pursuant to the Notes, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Borrower hereby pledges to Lender any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Lender will apply the Escrow Fund to the timely payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Other Charges and Insurance Premiums pursuant to paragraphs 3 and 4 hereof, Lender shall return any excess to Borrower or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the Taxes and Other Charges and Insurance Premiums when due, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Lender may apply any sums then present in the Escrow Fund to the payment of the following items in any order in its sole discretion:

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



Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrow Fund shall be payable or credited to Borrower.

6. Condemnation. (a) Borrower shall promptly give or shall cause Lessee to promptly give Lender written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Notes, in this Security Instrument and the other Loan Documents and the Debt shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Lender to the discharge of the Debt. Subject to the terms of the Lease, Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein and in the Notes. Subject to the terms of the Lease (provided that no default beyond any applicable notice and/or cure period then exists under the Lease), Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender.

(b) All condemnation awards or payments required to be applied to restoration and repair of the Mortgaged Property under the Lease shall be disbursed in accordance with the provisions of the Lease. The Net Award shall be delivered to Lender, subject to the terms of the Lease, and, to the extent (if any) not required under the Lease to be applied for such restoration and repair, shall be paid to Lessee; provided that, if a Lease Default then exists, then such Net Award will be paid to Lender to be applied to the reduction or discharge of the Debt whether or not then due and payable. Such application is to be without payment of the Prepayment Consideration or any other prepayment consideration, except that if an Event of Default under this Security Instrument has occurred and is continuing, then such application shall be subject to the Prepayment Consideration in accordance with the Notes.

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

the purpose of assigning any such award or payment to Lender, free and clear of any encumbrances of any kind or nature whatsoever.

(c) Notwithstanding anything to the contrary contained within this paragraph 6, if condemnation shall affect the Mortgaged Property as provided in Section 14 of Part II of the Lease, and Lessee serves Tenant's Termination Notice (as defined in the Lease) and makes a Rejectable Offer to purchase the remaining portion of Mortgaged Property at the Stipulated Loss Value, as defined in the Lease, Borrower shall, at its option, either (i) accept the Rejectable Offer or (ii) reject the Rejectable Offer, provided that Borrower shall in no event reject the Rejectable Offer unless immediately prior to such rejection becoming effective, Borrower pays the Debt in full (excluding the Prepayment Consideration or other prepayment consideration), in which case Lender shall give its consent of the rejection to Lessee. If the Rejectable Offer is accepted, Stipulated Loss Value proceeds shall be used to prepay the Debt in full in immediately available funds in accordance with the terms of the Notes.

#### 7. The Lease.

(a) Borrower, by this Security Instrument and the Assignment of Lease and Rents of even date herewith, has absolutely and unconditionally assigned to Lender, all of Borrower's right, title and interest in the Lease, the Other Leases and the Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment, subject to the terms and conditions of a certain Assignment of Leases and Rents of even date from the Borrower to the Lender. Borrower represents to Lender that, as of the date hereof, (i) the Lease is in full force and effect, (ii) a true and correct copy of the Lease as amended to the date hereof has been delivered to Lender, (iii) Borrower and, to the best of Borrower's knowledge, Lessee, is not in default under any of the terms, covenants or conditions of the Lease, (iv) Borrower has not delivered to, or received from the Lessee any notice of default under the Lease and (v) all rents due and payable under the Lease, including all additional rent, have been paid in full.

(b) Borrower agrees with Lender that Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Lease, keep the Lease in full force and effect and shall not do or permit to be done anything to impair the value of the Lease as a security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) subject to clause (vii) below, shall enforce all of the terms, covenants and conditions contained in the Lease upon the part of the Lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not execute any other assignment of lessor's interest in the Lease; (v) shall not alter, modify or change the terms of the Lease without the prior written consent of Lender, or cancel or terminate the Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by the Lease or of any interest therein so as to effect a merger of the estates and rights of, or termination or diminution of the obligations of Lessee thereunder; (vi) shall not waive, consent to, reject, approve or disapprove any action or inaction requested by Lessee including, without the prior written consent of Lender, without limitation any assignment of or subletting under the Lease (provided, however, that Lender's consent to a subletting or assignment shall not be required if Borrower's consent is not required pursuant to the Lease and such subletting or assignment is in accordance with the Lease terms), except that with respect to



Borrower's acceptance or rejection of a Tenant's Termination Notice (as such term is defined in the Lease) and the accompanying Rejectable Offer, such acceptance or rejection shall be made in accordance with paragraph 3(g) hereof with respect to a Termination Casualty (as defined in the Lease), paragraph 6(c) hereof with respect to a Major Condemnation (as defined in the Lease) or paragraph 33(e) hereof with respect to a failure to cause Substantial Completion (as defined in the Lease) to have occurred on or before the Substantial Completion Date (as defined in the Lease) with respect to the Mortgaged Property; (vii) except as expressly provided in the Assignment of Lease and Rents, shall not pursue any remedies under the Lease without the prior written consent of Lender; (viii) upon request of Lender, shall request and use reasonable efforts to obtain an estoppel certificate from the Lessee in substantially the form required by the Lease or if not so required, in form and substance reasonably satisfactory to Lender; and (ix) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Lender shall from time to time reasonably require.

(c) The payments of Fixed Rent (as defined in the Lease) (the "Fixed Rent") on each date for the payment thereof are at least equal to the interest and principal required on the Series A-1 Notes, and the payments of Fixed Rent on each date for the payment thereof are at least equal to the interest required on the Series A-2 Notes and the sum of the amounts payable as Fixed Rent and under the Residual Value Policy are sufficient to pay the principal of the Series A-2 Notes at their maturity. Notwithstanding the foregoing, if the Interest Reserve Account referred to in paragraph 33 has a positive balance, the interest on the Series A-1 and Series A-2 Notes from the issuance thereof through the Substantial Completion Date (as defined in the Lease) will be paid solely from the Interest Reserve Account, and the amount in such account is sufficient to pay all interest scheduled to accrue on the Notes through such date.

8. Maintenance of Mortgaged Property. Borrower shall maintain or cause to be maintained the Mortgaged Property in a good and safe condition and repair that meets the standards of the Residual Value Policy and the Lease. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment or as otherwise permitted under the Lease) without the prior written consent of Lender. Borrower shall cause the Mortgaged Property to be in compliance with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Borrower shall cause any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in paragraph 6 hereof to be promptly repaired, replaced or rebuilt, as provided in the Lease. Subject to Section 30 of the Lease (provided that no Lease Default then exists under the Lease), Borrower shall not initiate, join in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a lawful nonconforming use, Borrower will not cause or permit such nonconforming use, to be discontinued or abandoned without the prior written consent of Lender.

(b) Borrower shall provide or cause Lease Guarantor to provide Lender with certificates annually so long as Lease Guarantor has an investment-grade rating, quarterly in the



event Lessee's rating falls below investment grade, and quarterly during the year prior to expiration of the initial term of the Lease, certifying that the Mortgaged Property (i) is in good and safe condition and repair and (ii) complies with the property condition requirements set forth in the Residual Value Policy. One year prior to the termination of the Lease, Borrower shall at its own expense or at the expense of the Lessee cause the Mortgaged Property to be inspected, the results of which inspection shall be made available to Lender, to determine whether the condition of the Mortgaged Property complies with the requirements set forth in the Residual Value Policy.

9. Transfer or Encumbrance of the Mortgaged Property.

(a) Borrower acknowledges that Lender has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Borrower default in the repayment of the Debt, Lender can recover all or a portion of the Debt by a sale of the Mortgaged Property. Except as otherwise provided herein, Borrower shall not, without the prior written consent of Lender, which consent may be withheld in its sole discretion, and, if and to the extent required under the Residual Value Policy, of the insurer under the Residual Value Policy (the "Residual Value Insurer"), sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof or any interest therein, or permit the Mortgaged Property or any part thereof or any interest therein to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred (collectively, a "Sale"). A Sale shall be deemed to include, without limitation, (i) an installment sales agreement wherein Borrower agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space lessee thereunder 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 the Lease or any Rents; and (iii) any divestiture of Borrower's title to the Mortgaged Property or any interest therein in any manner or way, whether voluntary or involuntary, or any merger, consolidation, dissolution or syndication affecting Borrower, except in the case of a foreclosure by Lender.

(b) Except as otherwise provided herein, Borrower shall not allow or permit, without the prior written consent of Lender, which consent may be withheld in its sole discretion, and, if and to the extent required under the Residual Value Policy, of Residual Value Insurer, (i) if Borrower is a corporation, the voluntary or involuntary sale, conveyance or transfer of any of such corporation's stock or the creation or issuance of new stock in one or a series of transactions by which an aggregate of 49% or more of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the actual control of such corporation, directly or indirectly; (ii) if Borrower or any general partner of Borrower is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, joint venturer or member, or the transfer of any partnership interests of any general partner or managing partner or the transfer of 49% or more of the beneficial ownership interests in Borrower or any general partner of Borrower or of any joint venturer or member (or any interests of any entity directly or indirectly controlling such general partner, managing partner, joint venturer or member, by operation of law or otherwise) in one or a series of transactions by which the transferee acquires a greater than 49% beneficial interest, or any change in the actual control of such entity; and (iii) if

Borrower is a business trust, the voluntary or involuntary sale, conveyance or transfer in one or a series of transactions of forty-nine percent (49%) or more of the beneficial interest in Borrower, or the change of actual control thereof (the transactions described in clauses (i), (ii) and (iii), collectively, a "Transfer"). Notwithstanding the foregoing provisions of this paragraph, the consent of Lender to a Transfer shall not be needed if a Transfer results in the transferee acquiring less than a 49% beneficial ownership in Borrower and does not change the actual control of Borrower if (i) the Transfer does not affect the bankruptcy remote structure of the Borrower, (ii) such Transfer does not include the transfer of any entity satisfying the independent management requirements for a bankruptcy remote structure unless the transferee also qualifies as an independent entity for such purposes, (iii) Lender shall have received a "down date" substantive non-consolidation opinion with respect to the transferee of the beneficial ownership interest in the Borrower indicating that the change in the beneficial ownership interest of Borrower will not affect the opinions stated in the substantive non-consolidation opinion delivered to Lender as of the date hereof, or a new substantive non-consolidation opinion with respect to the transferee, (iv) a satisfactory net worth statement of the transferee (which shall be deemed satisfactory if the transferee's certified net worth equals or exceeds that of the beneficial owner of Borrower as of the date immediately preceding delivery hereof), and (v) guaranty and indemnity agreements in substantially the same form and substance as those executed by the beneficial owner of Borrower concurrently with the delivery hereof, executed by the transferee, together with an opinion of transferee's counsel to the effect that such guaranty and indemnity agreements have been duly authorized, executed and delivered and are enforceable against the transferee. If a Transfer involves more than 49% of the beneficial ownership interest in Borrower being acquired by the transferee in one or a series of transactions or if actual control of the Borrower will be changed as a result of the Transfer, Lender's consent thereto shall not be unreasonably withheld if the following matters have been satisfied: (i) no Event of Default shall then be continuing under the Loan Documents; (ii) Lender and its counsel has received evidence reasonably satisfactory to it that all required approvals, if any, under the governing documents of Borrower to such Transfer shall have been obtained; (iii) Lender shall have received a "down date" substantive non-consolidation opinion with respect to the transferee of the beneficial ownership interest in the Borrower indicating that the change in the beneficial ownership interest in Borrower will not affect the opinions stated in the substantive non-consolidation opinion delivered to Lender in connection with the initial delivery hereof, or a new substantive non-consolidation opinion with respect to the transferee, in either case in compliance with the applicable terms of the Declaration of Trust, dated as of the date hereof, by Lender (the "Declaration"); (iv) such transferee shall have assumed all obligations, if any, of the transferor beneficial owner under the Guaranty and Indemnity Agreement and the Hazardous Substances Indemnity Agreement and (v) Lender shall have received an acceptable net worth statement of the transferee (which shall be deemed satisfactory if the transferee's certified net worth equals or exceeds that of the beneficial owner of Borrower as of the date immediately preceding delivery hereof). Lender agrees that the transferor entity shall be relieved of all obligations under the Loan Documents accruing after such Transfer is effected as herein provided, and Lender shall deliver to such transferor a release to such effect; such release shall apply to all obligations of such transferor entity and its affiliates who have executed any of the Loan Documents. In all events, if (1) a Transfer will result in any person and persons controlled by, controlling or under common control with such person, directly or indirectly, owning or controlling properties



("Related Properties") originally leased to affiliates of Lease Guarantor by affiliates of the Control Parties (as defined in a letter agreement between Borrower and Lender) which are encumbered by first mortgage liens securing more than 10% of the then outstanding principal amount of all notes secured by liens on Related Properties running in favor of Lender, or (2) if the transferee does not deliver a new substantive non-consolidation opinion or down-date of the prior substantive non-consolidation opinion in compliance with the terms of the Declaration, such Transfer shall not take place until each Rating Agency that rates securities issued with respect to the Notes has confirmed in writing that such Transfer will not result in the downgrade, qualification or withdrawal of such rating. Borrower will pay the reasonable costs of Lender and the Rating Agencies, including the fees of their respective counsel, in connection with Sale or Transfer. It is understood that the Rating Agencies will require Lender to deliver its recommendation based on, among other things, a certified financial statement of transferee (which shall be deemed satisfactory to Lender if the transferee's certified net worth equals or exceeds that of the beneficial owner of Borrower as of the date immediately preceding delivery hereof), standard credit report on the transferee (or its principals, as applicable), Lexis/Nexis or similar search showing the transferee (or its principals, as applicable) not to have been indicted or convicted of a felony in the preceding seven years and not to have been a principal in an entity that availed itself of the protection of bankruptcy laws in the preceding seven years. Lender agrees to use its best efforts to provide such recommendation to the Rating Agencies within five (5) business days after receipt of the foregoing materials.

