

STATE OF ALABAMA)

Jefferson COUNTY)

Loan No. 20038001001

Property Name: Woodbrook Trail Apartments

MULTIFAMILY MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FIXTURE FILING

from

Ambler, L.L.C., an Alabama limited liability company

to

Merrill Lynch Mortgage Lending, Inc.

Dated as of July 20 2003

THIS INSTRUMENT WAS PREPARED BY AND UPON
RECORDATION RETURN TO:

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
DEFINITIONS	iv
ARTICLE I. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.....	3
Section 1.1. Representations, Warranties and Covenants of Borrower	3
Section 1.2. Liens	10
Section 1.3. Further Acts, etc.....	10
Section 1.4. Recording of Mortgage, etc	10
Section 1.5. Changes in Taxation Laws.....	11
Section 1.6. Indemnification	11
Section 1.7. Cost of Defending and Upholding the Mortgage Lien	12
ARTICLE II. INSURANCE	12
Section 2.1. Insurance Coverage.....	12
Section 2.2. Policy Terms	13
Section 2.3. Assignment of Proceeds.....	15
Section 2.4. Comply with Insurance Requirements.....	15
ARTICLE III. CASUALTY AND CONDEMNATION	16
Section 3.1. Casualty and Condemnation	16
Section 3.2. Condemnation	16
Section 3.3. Casualty and Restoration	16
Section 3.4. Disbursement of Net Proceeds.....	18
Section 3.5. Builders' Risk	19
Section 3.6. Application of Net Proceeds	19
ARTICLE IV. TAXES; RESERVES	20
Section 4.1. Payment of Taxes.....	20
Section 4.2. Right to Contest	20
Section 4.3. Reserve Account.....	20
ARTICLE V. MANAGEMENT	22
Section 5.1. Management.....	22
ARTICLE VI. LEASES AND RENTS	22
Section 6.1. Assignment	22

Section 6.2. Leases	23
ARTICLE VII. MAINTENANCE AND REPAIR	25
Section 7.1. Maintenance and Repair of the Property; Alterations; Replacement of Equipment.....	25
ARTICLE VIII. TRANSFER OR ENCUMBRANCE OF THE PROPERTY.....	26
Section 8.1. No Transfer/Encumbrance	26
Section 8.2. Permitted Transfers	26
Section 8.3. Conditions to Consent.....	27
ARTICLE IX. BOOKS AND RECORDS; REPORTING REQUIREMENTS	28
Section 9.1. Estoppel Certificates	28
Section 9.2. Financial Statements and Books and Records	28
ARTICLE X. SECURITY AGREEMENT; FIXTURE FILING	29
Section 10.1. Security Agreement; Fixture Filing	29
ARTICLE XI. DEFAULTS	31
Section 11.1. Events of Default	31
Section 11.2. Remedies.....	32
Section 11.3. Interest After Default	37
Section 11.4. Borrower's Actions After Default	37
Section 11.5. Control by Lender After Default.....	37
Section 11.6. Right to Cure Defaults	37
Section 11.7. Recovery of Sums Required to Be Paid.....	38
Section 11.8. Marshaling and Other Matters	38
Section 11.9. No Impairment; No Releases	38
ARTICLE XII. COVENANTS REGARDING INDEBTEDNESS AND CHANGES IN BORROWER.....	38
Section 12.1. Covenants Regarding Indebtedness and Changes in Borrower	38
ARTICLE XIII. ENVIRONMENTAL COMPLIANCE	41
Section 13.1. Indemnity	41
Section 13.2. Representations Regarding Hazardous Materials	42
Section 13.3. Covenants, Representations and Warranties.....	43
Section 13.4. Indemnification Procedures	45
Section 13.5. General Provisions	45
ARTICLE XIV. MISCELLANEOUS	46
Section 14.1. Right of Entry	46

	<u>Page</u>
Section 14.2. No Merger	46
Section 14.3. Tax Reduction Proceedings	46
Section 14.4. Attorney-in Fact	47
ARTICLE XV. RULES OF CONSTRUCTION	47
Section 15.1. Rules of Construction	47
ARTICLE XVI. STATE SPECIFIC PROVISIONS	53
Section 16.1. Inconsistencies	53
Exhibit A Legal Description	

DEFINITIONS

For all purposes of this Mortgage, the following capitalized terms shall have the meaning set forth below or in the provision referenced below:

“Affiliate” shall mean, with respect to any party, (i) each Person that Controls, is Controlled by or is under common control with such party, (ii) each Person that, directly or indirectly, owns or Controls, whether beneficially or as a trustee, guardian or other fiduciary, any of the stock of such party, and (iii) each of such Person’s officers, directors, members, joint venturers and partners.

“Appraisal” shall mean an appraisal of the Property, reasonably satisfactory to Lender in form and content, performed by an Appraiser.

“Appraiser” shall mean a licensed real estate appraiser who is a member of the American Institute of Real Estate Appraisers, having sufficient expertise and experience to perform an Appraisal, and otherwise reasonably satisfactory to Lender.

“Architect” shall mean a reputable architect, engineer licensed in the State, or general contractor selected by Borrower and reasonably satisfactory to Lender.

“Assignment” shall mean the Assignment of Leases and Rents of even date herewith from Borrower to Lender pertaining to the Property, as the same may be amended, supplemented or modified from time to time.

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

“Borrower” shall have the meaning set forth in the first paragraph on page 1 hereof.

“Business Day” shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended or supplemented from time to time.

“Claim” shall have the meaning set forth in Section 13.4 hereof.

“Collateral” shall mean all of the Property which is governed by the UCC.

“Contracts” shall have the meaning set forth in the NINTH granting clause hereof.

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

“Costs” shall mean, collectively, all liens, damages, losses, fines, liabilities, obligations, settlements, penalties, assessments, citations, directives, claims, litigations, demands, response costs (including, without limitation, investigation, removal, remediation, mitigation, containment, post-closure and monitoring costs), defenses, judgments, suits, proceedings, costs, laboratory fees, disbursements and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys’, consultants’ and experts’ fees and disbursements). “Costs” shall also include any future reduction in sales price of, or unmarketability and consequent inability of Lender to foreclose on or otherwise sell, the Property and the lost opportunity costs resulting from the inability of Lender to sell or dispose of its interest in the Property, all as a consequence of any event described in Section 13.1.

“Debt” shall have the meaning set forth in the recitals on page 1 hereof.

“Default Rate” shall have the meaning set forth in the Note.

“Environmental Laws” shall mean, collectively, any present or future federal, state or local law, statute, rule, regulation, common law duty or ordinance, and any judicial or administrative order, judgment, permit or authorization issued pursuant thereto, pertaining to the environment, natural resources, pollution, health, safety or clean-up, including, without limitation, each of the laws, statutes and ordinances identified in the definition of Hazardous Materials hereinafter set forth, as enacted as of the date hereof and as hereafter amended or supplemented, and all regulations promulgated pursuant thereto.

“Equipment” shall have the meaning set forth in the FOURTH granting clause hereof.

“Event of Default” shall have the meaning set forth in Section 11.1 hereof.

“Governmental Authority” shall mean any federal, state, regional, local or other government or political subdivision or agency thereof and any body or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Hazardous Materials” shall mean and include (i) those elements, wastes, materials, substances or compounds identified or regulated as hazardous or toxic pursuant to CERCLA, 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.), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 et seq.), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, all as amended from time to time, relating to or affecting the Property, (ii) any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum or petroleum by-products or wastes, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include

hazardous constituents) or any other substances or materials which are identified by or regulated by Environmental Laws, on, in, under or affecting all or any portion of the Property or any surrounding areas, and (iii) any substances now or hereafter defined as or included in the definitions of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “pollutants”, “contaminants” or “toxic substances” under any applicable Legal Requirements.

“Improvements” shall have the meaning set forth in the SECOND granting clause hereof.

“Indemnitor” shall have the meaning set forth in Section 12.1 hereof.

“Insurance Requirements” shall mean all terms of any insurance policy required by this Mortgage, all requirements of the issuer of any such policy, and all regulations and then current standards applicable to or affecting the Property or any use or condition thereof, which may, at any time, be recommended by the Board of Fire Underwriters, if any, having jurisdiction over the Property, or such other authority exercising similar functions.

“Leases” shall have the meaning set forth in the FIFTH granting clause hereof.

“Legal Requirements” shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions (including, without limitation any of the foregoing relating to Hazardous Materials) affecting either the Property or the ownership, occupancy, construction, use, alteration or operation thereof, whether now or hereafter enacted and in force, including, without limitation, (i) any which may require repairs, modifications or alterations in or to the Property, (ii) any which may in any way limit the use and enjoyment thereof, and all permits, licenses and authorizations and regulations relating thereto, (iii) all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, any time in force affecting or relating to the Property, or (iv) any which may pertain to requirements for equal opportunity, anti-discrimination, fairhousing, disability accommodation, safety, environmental protection, zoning or land use.

“Lender” shall have the meaning set forth in the first paragraph on page 1 hereof.

“Licenses” shall have the meaning set forth in the EIGHTH granting clause hereof.

“Lien” shall mean, with respect to any property or asset, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness or marketability), encumbrance, preference, right of reverter, option to purchase, reversionary interest, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such property or asset (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic affect as any of the foregoing).

“Loan” shall have the meaning set forth in the recitals on page 1 hereof.

“Loan Documents” shall mean, collectively, all documents, instruments, certifications and agreements now or hereafter given in connection with, evidencing, securing or relating to the Loan or the indebtedness evidenced by the Note, including, without limitation, all indemnities, guaranties, the Note, this Mortgage, related UCC financing statements, the Assignment and the Reserve Agreement.

“Maturity Date” shall have the meaning set forth in the Note.

“Mortgage” shall have the meaning set forth in the first paragraph on page 1 hereof.

“Net Proceeds” shall mean, in connection with any casualty, the insurance proceeds actually received by Lender and in connection with any Taking, any condemnation awards, proceeds or other payments, in either case, including any interest accrued or which accrues thereon and less any adjusters’ fees and expenses and all costs and expenses, including, without limitation, all reasonable architects’, attorneys’, engineers’ and other consultants’ and professionals’ fees and disbursements incurred by Lender in connection with the casualty or Taking in question.

“Note” shall have the meaning set forth in the recitals on page 1 hereof.