(c) In connection with the foregoing, Lender acknowledges that if Borrower (or any transferee) is a Delaware business trust, or similar entity, the substitution of trustees under such trust shall not be deemed to be a Transfer provided that if the trustee being removed is the resident trustee, the new resident trustee has a net worth of at least \$500,000,000, and if the trustee being removed is the trustee satisfying the independent management requirements, then such substitute trustee must also satisfy the independent management requirements.

(d) Notwithstanding the foregoing but subject to the next to last sentence of this paragraph, however, any involuntary transfer of an economic ownership interest in Borrower caused by the death of any general partner, shareholder, joint venturer, trustee, manager or beneficial owner of any person holding any interest in Borrower, any beneficial owner of Borrower or any trustee of Borrower, or if Borrower is a partnership, any limited partner thereof, shall not be a default under this Security Instrument so long as Borrower is reconstituted, if required, following such death and so long as those persons responsible for the management of the Mortgaged Property remain unchanged as a result of such death or any replacement management is approved by Lender. In all events, if a transfer contemplated by this paragraph will result in any person and persons (excluding the persons who own or control the Borrower at the date of delivery hereof) controlled by, controlling or under common control with such person, directly or indirectly owning or controlling, directly or indirectly, Related Properties which are encumbered by first mortgage liens securing more than 10% of the then outstanding principal amount of all notes secured by liens on Related Properties running in favor of Lender, such transfer shall not take place until after Lender shall have received confirmation in writing from Standard and Poor's Ratings Services and Moody's Investor Services that such transfer will not result in a downgrade, withdrawal or qualification of the rating of any of the Certificates. It is



understood that the Rating Agencies will require Lender to deliver its recommendation based on, among other things, a certified financial statement of transferee (which shall be deemed satisfactory to Lender if the transferee's certified net worth equals or exceeds that of the beneficial owner of Borrower as of the date immediately preceding delivery hereof), standard credit report on the transferee (or its principals, as applicable), Lexis/Nexis or similar search showing the transferee (or its principals, as applicable) not to have been indicted or convicted of a felony in the preceding seven years and not to have been a principal in an entity that availed itself of the protection of bankruptcy laws in the preceding seven years.

Notwithstanding the foregoing but subject to the last sentence of this paragraph, however, limited partnership interests in the beneficial owner of Borrower shall be transferable without the consent of Lender provided (x) Borrower gives Lender and the Rating Agencies five days advance written notice of the transfer, and (y) such transfer is between or among the Control Parties, their respective officers or employees, members of the families of the forgoing individuals or trusts for the benefit of such family members. In all events, if any transfer or transfers contemplated by this paragraph will result in the aggregate in any person and persons controlled by, controlling or under common control with such person, (i) directly or indirectly owning or controlling more than 49% of the beneficial interest in the Borrower (unless such person owned 49% or more of the beneficial interests at the date of delivery hereof), (ii) directly or indirectly owning or controlling more than 49% or more of the beneficial interest in owners of Related Properties which are encumbered by first mortgage liens securing more than 10% of the then principal amount of all notes secured by liens on Related Properties running in favor of Lender, or (iii) otherwise changing actual control of Borrower, then such Transfer shall not take place until Lender shall have received a substantive non-consolidation opinion satisfying the requirements of the Declaration of Trust and until Standard and Poor's Ratings Services and Moody's Investor Services have each confirmed in writing that such Transfer will not result in the downgrade, qualification or withdrawal of its rating of the Certificates.

It shall be a condition of any Sale or Transfer that Borrower shall pay Lender, in addition to the amounts described in paragraph 9(e) and 9(f), in the case of a Sale, a fee of \$5,000 per Sale and, in the case of a Transfer, a fee of \$1,000 per Transfer, plus in both cases reasonable transaction costs, provided that a Transfer of beneficial interest in Borrower and other similar entities owning Related Properties shall not exceed \$5,000 for all such Transfers occurring in a single transaction with the same transferee.

(e) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's Sale of the Mortgaged Property without Lender's prior written consent or as otherwise expressly permitted herein. This provision shall apply to every Sale of the Mortgaged Property regardless of whether voluntary or not, or whether or not Lender has consented to any previous Sale of the Mortgaged Property.

(f) Lender's consent to a Sale of the Mortgaged Property shall not be deemed to be a waiver of Lender's or Residual Value Insurer's right to require such consent to any future

occurrence of same. Any Sale of the Mortgaged Property made in contravention of this paragraph shall be null and void and of no force and effect.

(g) Borrower agrees to bear and shall pay or reimburse, or cause the transferee to bear, pay or reimburse, Lender on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and documentation of any such Sale approved by Lender hereunder.

(h) Notwithstanding the foregoing provisions of this paragraph 9, a Sale to an entity satisfying the requirements of paragraph 20 hereof (the "Grantee") shall be permitted provided that documents complying with the applicable provisions of the Declaration are delivered to Lender and that each of the following terms and conditions are satisfied:

(1) Lender shall have consented to such Sale based on, among other things, its review and approval of a certified financial statement of transferee (which shall be deemed satisfactory to Lender if the transferee's certified net worth equals or exceeds that of the beneficial owner of Borrower as of the date immediately preceding delivery hereof), standard credit report on the transferee (or its principals, as applicable), Lexis/Nexis or similar search showing the transferee (or its principals, as applicable) not to have been indicted or convicted of a felony in the preceding seven years and not to have been a principal in an entity that availed itself of the protection of bankruptcy laws in the preceding seven years, and its approval of the transferee's organizational documents and substantive non-consolidation opinion (which shall be deemed acceptable if they comply with the requirements of the Declaration relating to such documents);

(2) No Event of Default is then continuing hereunder or under any of the other Loan Documents, and no Lease Default exists;

(3) Borrower shall have received Residual Value Insurer's prior written approval of the proposed Sale if and to the extent provided in the Residual Value Policy issued in connection with respect to the Mortgaged Property.

(4) Borrower pays or causes to be paid to Lender, concurrently with the closing of such Sale, all out-of-pocket costs and expenses, including, without limitation, the fee described in subparagraph (b) above and reasonable attorneys' fees and disbursements, incurred by Lender in connection with the Sale;

(5) The Grantee assumes and agrees to pay (subject to the non-recourse provisions of paragraph 51 hereof) the indebtedness secured hereby and to perform all obligations under the Notes, this Security Instrument and the other Loan Documents (and the transferring Borrower ("Grantor") shall be relieved of such obligations thereafter and Lender shall execute and deliver to such Grantor a release to such effect), and prior to or concurrently with the closing of such Sale, the Grantee executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions (including a nonconsolidation opinion in



substantially the same form as that delivered in connection with the closing of the loan evidenced by the Notes) as Lender may reasonably require;

(6) Grantor and Grantee execute, without any cost or expense to Lender, new financing statements or financing statement amendments and any additional documents reasonably requested by Lender;

(7) Lessee shall provide Grantee with an executed Lease assignment and assumption agreement reasonably acceptable to Lender;

(8) Lessee or Grantor shall provide Lender with written evidence (including a legal opinion, if reasonably required by Lender), satisfactory to Lender in its reasonable discretion, that such transfer is permitted under the Lease;

(9) Grantor shall cause to be delivered to Lender, without any cost or expense to Lender, such endorsements to Lender's title insurance policy, hazard insurance endorsements or certificates and other similar materials as Lender may deem necessary at the time of the Sale, all in form and substance reasonably satisfactory to Lender, including, without limitation, an endorsement or endorsements to Lender's title insurance policy insuring that the lien of this Security Instrument constitutes a first lien on the Mortgaged Property subject only to the Permitted Exceptions, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in subparagraph (5) of this paragraph and insuring that fee simple title to the Mortgaged Property is vested in the Grantee, or, in lieu thereof, such other documents or evidence as Lender may reasonably require in order to confirm that such policy is unaffected by the transfer;

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

(11) Grantee complies with the provisions of paragraph 20 hereof; and

(12) Lender shall have received such legal opinions as may be reasonably requested by Lender in connection with such Sale.

(i) If (a) a Sale will result in any person and persons controlled by, controlling or under common control with such person, directly or indirectly owning or controlling Related Properties which are encumbered by first mortgage liens securing more than 10% of the then outstanding principal amount of all notes secured by liens on Related Properties running in favor of Lender, or (b) the Grantee is not a single member Delaware limited liability company with organizational documents identical to those of Borrower or if the transferee has not delivered documents complying with the requirements of the Declaration, such Sale shall not take place until each Rating Agency that rates securities issued with respect to the Notes has confirmed that

such Sale will not result in the reduction, qualification or withdrawal of such rating. It is understood that the Rating Agencies will require Lender to deliver its recommendation based on, among other things, a certified financial statement of transferee (which shall be deemed satisfactory to Lender if the transferee's certified net worth equals or exceeds that of the beneficial owner of Borrower as of the date immediately preceding delivery hereof), standard credit report on the transferee (or its principals, as applicable), Lexis/Nexis or similar search showing the transferee (or its principals, as applicable) not to have been indicted or convicted of a felony in the preceding seven years and not to have been a principal in an entity that availed itself of the protection of bankruptcy laws in the preceding seven years. Lender agrees to use its best efforts to provide such recommendation to the Rating Agencies within five (5) business days after receipt of the foregoing materials.

(j) No other indebtedness may be secured by the Mortgaged Property (senior, subordinate or pari passu).

(k) Any Sale or Transfer shall not be construed so as to relieve any current guarantor or indemnitor (an "Indemnitor") of its obligations under the Hazardous Substances Indemnity Agreement (the "Indemnity") or the Indemnity and Guaranty Agreement (the "Guaranty"), each of even date herewith, and each such Indemnitor agrees to execute, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of each such Guaranty and Indemnity, provided that if the beneficial owner of the Grantee (as to a Sale) or the transferee beneficial owner of Borrower (as to a Transfer), approved by Lender, in its discretion as provided in this Section 9, assumes the obligations of the current Indemnitor under its Guaranty or Indemnity and such transferee beneficial owner of Borrower or the beneficial owner of Grantee, as applicable, executes, without any cost or expense to Lender, a new Indemnity and Guaranty, as the case may be, in form substantially the same as that executed in connection herewith, then Lender shall execute and deliver to the current Indemnitor, concurrently with such transaction, a release of the current Indemnitor from all obligations arising under its Guaranty and Indemnity out of occurrences from and after the closing of such Transfer or Sale.

(l) If the Premises are subject to further subdivision pursuant to a subdivision escrow agreement to be entered into at the time of execution of this Security Instrument ("Subdivision Escrow Agreement"), Lender hereby agrees to release the Surplus Lot (as described on the Subdivision Escrow Agreement) from the lien of this Security Instrument in accordance with any partial release document and financing statement partial releases delivered by Lender pursuant to the Subdivision Escrow Agreement. Such release shall occur upon the approval of Residual Value Insurer and the receipt by Lender of (x) satisfactory evidence of the subdivision in accordance with an approved subdivision plan, (y) satisfactory evidence that the value of the Surplus Lot was not included in the appraised value of the Mortgaged Property in the appraisal delivered to Residual Value Insurer and Lender at the time of delivery of this Security Instrument, and (z) an endorsement to the title insurance with respect to the Mortgaged Property confirming the priority of the lien hereunder subsequent to the release of the Surplus Lot. Borrower hereby agrees to obtain, or cause to be obtained separate tax lot status of the Final Lot (as defined in the Subdivision Escrow Agreement).