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

“Officer’s Certificate” shall mean a certificate of Borrower signed by the President, any Vice President, the Treasurer or any other officer authorized so to sign by the board of directors or by-laws of Borrower, and delivered to Lender or, if Borrower is a partnership with one or more corporate general partners, a certificate so executed by such general partner(s) and/or any other partners having the power and authority to sign on behalf of Borrower or, if Borrower is a limited liability company with one or more corporate members, a certificate so executed by such member(s) and/or any other members having the power and authority to sign on behalf of Borrower.

“Original Principals” shall mean Malcolm S. Bethea, Susan Bethea, Elizabeth Kopecky, Virginia Mills, and W. Wheeler Smith.

“Other Charges” shall have the meaning set forth in Section 4.1 hereof.

“Payment Date” shall have the meaning set forth in the Note.

“Permitted Encumbrances” shall have the meaning set forth in Section 1.1(d) hereof.

“Person” shall mean any individual, corporation, partnership, joint venture, estate, trust, limited liability company, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such

capacity on behalf of any of the foregoing, and any of the heirs, executors, legal representatives, successors and assigns of any of the foregoing, as applicable.

“Premises” shall have the meaning set forth in the FIRST granting clause hereof.

“Prepayment Charge” shall have the meaning set forth in the Note.

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

“Property” shall have the meaning set forth in the recitals on page 1 hereof.

“Rating Agencies” shall mean Standard & Poor’s Ratings Group, Moody’s Investors Service, Inc., and Fitch, Inc. or any successors thereto.

“Rents” shall have the meaning set forth in the FIFTH granting clause hereof.

“Reserve Account” shall have the meaning set forth in Section 4.3 hereof.

“Reserve Agreement” shall mean that agreement dated the date hereof, made by Borrower in favor of Lender, in connection with additional Reserves, if any, required by Lender, other than for Taxes and insurance premiums expressly provided for in Article IV hereof.

“Reserves” shall have the meaning set forth in Section 4.3 hereof.

“Restoration Work” shall have the meaning set forth in Section 3.3 hereof.

“Retention Amount” shall have the meaning set forth in Section 3.4(e) hereof.

“Special-Purpose Entity” shall mean an entity which owns no interest or property other than the Property or interests in Borrower and otherwise is required to comply with the Special Purpose Entity Provisions.

“Special-Purpose Entity Provisions” shall mean the provisions required by Lender to be included in an entity’s organizational documents for such entity to satisfy Lender’s bankruptcy-remote requirements. Such provisions deal with certain prohibited activities of the entity, subordination of certain indemnification obligations, separateness covenants and, if applicable, anti-dissolution, voting and independent director requirements.

“State” shall mean the state or commonwealth in which the Premises is located.

“Taking” shall mean a taking or voluntary conveyance during the term hereof of any of the Property, or any interest therein or right accruing thereto or the use thereof or relocation of any roadway providing access thereto, including, without limitation, any change of grade of any street, road, avenue or the widening of streets, roads or avenues adjoining or abutting the Premises, or any other injury to, or decrease in value of the Property, as the result of, or in

settlement of any condemnation or other eminent domain proceeding affecting the Property whether or not the same shall have actually been commenced.

“Taxes” shall have the meaning set forth in Section 4.1 hereof.

“Transfer” shall mean any direct or indirect sale, conveyance, mortgaging, grant, bargain, alienation, encumbrance, pledge, assignment or other transfer of the Property or any part thereof, or legal or beneficial interest therein, or agreement to do any of the foregoing, whether voluntary or involuntary, including, without limitation, all of the items enumerated in Section 8.1 hereof.

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

THIS MULTIFAMILY MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (as the same may be supplemented, amended, modified or extended from time to time, "**Mortgage**") is made as of July ~~2~~¹, 2003, by Ambler, L.L.C., an Alabama limited liability company having an address of 951 18th Street South, Suite 200, Birmingham, Alabama, 35205 ("**Borrower**"), to Merrill Lynch Mortgage Lending, Inc., a Delaware corporation, having an address at 4 World Financial Center, 250 Vesey Street, New York, NY, 10080 ("**Lender**").

W I T N E S S E T H:

WHEREAS, Borrower has requested that Lender make a loan to Borrower in the aggregate principal sum of SIX MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$ 6,850,000) (the "**Loan**") to be used for the purposes set forth herein; and

WHEREAS, Lender has agreed to make the Loan to Borrower upon, and subject to, the terms and conditions set forth herein and in the other Loan Documents;

NOW THEREFORE, in consideration of Lender making the Loan, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and TO SECURE (i) the payment of all principal, interest and other sums due under that certain promissory note dated the date hereof, made by Borrower in favor of Lender in the original principal amount of SIX MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$ 6,850,000) Dollars (the "**Note**"); and (ii) the payment and performance of all other covenants, obligations, liabilities or sums due or to become due under this Mortgage, the Note or any other Loan Document, including, without limitation, interest on said obligations, liabilities or sums now due or to become due under this Mortgage, the Note or any other Loan Document; and (iii) any further or subsequent advances made by Lender pursuant to this Mortgage, the Note or any other Loan Document to protect or preserve the Property or the lien or security created hereby, including all advances and costs incurred by Lender to perform any obligation of Borrower under the Loan Documents and (iv) all costs of collection in connection with this Mortgage and the other Loan Documents (items (i) through (iv), collectively, the "**Debt**"), Borrower does hereby irrevocably grant, bargain, sell, alien, demise, convey, assign, transfer, mortgage, grant a security interest in, hypothecate, pledge, set over to Lender, its successors and assigns, forever (to the extent legally permitted), with power of sale, all right, title and interest of Borrower in, to and under all of the following property, rights, interests and estates, whether now owned or hereafter acquired (collectively, and any part or portion thereof, the "**Property**");

FIRST, all plots, pieces or parcels of real property described in Exhibit A hereto (the "**Premises**");

SECOND, all buildings, structures and improvements of every kind or nature now or hereafter located on the Premises (collectively, the "**Improvements**");

THIRD, all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, wells, water courses, water rights, ditches, reservoirs, air rights and development rights, lateral supports, foundations and drainage, and all estates, rights, interests,

reversions, remainders, tenements, hereditaments and appurtenances of any nature whatsoever located on, under, above or pertaining to the Premises and Improvements;

FOURTH, all machinery, equipment, fittings, furniture, furnishings, fixtures (including, but not limited to, all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, plumbing, lighting, communications and elevator fixtures), building equipment, materials and supplies, and all warranties and guaranties relating thereto, and all other property of every kind and nature whatsoever, now or hereafter located upon, in or used in connection with the Premises or the Improvements or appurtenant thereto (collectively, the **“Equipment”**);

FIFTH, all leases, tenancies, licenses, subleases, assignments and other agreements affecting the use, enjoyment or occupancy of all or any portion of the Premises or the Improvements now existing or hereafter entered into, and all amendments, renewals and extensions thereto (collectively, the **“Leases”**), together with all income, rents, issues, profits, revenues and royalties therefrom, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the **“Rents”**), and all security deposits, guarantees or other security held by Borrower in connection therewith, and all other credits, rights, options, claims and causes of action of Borrower in connection with any of the foregoing;

SIXTH, all proceeds, awards and payments, including interest thereon, which may hereafter be made with respect to all or any portion of the Property in connection with any Taking, and all proceeds of, and any unearned premiums under, any insurance policies covering all or any portion of the Property, and all refunds or rebates of Taxes, impositions and Other Charges or in connection with other Property, and any interest thereon;

SEVENTH, all accounts, funds, deposits and reserves, including without limitation, those Reserves referred to in or governed by Article IV hereof and any Reserves covered by the Reserve Agreement, and all accounts receivable, contract rights, rights, claims, actions, general intangibles, trademarks, trade names, franchises, service marks, building names and logos;

EIGHTH, all licenses, permits, building permits, certificates, certificates of occupancy, consents, authorizations, approvals, variances and land use entitlements for the construction, use, occupancy and operation of the Improvements and the Premises (collectively, the **“Licenses”**);

NINTH, all contracts, documents, agreements and arrangements to which Borrower is a party or bound or which relate to the use, operation, ownership or enjoyment of the Property, including without limitation all service contracts, management agreements, zoning agreements, development agreements, utility agreements, parking arrangements, operating contracts, supply and maintenance contracts, equipment or other personal property leases, and all amendments thereto; and all income, revenue, rights of reimbursement and benefits therefrom, and all deposits, security, credits and advance payments in connection with any of the foregoing; and all books and records relating to the Property (collectively, the **“Contracts”**);

TENTH, all claims with respect to the Property, including without limitation, for loss or damage arising from any defect in or with respect to the design or construction of the Improvements or the Equipment; and the right to appear in and defend any action or proceeding, in the name and on behalf of Borrower, brought with respect to any of the Property; and the right to commence any action or proceeding to protect the interest of Lender in such Property;

ELEVENTH, all drawings, designs, architectural renderings, models, surveys, reports, studies, tests, plans and specifications for the design, development, construction, repair, improvement, ownership or operation of the Property;

TWELFTH, all oil, gas, minerals, timber and crops in, on, under or pertaining to the Premises and all royalties, revenues, leasehold and other rights and interests of Borrower pertaining thereto, including, without limitation, any surface or subsurface entry rights to the Premises or any other property; and

THIRTEENTH, all renewals, substitutions, improvements, accessions, attachments, additions, replacements and all proceeds to or of each of the foregoing, and all conversions of the security constituted thereby so that, immediately upon such acquisition, construction, assemblage, placement or conversion, as the case may be, and in each such case, the foregoing shall be deemed a part of the Property and shall automatically become subject to the lien of this Mortgage as fully and completely and with the same priority and effect as though now owned by Borrower and specifically described herein, without any further mortgage or assignment or conveyance by Borrower.

TO HAVE AND TO HOLD, together with all the rights, privileges and appurtenances thereunto belonging, the above described Property unto Lender, its successors and assigns, in fee simple forever, and to warrant and forever defend the title thereto, subject only to Permitted Encumbrances.

PROVIDED, ALWAYS, that if Borrower shall pay and discharge the Debt in full and perform and observe the terms, covenants and conditions set forth in the Loan Documents, then these presents and the estate hereby granted shall cease, terminate and be void.