(m) If no Event of Default shall have occurred and be continuing and provided Borrower shall have obtained the consent of Residual Value Insurer (if and to the extent such consent is required pursuant to the terms of the Residual Value Policy), Borrower may, from time to time, in connection with the transactions contemplated by the Lease or otherwise, (i) sell and convey an interest in the Mortgaged Property to any Person legally empowered to take such interest under the power of eminent domain, (ii) grant routine utility, access and other customary easements, rights of way and other rights in the nature of easements with respect to the Mortgaged Property as Lessee may reasonably request, (iii) release or relocate existing easements and appurtenances which are for the benefit of the Mortgaged Property as reasonably requested by Lessee, (iv) dedicate or transfer unimproved portions of the Mortgaged Property for road, highway or other public purposes, (v) execute petitions to have the Mortgaged Property annexed to any municipal corporation or utility district, (vi) execute amendments to any covenants and restrictions affecting the Mortgaged Property as reasonably requested by Lessee, and (vii) execute and deliver to any Person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers. Borrower may instruct Lender to execute and deliver any instruments necessary to effect any of the above by providing Lender with a certificate attaching the following:

(1) such instrument;

(2) (i) a certificate of Lessee stating (A) that such grant, release, dedication, transfer, petition or amendment is not detrimental in any material respect to the proper conduct of Lessee's business on such Mortgaged Property, (B) the consideration, if any, being paid for such grant, release, dedication, transfer, petition or amendment and that Lessee considers such consideration to be fair and adequate, (C) that such grant, release, dedication, transfer, petition or amendment does not materially impair Lessee's use and operation of such Mortgaged Property or materially reduce its value, and (D) that, for so long as the Lease shall be in effect, Lessee will perform all obligations, if any, of Borrower under such instrument and will remain obligated under the Lease in accordance with its respective terms; and

(ii) a certificate from Lease Guarantor stating that, notwithstanding such grant, release, dedication, transfer, petition or amendment, the Lease Guaranty will remain in full force and effect;

(3) an updated ALTA survey reflecting such grant, release, dedication, transfer, petition or amendment;

(4) consent of Residual Value Insurer to such grant, release, dedication, transfer, petition or amendment, if and to the extent such consent is required by the Residual Value Policy;

(5) confirmation of lien priority of this Security Instrument from the title company that issued the Title Policy;

(6) a letter from the appraiser who prepared the appraisal of the Mortgaged Property delivered to Residual Value Insurer and Lender at the time of delivery of

this Security Instrument to the effect that the grant, release, dedication or transfer is not estimated to reduce the fair market value of the Mortgaged Property by an amount greater than the amount of consideration being paid to Borrower therefor; and

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

Such Lender direction shall be effective upon the satisfactory review by Lender of the certificate and supporting documentation as evidenced by either Lender's execution of such instruments or the delivery by Lender to Borrower of a written consent. If the consideration payable to Borrower in connection with such grant, release, dedication, transfer, petition or amendment exceeds 2% of the price paid by Borrower to acquire the Property, Borrower hereby assigns to Lender and agrees to deliver to Lender all such consideration which shall be applied to the partial prepayment of the Notes, without Prepayment Consideration..

(n) Notwithstanding anything to the contrary contained in this paragraph 9, no Sale or Transfer shall be made unless Borrower or Grantee, as the case may be, shall represent and warrant to Lender in writing that all of the representations and warranties set forth in paragraph 37 shall survive such Sale or Transfer.

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

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

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



taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

12. No Credits on Account of the Debt. Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. In the event such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

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

14. Usury Laws. This Security Instrument and the Notes are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by law to contract or agree to pay. If by the terms of this Security Instrument or the Notes, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all previous payments in excess of such maximum rate shall be deemed to have been payments in reduction of the principal and not on account of the interest due hereunder.

15. Books and Records. Borrower shall keep adequate books and records of account in accordance with generally accepted accounting principles on a modified cash basis consistently applied and furnish to Lender upon Lender's request: (a) unaudited financial statements of Borrower for the year just ended, including balance sheet and statement of income and expenses certified as true and correct by an officer or manager of the Borrower; (b) copies of all tax returns filed by Borrower within twenty (20) days after the filing thereof; and (c) copies of all financial information received by Borrower under the Lease within twenty (20) days after receipt thereof. Borrower shall provide Lender with such additional financial or management information with respect to the Lessee or the Mortgaged Property as Lender may reasonably request, provided that any such additional information is available to Borrower pursuant to the terms and provisions of the Lease.

16. Performance of Other Agreements. Borrower shall observe and perform or cause Lessee to observe or perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property, including, without limitation, any reciprocal easement, operating or similar

agreement, and if Borrower shall fail to so observe and perform, or cause to be so observed and performed by Lessee, any such terms, Lender and its agents, employees, contractors, engineers, architects and other representatives shall have the right to so observe and perform such terms.

17. Further Acts, etc. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Mortgaged Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this paragraph 17; provided, however, that such power of attorney shall only be exercised during the existence of an Event of Default hereunder.

18. Recording of Security Instrument, etc. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Lender in, the Mortgaged Property. Borrower will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Security Instrument.

19. Prepayment; Substitution of Collateral.

(a) The Debt may not be prepaid except as described below and except in connection with a Rejectable Offer as a result of a Termination Casualty (as defined in the Lease) in accordance with paragraph 3(g) hereof, a Rejectable Offer as a result of a Major Condemnation (as defined in the Lease) in accordance with paragraph 6(c) hereof, a Rejectable



Offer as a result of a failure to reach Substantial Completion (as defined in the Lease) of the Mortgaged Property in accordance with paragraph 33(e) hereof or in connection with minor releases and easements as described in paragraph 9(l), but may be defeased in accordance with the terms of the Notes.

(b) Subject to compliance with the applicable terms and conditions of this paragraph 19(b) and if an Event of Default shall not have occurred and be continuing, the Borrower, in connection with a Sale or Transfer to be effected within two (2) years after the date hereof, shall have the right (the "Substitute Collateral Right") to reduce the principal balance, in part but not in whole, of the Notes, provided that it simultaneously issues new two promissory notes in the form specified in the Declaration (the "New Notes") in the respective amounts of such principal reduction allocated between the Series A-1 Note and Series A-2 Note, and which are secured by Cash Collateral (as defined herein). This Substitute Collateral Right may only be exercised by the Borrower if it has a member which is, or which is directly or indirectly owned by, one or more of the Control Parties.

(c) Any Sale, as described in paragraph 9(a) hereof, to be made by Borrower as to which Borrower elects to exercise the Substitute Collateral Right, shall be subject to satisfaction of the following conditions:

(i) at least twenty (20) days prior to the proposed date of Sale or, if Rating Agency confirmation of such Sale is required, at least thirty (30) days prior to the proposed date of Sale, Borrower shall deliver written notice (the "Substitute Collateral Notice") to Lender specifying (A) the date of the intended Sale, (B) Borrower's election to exercise its Substitute Collateral Right, and (C) the date upon which the Debt Assumption Right (as hereinafter defined) will expire, which is at least two (2) business days prior to the next scheduled rent payment under the Lease (the "Election Period Deadline");

(ii) at least ten (10) business days prior to the proposed date of Sale, Borrower shall deliver to Lender a certificate in the form specified in the Declaration;

(iii) on the date of Sale,

(A) Borrower shall, pursuant to an Escrow Agreement in the form specified in the Declaration, deposit or cause to be deposited into escrow with Chicago Title Insurance Company (the "Escrow Agent"), for the benefit of Lender, cash in an amount equal to the following: (1) the amount by which the principal amount of the Notes is to be reduced, which must be less than the unpaid principal amount thereof (the "Principal Collateral"), (2) interest which has accrued and is unpaid on the Notes and interest which will accrue on the New Notes from the date through which interest was last paid on the Notes to, but excluding, the Election Period Deadline (the "Interest Collateral"); (3) the Substitute Make-Whole Premium, as hereinafter defined; and (4) the Substitute Collateral Fees and Expenses, as hereinafter defined (such amounts in clauses (1)

through (4), collectively, the "Cash Collateral"). The term "Substitute Collateral Fees and Expenses" means the sum of the fees of the Escrow Agent, Lender and their respective counsel in connection with the Sale. The Cash Collateral shall be held by Escrow Agent in an escrow account pursuant to the Escrow Agreement for the benefit of Lender. Such deposit of the Cash Collateral, to the extent made by the transferee, shall be deemed to have been paid by the transferee to Borrower as purchase price and/or deposit under the contract of sale between Borrower and the transferee for the Premises, and then deposited by Borrower pursuant to the Escrow Agreement into escrow with Escrow Agent as the Cash Collateral for the New Notes. The Borrower shall simultaneously deliver a Pledge and Security Agreement in the form specified in the Declaration to Escrow Agent granting to the Lender a first priority perfected security interest in the Cash Collateral as collateral for the obligations of Borrower under the New Notes described in paragraph (B) below. Borrower shall take or cause to be taken all actions necessary to perfect such security interest in favor of Lender, including, without limitation, filing a UCC statement;

(B) Borrower shall issue to Lender the New Notes in an aggregate principal amount equal to the Principal Collateral. The New Notes shall be secured solely by the Cash Collateral. Interest shall accrue on the New Notes and on the reduced amount of the Notes;

(C) Borrower shall have delivered to Lender a Substitute Collateral Borrower Opinion in the form specified in the Declaration;

(D) Borrower and a bankruptcy remote, special purpose Delaware limited liability company having organizational documents identical to Borrower's (except for proper names, purposes, dates and numbers) (the "Substitute Collateral Borrower"), which may be formed and controlled by one of the Control Parties or one of their respective affiliates, shall have entered into an assignment and assumption agreement, pursuant to which Borrower shall have assigned ownership of the Cash Collateral to the Substitute Collateral Borrower and the Substitute Collateral Borrower shall have assumed the outstanding obligations under the New Notes;

(E) either the transferee or Borrower shall have paid or deposited with Escrow Agent all transfer and mortgage taxes incurred or to be incurred in connection with such Sale and the exercise of the Substitute Collateral Right. Borrower hereby indemnifies Lender in respect of any such taxes;

(F) Borrower or the transferee shall have delivered to Lender a Substitute Collateral Non-Consolidation Opinion in the form specified in the Declaration;



(G) Borrower shall have delivered to Lender an opinion of counsel that exercise of the Substitute Collateral Right will not result in a realization event under Section 1001 of the Internal Revenue Code of 1986, as amended, in the form specified in the Declaration; and

(H) the transferee shall have delivered a transferee opinion letter complying with the requirements of the Declaration.

(d) Any Transfer, as defined in paragraph 9(b) hereof, to be made by the owner of a membership interest in Borrower ("Transferor") as to which Borrower elects to exercise the Substitute Collateral Right shall be subject to satisfaction of the following conditions:

(i) at least twenty (20) days prior to the proposed date of Transfer or, if Rating Agency confirmation of such Transfer is required, at least thirty (30) days prior to proposed date of Transfer, Borrower shall deliver the Substitute Collateral Notice to Lender;

(ii) at least ten (10) business days prior to the proposed date of Transfer, Borrower shall deliver to Lender a certificate in the form specified in the Declaration;

(iii) on the date of Transfer:

(A) Borrower, shall, pursuant to an Escrow Agreement in the form specified in the Declaration, deposit or cause to be deposited into escrow with Escrow Agent, for the benefit of Lender, the Cash Collateral. Such deposit of the Cash Collateral, to the extent made directly by the transferee, shall be deemed to have been paid by the transferee to the Transferor as purchase price and/or deposit under the contract of sale between the Transferor and the transferee for the transfer of the equity interest in the Borrower, then transferred by Transferor to Borrower as a capital contribution; and then deposited by Borrower into escrow with Escrow Agent pursuant to the Escrow Agreement as the Cash Collateral for the New Notes. Borrower shall simultaneously deliver a Pledge and Security Agreement in the form specified in the Declaration granting to Lender a first priority perfected security interest in the Cash Collateral as collateral for the obligations of the Borrower under the New Notes described in paragraph (B) below. Borrower shall take or cause to be taken all actions necessary to perfect such security interest in favor of Lender, including, without limitation, filing a UCC statement;

(B) Borrower shall issue to Lender New Notes. The New Notes shall be secured solely by the Cash Collateral;

(C) Borrower shall have delivered to Lender a Substitute Collateral Borrower Opinion in the form specified in the Declaration;

(D) Borrower and Substitute Collateral Borrower shall have entered into an assignment and assumption agreement, pursuant to which Borrower shall have assigned ownership of the Cash Collateral to the Substitute Collateral Borrower, and the Substitute Collateral Borrower shall have assumed the outstanding obligations under the New Notes;

(E) Borrower shall have paid or deposited with Escrow Agent all transfer and mortgage taxes incurred or to be incurred in connection with such Transfer and the exercise of the Substitute Collateral Right. Borrower hereby indemnifies Lender in respect of any such taxes;

(F) Borrower shall have delivered or caused to be delivered to Lender a Substitute Collateral Non-Consolidation Opinion in the form specified in the Declaration;

(G) Borrower shall have delivered to Lender an Opinion of Counsel that exercise of the Substitute Collateral Right will not result in a realization event under Section 1001 of the Internal Revenue Code of 1986, as amended, in the form specified in the Declaration; and

(H) the transferee shall have delivered a transferee opinion letter complying with the requirements of the Declaration.

(e) Upon satisfaction of the conditions set forth in paragraph 19(c) or (d), as applicable:

(i) Lender shall cause the grid attached to each Note to be amended to reflect a proportional decrease in the principal amount of each such Note by the pro rata amount of the Principal Collateral; and

(ii) Lender shall deliver a release releasing Borrower or Transferor, as applicable, from its obligations under the New Notes.