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

ARTICLE I. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Section 1.1. Representations, Warranties and Covenants of Borrower. Borrower represents and warrants to, and covenants with Lender as follows:

(a) Payment of Debt. Borrower shall pay the Debt at the time and in the manner provided in the Note and the other Loan Documents and shall perform all of its obligations in accordance with the provisions set forth herein and in the other Loan Documents.

(b) Authorization. Borrower has duly authorized the execution, delivery and performance of the Loan Documents to which it is a party, and has taken all requisite action and obtained all required approvals and consents for the Loan Documents to be binding upon and enforceable against Borrower. Borrower warrants that the execution, delivery and performance of such Loan Documents will not (i) violate any provision of any organizational document of Borrower or any instrument, contract, covenant, mortgage, indenture or other agreement to which Borrower is a party or bound and (ii) to its knowledge, violate or contravene any law, judgment, order, rule or regulation applicable to Borrower.

(c) Enforceability. The Note, this Mortgage and the other Loan Documents are (i) legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms and (ii) not subject to any right of rescission, set-off, counterclaim or defense, and no claim of any such right has been asserted with respect thereto.

(d) Title. Borrower has good, marketable and insurable fee simple title to the Premises and Improvements, free and clear of all liens, claims, encumbrances and charges whatsoever except for those expressly set forth as exceptions to title or subordinate matters in the title insurance policy insuring the lien of this Mortgage which Lender has agreed to accept, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Mortgage, materially and adversely affect the value or marketability of the Property, impair the use or operation of the Property for the use currently being made thereof or impair Borrower's ability to pay its obligations in a timely manner ("Permitted Encumbrances"). Borrower has the right, power and authority to mortgage and convey its interest in the Property as contemplated herein. Borrower shall preserve its interest in and title to the Property and shall forever warrant and defend such title, and the validity and priority of the lien of this Mortgage, to Lender, from and against the claims of all Persons. The foregoing warranty of title shall survive the foreclosure of this Mortgage or any deed given in lieu thereof.

(e) Use of the Property. Borrower shall cause the Property to be used for its current use in compliance with all Licenses and Legal Requirements. Borrower shall not allow any change in the manner of use of the Property to occur. Borrower shall not permit the Property to be used by the public or any Person not a tenant under a Lease in such manner as might impair Borrower's title to the Property or give rise to a claim of adverse usage or possession or of implied dedication. Borrower shall not file or subject the Premises or Improvements to any subdivision, declaration of condominium, cooperative or other multiple ownership regime.

(f) Legal Requirements. Borrower is in compliance in all material respects with all Legal Requirements. There is no evidence of any illegal activities at the Property. Borrower shall comply with all present and future Legal Requirements in all material respects.

(g) Licenses. Borrower possesses all Licenses, franchises, patents, copyrights, trademarks and trade names necessary (i) for the use, occupancy, maintenance and operation of the Property and (ii) to conduct its business substantially as now conducted. All such items are currently in full force and effect, and Borrower shall do all things necessary to comply with and keep such items in full force and effect.

(h) Leases and Contracts. Borrower has delivered to Lender true, correct and complete copies of all Contracts and Leases, and as of the date of this Mortgage, is in compliance with all of the material terms thereof. Borrower is not a party to any Contract or Lease or subject to any restriction which may have a material adverse affect on Borrower or the Property. No default exists, or with notice or the passage of time or both would exist, by any party under any Contract or Lease, which would, in the aggregate, have a material adverse effect on Borrower or the Property. Borrower shall comply in a timely fashion with all of its material covenants and obligations and satisfaction of all conditions under all Leases and Contracts to which it is a party or bound.

(i) Solvency; No Bankruptcy Filing. Any borrowings made by Borrower under the Loan do not and will not render Borrower insolvent. No bankruptcy, reorganization or insolvency proceedings are pending against Borrower or, if Borrower is a partnership or limited liability company, against any general partner or member of Borrower, or against any guarantor or indemnitor of any obligations under the Loan. Borrower is not contemplating either filing a petition under any state or federal bankruptcy or insolvency laws or liquidating a major portion of its assets. Borrower has no knowledge of any party contemplating the filing of any such petition against it or against any general partner or member, if applicable, or any guarantor or indemnitor. None of the transactions contemplated hereby will be or have been made with an intent to hinder, delay or defraud any present or future creditors of Borrower and Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Borrower's assets do not, and immediately upon consummation of the transaction contemplated in the Loan Documents will not, constitute unreasonably small capital to carry out its business as presently conducted or as proposed to be conducted. Borrower does not intend to, nor believe that it will, incur debts and liabilities beyond its ability to pay such debts as they may mature.

(j) Disclosure. No statement of fact made by or on behalf of Borrower to Lender in connection with the Loan or in any certificate, rent roll, document, affidavit, data, financial or operating statement or schedule furnished to Lender in connection with the Loan, (i) contains any untrue statement of a material fact or (ii) omits to state any material fact necessary to make statements contained therein or herein true or not misleading as of the date given, and there has been no material adverse change in the information set forth therein. There is no fact presently known to Borrower which has not been disclosed to Lender which has or could have a material adverse effect on either Borrower or the Property.

(k) Financial Information. All financial data that has been delivered by or on behalf of Borrower to Lender (i) is true, correct and complete in all material respects, (ii) accurately represents the financial condition of the Person covered thereby as of the date stated therein, and (iii) has been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered. As of the date of this Mortgage, neither Borrower nor, if Borrower is a partnership or limited liability company, any general partner or member of Borrower, has any material contingent liability, liability for taxes or other unusual or forward commitment not reflected in the financial statements delivered to Lender. Since the date of the last financial statements delivered by Borrower to Lender, there has been no material adverse

change in the financial condition of the Property, Borrower nor, if Borrower is a partnership or limited liability company, any general partner or member of Borrower.

(l) No Advance Payments. Borrower has not received any rent, payment, deposit or other amount of any nature for any existing or prospective occupant or tenant at the Premises more than one (1) month in advance of its due date.

(m) Other Security Interests. There are no security agreements or financing statements affecting the Property other than (i) as approved in writing by Lender prior to the date hereof and (ii) those created in favor of Lender.

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

(o) Utilities. The Property has all necessary and sufficient utility services for the full use, occupancy, disposition and enjoyment of the Property, including water, storm sewer, sanitary sewer, electric, gas, telephone and cable facilities, located in the public rights-of-way or within perpetual easements acceptable to Lender.

(p) Public Access. The Property has adequate access to completed, dedicated all-weather streets, roads, highways, driveways, curb cuts and bridges necessary for the full utilization of the Property for its current purpose, without further condition or cost to Borrower.

(q) Separate Lots. The Premises is made up of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. Borrower shall not consent to or initiate the joint assessment of the Premises and the Improvements (i) with any other real property constituting a separate tax lot or (ii) with any of the Property which may be deemed to constitute personal property.

(r) Litigation. There is no judicial or administrative action, suit or proceeding pending or threatened against or affecting Borrower, or, if Borrower is a partnership or limited liability company, against any general partner or member of Borrower, or against the Property which, if adversely determined, would have a material adverse effect on either the Property or the ability of Borrower to perform its covenants and obligations under the Loan Documents.

(s) Casualty Damage. As of the date of this Mortgage, the Property is free from unrepaired damage caused by fire, flood or other casualty.

(t) Taking. As of the date of this Mortgage, no proceeding for a Taking has been commenced or, to the best of Borrower's knowledge, threatened or contemplated.

(u) No Delinquent Taxes. The Property and Borrower are free from delinquent Taxes and Other Charges. There are no pending, or to Borrower's best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

(v) Tax Filings. Borrower and, if Borrower is a partnership or limited liability company, each of the general partners or members of Borrower, have filed all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, including sales and payroll taxes. The income tax returns filed by Borrower and, if Borrower is a partnership or limited liability company, each of the general partners and members of Borrower, accurately and correctly reflect the income and taxes of Borrower and such general partners or members for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit, which will have no material adverse effect on the financial condition of Borrower, such general partners or members, or Borrower's ability to perform the covenants and obligations required to be performed under the Loan Documents.

(w) Property Condition. The Improvements are structurally sound, in good repair, free of defects in materials and workmanship and have been constructed and installed in substantial compliance with all Legal Requirements. All major building systems located within the Improvements including, without limitation, heating, ventilation and air conditioning systems and electrical and plumbing systems, are in good working order and condition.

(x) Equipment. There are no fixtures, machinery, apparatus, tools, equipment or articles of personal property attached or appurtenant to, or located on, or used in connection with the management, operation or maintenance of the Property, except for the Equipment and equipment leased by Borrower for the management, operation or maintenance of the Property in accordance with the Loan Documents. All of the Equipment is free and clear of all Liens, except for the lien of this Mortgage and the Permitted Encumbrances.

(y) Not Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Internal Revenue Code of 1986 as amended and the related Treasury Department regulations, including temporary regulations.

(z) ERISA. Borrower has made and shall continue to make all required contributions to all employee benefit plans, if any, and Borrower has no knowledge of any material liability which has been incurred by Borrower which remains unsatisfied for any taxes or penalties with respect to any employee benefit plan or any multi-employer plan, and each such plan has been administered in compliance with its terms and the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and any other federal or state law.

(aa) Flood Zone. The Property is not located in a flood hazard area as defined by the Federal Insurance Administration.

(bb) Misstatements of Fact. No statement of fact made in the Loan Documents contains any untrue statement of a 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 the representing party.

(cc) No Condemnation. No part of any property subject to this Mortgage has been taken in condemnation or other like proceeding nor is any proceeding pending, threatened or known to be contemplated for the partial or total condemnation or taking of the Property.

(dd) No Purchase Options. No tenant or other Person has an option to purchase the Property, any portion thereof or any interest therein.

(ee) Boundary Lines. All of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Premises encroach upon any of the Improvements, so as to affect the value or marketability of the Property.

(ff) Survey. The survey of the Property delivered to Lender in connection with this Mortgage has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Property is situated, is certified to Lender, its successors and assigns, and each title insurance company having liability under the title policy insuring the lien of this Mortgage and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with the signature and seal of such licensed engineer or surveyor affixed thereto, and does not fail to reflect any material matter affecting the Property or the title thereto.

(gg) Forfeiture. There has not been and shall never be committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

(hh) Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws.

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

(ii) Transaction Brokerage Fees. Borrower has not dealt with any financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Mortgage. All brokerage fees, commissions and other expenses payable in connection with the transactions contemplated by the Loan Documents have been paid in full by Borrower contemporaneously with the execution of the Loan Documents and the funding of the Loan. Borrower hereby agrees to indemnify and hold Lender harmless for, from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from (i) a claim by any Person that such Person acted on behalf of Borrower in connection with the transactions contemplated herein or (ii) any breach of the foregoing representation. The provisions of this subsection (ii) shall survive the repayment of the Debt.

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

(kk) Investment Company Act Status; Etc. Borrower is not (i) an "investment company," or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended, (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a

“subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended, or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

With respect to the representations set forth in items (j), (k), (l), (z) and (ii) the term “Borrower” shall also include any predecessor-in-interest to Borrower who applied for the Loan secured hereby, if applicable.

Section 1.2. Liens. Borrower shall, at its expense, maintain this Mortgage as a first priority lien on the Property and shall keep the Property free and clear of all Liens of any kind and nature other than the Permitted Encumbrances. If Borrower fails to comply with the requirements of this provision, Lender may, but shall not be obligated to, pay any such Lien, and Borrower shall reimburse Lender on demand for all sums so expended, together with interest thereon at the Default Rate from the date advanced to the date repaid, all of which shall be deemed part of the Debt. Borrower shall, within thirty (30) days following the filing of any materialman’s, mechanic’s or similar lien, discharge such lien of record, by payment, bonding or otherwise and, promptly upon request by Lender, deliver to Lender evidence reasonably satisfactory to Lender of the discharge thereof. Nothing contained herein shall be deemed a consent or request of Lender, express or implied, by inference or otherwise, to the performance of any alteration, repair or other work by any contractor, subcontractor or laborer or the furnishing of any materials by any materialmen in connection therewith.

Section 1.3. Further Acts, etc. At its sole cost and expense, Borrower shall execute, acknowledge and deliver all such further acts, deeds, conveyances, mortgages, assignments, financing statements, transfers and assurances as Lender shall, from time to time, require to confirm and fully protect the lien and priority of this Mortgage, or to file, register or record this Mortgage. On demand, Borrower shall execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower, to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of (i) protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Mortgage and to effect the intent hereof, and (ii) correcting any mistakes, filling in blanks and otherwise completing and perfecting the Loan Documents (provided such changes do not impose any additional liability or obligation upon Borrower). Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof.

Section 1.4. Recording of Mortgage, etc. Upon execution and delivery of this Mortgage and thereafter, from time to time, Borrower shall cause this Mortgage and any other Loan Document specified by Lender, and any document of further assurance, to be filed, registered or recorded in such manner and in such places as may be required by any Legal Requirement in order to publish notice of and fully protect Lender’s interest in and lien or security interest upon the Property. Borrower shall pay all filing, registration or recording fees, and all expenses incidental to the preparation, execution and acknowledgment and subsequent release or reconveyance of this Mortgage, any mortgage supplemental hereto, any instrument of further

assurance, and any other Loan Document with respect to the Property and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments, intangibles taxes and other charges arising out of or in connection with the execution, delivery, filing or recordation of this Mortgage, the Note or any other Loan Document.

Section 1.5. Changes in Taxation Laws. In the event of the passage after the date of this Mortgage of any Legal Requirement deducting from the value of the Property for the purpose of taxation, amounts in respect of any Lien thereon or changing in any way the Legal Requirements now in force for the taxation of this Mortgage and/or the Debt for federal, state or local purposes, or the manner of the collection of any such taxes so as to adversely affect the interest of Lender, or impose any tax or other charge on any Loan Document, then Borrower will pay such tax, with interest and penalties thereon, if any, within the statutory period. In the event Lender receives an opinion of counsel chosen by it (the cost of which shall be paid by Borrower upon demand) to the effect that the payment of such tax, interest and/or penalties by Borrower would be (i) unlawful, (ii) taxable to Lender, (iii) unenforceable, (iv) provide the basis for a defense of usury, or (v) entitle Borrower to any credit against the Debt, then in any such event, Lender shall have the option, by giving Borrower at least thirty (30) days' prior written notice, to declare the Debt immediately due and payable, without any Prepayment Charge.

Section 1.6. Indemnification. (a) In addition and without limitation to any other provision of this Mortgage, Borrower shall protect, indemnify and save harmless Lender, and its agents, employees, officers and directors, from and against all Costs, claims, actions, suits, proceedings or demands imposed upon or incurred by or asserted against Lender, or any of its agents, employees, officers or directors, by reason of (i) ownership of this Mortgage, the Property or any interest therein, or receipt of any Rents; (ii) any accident, injury to or death of any person or loss of or damage to property occurring in, on or about the Property or on the adjoining sidewalks, curbs, parking areas, streets or ways; (iii) any use, nonuse or condition in, on or about, or possession of, the Property or on the adjoining sidewalks, curbs, parking areas, streets or ways; (iv) performance of any labor or services or the furnishing of any materials or other property in respect of the Property; (v) any claim by brokers, finders or similar parties claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property; (vi) any Lien or claim arising on or against the Property under any Legal Requirement or any liability asserted against Lender with respect thereto; or (vii) the claims of any tenant, or its invitees or other party acting through or under any tenant or otherwise arising under or as a consequence of any Lease. Any amounts payable to Lender pursuant to this Section 1.6 shall constitute a part of the Debt secured by this Mortgage and other Loan Documents, shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid.

(b) Notwithstanding the foregoing, Borrower shall have no obligation to indemnify Lender pursuant to this Section for liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses relative to the foregoing which result directly from Lender's willful misconduct or gross negligence.

Section 1.7. Cost of Defending and Upholding the Mortgage Lien. If any Claim is commenced to which Lender is made a party relating to the Loan Documents, the Property or Lender's interest therein or in which it becomes necessary to defend or uphold the lien of this Mortgage or any other Loan Document, Borrower shall, on demand, reimburse Lender for all Costs incurred by Lender in connection therewith. Such Costs, together with interest thereon at the Default Rate from the date of demand through the date of repayment, shall constitute part of the Debt.

ARTICLE II. INSURANCE

Section 2.1. Insurance Coverage. Borrower shall, at its own cost and expense, maintain the following insurance coverages with respect to the Property during the term of this Mortgage:

(a) Casualty. Insurance against loss or damage by fire, lightning, hail, windstorm and other hazards covered by an "all risk" policy or a policy covering "special" causes of loss, with such endorsements as Lender may from time to time reasonably require. The amount of such insurance shall be equal to the lesser of (i) 100% of the full insurable replacement value of the Property (exclusive of footings and foundations below the lowest basement floor) and contain a replacement cost endorsement and agreed amount endorsement or (ii) the original principal Loan amount evidenced by the Note provided a waiver of any co-insurance provisions can be and is obtained, and in either case, the policy shall be without deduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing the coverage or, at Lender's election, by reference to such indexes, appraisals or information as Lender determines in its reasonable discretion, and, unless the insurance required by this paragraph shall be effected by blanket and/or umbrella policies in accordance with the requirements of this Mortgage, the policy shall include inflation guard coverage.

(b) Liability. Commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverages for broad form property damage, contractual damages and personal injuries (including death resulting therefrom) and containing minimum limits per occurrence of \$1,000,000.00 and \$2,000,000.00 in the aggregate for any policy year. If such policy shall cover more than one property, such limits shall apply on a "per location" basis. In addition, Borrower shall obtain an excess liability or umbrella policy in an amount not less than \$2,000,000 per occurrence.

(c) Business Interruption. Business interruption and/or business income insurance, with loss payable to Lender, in an amount equal to the greater of (i) the estimated gross revenues from the operation of the Property for a period of twelve (12) months and (ii) the projected operating expenses (including debt service) for the maintenance and operation at the Property for twelve (12) months including either an agreed amount endorsement or a waiver of any co-insurance provisions, so as to prevent Borrower, Lender and any other insured thereunder from being a co-insurer. The amount of business interruption and/or business income insurance shall be determined upon the execution of this Mortgage and once each calendar year thereafter.

(d) Boiler. If the Property contains steam boilers, or other high pressure vessels, insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, 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 Property, 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.

(e) Flood. If the Property is located in an area identified by the Federal Emergency Management Agency as having special flood hazards (including without limitation those areas designated as Zone A or Zone V), flood insurance in an amount equal to the full insurable value of the Property or the maximum amount of flood insurance available, whichever is lesser.

(f) Worker's Compensation. If Borrower has employees, worker's compensation insurance or other similar insurance which may be required by any Legal Requirement in an amount at least equal to the minimum required by law.

(g) Building Ordinance and Law. If the Property is or ever becomes non-conforming with respect to zoning, building ordinance and law coverage acceptable to Lender, including, without limitation, Coverage for Loss to the Undamaged Portion of the Building, Demolition Cost Coverage and Increased Cost of Construction Coverage.

(h) Terrorism Insurance. Insurance against damage resulting from acts of terrorism or an insurance policy without exclusion for damages resulting from terrorism on terms consistent with the insurance required under paragraphs (a), (b) and (c) above.

(i) Miscellaneous. Such other insurance coverages, in such amounts, and such other forms and endorsements, as may from time to time be required by Lender and which are customarily required by institutional lenders for similar properties, similarly situated, including, without limitation, coverages against other insurable hazards including, by way of example only, earthquake, sinkhole, mine subsidence, windstorm, mold, spores or fungus, which at the time are commonly insured against and generally available, as determined by Lender in its reasonable discretion. Additionally, Borrower shall carry such insurance coverage as Lender may from time to time require if the failure to carry such insurance shall result in a downgrade, qualification or withdrawal of any class of securities issued in connection with a securitization of the Loan. Borrower may carry insurance not required under this Mortgage, provided any such insurance affecting the Property shall be for the mutual benefit of Borrower and Lender, as their respective interests may appear, and shall be subject to all other provisions of this Article II.