(f) Subject to compliance with the terms and conditions of paragraph 19(c) or (d) above, as applicable, and this paragraph 19(f), and if an Event of Default shall not have occurred and be continuing, the transferee, in the case of a Sale subject to paragraph 19(c) or, Borrower in the case of a Transfer subject to paragraph 19(d), may subsequently elect to assume (the "Debt Assumption Right"), in whole but not in part, the debt of the Substitute Collateral Borrower evidenced by the New Notes. Exercise of the Debt Assumption Right by the transferee or Borrower, as applicable, is subject to satisfaction of the following conditions:

(i) no later than three (3) business days prior to the Election Period Deadline, the transferee or Borrower, as applicable, shall deliver written notice to Lender and



Escrow Agent stating such transferee's or Borrower's election, as applicable, to exercise the Debt Assumption Right; and

(ii) either (A) if the Sale is subject to paragraph 19(c), the transferee and the Substitute Collateral Borrower shall have entered into an assignment and assumption agreement, pursuant to which the Substitute Collateral Borrower shall have assigned, and the transferee shall have assumed, ownership of the Cash Collateral and the outstanding obligations under the New Notes; or (B) if the Transfer is subject to paragraph 19(d), Borrower and the Substitute Collateral Borrower shall have entered into an assignment and assumption agreement, pursuant to which the Substitute Collateral Borrower shall have assigned, and the Borrower shall have assumed, such ownership of the Cash Collateral and the outstanding obligations under the New Notes.

If Borrower or the transferee, as applicable, has elected to exercise its Debt Assumption Right and all of the conditions of this paragraph 19(f) have been satisfied, Lender shall cause the grid attached to each Note to be increased to reflect an increase in the principal amount of each such Note by the principal amount of the New Notes. The lien hereof shall automatically be amended to secure such increase in the principal amount of the Notes. Lender shall simultaneously deliver a release, releasing the Substitute Collateral Borrower from the New Notes and cancel such New Notes. Escrow Agent shall execute a UCC-3 Release, releasing Lender's security interest in the Cash Collateral. Escrow Agent shall release all funds in the escrow account, other than the Substitute Collateral Fees and Expenses, to the transferee, in the case of a Sale, subject to paragraph 19(c), or the related Control Party, as applicable, in the case of a Transfer, subject to paragraph 19(d). Escrow Agent shall pay all Substitute Collateral Fees and Expenses to the appropriate parties in accordance with the Escrow Agreement.

(g) If the principal amount of the Notes has been reduced in accordance with paragraph 19(c) or (d) above, and if Borrower or the transferee, as applicable, has either not timely elected to assume the debt of the Substitute Collateral Borrower or all of the conditions to the exercise of the Debt Assumption Right have not been satisfied by the Election Period Deadline, then the following requirements, events and conditions shall become operative (provided that such requirements, events and conditions shall not constitute an Event of Default hereunder unless and until the following have not been satisfied):

(i) the New Notes shall become immediately due and payable as of the Election Period Deadline;

(ii) the New Notes shall be repaid with the Cash Collateral;

(iii) Escrow Agent shall release the Principal Collateral, Interest Collateral and the Substitute Collateral Make-Whole Premium to the Lender, which shall distribute such amounts to the holders of the New Notes as if such distributions were being made on the Notes;

(iv) Escrow Agent shall pay all Substitute Collateral Fees and Expenses to the appropriate parties in accordance with the Escrow Agreement; and

(v) any excess funds remaining after the distributions described in clauses (iii) and (iv) shall be remitted to the Substitute Collateral Borrower.

If, prior to the Election Period Deadline, the yield on the actively traded U.S. Treasury obligation having a maturity approximating the average life of the Notes declines by fifty (50) basis points or more from the yield at which the Substitute Collateral Make-Whole Premium was initially calculated, Lender shall give written notice within three (3) business days of such decline to Borrower, the transferee, and the Substitute Collateral Borrower. Upon receipt of such notice, Substitute Collateral Borrower shall be required to deposit or cause to be deposited with Escrow Agent an additional amount equal to the excess of the Substitute Collateral Make-Whole Premium calculated based on the current yield on actively traded U.S. Treasury obligations with a maturity approximating the average life of the Notes on the date of such notice over the original Substitute Collateral Make-Whole Premium. During the Election Period, Lender shall review the aforesaid yield rated every five (5) days during the Election Period.

- (h) Borrower agrees to pay all reasonable fees and expenses (including reasonable legal fees) incurred by Borrower, Escrow Agent and Lender on behalf of the registered owners of those certain pass-through certificates (each a "Pass-Through Certificate") issued by Lender (the "Registered Owners") in connection with the exercise of the Substitute Collateral Right and/or Debt Assumption Right.

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

(a) Borrower does not own and will not own any asset or property other than (i) the Mortgaged Property, (ii) incidental personal property necessary for the ownership or operation of the Mortgaged Property, and (iii) the Cash Collateral, if contributed in accordance with paragraph 19 above.

(b) To the extent its office is located in the offices of any of its affiliates, Borrower will pay fair market rent for its office space located therein and its fair share of any overhead costs with respect thereto.

(c) Borrower will not engage in any business other than the ownership, management, leasing and operation of the Mortgaged Property, and Borrower will conduct and operate its business as presently conducted and operated.

(d) Borrower will not enter into any contract or agreement with any affiliate of Borrower, any constituent party of Borrower, any guarantor or any affiliate of any constituent party or guarantor, except upon terms and conditions that are intrinsically fair and substantially



similar to those that would be available on an arms-length basis with third parties other than any such party.

(e) Borrower has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt (and the New Notes, if applicable) or (ii) unsecured trade debt customarily incurred in the ordinary course of business and payable within thirty (30) days.

(f) Borrower has not made and will not make any loans or advances to any third party (including any affiliate or constituent party, any guarantor or any affiliate of any constituent party or guarantor), shall not pledge its assets for the benefit of any other entity and shall not acquire obligations or securities of its members or its affiliates.

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

(h) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will not, nor will Borrower permit any constituent party or guarantor to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, trust certificate and agreement or other organizational documents of Borrower or such constituent party or guarantor, in any manner.

(i) Borrower will make investments directly or by brokers engaged and paid by the Borrower or its agents (provided that if any such agent is an affiliate of the Borrower it shall be compensated at a fair market rate for its services).

(j) Borrower will maintain books, accounting records and other corporate documents and records, financial statements, bank accounts and payroll accounts separate from those of its affiliates, any constituent party and any other person. Borrower will file its own tax returns and characterize itself as a separate entity from any affiliate or other person in each and every report, tax return or financial statement. Borrower shall maintain its books, records, resolutions and agreements as official records.

(k) Borrower will separately manage the Borrower's liabilities from those of any affiliate and pay from its assets (to the extent available) all of its own obligations, indebtedness and liabilities, including all administrative expenses and compensation to employees, consultants or agents, and all operating expenses, except that the Borrower's members may pay the organizational expenses of the Borrower.

(l) Borrower will not become involved in the day-to-day management of any other person.

(m) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any of its managers, members, any

affiliate of Borrower, any constituent party of Borrower, any guarantor or any affiliate of any constituent party or guarantor), and shall conduct business in its own name and through its own authorized directors, officers, managers, employees and agents and shall maintain and utilize separate stationery, invoices and checks. Borrower shall correct any known misunderstanding regarding its status as a separate entity and shall not identify itself as a division or part of its members or affiliates or any of its affiliates as a division or part of Borrower.

(n) Borrower will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(o) Borrower will not commingle the funds and other assets of Borrower with those of any affiliate or constituent party, any guarantor, or any affiliate of any constituent party or guarantor, or any other person.

(p) Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, any guarantor, or any affiliate of any constituent party or guarantor, or any other person.

(q) Borrower does not and will not hold itself out to be responsible for the debts or obligations of any other person.

(r) Borrower will not dissolve or terminate or materially amend the terms of its trust agreement, certificate of incorporation, partnership agreement or operating agreement or other agreement pursuant to which Borrower is organized.

(s) Borrower will not enter into any transaction of merger or consolidation, or liquidate or dissolve (or suffer any liquidation or dissolution), or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any entity.

(t) If Borrower is a business trust, at least one trustee, or if Borrower is a limited liability company, at least one member or manager (such trustee, member or manager being herein referred to as the "SPC Member") shall be (i) a limited liability company or corporation whose sole asset is its interest in Borrower and which at all times has a manager, member or director who qualifies as an Independent Person (as defined below), or (ii) a natural person who qualifies as an Independent Person (as defined in paragraph 20(u)), and such SPC Member will at all times comply, and SPC Member and the beneficial owner of Borrower will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this paragraph 20 as if such representation, warranty or covenant was made directly by such SPC Member.

(u) "Independent Person" means an individual who is not, and during the preceding five (5) years has never been, and is not while serving as the Independent Person (and is not, and during the preceding five (5) years never been, an Affiliate of): (i) a direct or indirect



legal or beneficial owner of any limited liability company membership interest, stock, partnership, membership or other equity interest in any of Borrower, an Owner (defined in this paragraph 20(u)) or any of their respective Affiliates (defined in this paragraph 20(u)); (ii) creditor, customer or supplier of any of Borrower, an Owner or any of their respective Affiliates, [provided that a person who derives and reasonably expect to derive in the future no more than 5% of his or her annual after tax income from services rendered as an Independent Person for Affiliates of Borrower shall not be disqualified as an Independent Person]; (iii) an employee, officer, director (other than during his tenure as an Independent Person of Borrower or for one or more Affiliates), member, manager (other than as an Independent Person of Borrower or for one or more Affiliates), trustee (other than as Independent Person of Borrower or for one or more Affiliates), beneficiary or contractor of Borrower, an Owner or any of their respective Affiliates; (iv) a person who controls (whether directly, indirectly or otherwise), Borrower, an Owner or any of their respective Affiliates or any substantial supplier, customer or creditor, or an officer, director, beneficiary, trustee, manager, member or contractor of Borrower, Owner or any of their respective Affiliates; and (v) a spouse, parent, sibling or child of any Person described in clauses (i) through (iv) above.

As used herein, “Affiliate” shall have the same meaning as defined in § 101 of the Bankruptcy Code and shall include all “insiders”, as such term is defined in § 101 of the Bankruptcy Code, with respect to Borrower and the Independent Person, except that the percentage of direct or indirect legal or beneficial interest required to be held by the relevant entity shall be ten percent (10%), not twenty percent (20%).

As used herein, “Owner” means the members having an economic interest or beneficiaries of Borrower and each of their successors in interest as members or beneficiaries of the Borrower.

As used herein, “Person” shall mean a natural person, corporation, limited partnership, general partnership, business trust, limited liability company or other form of association.

(v) Borrower shall not cause or permit the board of directors or board of managers, as applicable, of Borrower or the SPC Member, as applicable, to take any action which, under the terms of any certificate of incorporation, by-laws, voting trust agreement with respect to any common stock or other economic ownership interest, or limited liability company agreement requires the vote of the board of directors or board of managers, as applicable, of Borrower or the general partners of Borrower or the SPC Member, as applicable, unless at the time of such action there shall be at least one member who is an Independent Person.

(w) Borrower shall conduct its business so that the assumptions made with respect to Borrower in that certain opinion letter (the “Non-Consolidation Opinion”) dated September 27, 2000, and delivered by Winstead Sechrest & Minick P.C. in connection with this Security Instrument shall be true and correct in all respects.

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

(a) if any portion of the Debt is not paid within five (5) days from the date it was due;

(b) subject to the provisions of paragraph 4(b) hereof, if Taxes are not paid before they become delinquent, or Other Charges or other sums due hereunder are not paid and Borrower fails to cure after five (5) days after the earlier of notice or actual knowledge thereof;

(c) if (i) the Policies are not kept in full force and effect or (ii) within ten (10) days following written demand, Borrower shall fail to cause the delivery of any such Policies or a certificate, binder or other evidence of the renewal of any such Policies to Lender;

(d) if Borrower violates or does not comply with the provisions of subparagraphs 7(b)(iv), 7(b)(v), 7(b)(vi) or 7(b)(vii);

(e) if Borrower transfers or encumbers the Mortgaged Property or any interest therein in violation of the provisions of paragraph 9 hereof;

(f) if Borrower breaches the provisions of paragraph 20 hereof;

(g) if any representation or warranty of Borrower, or any guarantor, made herein or in any certificate, report, financial statement or other instrument or document furnished to Lender shall prove to have been false or misleading in any material respect when made or if any of the assumptions in the Non-Consolidation Opinion shall be or become inaccurate;

(h) if Borrower shall make a general assignment for the benefit of creditors or if Borrower shall generally not be paying its debts as they become due;

(i) if a receiver, liquidator or trustee of Borrower shall be appointed or if Borrower shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in, by Borrower or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower upon the same not being discharged, stayed or dismissed within 60 days;

(j) if the Mortgaged Property or any part thereof is taken on execution or other process of law in any action against Borrower;

(k) if the holder of any lien or security interest on the Mortgaged Property (without implying the consent of Lender to the existence or creation of any such lien or security interest), whether superior or subordinate to this Security Instrument or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder;



(l) subject to the provisions of paragraph 4(b) hereof, if the Mortgaged Property becomes subject to any mechanic's, materialmen's or other lien (other than for local real estate taxes or assessments which are not then due and payable) and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) calendar days;

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

(n) if Borrower fails to (i) permit on-site inspections of the Mortgaged Property (subject to the terms of the Lease, provided that no default beyond any applicable notice and/or cure period then exists under the Lease), or (ii) provide the financial information required pursuant to paragraph 15 hereof, and such breach or default continues for five (5) days after notice thereof;

(o) if Borrower shall default in the observance or performance of any other term, covenant or condition of the Notes, this Security Instrument or any of the other Loan Documents, and Borrower shall fail to remedy such default within thirty (30) days after notice by Lender to Borrower of such default, or if such default is of such a nature that it cannot with due diligence be cured within said thirty (30) day period and Borrower shall not commence within said thirty (30) days, or shall not thereafter diligently prosecute to completion, all steps necessary to cure such default within a reasonable period of time;

(p) subject to paragraph 53 hereof, if any default under the Lease ("Lease Default") which would constitute, after any notice and lapse of time required under the Lease, an Event of Default thereunder, provided that no Event of Default under the Loan Documents shall be deemed to exist as a result of this paragraph (p) until Borrower has received notice of the Lease Default and has failed to cause Lessee to cure same within the time, if any, provided by the Lease, and in no event shall an Event of Default exist hereunder by reason of a breach of the Lease by Lessee until such breach has become an Event of Default thereunder; and

(q) if the Lease is canceled, terminated, abridged, modified or surrendered.