Section 2.2. Policy Terms. (a) All insurance required by this Article II shall have a term of not less than one year and shall be in the form and amount and with deductibles as, from time to time, shall be reasonably acceptable to Lender, under valid and enforceable policies issued by financially responsible insurers either licensed to transact business in the State where the Property is located, or obtained through a duly authorized surplus line insurance agent or otherwise in conformity with the laws of such State, with a claims paying ability rating and financial strength rating, as applicable, of not less than the highest rating category by any one of

the Rating Agencies and with an A.M. Best Company, Inc. rating of A or higher and a financial size category of not less than X. Originals or certified copies of all insurance policies shall be delivered to and held by Lender. All such policies shall name Lender as an additional insured, shall provide for loss payable to Lender and shall contain: (i) standard "non-contributory mortgagee" endorsement or its equivalent relating, inter alia, to recovery by Lender notwithstanding (a) the negligent or willful acts or omissions of Borrower, (b) occupancy or use of the Property for purposes more hazardous than those permitted by the terms of such policy, (c) any foreclosure or other action taken by Lender pursuant to this Mortgage upon the occurrence of an Event of Default, or (d) any change in title or ownership of the Property; and (ii) a provision that such policies shall not be canceled or amended, including, without limitation, any amendment reducing the scope or limits of coverage, or failed to be renewed, without at least thirty (30) days prior written notice to Lender in each instance. With respect to insurance policies which require payment of premiums annually, not less than thirty (30) days prior to the expiration dates of the insurance policies obtained pursuant to this Mortgage, Borrower shall pay such amount, except to the extent provision is actually made therefor pursuant to Section 4.3(b). Not less than thirty (30) days prior to the expiration dates of the insurance policies obtained pursuant to this Mortgage, originals or certified copies of renewals of such policies (or certificates evidencing such renewals), together with evidence satisfactory to Lender of the payment of all premiums by Borrower and not through or by any financing arrangement, shall be delivered by Borrower to Lender. Borrower shall not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required under this Article II. If the limits of any policy required hereunder are reduced or eliminated due to a covered loss, Borrower shall pay the additional premium, if any, in order to have the original limits of insurance reinstated, or Borrower shall purchase new insurance in the same type and amount that existed immediately prior to the loss.

(b) If Borrower fails to maintain and deliver to Lender the policies and certificates of insurance required by this Mortgage, Lender may, at its option, procure such insurance and Borrower shall pay or, as the case may be, reimburse Lender for all premiums thereon promptly upon demand by Lender, with interest thereon at the Default Rate from the date paid by Lender to the date of repayment and such sum shall constitute a part of the Debt.

(c) The insurance required by this Mortgage may, at the option of Borrower, be effected by blanket and/or umbrella policies issued to Borrower covering the Property and the other properties of Borrower provided that, in each case, the policies otherwise comply with the provisions of this Mortgage and allocate to the Property, from time to time, the coverage specified by this Mortgage, without possibility of reduction or coinsurance by reason of, or damage to, any other property (real or personal) named therein. If the insurance required by this Mortgage shall be effected by any such blanket or umbrella policies, Borrower shall furnish to Lender original policies or certified copies thereof, with schedules attached thereto showing the amount of insurance applicable to the Property provided under such policies.

(d) Neither Lender nor its agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Mortgage; it being understood that (i) Borrower shall look solely to its insurance company for the recovery of such

loss or damage, (ii) such insurance company shall have no rights of subrogation against Lender, its agents or employees, and (iii) Borrower shall use its best efforts to procure from such insurance company a waiver of subrogation rights against Lender. If, however, such insurance policies do not provide for a waiver of subrogation rights against Lender (whether because such a waiver is unavailable or otherwise), then Borrower hereby agrees, to the extent permitted by law and to the extent not prohibited by such insurance policies, to waive its rights of recovery, if any, against Lender, its agents and employees, whether resulting from any damage to the Property, any liability claim in connection with the Property or otherwise. If any such insurance policy shall prohibit Borrower from waiving such claims, then Borrower must obtain from such insurance company a waiver of subrogation rights against Lender.

Section 2.3. Assignment of Proceeds. (a) Borrower hereby assigns to Lender all of its rights to insurance proceeds and condemnation awards in connection with the Property, all of which proceeds shall be payable to Lender as collateral and further security for the payment of the Debt and the performance of Borrower's obligations under the Loan Documents. Borrower hereby authorizes and directs the issuer of any such insurance or award to make payment directly to Lender. Nothing herein contained shall be deemed to excuse Borrower from repairing or maintaining the Property as provided in this Mortgage or restoring all damage or destruction to the Property, provided that Lender shall have elected to apply the Net Proceeds to pay for the cost of the Restoration Work, regardless of the sufficiency of the Net Proceeds. No application or release of proceeds by Lender shall be deemed a waiver or cure or any default or Event of Default.

(b) In the event of the foreclosure of this Mortgage or any other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Debt, all right, title and interest of Borrower, to the extent permissible, in and to all policies of insurance required by this Mortgage shall inure to the benefit of the successor in interest to Borrower or the purchaser of the Property. The provisions of this Section 2.3(b) shall survive the termination of this Mortgage by foreclosure, deed in lieu thereof or otherwise.

(c) Borrower hereby authorizes Lender to pay out of any proceeds or awards, all adjusters' fees and expenses, and all of Lender's costs and expenses, including, without limitation, all reasonable architects', attorneys', engineers' and other consultants' and professionals' fees and disbursements, incurred by Lender in connection with the (i) casualty or Taking, (ii) recovery of the proceeds or award or (iii) repair or restoration of the Property pursuant to Article III.

Section 2.4. Comply with Insurance Requirements. Borrower promptly shall comply with, and shall cause the Property to comply with, all Insurance Requirements and shall not by any action or omission invalidate any insurance policy required to be carried hereunder or materially increase the premiums on any such policy above the normal premium charged by the carrier of such policy.

ARTICLE III. CASUALTY AND CONDEMNATION

Section 3.1. Casualty and Condemnation. In the event of any damage or destruction to, or commencement or threat of a Taking of, the Property, Borrower shall give prompt written notice thereof to Lender. Borrower hereby assigns to Lender all insurance proceeds, condemnation awards, compensation and other recoveries related to damage or destruction to, or a Taking of, the Property. In connection therewith, Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power (i) to collect, receive and retain all such proceeds and recoveries, (ii) to make any compromise or settlement in connection therewith, (iii) to give, execute and deliver on behalf of Borrower proper receipts and acquittances therefor and (iv) to endorse any checks, drafts or other instruments representing any insurance proceeds, condemnation awards or other recoveries. If no Event of Default exists, Borrower may participate in any such claims, suits or proceedings and shall be authorized and entitled to compromise or settle any such claims, suits or proceedings in an amount less than One Hundred Thousand Dollars (\$100,000). Borrower shall execute and deliver to Lender any and all instruments, proofs of loss, receipts, vouchers and releases reasonably required in connection with any such claims, suits, proceedings or settlements promptly after request therefor by Lender and shall cooperate with Lender in connection therewith.

Section 3.2. Condemnation. In the event of a Taking, Lender shall have the option, in its sole discretion, to apply any Net Proceeds toward the payment of the Debt, to cure any default or Event of Default hereunder or to allow such proceeds to be applied to the restoration of the Property to a usable whole. Any Net Proceeds to be applied to restoration shall be disbursed subject to the satisfaction of the conditions in Section 3.3 and in the manner set forth in Section 3.4.

Section 3.3. Casualty and Restoration. (a) In the event of any casualty to the Property, Borrower shall promptly commence and diligently prosecute to completion the repair, replacement, restoration and rebuilding of the Property (the "**Restoration Work**") so damaged, destroyed or taken in full compliance with all Legal Requirements and the provisions of this Article III, and free and clear from any and all Liens, claims and encumbrances.

(b) Following (i) the occurrence of a Taking in which Lender approves, in its sole discretion, Borrower's request to rebuild, or (ii) an insured casualty, Lender shall apply the Net Proceeds to pay the cost of the Restoration Work in accordance with Section 3.4 hereof provided:

(i) no Event of Default exists;

(ii) Borrower has provided its written (A) agreement to proceed promptly and diligently with the Restoration Work in compliance with all Legal Requirements and plans and specifications approved by an Architect, the applicable Governmental Authority and, if requested, Lender and (B) certification setting forth a reasonable estimate of the cost of completing the Restoration Work and time schedule therefor;

(iii) the Restoration Work can be completed prior to the earlier of (A) one year prior to the Maturity Date and (B) the date occurring six (6) months after the date of the casualty or Taking;

(iv) in Lender's sole judgment, there are sufficient proceeds of business interruption, rent insurance or cash available to pay the Debt through the completion of the Restoration Work and any reasonable period thereafter for leasing the Property; and

(v) Borrower provides substantiation requested by and satisfactory to Lender with respect to:

- (A) the feasibility and reasonability of the schedule and costs;
- (B) the restoration of the Property resulting in an economically viable project at least equivalent to the quality and character of the Property immediately prior to the casualty;
- (C) the projected income and cash flow of the Property after the restoration being at least equivalent to the levels prior to the casualty;
- (D) the sufficiency of the Net Proceeds to complete the Restoration Work during all phases of such work; and
- (E) this Mortgage remaining a first priority lien on the Property.

(vi) in the event of a casualty, not more than thirty percent (30%) of the reasonably estimated fair market value of the Property is damaged or destroyed and, with respect to a Taking, not more than fifteen percent (15%) of the Premises has been taken and Lender determines that following restoration of the Property, the Property will have adequate ingress and egress.

(c) If the cost of the Restoration Work exceeds the Net Proceeds, Borrower shall deliver to Lender either: (i) cash collateral; (ii) an unconditional, irrevocable, transferable letter of credit in form, substance, amount and issued by a bank acceptable to Lender or (iii) a completion bond in form, substance, amount and issued by a surety company acceptable to Lender.

(d) Borrower agrees with Lender that all fees, costs and expenses (including without limitation, all reasonable attorneys' fees, engineers' fees, architects' fees, insurance consultants' fees, title endorsements and all disbursements) incurred by Lender in connection with the restoration of the Property, reviewing and monitoring the restoration and verifying compliance with this Article III shall constitute a part of the cost of Restoration Work and shall be paid by Borrower.

Section 3.4. Disbursement of Net Proceeds. (a) Any Net Proceeds to be used to pay the cost of Restoration Work pursuant to Sections 3.2 or 3.3 hereof shall be held by Lender and shall be paid out from time to time to Borrower as the work progresses (less any cost to Lender of recovering and paying out such proceeds, including reasonable attorneys' fees and costs allocable to inspecting the work and the plans and specifications therefor), subject to each of the following conditions:

(b) Each request for payment shall be made on not less than ten (10) Business Days prior notice to Lender and shall be accompanied by a certificate of an Architect stating (i) that all of the Restoration Work completed has been performed in compliance with the approved plans and specifications, (ii) that the sum is justly due, or is required to reimburse Borrower for payments justly made, to the contractor, subcontractors, materialmen, laborers, engineers, architects or other Persons rendering services or materials for the Restoration Work (giving a brief description of such services and materials), and (iii) that the undisbursed Net Proceeds are sufficient to complete the Restoration Work; provided, however, that Lender shall not be obligated to disburse such funds if Lender reasonably determines that Borrower shall not be in compliance with conditions set forth in Section 3.3 (b) hereof. Additionally, each request for payment shall contain a statement signed by Borrower approving both the Restoration Work performed to date and the Restoration Work covered by the request for payment in question. As to any personal property covered by the request for payment, Lender shall be furnished with satisfactory evidence of payment therefor and such further evidence satisfactory to assure Lender of its valid first lien on the personal property.

(c) Each request for payment shall be accompanied by lien waivers covering that part of the Restoration Work for which payment or reimbursement is being requested and, if required by Lender, a search prepared by a title company, or by other evidence satisfactory to Lender indicating that no mechanics' or other liens or title retention instruments have been filed in connection with such Restoration Work.

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

(e) Until such time as the Restoration Work has been completed and Lender shall have received copies of any and all final certificates of occupancy or other Licenses required to comply with all Legal Requirements, Lender shall be entitled to retain up to ten percent (10%) of the cost of the Restoration Work (the "**Retention Amount**"). Borrower hereby covenants diligently to seek to obtain all Licenses. Provided no Event of Default shall exist, promptly after the completion of the Restoration Work and delivery of such Licenses to Lender, Lender shall pay the Retention Amount to Borrower. Any excess Net Proceeds remaining after the completion of the Restoration Work shall, so long as no Event of Default exists, be remitted to Borrower.

(f) The application or release by Lender of any proceeds shall not cure or waive any default or Event of Default.

(g) If Borrower (i) shall fail promptly to submit to Lender for approval plans and specifications for the Restoration Work approved by the Architect and by all Governmental

Authorities whose approval is required, (ii) shall fail to promptly commence such Restoration Work after obtaining all approvals, (iii) shall fail to diligently prosecute such Restoration Work to completion, or (iv) shall fail in any other respect to comply with its Restoration Work obligations under Section 3.3 and this Section 3.4, then Lender, or any receiver of the Property, upon five (5) days prior notice to Borrower (except in the event of emergency in which case no notice shall be required), shall have the right but not the obligation to perform or cause to be performed such Restoration Work, and may take such other steps as it deems advisable. Borrower hereby waives any claim, other than for gross negligence or willful misconduct, against Lender and any receiver arising out of any act or omission of Lender or such receiver pursuant hereto.

Section 3.5. Builders' Risk. During the period of any new construction on the Premises, Borrower shall maintain a so-called "Builder's All-Risk Completed Value" or "Course of Construction" insurance policy in non-reporting form for any improvements under construction, including, without limitation, for demolition and increased cost of construction or renovation, in an amount equal to 100% of the estimated replacement cost value on the date of completion, including "soft cost" coverage. Borrower shall also maintain Worker's Compensation Insurance, covering all Persons engaged in such construction, in an amount at least equal to the minimum required by Legal Requirements. In addition, each contractor and subcontractor shall be required to provide Lender with a certificate of insurance for (i) Worker's Compensation Insurance covering all Persons engaged by the contractor or subcontractor in the construction in an amount at least equal to the minimum required by Legal Requirements, and (ii) general liability insurance showing minimum limits of at least \$5,000,000, including coverage for products and completed operations. Borrower shall cause each contractor and subcontractor to cover Borrower and Lender as an additional insured under such liability policy and to indemnify and hold Borrower and Lender harmless from and against any and all claims, damages, losses, liabilities, costs and expenses arising out of, relating to or otherwise in connection with its performance of such construction.

Section 3.6. Application of Net Proceeds. Except if the Net Proceeds are applied to the repair and restoration of the Property in accordance with this Article III, Lender shall have the option, in its discretion, and without regard to the adequacy of its security, to apply all or any part of the proceeds it may receive pursuant to Article II, in such order and amounts as Lender shall elect, to any one or more of the following: (i) the payment of the Debt in accordance with the provisions of the Note, (ii) the cure of any default or Event of Default or (iii) the reimbursement of the costs and expenses of Lender in connection with the recovery of the proceeds. All amounts deposited with Lender pursuant to Article II hereof or this Article III, until expended or applied as provided herein, may be commingled with the general funds of Lender and shall constitute additional security for the payment of the Debt and performance of all of Borrower's obligations under the Loan Documents. Lender makes no representation or warranty as to the rate or amount of interest, if any, which may accrue on any proceeds deposited by Lender in any bank or other financial institution and shall have no liability in connection therewith. Lender shall not be deemed a trustee or other fiduciary with respect to any amounts received or held by it pursuant to Article II or this Article III.

ARTICLE IV. TAXES; RESERVES

Section 4.1. Payment of Taxes. Borrower shall pay or cause to be paid in a timely fashion all taxes, assessments, water rates and sewer rents, now or hereafter levied, assessed or imposed against the Property (collectively "**Taxes**") and all ground rents, utility charges, maintenance charges, governmental impositions, excises, levies, fees, licenses and charges which may be or become a lien or charge against the Property (including, without limitation, charges for any easements, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property), now or hereafter levied, imposed or assessed against the Property (the "**Other Charges**"). Borrower shall furnish to Lender or its agent or designee receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent and at any time upon Lender's request.

Section 4.2. Right to Contest. After prior written notice to Lender, Borrower shall have the right, at its sole expense, to contest by appropriate legal proceedings, promptly initiated and diligently conducted in good faith, the validity, amount or application, in whole or in part, of any of the Taxes or Other Charges, provided that:

- (a) no Event of Default exists;
- (b) such proceeding shall suspend the collection of the Taxes or Other Charges from Borrower and from the Property and no portion of the Property or interest therein shall be in danger of being sold, forfeited, terminated, canceled or lost;
- (c) such proceeding shall be permitted under and conducted in accordance with the provisions of any other instrument or agreement to which Borrower is bound or to which the Property or Borrower is subject and shall not constitute a default thereunder;
- (d) Borrower shall have furnished such security as may be required in the proceeding or by Lender to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon or, if not required, Borrower shall have set aside adequate reserves for the payment of the Taxes or Other Charges, together with all interest and penalties thereon.

Upon completion of any contest, Borrower shall immediately pay any amount due, and deliver to Lender proof of the completion of the contest and payment of the amount due, whereupon Lender shall return any security deposited with Lender. Borrower shall deliver copies of all notices relating to any Taxes and Other Charges covered by this Article IV to Lender.

Section 4.3. Reserve Account. (a) On each Payment Date, Borrower shall deposit with Lender (or its servicer) a sum equal to (i) one-twelfth of the aggregate annual amount which would be sufficient to pay the Taxes and (ii) one-twelfth of the aggregate of the current annual insurance premiums for all insurance required by the terms of this Mortgage. The monthly deposits described in (i) and (ii) above, together with any reserves established pursuant to the Reserve Agreement, are hereinafter referred to collectively, as the "**Reserves**" and all amounts held by, or to be held by Lender under this Article IV are hereinafter collectively referred to as

the “**Reserve Account**”. In addition, on the date hereof, Borrower shall pay to Lender for deposit into the Reserve Account an amount which, when added to the Reserves subsequently required to be deposited with Lender hereunder, will result in there being sufficient amounts in the Reserve Account to pay the next due installments of Taxes and insurance premiums. The determination of the amount of the Reserves and the fractional part thereof to be deposited with Lender shall be made by Lender in its sole discretion.

(b) **Application of Reserves.** So long as no Event of Default exists, to the extent of amounts on deposit in the Reserve Account, Lender shall apply the Reserve Account to payments of Taxes and insurance premiums required to be made by Borrower herein. Borrower shall be responsible for ensuring the receipt by Lender (or any servicer or other party Lender designates), at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all Taxes and insurance premiums. In making any payment from the Reserve Account, Lender shall be entitled to rely on any bill, statement or estimate obtained from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate nor the validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien, title or claim thereof.

(c) **Security Interest.** Borrower hereby grants to Lender a lien on and security interest in all Reserves now or hereafter in the Reserve Account, and such Reserve Account shall constitute additional security for the Debt until expended or applied as above provided. Upon the occurrence of an Event of Default, Lender may apply any sums then present in the Reserve Account to the payment of the following items in any order and amount, in its sole discretion: (i) Taxes and Other Charges; (ii) insurance premiums; (iii) any other advance or payment made by Lender to preserve and protect the Property or the lien of this Mortgage, (iv) the Debt and (v) any other sum payable to Lender by Borrower under any Loan Document.

(d) **Reserve Account Balances.** If the amount of the Reserve Account shall exceed the amounts due for Taxes and insurance premiums pursuant to this Article IV, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Reserve Account. In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Property. If the Reserve Account is not sufficient to pay the items set forth in Section 4.1, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up such deficiency.

(e) **Right to Make Advances.** If Borrower shall fail to pay any Taxes or insurance premiums in accordance with this Article and is not contesting such charges in accordance with the terms hereof, then Lender shall have the right, but not the obligation, to advance such Taxes or insurance premiums. Borrower shall repay Lender, on demand, any amount so advanced by Lender, with interest thereon at the Default Rate from the date of the advance to the date of repayment.

(f) **Limitation of Liability.** Lender’s acceptance of Reserves shall not impose any responsibility on Lender beyond the payment of Taxes and insurance premiums for which the Reserves were paid into the Reserve Account following Lender’s receipt of bills, invoices or statements therefor in accordance with the terms of this Mortgage. Upon assignment of this

Mortgage by Lender, any funds in the Reserve Account shall be paid over to the assignee and Lender shall thereupon be completely released from all liability with respect thereto.

(g) Additional Reserves. If there is a default or Event of Default hereunder, or if Lender deems it prudent to require additional Reserves during the term of the Loan, Lender shall have the right to require Borrower to deposit additional Reserves with Lender on each Payment Date. Borrower shall commence paying such additional Reserves on the next Payment Date. All such Reserves, and the rights and obligations of Lender and Borrower in connection therewith, shall be governed by this Article IV and the Reserve Agreement.

(h) Miscellaneous. Unless expressly required by applicable law, no Reserves shall be deemed to be escrow or trust funds and the Reserves may, at Lender's discretion, be held in a separate account or be commingled with the general funds of Lender. No earnings or interest on the Reserve Account shall be payable to Borrower.