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

**23. Right to Cure Defaults.**

(a) Subject to the rights of the Lessee under the Lease (provided that no default beyond any applicable notice and/or cure period then exists under the Lease), upon the

occurrence and during the continuance of any Event of Default, Lender may (itself or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or curing or being deemed to have cured any default hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to the rights of the Lessee under the Lease (provided that no default beyond any applicable notice and/or cure period then exists under the Lease), Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Mortgaged Property for such purposes and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to protect Lender's interest in the Mortgaged Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including, without limitation, the Prepayment Consideration, if any, and reasonable attorneys' fees and disbursements to the extent permitted by law), with interest as provided in this paragraph 23, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such reasonable costs and expenses incurred by Lender in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the above rate shall be deemed to be protective advances hereunder and shall constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

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



(c) Borrower shall have the right but not the obligation to cure up to three consecutive defaults by Lessee in the payment of monthly Fixed Rent under the Lease within the grace period set forth in the Lease, provided that such right shall be limited to six monthly defaults during the life of the Notes, and Borrower shall have the right, but not the obligation, to cure any other default by Lessee within the grace periods set forth in the Lease on up to six occasions during the life of the Notes.

24. Right of Entry. Subject to the rights of Lessee under the Lease (provided that no Lease Default then exists), Lender and its agents shall have the right at any time during normal business hours to enter and inspect the Mortgaged Property.

25. Remedies.

(a) Upon the occurrence and during the continuation of any Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(i) declare the entire Debt (including the Prepayment Consideration) to be immediately due and payable;

(ii) institute proceedings for the complete foreclosure of this Security Instrument in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien of this Security Instrument for the balance of the Debt not then due;

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

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Notes;

(vi) subject to paragraph 51 hereof, recover judgment on the Notes either before, during or after any proceedings for the enforcement of this Security Instrument;

(vii) subject to Lessee's rights under the Lease (if still in effect) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Borrower, any guarantor or of any person, firm or other entity liable for the payment of the Debt;

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



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

(ix) with or without taking possession of the Mortgaged Property, sue or otherwise collect the Rents, including those past due and unpaid; and

(x) exercise any other right or remedy available hereunder, under any of the Other Loan Documents or at law or in equity.

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

(b) To the fullest extent permitted by law, the proceeds of any sale under this Security Instrument shall be applied, to the extent funds are so available, to the following items in such order as Lender in its discretion may determine:

(i) To payment of the reasonable costs, expenses and fees of taking possession of the Mortgaged Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Lender's rights and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

(ii) To payment of all sums expended by Lender under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate.

(iii) To payment of the interest, principal, the Prepayment Consideration and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Rate, in any order that Lender chooses in its sole discretion.

(iv) The remainder, if any, of such funds shall be disbursed to Borrower or to the person or persons legally entitled thereto.

(c) To the extent permitted by applicable law, Lender may adjourn from time to time any sale by it to be made under or by virtue of this Security Instrument by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Lender under or by virtue of this paragraph, Lender, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Lender is hereby irrevocably appointed the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this paragraph shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

(e) Upon any sale made under or by virtue of this paragraph, Lender may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument.

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



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

27. Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Mortgaged Property. Borrower by executing and delivering this Security Instrument has granted and hereby grants to Lender, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph 27 the "Collateral"). If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at the Mortgaged Property. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees and disbursements, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. In the event of any change in name, identity or structure of any Borrower, such Borrower shall notify Lender thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Borrower shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Lender shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Lender, as secured party, in connection with the Collateral; provided, however, that such power of attorney shall only be exercised during the existence of an Event of Default hereunder. To the extent permitted by applicable law, this Security Instrument shall be effective as a financing statement filed as a fixture filing. The name

of the record owner of the real property is that of the Borrower herein. The name and address of the Borrower, as Debtor, and Lender, as Secured Party are as set forth on page 1 hereof.

28. Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding which Lender, in its discretion, decides should be brought to protect their interest in the Mortgaged Property (which action or proceeding may be brought in the name and on behalf of Borrower upon the occurrence and during the continuation of an Event of Default hereunder). Lender shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

29. Waiver of Counterclaim. All amounts due under this Security Instrument, the Notes and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Borrower hereby waives the right to assert a setoff, counterclaim (other than a mandatory or compulsory counterclaim) or deduction in any action or proceeding brought against it by Lender.

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

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

32. Hazardous Waste and Other Substances.

(a) Except as otherwise disclosed by that certain environmental assessment report with respect to the Mortgaged Property, which report Borrower furnished to Lender prior to the date hereof (the "Environmental Report"), or otherwise disclosed to Lender in writing, Borrower hereby represents and warrants to Lender that, as of the date hereof Borrower has received no written notice (i) that the Mortgaged Property is in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up (collectively, "Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq. and 40 CFR §302.1 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq. and 40 CFR §116.1 et seq.), and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), and the regulations promulgated pursuant to said laws, all as amended, and any similar laws and regulations of the state having jurisdiction over the Mortgaged Property; (ii) that any hazardous,



toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, generated, stored, processed or disposed of on or released or discharged at, onto, under or from the Mortgaged Property (including underground contamination) except for those substances used or sold by Borrower or Lessee in the ordinary course of its business and in compliance with all Environmental Laws; (iii) that the Mortgaged Property is subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances; (iv) of any existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances located on the Mortgaged Property; (v) of any investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Mortgaged Property nor does Borrower know of any basis for such a claim; and (vi) of any claim by any party that any use, operation or condition of the Mortgaged Property violates any Environmental Laws.

(b) As long as the Lease is in effect, Borrower shall enforce the obligations of Lessee thereunder with respect to compliance with Environmental Laws. At all times, Borrower shall keep or cause the Mortgaged Property to be kept free from Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) by all lessees of space in the Improvements, and, without limiting the generality of the foregoing, during the term of this Security Instrument, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos or potentially asbestos containing substance.

(c) Borrower shall promptly notify Lender if Borrower shall become aware of the possible existence of any Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) on the Mortgaged Property or if Borrower shall become aware that the Mortgaged Property is or may be in direct or indirect violation of any Environmental Laws. Further, immediately upon receipt of the same, Borrower shall deliver to Lender copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments received by Borrower pertaining to the actual, alleged or potential presence or existence of any such Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with Environmental Laws) at, on, about, under, within, near or in connection with the Mortgaged Property. Borrower shall, promptly and when and as required by any Environmental Laws, at Borrower's sole cost and

expense, take, or cause Lessee to take, all actions as shall be necessary or advisable for the clean-up of any and all portions of the Mortgaged Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Lender), and shall further pay or cause to be paid, at no expense to Lender, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Mortgaged Property. In the event Borrower fails to do so, Lender may, but shall not be obligated to, cause the Mortgaged Property or other affected property to be freed from any Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) or otherwise brought into conformance with Environmental Laws and any and all costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Notes. Borrower hereby grants to Lender and its agents and employees, subject to the rights of Lessee under the Lease, access to the Mortgaged Property and a license to remove any Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) and to do all things Lender shall deem necessary to bring the Mortgaged Property in conformance with Environmental Laws. Borrower covenants and agrees, at Borrower's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Lender), and hold Lender harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lender or the Mortgaged Property, and arising directly or indirectly from or out of: (i) the presence, release or threat of release of any Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with Environmental Laws) on, in, under or affecting all or any portion of the Mortgaged Property or any surrounding areas; (ii) the violation of any Environmental Laws relating to or affecting the Mortgaged Property; (iii) the failure by Borrower or its agents to comply fully with the terms and conditions of this paragraph 32; (iv) the breach of any representation or warranty contained in this paragraph 32; or (v) the enforcement of this paragraph 32, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with Environmental Laws) from all or any portion of the Mortgaged Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with Environmental Laws)



on, in, under or affecting any portion of the Mortgaged Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Mortgaged Property or any surrounding areas. Lender's rights under this paragraph shall survive payment in full of the indebtedness secured hereby and shall be in addition to all other rights of Lender under this Security Instrument, the Notes and the other Loan Documents.

(d) Upon Lender's request, at any time after the occurrence and during the continuation of an Event of Default hereunder or at such other time as Lender has reasonable grounds to believe that Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective business and in compliance with all Environmental Laws) are or have been released, stored or disposed of on or around the Mortgaged Property or that the Mortgaged Property may be in violation of the Environmental Laws, Borrower shall provide, at Borrower's sole cost and expense, an inspection or audit of the Mortgaged Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Lender indicating the presence or absence of Hazardous Substances on the Mortgaged Property (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with Environmental Laws) or an inspection or audit of the Improvements prepared by an engineering or consulting firm approved by Lender indicating the presence or absence of friable asbestos or substances containing asbestos on the Mortgaged Property. If Borrower fails to provide such inspection or audit within forty-five (45) days after such request, Lender may order the same, and Borrower hereby grants to Lender and its employees and agents access to the Mortgaged Property, subject to the rights of Lessee under the Lease, and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Notes.

(e) Without limiting the foregoing, where recommended by the Environmental Report and/or a "Phase I" or "Phase II" assessment, Borrower shall establish and comply with an operations and maintenance program relative to the Mortgaged Property, in form and substance acceptable to Lender, prepared by an environmental consultant acceptable to Lender, which program shall address any Hazardous Substances (except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with Environmental Laws) (including asbestos containing material or lead based paint) that may now or in the future be detected on the Mortgaged Property. Without limiting the generality of the preceding sentence, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify to address matters raised in the Environmental Report and/or a "Phase I" or "Phase II" assessment, (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (iii) at Borrower's sole expense, supplemental examination of the Mortgaged Property by consultants specified by Lender to address matters raised in the

Environmental Report and/or a "Phase I" or "Phase II" assessment, (iv) subject to the terms of the Lease, access to the Mortgaged Property, by Lender, its agents or servicer, to review and assess the environmental condition of the Mortgaged Property and Borrowers compliance with any operations and maintenance program, and (v) variation of the operations and maintenance program in response to the reports provided by any such consultants.

(f) If any action shall be brought against Lender based upon any of the matters for which Lender is indemnified under this paragraph 32, Lender shall notify Borrower in writing thereof and Borrower shall promptly assume the defense thereof, including, without limitation, the employment of counsel and the negotiation of any settlement; provided, however, that any failure of Lender to notify Borrower of such matter shall not impair or reduce the obligations of Borrower hereunder. Lender shall have the right, at Lender's expense, to employ separate counsel in any such action and to participate in the defense thereof. In the event Borrower shall fail to discharge or undertake to defend Lender against any claim, loss or liability for which Lender is indemnified hereunder, Lender may, at its sole option and election, defend or settle such claim, loss or liability. The liability of Borrower to Lender hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both the settlement consideration and the costs and expenses, including, without limitation attorney's fees and disbursements, incurred by Lender in effecting such settlement. In such event, such settlement consideration, costs and expenses shall be included in costs described in subparagraph (c) above, shall bear interest at the Default Rate, and Borrower shall pay the same as provided in this paragraph 32.

### 33. Completion Reserve; Interest Reserve.

(a) Upon the execution and delivery hereof, Borrower has deposited with Lender the amount of \$, which shall be held by Lender in an Eligible Account (the "Completion Reserve"). All sums on deposit from time to time in the Completion Reserve, including interest earned thereon, are for the benefit of Lender, but subject to the rights of Lessee hereinafter set forth, and shall be invested only in Permitted Investments. As used herein, "Permitted Investments" shall mean any of the following which are not shown with an "r" designation in its Standard and Poor's rating:

(i) direct obligations of, or obligations guaranteed as to timely payment of principal and interest by, the United States of America ("USA") or any agency or instrumentality thereof provided that such obligations are backed by the full faith and credit of the USA and provided that no such investment shall be purchased at a premium to its face value (disregarding interest accrued to the date of acquisition) and that no such investment shall have a maturity later than the earlier of (x) the business day before the proceeds of such investment are anticipated to be needed pursuant to this paragraph 33 or (y) ninety days from the date of acquisition; and

(ii) repurchase obligations with respect to any security described in clause (i) above entered into with a depository institution or trust company (acting as principal) whose long-term unsecured debt obligations have received one of the two highest ratings available for such securities by each of Standard and Poor's Ratings



Services and Moody's Investors Service (the "Rating Agencies"), provided that no such investment shall be purchased at a premium to its face value (disregarding interest accrued to the date of acquisition) and that no such investment shall have a maturity later than the earlier of (x) the business day before the proceeds of such investment are anticipated to be needed pursuant to this paragraph 33 or (y) ninety days from the date of acquisition; and

(iii) units of taxable money market funds which funds are regulated investment companies, seek to maintain a constant net asset value per share of \$1.00 and invest solely in obligations backed by the full faith and credit of the USA, and have been designated in writing by each of the Rating Agencies in one of the two highest credit rating categories as Permitted Investments with respect to this definition;

Each Permitted Investment must have a predetermined principal amount due at maturity that cannot change. Interest on a Permitted Investment may be either fixed or variable, but if variable, the interest rate on the Permitted Investment must be expressed as a single fixed spread (if any) over an index rate, and move proportionately with the index rate.