ARTICLE V. MANAGEMENT

Section 5.1. Management. If the Property is not managed by Borrower, it shall be managed either by an Affiliate of Borrower or professional property management company reasonably acceptable to Lender. The Property shall be managed in accordance with generally accepted management practices for properties of similar type and class in the vicinity of the Property. Management by an Affiliate or a professional property management company shall be pursuant to a written agreement approved by and collaterally assigned to Lender. In no event shall any manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Lender. In the event of default by Borrower hereunder or by the manager under any management contract then in effect, which default is not cured within any applicable grace or cure period, Lender shall have the right to terminate, or to direct Borrower to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Borrower to retain, a new management agent approved by Lender.

ARTICLE VI. LEASES AND RENTS

Section 6.1. Assignment. (a) Borrower does hereby bargain, transfer, pledge, convey, sell, assign and set over unto Lender, all Leases and Rents. This assignment of Leases and Rents is an absolute, unconditional and present assignment from Borrower to Lender and not an assignment for security.

The exercise by Lender of any of its rights or remedies pursuant to this Section 6.1 shall not be deemed to make Lender a mortgagee-in-possession.

(b) So long as no Event of Default shall exist hereunder, Borrower shall have a revocable license to take all actions with respect to all Leases, present and future, subject to the terms of this Mortgage and the Assignment. The existence or exercise of Borrower's revocable license to collect Rent shall not operate to subordinate this assignment to any subsequent assignment. This assignment shall be fully operative without any further action on the part of

any Person. Upon the occurrence of an Event of Default hereunder, Lender shall be entitled to all Rents, whether or not Lender takes possession of the Property.

(c) Borrower agrees to deliver to Lender within ten (10) days after Lender's request a complete list of the Leases, certified pursuant to an Officer's Certificate stating the demised premises, the names of the Lessees, the Rent payable under the Leases, the date to which such Rents have been paid, the terms of the Leases, the dates of occupancy, the dates of expiration, any Rent concessions, work obligations or other inducements granted to the Lessees, and any renewal options. Borrower shall also deliver on demand a copy of any Lease not previously delivered to Lender.

(d) Upon the occurrence of an Event of Default, the license granted hereinabove automatically shall terminate without notice to Borrower, and Lender or a receiver may thereupon or at any time thereafter (i) enter upon the Property, and collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper, (ii) dispossess by the usual summary proceedings any lessee defaulting in making any payment due under any Lease or sublease or defaulting in the performance of any of its other obligations under its Lease or sublease, (iii) let the Premises, the Improvements or any portion thereof and (iv) perform such other acts as Lender is entitled to perform hereunder or that Borrower is entitled to perform as landlord under any Lease. This assignment and grant shall continue in effect until the entire amount of the Debt shall be paid in full and all of the obligations shall be fully performed in accordance with this Mortgage and the other Loan Documents. The execution of this Mortgage constitutes and evidences the irrevocable consent of Borrower to the entry upon and taking possession of the Premises, the Improvements and the Equipment by Lender.

(e) 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 (i) pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in the possession of Borrower and (ii) vacate and surrender possession of the Property to Lender or to such receiver; and in default thereof, Borrower may be evicted by summary proceedings or otherwise.

Section 6.2. Leases. (a) All new leases and lease renewals shall, regardless of whether Lender's approval is required,

- (i) be arm's-length transactions on commercially reasonable terms;
- (ii) be for actual occupancy by the tenant thereunder;
- (iii) contain prevailing market rental rates, terms and conditions;
- (iv) be fully subordinated to this Mortgage and provide for attornment to Lender, if it becomes a successor landlord;

(v) in the case of new Leases, be written on the form of Lease approved by Lender; without material revision (unless required by law).

(b) Borrower shall observe and perform all the obligations imposed upon the lessor under the Leases and pursuant to applicable Legal Requirements. Borrower shall not, without the prior written consent of Lender: (i) accept Rents (exclusive of security deposits) for more than one month in advance, (ii) do or permit anything to impair the value of the Leases as security for the Debt; (iii) amend or modify any non-residential Lease, except as permitted under this Section 6.2; (iv) enter into any non-residential Lease not in conformity with Section 6.2 (a); (v) take or omit to take any action or exercise any right or option which would permit the tenant under any non-residential Lease to cancel or terminate said Lease or accept the surrender or assignment of any Lease; (vi) permit any Lease to become subordinate to any Lien other than the lien of this Mortgage; (vii) further pledge, transfer, mortgage or otherwise encumber or assign the Leases or future payments of Rents except if expressly permitted by this Mortgage (viii) cancel or terminate any non-residential Lease (other than for non-payment of rent or any other material default thereunder); or (ix) discount, release, waive, compromise or otherwise discharge any Rents payable or other obligations under the Leases. However, Borrower may take any of the actions described in subsections (viii) and (ix) so long as such actions are taken by Borrower in the ordinary course of business and are consistent with sound customary leasing and management practices for similar properties and prompt notice thereof is given to Lender.

(c) Upon the occurrence of an Event of Default, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Mortgage, Lender shall have, and Borrower hereby gives and grants to Lender, the right, power and authority to make and enter into Leases with respect to the Property for such rents and for such periods of occupancy and upon such other terms and conditions as Lender determines in its sole discretion with like effect as if such Leases had been made by Borrower as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Mortgage. Borrower expressly acknowledges and agrees that the term of such Lease may extend beyond the Maturity Date of the Loan or any foreclosure sale of the Property. In furtherance of the rights granted Lender under Section 6.1(d) hereof and this Section 6.2(c), Borrower hereby irrevocably appoints Lender and any receiver of the Property as the attorneys-in-fact of Borrower coupled with an interest. In connection with any action taken by Lender or any receiver of the Property pursuant to this Article, Lender or any receiver of the Property shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or from any other act or omission of Lender or any receiver of the Property in managing the Property, nor shall Lender or any receiver of the Property be obligated to perform or discharge any obligation, duty or liability under any Lease.

(d) All security deposits of lessees, whether held in cash or any other form, shall be treated by Borrower as trust funds, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower at a bank or other financial institution reasonably satisfactory to Lender. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under applicable Legal Requirements shall be maintained in full force and effect unless replaced by cash deposits as hereinabove described and shall be issued by a

financial institution reasonably satisfactory to Lender. The bond or other instrument shall, if permitted pursuant to Legal Requirements, at Lender's option, name Lender as payee or beneficiary thereunder or be fully assignable to Lender and shall otherwise be reasonably satisfactory to Lender.

ARTICLE VII. MAINTENANCE AND REPAIR

Section 7.1. Maintenance and Repair of the Property; Alterations; Replacement of Equipment. Borrower hereby covenants and agrees that:

(a) Borrower shall (i) maintain the Property and the sidewalks and curbs adjoining the Property in good repair and shall keep the same in good, safe and insurable condition and in compliance with all existing and future applicable Legal Requirements, (ii) promptly make all repairs and replacements to the Property, interior and exterior, structural and nonstructural, ordinary and extraordinary, unforeseen and foreseen, and maintain the Property in a manner appropriate for similar buildings for their present uses, (iii) not commit or suffer to be committed any waste of the Property or do or suffer to be done anything which will increase the risk of fire or other hazard to the Property or otherwise impair the value thereof and (iv) not abandon the Property. Borrower shall keep the sidewalks, vaults, gutters and curbs comprising, in front of or adjacent to, the Property, clean and free from dirt, snow, ice, rubbish and obstructions. All repairs and replacements made by Borrower shall (i) be made with first-class materials, in a good and workmanlike manner, (ii) be equal or better in quality and class to the original work, (iii) comply with all applicable Legal Requirements and Insurance Requirements and (iv) be at Borrower's sole expense.

(b) Borrower shall not demolish, remove, construct, and, except as expressly provided in Article III hereof, restore or alter the Property or any portion thereof, nor consent to or permit any of the foregoing, without Lender's prior written consent in each instance, which consent may be given or withheld in Lender's discretion. Notwithstanding the foregoing, Lender's consent shall not be required with respect to nonstructural, interior alterations involving less than One Hundred Thousand Dollars (\$100,000) to complete, as evidenced by an Officer's Certificate delivered to Lender prior to the commencement of such alteration.

(c) Notwithstanding the provisions of this Mortgage to the contrary, Borrower shall have the right, at any time and from time to time, to remove and dispose of Equipment which may have become obsolete or unfit for use or which is no longer useful in the management, operation or maintenance of the Property. Borrower shall promptly replace any such Equipment so disposed of or removed with other Equipment of at least equal quality, value, serviceability and use, free of superior title, liens and claims. However, if by reason of technological or other developments in the operation and maintenance of buildings of the general character of any Improvement, replacement of the Equipment so removed or disposed of is not necessary or desirable for the proper management, operation or maintenance of the Property, Borrower shall not be required to replace the same.

ARTICLE VIII. TRANSFER OR ENCUMBRANCE OF THE PROPERTY

Section 8.1. No Transfer/Encumbrance. Without the prior written consent of Lender, Borrower agrees that it shall not Transfer, or agree to Transfer, all or any portion of the Property or any interest therein. For purposes of the preceding sentence, the following shall be prohibited:

- (i) an installment sale agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments;
- (ii) an agreement by Borrower leasing all or a substantial portion of the Property for other than actual occupancy by a space tenant thereunder;
- (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents;
- (iv) subjecting the Property to a condominium regime or transferring the Property to a cooperative corporation or similar association;
- (v) any merger or consolidation involving Borrower;
- (vi) any voluntary or involuntary sale, conveyance, transfer, pledge or encumbrance of a majority of the beneficial interests in Borrower or any general partner or managing member (or if no managing member, any member) of Borrower, whether occurring in one or a series of transactions; and
- (vii) any Transfer by Malcolm S. Bethea and Susan Bethea and Elizabeth Kopecky and Virginia Mills and W. Wheeler Smith of any of their interests in Borrower or the general partner or member of Borrower, if applicable.

Section 8.2. Permitted Transfers.