(b) Prior to the Substantial Completion Date (as defined in the Lease), any interest earned on amounts deposited in the Completion Reserve shall be reinvested in the Completion Reserve on a monthly basis.

(c) From time to time prior to the Substantial Completion Date, Lender shall release funds from the Completion Reserve and pay such funds to Lease Guarantor, or its successors and assigns under the Construction Servicing Agreement dated August 6, 1998, as amended by two addenda effective as of October 16, 1998 and by Addendum #3 effective as of February 12, 1999 between CVS Pharmacy, Inc. and GE Capital Loan Services, Inc. (as so amended the "Construction Servicing Agreement") pursuant to the terms of a draw certificate ("Draw Certificate") in the form set forth as Exhibit B hereto. Lease Guarantor shall deliver a Draw Certificate signed by Lease Guarantor certifying the amount requested on such certificate (the "Total Requested Amount") is (1) due and owing, and (2) an "approved draw request," under the Construction Servicing Agreement. Lender shall then pay to Lease Guarantor the Total Requested Amount, but not more than the Completion Reserve plus any earnings thereon. So long as no Event of Default shall have occurred and be continuing under the Lease, Lease Guarantor shall have the right to have funds released to it or upon its order as provided in this paragraph and in paragraph (d) below, notwithstanding any default or Event of Default by Borrower hereunder. This paragraph 33(c) and paragraph 33(d) shall not be amended without the written consent of Lease Guarantor. Lease Guarantor is hereby made a third party beneficiary of the agreements contained in this paragraph 33(c) and in paragraph 33(d).

(d) On the Substantial Completion Date, Lender shall pay any amounts, including interest, remaining in the Completion Reserve to Lease Guarantor if the construction of the Improvements has been completed pursuant to the Lease and the following conditions (i) through (vii) have been satisfied. After construction on the site has been completed, (the "Physical Completion Date") and prior to the Substantial Completion Date Borrower shall

perform the following acts and deliver or cause to be delivered to Lender the following items which shall be reasonably satisfactory in form and substance to Lender:

- (i) a copy of a permanent certificate of occupancy (unless otherwise required under the Lease, and which may be qualified to require continued compliance with ordinances and regulations) for the Improvements, issued by the municipality in which the Mortgaged Property is located, and any other governmental body having jurisdiction with respect thereto;
- (ii) an estoppel certificate from Lessee in the form attached as Exhibit C hereto;
- (iii) an updated "as-built" survey dated subsequent to the Physical Completion Date;
- (iv) a letter from an environmental consultant addressed to the Lender and reasonably acceptable to the Lender, dated subsequent to the Physical Completion Date and stating that either there has been no adverse change to the environmental condition of the Mortgaged Property since the date of the environmental report previously delivered to Lender with respect to the Mortgaged Property and recommending no further testing or other action, or, in the event the environmental report delivered at the time of execution hereof with respect to such Mortgaged Property recommended further action or otherwise raised environmental issues, stating that the environmental condition of the Mortgaged Property complies with Environmental Laws; such action has been completed and such environmental issues have been addressed in a manner satisfactory to such environmental consultant and in either case, no further action needs to be taken, other than ongoing monitoring or remediation which could not be completed prior to Substantial Completion but is being diligently pursued and with respect to which all necessary equipment has been installed and is operating.
- (v) an endorsement to Lender's mortgage title insurance policy delivered at the initial closing of the Loan (the "Title Policy") making the Title Policy effective as of a date after the Physical Completion Date and before the Substantial Completion Date, making any contingent endorsements no longer conditional and insuring that this Security Instrument constitutes a first lien on the Mortgaged Property subject only to such exceptions as were contained in the Title Policy with no additional exceptions; and
- (vi) a Uniform Commercial Code search dated after the Physical Completion Date indicating that the Lender has a first perfected security interest in and to the fixtures constituting a part of the Mortgaged Property.



- (vii) Written confirmation in a form and substance satisfactory to Lender that the Special Provisions Endorsement of the Residual Value Policy issued for the benefit of Lender is no longer applicable.

(e) In the event Substantial Completion (as defined in the Lease) of the Mortgaged Property does not occur on or before the Substantial Completion Date, Borrower shall require Lessee to satisfy the obligations set forth in Section 45(b)(i) or Section 45(b)(ii) of Part II of the Lease. In the event Lessee elects to make an irrevocable written Rejectable Offer to purchase the Mortgaged Property, Borrower shall, at its option, either (i) accept the Rejectable Offer or (ii) reject the Rejectable Offer provided that Borrower shall in no event reject the Rejectable Offer unless immediately prior to such rejection becoming effective, Borrower pays the Debt in full in immediately available funds (including the Prepayment Consideration, if any, or other prepayment consideration), in which case Lender shall give its consent of the rejection to Lessee, and any amount remaining in the Completion Reserve shall be paid to Borrower. In the event Lessee shall make an Exchange Offer (as defined in the Lease) such substitution shall occur in accordance with Section 45(f) of Part II of the Lease. No acceptance of an Exchange Offer shall be effective unless Lender and Residual Value Insurer shall have consented in writing to such substitution and the related modification to the Loan Documents and Lease are completed within the time frame allowed under the Lease for an acceptance or rejection of an Exchange Offer, and the Rating Agencies shall have confirmed in writing that such substitution will not result in the downgrade, withdrawal or qualification of the rating of the Certificates. In the event of an acceptance of such Exchange Offer, such acceptance shall be deemed conditioned upon the modification of this Security Instrument described below within thirty (30) days from the date of Borrower's acceptance of such Exchange Offer, in addition to those conditions required under the Lease. Upon the completion of the conveyance of the Substitute Premises (as defined in the Lease) to the Borrower, this Security Instrument shall be modified to reflect the substitution of the Substitute Premises for the Mortgaged Property and in such other respects as may be necessary as a result of the exchange of the Mortgaged Property for the Substitute Premises. Funds in the Completion Reserve not yet disbursed upon the conveyance of the Substitute Premises shall be disbursed by Lender to Lessee. In the event Borrower rejects or is deemed to reject an Exchange Offer made by Lessee in accordance with the Lease or in the event the conditions under Section 45(f)(i) through (iv) of Part II of the Lease are not satisfied, then in accordance with Section 45(g) of Part II of the Lease, Borrower shall accept Lessee's Rejectable Offer, or reject the Rejectable Offer, provided that Borrower shall in no event reject the Rejectable Offer unless immediately prior to such rejection becoming effective, Borrower pays the Debt in full in immediately available funds (including the Prepayment Consideration, if any), in which case Lender shall give its consent of the rejection to Lessee.

(f) Upon the execution and delivery hereof, Borrower has deposited with Lender the amount of \$0.00 which shall be held by Lender in an Eligible Account (the "Interest Reserve"). The purpose of the Interest Reserve is to pay interest on the Notes until Fixed Rent under the Lease becomes payable so that at all times either the Interest Reserve or Fixed Rent will pay the interest on the Notes when due. All sums on deposit from time to time in the Interest Reserve, including interest earned thereon, are for the benefit of Lender and shall be invested only in Permitted Investments. On each date on which interest is payable on the Notes, Lender shall

withdraw from the Interest Reserve an amount equal to the amount of interest then due on the Notes and apply such amount to the payment of such interest. Any amount remaining in the Interest Reserve after required payments of interest on the Notes have been made and the payment of Fixed Rent has commenced shall, if no Event of Default has occurred and is continuing, be paid to Borrower.

34. Handicapped Access.

(a) Borrower agrees that the Mortgaged Property shall at all times strictly comply, to the extent applicable, with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Mortgaged Property, Borrower shall not alter or permit the Mortgaged Property to be altered in any manner which would increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. Lender may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Lender.

(c) Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

35. Indemnification. In addition to any other indemnifications provided herein or in the other Loan Documents, Borrower covenants and agrees at its sole cost and expense to protect, defend, indemnify and save harmless Lender and any and all its successors and assigns hereunder from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Lender and any and all its successors and assigns hereunder (except to the extent caused by the gross negligence or willful misconduct of Lender) by reason of any of the following for which the event or events which give rise to such cause of action or liability occurred prior to a foreclosure or deed in lieu of foreclosure or other transfer of the Mortgaged Property pursuant to Lender's exercise of its remedies hereunder: (a) ownership of this Security Instrument, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Security Instrument; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Substance



(except those substances used by Borrower, Lessee or other tenants of the Mortgaged Property in the ordinary course of their respective businesses and in compliance with Environmental Laws) or asbestos on, from, or affecting the Mortgaged Property or any property contiguous therewith; (g) to the extent not covered by insurance, any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or asbestos including, without limitation, the costs and expenses of any remedial action, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; and (j) any failure of the Mortgaged Property to comply with any Access Laws. Any amounts payable to Lender and any and all its successors and assigns hereunder by reason of the application of this paragraph 35 shall be secured by this Security Instrument and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender and any and all its successors and assigns hereunder until paid. The obligations and liabilities of Borrower under this paragraph 35 shall survive any termination, satisfaction or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

36. Notices. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Security Instrument, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

To Lender:

First Security Bank, N.A., as Trustee  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Val T. Orton

with a copy concurrently to:

Day, Berry & Howard LLP  
260 Franklin Street  
Boston, Massachusetts 02110  
Attention: Lewis A. Burleigh, Esq.

To Borrower:

WEC 2000A-1 LLC  
c/o The Staubach Company

15601 Dallas Parkway, Suite 400  
Addison, Texas 75001

With a copy concurrently to:

Winstead Sechrest & Minick P.C.  
1201 Elm Street, Suite 5400  
Dallas, Texas 75270  
Attention: J. Richard White, Esq.

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the business day such material is sent, or (iii) if sent by certified mail, three (3) business days after such notice has been sent by Borrower or Lender.

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

(a) Borrower (and the undersigned representative of Borrower, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Security Instrument, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

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

(c) Borrower represents and warrants that, as of the date of this Security Instrument and throughout the term of this Security Instrument, (i) Borrower is not an employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, and (ii) the assets of such Borrower do not constitute "plan assets" of one or more such plans within the meaning of 29 CFR Section 2510.3-101.

(d) Borrower represents and warrants to Lender that, as of the date of this Security Instrument and throughout the term of this Security Instrument (i) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and (ii) transactions by or with Borrower or any Borrower are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

(e) Borrower covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of this Security Instrument, as reasonably requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" or a "governmental plan"; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:



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

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

(g) Borrower has never had any employees or any employee benefit plan or participated in any multi-employer benefit plan, and will not, so long as the Notes are outstanding, have any employee benefit plan or participate in any multi-employer benefit plan.

(h) Borrower shall indemnify Lender and defend and hold Lender and any and all its successors and assigns hereunder harmless from and against all civil penalties, excise taxes, or other loss, cost, damage and expense (including, without limitation, reasonable attorneys’ fees and disbursements and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender’s sole discretion) that Lender and any and all its successors and assigns hereunder may incur, directly or indirectly, as a result of a default under this paragraph. This indemnity shall survive any termination, satisfaction or foreclosure of this Security Instrument.

38. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

39. Remedies of Borrower. In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Notes, this Security Instrument or the other Loan Documents, it has an obligation to act

reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.

40. Discretion of Lender. Wherever pursuant to this Security Instrument, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole good faith discretion of Lender, unless this Security Instrument provides expressly to the contrary.

41. Non-Waiver. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower, Lease Guarantor or any other guarantor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Notes or the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Notes, this Security Instrument or the other Loan Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Subject to paragraph 51 hereof, Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights and remedies of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

42. No Oral Change; Residual Value Insurer Consent. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought. No amendments, modifications, changes, waivers, discharges or terminations which may adversely affect the fair market value of the Mortgaged Property or which may impair the Lender's right to realize upon the Mortgaged Property may be entered into without the prior written consent of Residual Value Insurer, as required pursuant to the Additional Named Insured Endorsement to the Residual Value Policy.

43. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

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



45. Headings, etc. The headings and captions of various paragraphs of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

46. Duplicate Originals. This Security Instrument may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

47. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Notes," the word "Notes" shall mean "the Notes and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

48. Homestead. To the extent permissible under applicable law, Borrower hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part hereof.

49. Assignments. Lender shall have the right to assign or transfer its rights under this Security Instrument without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Security Instrument.

50. Cooperation. Borrower acknowledges that Lender and its successors and assigns may (a) sell this Security Instrument, the Notes and other Loan Documents to one or more investors as a whole loan, (b) participate the loan (the "Loan") secured by this Security Instrument to one or more investors, (c) deposit this Security Instrument, the Notes and the other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary Market Transactions"). Borrower shall, at Lender's expense, cooperate in good faith with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements reasonably imposed by the participants involved in any Secondary Market Transaction including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the Rating Agency and addressing such matters as the Rating Agency may require, and providing direct access to financial and other information relating to the Lessee and the Mortgaged Property (subject to the terms of the Lease); provided, however, that the Borrower shall not be required to modify any documents evidencing or securing the Loan which would modify (i) the interest rate payable under the Notes, (ii) the stated maturity of the Notes, (iii) the amortization of principal of the Notes, or (iv) any other material economic term or other operating covenants of the Loan. Borrower shall provide such information and documents relating to Borrower, the Mortgaged

Property, the Lease and the Lessee as Lender or any Rating Agency may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Borrower, the Mortgaged Property and the Lessee. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Mortgaged Property may be included in a private placement memorandum, prospectus or other disclosure documents. As used herein, "Rating Agency" shall mean Moody's Investors Services, Inc. and Standard & Poor's Rating Services, and any successor to any of them; provided, however, that at any time during which the Debt is an asset of a securitization or is otherwise an asset of any rated transaction, "Rating Agency" shall mean the rating agency or rating agencies that from time to time rate the securities, certificates or other instruments issued in connection with such securitization or other transaction.

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

- (i) the failure of Borrower to account for Lessee's security deposits, if any, or any other similar payment collected from Lessee by Borrower under the Lease;



(ii) after notice of an uncured Event of Default and during the continuance of such Event of Default, the failure of Borrower to apply 100% of any and all net income (i.e., after payment of operating expenses relating to the Mortgaged Property) derived from the Mortgaged Property, and received by Borrower, to the repayment of the Notes;

(iii) a material misrepresentation made by Borrower, or the holders of beneficial or ownership interests in Borrower, in connection with the financing evidenced by the Notes, this Security Instrument or the other Loan Documents;

(iv) any attempt by Borrower to divert or otherwise cause to be diverted any amounts payable to Lender for the benefit of Lender in accordance with the Loan Documents; and

(v) the misappropriation or misapplication of insurance or condemnation proceeds obtained by Borrower relating to the Mortgaged Property;

(vi) any environmental matter(s) affecting the Mortgaged Property which is introduced or caused by Borrower or the beneficial owner of Borrower;

(vii) any waste of or damage to the Mortgaged Property caused by the willful or wanton acts or omissions of Borrower or its agents;

(viii) the willful or grossly negligent material violation by Borrower of any law, ordinance, rule, or regulation applicable to Borrower or the Mortgaged Property;

(ix) the termination or amendment of the Lease by Borrower in violation of the terms hereof;

(x) the failure of Borrower to maintain its existence as a single asset, special purpose entity in good standing, as required by this Security Instrument;

(xi) Borrower fails to obtain Lender's prior written consent to any subordinate financing or other voluntary lien caused by Borrower or its agent encumbering the Mortgaged Property as required by this Security Instrument; and

(xii) Borrower fails to obtain Lender's prior written consent to any Sale or Transfer as required by this Security Instrument.

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

**52. GOVERNING LAW; SUBMISSION TO JURISDICTION. THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE**

WITH THE LAW OF THE STATE OR COMMONWEALTH IN WHICH THE MORTGAGED PROPERTY IS LOCATED WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF. EACH BORROWER AND EACH ENDORSER OR GUARANTOR HEREBY SUBMITS TO PERSONAL JURISDICTION IN SAID STATE OR COMMONWEALTH AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SAID STATE OR COMMONWEALTH (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF SUCH BORROWER'S, ENDORSER'S OR GUARANTOR'S OBLIGATIONS HEREUNDER, UNDER THE NOTES, ANY GUARANTY AND THE OTHER LOAN DOCUMENTS, AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATE FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE SUCH OBLIGATIONS OF SUCH BORROWER, ENDORSER OR GUARANTOR. EACH BORROWER AND EACH ENDORSER AND GUARANTOR HEREBY WAIVES AND AGREES NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT, THE NOTES, ANY GUARANTY OR ANY OF THE OTHER LOAN DOCUMENTS, (A) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE COURTS OR THAT THIS SECURITY INSTRUMENT, THE NOTES, ANY GUARANTY AND/OR ANY OF THE OTHER LOAN DOCUMENTS MAY NOT BE ENFORCED IN OR BY THOSE COURTS OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (B) THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR (C) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). IN THE EVENT ANY SUCH ACTION, SUIT, PROCEEDING OR LITIGATION IS COMMENCED, BORROWER, OR ENDORSER AND GUARANTOR AGREE THAT SERVICE OF PROCESS MAY BE MADE, AND PERSONAL JURISDICTION OVER SUCH BORROWER, ENDORSER OR GUARANTOR OBTAINED, BY SERVICE OF A COPY OF THE SUMMONS, COMPLAINT AND OTHER PLEADINGS REQUIRED TO COMMENCE SUCH LITIGATION UPON SUCH BORROWER OR ENDORSER OR GUARANTOR AT BORROWER'S ADDRESS FIRST ABOVE WRITTEN.

53. Cure Rights. Notwithstanding the provisions of paragraph 21(p) hereof, Borrower shall have a one time right to cure each of (x) up to three consecutive months of Lease Defaults in the payment of Fixed Rent if such cure is made within five (5) days after receipt of notice thereof from Lender, (y) a Lease Default in the payment of Taxes, if such cure is made within fifteen (15) days after receipt of notice, and (z) a Lease Default consisting of the breach of any other covenant contained herein (other than the covenant to maintain insurance), if such cure is made within thirty (30) days after receipt of notice thereof from Lender; the foregoing cure provision shall not prevent any such Lease Default from constituting an Event of Default, and Lender shall have all rights consequent upon an Event of Default, including without limitation the acceleration of the maturity of the Debt, taking remedial action under the Lease and instituting foreclosure proceedings hereunder, provided that so long as Borrower is effecting cure



in compliance with the foregoing provisions, no foreclosure sale shall be conducted until the expiration of the cure rights herein above provided. If such Lease Defaults are cured in accordance with the foregoing proviso and no other Event of Default is continuing, the Loan shall be reinstated, any acceleration of the maturity of the Debt shall be rescinded and Borrower shall pay all costs associated with such reinstatement, including Lender's expenses in connection with the Event of Default.

54. Miscellaneous.

(a) Any consent or approval by Lender in any single instance shall not be deemed or construed to be Lender's consent or approval in any like matter arising at a subsequent date, and the failure of Lender to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Lender be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Lender pursuant hereto shall be narrowly construed to be applicable only to Borrower and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, other than the party to whom such consent or approval was given or reasonably intended to benefit, and any such consent or approval shall not be deemed to constitute Lender a venturer or partner with Borrower nor shall privity of contract be presumed to have been established with any such third party.

(b) Borrower represents and warrants to Lender that, as of the date hereof, there has not been committed by Borrower any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Borrower's obligations under the Notes, this Security Instrument or under any of the other Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Borrower hereby indemnifies Lender and agrees to defend and hold Lender harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this paragraph.

55. Lender Fees. Borrower will pay, or cause to be paid by a party acceptable to Lender, as the same become due and payable, all fees, disbursements, and other amounts payable to Lender acting in the capacity of Trustee under that certain Declaration of Trust of even date herewith, or any successor trustee thereunder.

56. Contractual Statute of Limitations. Borrower hereby agrees that any claim or cause of action by Borrower against Lender, or any of Lender's directors, officers, employees, agents, accountants or attorneys, based upon, arising from or relating to the Debt, or any other matter, cause or thing whatsoever, whether or not relating thereto, occurred, done, omitted or suffered to be done by Lender or by Lender's directors, officers, employees, agents, accountants or attorneys, whether sounding in contract or in tort or otherwise, shall be barred unless asserted by Borrower by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within one (1) year after Borrower knew or should have known of the act, occurrence or omission upon which such claim or cause of action, or any part thereof, is based and service of a summons and complaint on an officer of Lender or any other person

authorized to accept service of process on behalf of Lender, within thirty (30) days thereafter. Borrower agrees that such one (1) year period of time is reasonable and sufficient time for a borrower to investigate and act upon any such claim or cause of action. The one (1) year period provided herein shall not be waived, tolled or extended except by the specific written agreement of Lender. This provision shall survive any termination of this Security Instrument or any of the other Loan Documents.

57. Relationship of the Parties. The relationship between Borrower and Lender is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

58. No Merger. It is the desire and intention of the parties hereto that this Security Instrument and the lien hereof do not merge in fee simple title to the Mortgaged Property. It is hereby understood and agreed that should Lender acquire any additional or other interests in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in such other or additional interests in or to the Mortgaged Property, toward the end that this Security Instrument may be foreclosed as if owned by a stranger to said other or additional interests.

59. Rights With Respect to Junior Encumbrances. In case of any junior encumbrance whether prohibited or not by the Security Instrument, any person or entity purporting to have or to take a junior mortgage or other lien upon the Mortgaged Property or any interest therein shall be subject to the rights of Lender to amend, modify, increase, vary, alter or supplement this Security Instrument, the Notes or any of the other Loan Documents, and to extend the maturity date of the indebtedness secured hereby, and to increase the amount of such indebtedness, and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for such indebtedness, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Security Instrument losing its priority over the rights of any such junior lien.

60. Fixture Filing. This Security Instrument shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures and are owned by Borrower. This Security Instrument shall also be effective as a financing statement covering minerals or the like (including oil and gas) and is to be filed for record in the real estate records of the county where the Premises is situated. The mailing address of Borrower and the address of Lender from which information concerning the security interests may be obtained are set forth above.

61. After-Acquired Mortgaged Property. All property acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further mortgage, conveyance or assignment become subject to the lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further mortgages, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument.



62. No Representation. By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument and the other Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Lender.

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

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


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

***[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]***

IN WITNESS WHEREOF, the foregoing Security Instrument has been executed by the undersigned as of the day and year first above written.

WEC 2000A-1 LLC,  
a Delaware limited liability company

(SEAL)

By:   
Name: Greg L. England  
Title: Vice President

(AL)



STATE OF TEXAS

COUNTY OF DALLAS

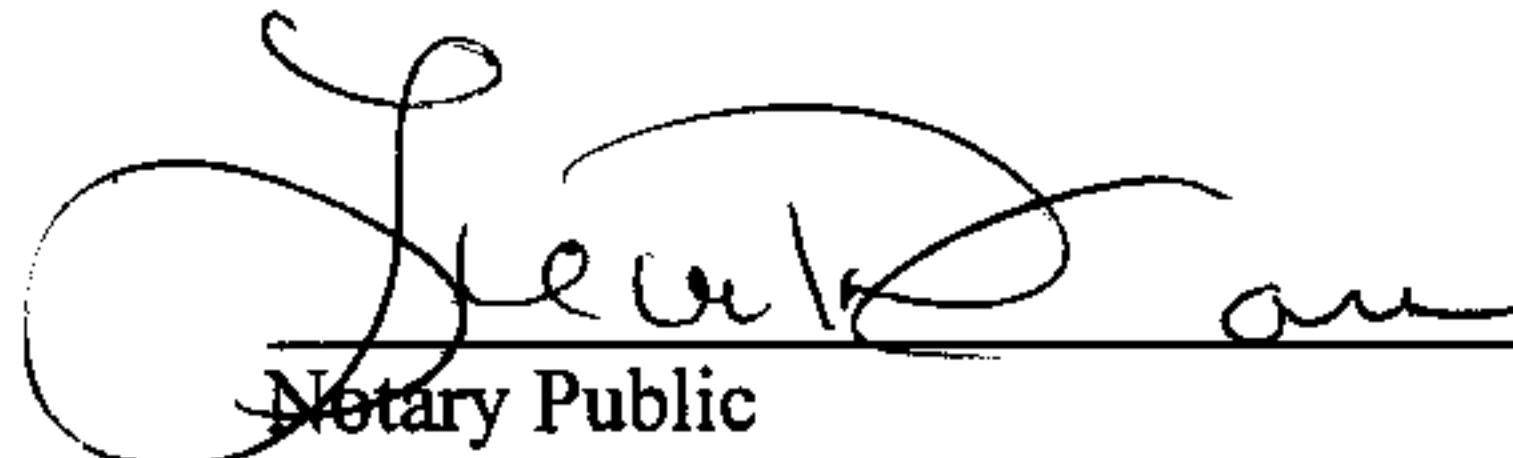
)  
) ss.  
)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Greg L. England, whose name as Vice President of WEC 2000A-1 LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, acting in his capacity as such officer and with full authority executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 9 day of August, 2000.



[Notarial Seal]

  
\_\_\_\_\_  
Notary Public  
My commission expires:

(AL)

**EXHIBIT A**  
**LEGAL DESCRIPTION**



LEGAL DESCRIPTION  
BIRMINGHAM, ALABAMA  
STORE NO. 4864

**EXHIBIT A**

**Parcel I:**

A parcel of land located in the East half of the Southeast quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said Southeast quarter of Section 36 and run north along the West line of same 770.80 feet; thence right  $119^{\circ}08'28''$  and run Southeasterly 257.20 feet; thence left  $90^{\circ}04'42''$  and run Northeasterly 1,495.98 feet to a point on the Southwesterly right of way of U. S. Highway #280; thence right  $89^{\circ}57'31''$  and run Southeasterly along said right of way 777.61 feet; thence right of  $44^{\circ}58'43''$  and continue Southeasterly along said right of way 34.90 feet to the point of beginning of the herein described Site "C"; thence continue along last described course 21.70 feet to a point on the Northwesterly right of way of Shelby County Highway #17 (Valleydale Road); thence right  $44^{\circ}58'43''$  and run Southwesterly along said right of way 193.86 feet to the point of curve of a curve to the right having a radius of 1,387.42 feet and a central angle of  $7^{\circ}21'35''$ ; thence run Southwesterly along the arc of said curve and right of way 178.22 feet to a point of intersection with a curve to the right having as radius of 72.14 feet and a central angle of  $72^{\circ}45'42''$ ; thence right  $20^{\circ}54'23''$  from the tangent behind to the tangent ahead and run southwesterly along the arc of said curve 91.61 feet to the point of tangent; thence run Northwesterly along tangent 6.69 feet to the point of curve of a curve to the right having a radius of 113.50 feet and a central angle of  $39^{\circ}00'54''$ ; thence run Northwesterly along the arc of said curve 77.29 feet to the point of tangent; thence run Northwesterly along tangent 200.89 feet; thence right  $90^{\circ}$  and run Northeasterly 357.84 feet to the point of beginning.

**Also described as:**

A parcel of land situated in the Southeast Quarter of Section 36, Township 18 South, Range 2 West, Huntsville Meridian, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said Southeast Quarter of Section 36 and run Northeasterly along the Westerly line thereof for a distance of 770.80 feet to a found  $\frac{3}{4}$ " rebar; thence turn a deflection angle to the right of  $119^{\circ}08'28''$  and run Southeasterly for a distance of 257.20 feet to a found 1" crimped iron; thence turn a deflection angle to the left of  $90^{\circ}04'42''$  and run Northeasterly for a distance of 1495.98 feet to a found 1" crimped iron on the Southwesterly right of way of U.S. Highway 280; thence turn a deflection angle to the right of  $89^{\circ}58'11''$  and run Southeasterly along said right of way for a distance of 777.55 feet; thence turn a deflection angle to the right of  $44^{\circ}59'08''$  and continue Southeasterly along said right of way for a distance of 34.90 feet to the Point of Beginning; thence continue along last described course for a distance of 21.70 feet to a point on the Northwesterly right of way of Shelby County Highway No. 17 (Valleydale Road); thence turn a deflection angle to the right of  $44^{\circ}58'43''$  and run Southwesterly along said right of way for a distance of 193.86 feet to the point of curvature of a

curve to the right having a radius of 1387.42 feet and a central angle of 7°21'35"; thence continue along the arc of said curve and along said right of way for a distance of 178.22 feet to the point of intersection of said arc with a curve to the right having a radius of 72.14 feet and a central angle of 72°45'42"; thence turn a deflection angle to the right of 20°54'23" from the tangent back to the tangent ahead and leaving said right of way, run Southwesterly along the arc of said curve for a distance of 91.61 feet to the point of tangency thereof; thence Northwesterly along a line tangent to last described course for a distance of 6.69 feet to the point of curvature of a curve to the right having a radius of 113.50 feet and a central angle of 39°00'54"; thence continue along the arc of said curve for a distance of 77.29 feet to the point of tangency thereof; thence continue Northwesterly along a line tangent to last described course for a distance of 200.88 feet; thence turn a deflection angle to the right of 90°00'00" and run Northeasterly for a distance of 357.84 feet to the Point of Beginning.

Parcel II:

Together with Easement Agreement recorded as Instrument #1999-49910, as affected by Corrective Easement Agreement recorded with Shelby County Judge of Probate on July 5, 2000 as Instrument No. 2000-22003.



**ADDENDUM**  
**GEORGIA AND ALABAMA STATE SPECIFIC PROVISIONS**

Notwithstanding anything to the contrary contained elsewhere in the Security Instrument to which this Addendum is attached, if and only if the Mortgaged Property is located in one of the states of Georgia or Alabama, then the particular provisions set forth below (applicable to the state in question) shall apply. As to any Mortgaged Property not located in such state, the provisions below that would apply to such state shall not apply.

Section 1.     *As to Mortgaged Property in the State of Georgia.* Notwithstanding anything to the contrary elsewhere in this Security Instrument, as to any Mortgaged Property located in the State of Georgia:

(a)     The following paragraph is hereby inserted immediately following the word "WITNESSETH" on page 1 of the Security Instrument:

"For and in consideration of the foregoing and other good and valuable consideration, and the sum of One Hundred and No/100 Dollars (\$100.00) in hand paid, and the other considerations hereinafter mentioned, the receipt and sufficiency of which are hereby acknowledged; and further

(b)     The phrase ", its successors and assigns" is hereby inserted after the words "pledge, assign and hypothecate unto Lender" in the paragraph immediately following the paragraph inserted pursuant to subsection 1(a) above.

(c)     The phrase ", members, parts" is hereby inserted after the words "together with all of the easements, rights" in subparagraph (a) on page 1 of the Security Instrument.

(d)     The phrases "and behoof" and "in fee simple" are hereby inserted after, respectively, the words "to the use and benefit of" and "successors and assigns of Lender" in the paragraph commencing with "TO HAVE AND TO HOLD" on page 4 of the Security Instrument.

(e)     The Security Instrument is intended (i) to constitute a security agreement under the Uniform Commercial Code of Georgia and (ii) to operate and is to be construed as a deed passing title to the Premises to Lender and is made under those provisions of Sections 44-14-60 through 44-14-85 of the OFFICIAL CODE OF GEORGIA ANNOTATED, and not as a mortgage.

(f)     The provisions of Section 25 of the Security Instrument is supplemented and amended to provide that, if an Event of Default occurs and Borrower fails to pay the indebtedness secured hereby in full following the acceleration thereof pursuant to subsection 25(a)(i) of the Security Instrument, Lender, at its option, may sell the Mortgaged Property or any part thereof at public sale or sales before the door of the courthouse of the county in which the Mortgaged Property or any part of the Mortgaged Property is situated, to the highest bidder for cash, in order to pay the Debt and all expenses of the sale and of all proceedings in connection therewith, including reasonable attorneys' fees, after advertising the time, place, and terms of

sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which Sheriff's sales are advertised in said county. Lender may bid and purchase at such sale and may credit the secured indebtedness for some of all of the purchase price. With respect to any personal property or fixtures included in or located on the Mortgaged Property, Lender may, at its option, sell or otherwise dispose of the same by public or private proceedings, separate from the sale of the real property, in accordance with the provisions of the Georgia Uniform Commercial Code, and Lender may with respect to such personal property and fixtures exercise any other rights or remedies of a secured party under the Georgia Uniform Commercial Code. At any sale conducted pursuant to this Section, Lender may execute and deliver to the purchaser a conveyance of the Mortgaged Property, or any part thereof, or any personal property or fixtures included in or located on the Mortgaged Property, in fee simple, which conveyance may contain recitals as to the occurrence of an Event of Default hereunder, and to this end Borrower hereby constitutes and appoints Lender its agent and attorney in fact to make such sale and conveyance and thereby to divest Borrower of all right, title, or equity in and to the Mortgaged Property and to vest the same in the purchaser or purchasers at such sale or sales, and all the reasonable acts and doings of said agent and attorney in fact are hereby ratified and confirmed. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by dissolution or otherwise, are granted as cumulative of the other remedies provided by law for collection of the Debt, and shall not be exhausted by one exercise thereof but may be exercised until full payment of the Debt. Upon any such public sale pursuant to the power of sale and agency conferred by this Section, the proceeds of such sale shall be applied first to payment of the Debt and to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' fees, in such manner and in such amounts as Lender elects, and, the remainder, if any, shall be paid to Borrower or its assigns or interpleaded into court in the event any other secured party or lien or having an interest in the Premises or any part thereof should make a claim thereto.

(g) The entire first sentence of Section 27 of the Security Instrument is hereby deleted.

(h) The entire Section 60 of the Security Instrument is hereby deleted and the words "60. RESERVED" are hereby inserted in lieu thereof.

Section 2. *As to Mortgaged Property in the State of Alabama.* Notwithstanding anything to the contrary elsewhere in this Security Instrument, as to any Mortgaged Property located in the State of Alabama:

(a) The following paragraph is hereby inserted immediately following the word "WITNESSETH" on page 1 of the Security Instrument:

"For and in consideration of the foregoing and other good and valuable consideration, and the sum of One Hundred and No/100 Dollars (\$100.00) in hand paid, and the other considerations hereinafter mentioned, the receipt and sufficiency of which are hereby acknowledged; and further



(b) The phrase “, its successors and assigns” is hereby inserted after the words “pledge, assign and hypothecate unto Lender” in the paragraph immediately following the paragraph inserted pursuant to subsection 2(a) above.

(c) The phrase “, members, parts” is hereby inserted after the words “together with all of the easements, rights” in subparagraph (a) on page 1 of the Security Instrument.

(d) The phrases “and behoof” and “in fee simple” are hereby inserted after, respectively, the words “to the use and benefit of” and “successors and assigns of Lender” in the paragraph commencing with “TO HAVE AND TO HOLD” on page 4 of the Security Instrument.

(e) The Security Instrument also constitutes a Uniform Commercial Code financing statement that is being filed as a fixture filing. Borrower is the record owner of the real property described therein. The collateral is described in the Security Instrument and some of the collateral described therein is or is to become fixtures on the real property described therein.

(f) The entire paragraph commencing with “PROVIDED, HOWEVER” on page 5 of the Security Instrument is hereby deleted and the following is inserted in lieu thereof:

“PROVIDED, HOWEVER, that these presents are upon the condition that, if Borrower shall pay or cause to be paid to Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall keep, perform, and observe all and singular the covenants and promises of Borrower in the Note, this Security Instrument, and in any and all other instruments or documents heretofore or hereafter executed and delivered in connection with the Note, this Security Instrument, or the transactions contemplated thereby, together with any and all extensions, modifications, and renewals of any of the foregoing, all without fraud or delay, then this Security Instrument, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, and shall be discharged of record at the cost of Borrower, which cost Borrower agrees to pay, but shall otherwise remain in full force and effect.”

(g) Power of Sale. Upon the occurrence or existence of an Event of Default, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, during the legal hours of sale, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

**EXHIBIT B**  
**FORM OF DRAW CERTIFICATE**

**[Letterhead of CVS Corporation]**

[ \_\_\_\_\_, \_\_\_\_\_]

First Security Bank, N.A.  
79 South Main Street  
Salt Lake City, Utah  
84111  
Attn: Corporate Trust Services

Ladies and Gentlemen:

We refer to the Construction Servicing Agreement dated as of August 6, 1998, between CVS Pharmacy, Inc. and GE Capital Loan Services, Inc. (as amended by two Addenda effective as of October 16, 1998, and as further amended by Addendum #3 dated as of February 12, 1999) (the "Construction Servicing Agreement") and to paragraph 33 of certain mortgages or deeds of trust, each dated as of August 1, 2000, from various limited liability companies or Delaware business trusts, each with the letters and numbers "WEC 99J" or "WEC 2000A" beginning its name (the "Mortgages"). Attached hereto is a schedule setting forth the locations of various stores, each of which is subject to a Mortgage, and the amount of a construction progress payment to be made with respect to each store. We hereby certify to you and to the Owner of such property that the conditions of the Construction Servicing Agreement have been satisfied for the construction progress payment specified on the attached schedule. The amount of such payment is \$\_\_\_\_\_, which is to be disbursed from the Completion Reserve established under the Mortgage for such property. The aggregate of such sums should be wire transferred to GE Capital Loan Services, Inc. as follows: Bankers Trust Company, NY, NY, ABA No. 021001033, for credit to account number 50-256-477, REF: CVS. Please notify Shelly Shrimpton at 281-405-7087.

Very truly yours,

**CVS CORPORATION**

By: \_\_\_\_\_  
Authorized signatory:



**EXHIBIT C**  
**FORM OF ESTOPPEL CERTIFICATE**

First Security Bank N.A., as Trustee  
79 South Main Street  
Salt Lake City, Utah 84111

Re: Lease dated as of August 1, 2000 (the "Lease") between WEC 2000A-1 LLC, a Delaware limited liability company, as Landlord, and Big B, Inc., an Alabama corporation, as Tenant.

Ladies and Gentlemen:

Reference is made to the Lease. Terms not defined herein shall have the meaning set forth in the Lease. Lessee hereby certifies the following:

- (i) the Lease is in full force and effect and has not been amended;
- (ii) the monthly amount of Fixed Rent under the Lease is \$\_\_\_\_\_, and is accruing as of \_\_\_\_\_;
- (iii) no Event of Default or event which with notice or lapse of time or both would constitute an Event of Default has occurred and is continuing under the Lease; and
- (iv) Lessee has accepted the Building (as defined in the Lease) as constructed and certifies that all construction has been completed in accordance with the terms of Section 45 of the Lease and Lessee has no claims against Landlord with respect thereto.

[Lessee]

By: \_\_\_\_\_  
Name:  
Title:

**Inst # 2000-35574**

**10/12/2000-35574**

**08:54 AM CERTIFIED**

**SHELBY COUNTY JUDGE OF PROBATE**

**075 NMB 4558.85**