Notwithstanding the foregoing, the following shall not be deemed to be Transfers hereunder: (i) transfer by devise or descent or by operation of law upon the death of a member, general partner or stockholder of Borrower or any member or general partner thereof, if (A) written notice of any transfer pursuant to this clause (i) is given to Lender together with such documents relating to the transfer as Lender may reasonably require, (B) control over the management and operation of the Property is retained by the Original Principals at all times prior to the death or legal incapacity of all the Original Principals and is thereafter assumed by Persons who are acceptable in all respects to Lender in its sole and absolute discretion, (C) no such transfer by any of the Original Principals will release the respective estate from any liability as a guarantor, and (D) no such transfer, death or other event has any adverse effect either on the Single Purpose Entity status of Borrower or on the status of Borrower as a continuing legal entity liable for the payment of the Debt and the performance of all other obligations secured hereby;

(ii) an inter vivos or testamentary transfer of all or any portion of the ownership interest in Borrower to one or more family members of Original Principals or a trust in which all of the beneficial interest is held by one or more family members of Original Principals or a partnership, limited liability company, corporation or other legal entity in which a majority of the capital and profits interests are held by one or more family members of Original Principals, provided that any inter vivos transfer of all or any portion of the Property or any inter vivos transfer or issuance of capital stock (or other ownership interests) in Borrower is made in connection with Original Principals' bona fide, good faith estate planning and that the Person(s) with Control of Borrower or the management of the Property are (A) the same Person(s) who had such Control and management rights immediately prior to the transfer in question, or (B) reasonably acceptable to Lender; and

(iii) if Borrower is a limited or general partnership or limited liability company, a transfer of the limited partnership or non-managing membership interest in Borrower, unless such interest would, or together with all other direct or indirect interests in Borrower which were previously transferred, aggregate 49% or more of the partnership or membership, as applicable, interest in Borrower or would result in any Person who, as of the date hereof, did not own, directly or indirectly, 49% or more of the partnership or membership, as applicable, interest in Borrower, owning, directly or indirectly, 49% or more of the partnership or membership, as applicable, interest in Borrower or a transfer of any legal or beneficial interest in any general partner or managing member, as applicable, of Borrower unless such interest would, or together with all other direct or indirect interest in the general partner or managing member, as applicable, of Borrower which were previously transferred, aggregate 49% or more of the legal or beneficial interest in the general partner or managing member, as applicable, of Borrower (or result in a change in control of the management of the general partner or managing member, as applicable, from the individuals exercising such control immediately prior to the conveyance or other disposition of such legal or beneficial interest). As used herein, "family members" shall include spouses, children and grandchildren and any lineal descendants

Section 8.3. Conditions to Consent. Lender reserves the right to condition its consent to any sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or other transfer under this Article VIII upon (a) its receipt of all information regarding the proposed transferee which Lender deems necessary to underwrite the credit-worthiness and managerial expertise of the proposed transferee at least sixty (60) days prior to the proposed Transfer, (b) Lender's receipt of a one percent (1%) assumption fee, (c) payment of all costs, fees and expenses of Lender and its counsel in connection with the Transfer, (d) execution and delivery of Lenders' form of assumption agreement, indemnities, guaranties, ratifications, financing statements, note modifications, opinions and all other agreements required by Lender, (e) delivery of all title, casualty, liability and other insurance policies, endorsements and certificates required by Lender, and (f) satisfaction of such other conditions as Lender shall determine in its sole discretion. No request for consent will be entertained by Lender if the Loan is in default or if the Transfer is to occur within sixty (60) days of any contemplated sale of the Loan by Lender, whether in connection with a securitization or otherwise. Any approval or denial of consent to a Transfer prohibited under this Article VIII shall be in the sole and absolute discretion of Lender.

ARTICLE IX. BOOKS AND RECORDS; REPORTING REQUIREMENTS

Section 9.1. Estoppel Certificates. Borrower shall at its own expense, within fifteen (15) days after request by Lender, furnish Lender with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Note, and the unpaid principal amount of the Note, (b) the rate of interest of the Note, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Debt, and if any are alleged, the nature thereof, (e) that the Note, this Mortgage and the other Loan Documents have not been modified or if modified, giving particulars of such modification and (f) that no default or Event of Default exists pursuant to the Note or this Mortgage or any event or circumstance which, with the giving of notice or the passage of time, or both, would constitute a default or Event of Default hereunder, or if such default, Event of Default, event or circumstance exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such default, Event of Default, event or circumstance.

Section 9.2. Financial Statements and Books and Records. Borrower shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender and its duly authorized representatives, agents, and employees shall have the right to examine, copy and audit Borrower's records and books of account at all reasonable times and, except during an emergency or following the occurrence and during the continuance of an Event of Default, upon reasonable advance written notice. Borrower shall provide to Lender the following financial statements and information, all of which must be certified to Lender as being true and correct by Borrower or the entity to which they pertain and, if financial statements, be compiled in accordance with generally accepted accounting principles consistently applied, and be in form and substance acceptable to Lender:

(a) during the first twelve (12) months of the Loan, promptly upon request, operating statements for the Property for the immediately preceding twelve month period and a rent roll for the preceding month;

(b) copies of all tax returns filed by Borrower, within thirty (30) days after the date of filing;

(c) annually, within thirty (30) days after the end of each calendar year, operating statements for the Property for the immediately preceding twelve (12) month period and a rent roll for the Property containing the name of each tenant, the space occupied by such tenant, the lease commencement date and expiration date, security deposit, rent, additional rent, arrearages, and such other information as may customarily be reflected thereon or reasonably requested by Lender;

(d) annual financial statements for Borrower within ninety (90) days after the end of each fiscal year and, upon Lender's request, financial statements from each indemnitor and guarantor under the Loan; and

(e) such other information with respect to the Property, Borrower, the principals, members or general partners of Borrower, as applicable, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the Note secured hereby which may be requested from time to time by Lender, within a reasonable time after the applicable request.

In the event Borrower fails to supply any of the financial information as and when required in items (a) through (e) above or, upon the occurrence of an Event of Default, Lender, in addition to any other rights and remedies contained herein, shall have the right (but no obligation) to make or cause to be made such inspections of the Property and such audits of Borrower and/or the Property as Lender shall determine, in its sole discretion, by such Person(s) as Lender deems appropriate. Borrower agrees to pay or to reimburse Lender for any expense incurred therefor and further agrees to provide and/or make available all necessary information and personnel and to otherwise cooperate in connection with any such inspection or audit. If Borrower fails to pay or reimburse Lender within ten (10) days of a request by Lender therefor, the amounts so owed shall be added to the Debt and shall accrue interest at the Default Rate.

ARTICLE X. SECURITY AGREEMENT; FIXTURE FILING

Section 10.1. Security Agreement; Fixture Filing. (a) This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the UCC. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. This Mortgage is filed as a fixture filing and covers goods which are or are to become fixtures on the Property. Borrower by executing and delivering this Mortgage has granted to Lender, as security for the Debt, a security interest in the Property to the full extent that the Property may be subject to the UCC (said portion of the Property so subject to the UCC being called in this Section 10.1 the "Collateral"). If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender following an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any disposition pursuant to the UCC of so much of the Collateral as may constitute personal property shall be considered commercially reasonable if made pursuant to a public sale which is advertised at least twice in a newspaper in which sheriff's sales are advertised in the county where the Premises is located. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral given to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. It is

not necessary that the Collateral be present at any disposition thereof. Lender shall have no obligation to clean-up or otherwise prepare the Collateral for disposition.

(b) Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, and authorizes Lender to file with the appropriate public office on its behalf any financing, continuation or other statements, as secured party, in connection with the Collateral covered by this Mortgage at Borrower's cost and expense.

(c) The goods are described by item or type on pages 1, 2 and 3 of this Mortgage. The Borrower is the debtor, and the Lender is the secured party. The names of the debtor (Borrower) and the secured party (Lender) are given in the first paragraph and in Section 15.1(b) of this Mortgage. This Mortgage is signed by the debtor (Borrower) as a fixture filing. The mailing address of the Lender set out in Section 15.1(b) is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Borrower set out in Section 15.1(b) is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section 10(c) and on pages 1, 2 and 3 of this Mortgage. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Borrower is a record owner of the real estate.

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

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

(f) Intentionally Omitted.

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

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

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

ARTICLE XI. DEFAULTS

Section 11.1. Events of Default. The Debt shall become immediately due at the option of Lender upon any one or more of the following events (each, an "**Event of Default**"):

(a) if any monthly payment of interest or principal is not paid as required pursuant to the Note within five (5) days after the date that the same is due or if all or any portion of the principal amount of the Note shall not be paid on the Maturity Date;

(b) if any other amount payable pursuant to the Note, this Mortgage, or any other Loan Document except as set forth in (a) above is not paid within five (5) days after the date when due and payable in accordance with the provisions thereof;

(c) if a default occurs under any of the other Loan Documents and such default is not cured within any applicable grace or cure period provided therein or, if an Event of Default occurs under the terms of any of the Loan Documents;

(d) if Borrower fails to maintain insurance in accordance with Article II hereof;

(e) if Borrower fails to comply with Article VIII or Article XII hereof;

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

(g) if a receiver, liquidator or trustee is appointed for Borrower, any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; or if Borrower or any general partner or member of Borrower or any indemnitor becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or if any petition for bankruptcy, reorganization, liquidation 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 any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or such general partner or member of Borrower or indemnitor, then upon the same not being discharged, stayed or dismissed within thirty (30) days thereof;

(h) if Borrower shall be in default beyond any notice or grace period, if any, under any other mortgage or security agreement covering any part of the Property without regard to its priority relative to this Mortgage; provided, however, this provision shall not be deemed a waiver of the provisions hereof prohibiting further encumbrances affecting the Property or any other provision of this Mortgage;

(i) if the Property becomes subject (i) to any Lien other than a Lien for real estate taxes and assessments not yet due and payable, or (ii) to any mechanic's, materialman's or other Lien, and such Lien shall not be discharged (by payment, bonding, or otherwise) within thirty (30) days unless contested in accordance with the terms hereof;

(j) if Borrower discontinues the operation of the Property for reasons other than repair or restoration arising from a casualty or Taking, or if Borrower is enjoined by any court or other Governmental Authority from continuing the operation of its business, including, without limitation, entering into Leases or performing its obligations thereunder, which injunction is not released or stayed, for forty-five (45) days;

(k) if Borrower or any general partner, manager or member, as applicable of Borrower shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower or any general partner, manager or managing member, as applicable;

(l) if the Property is subjected to waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby; and Lender determines that it is not adequately protected from any loss, damage or risk associated therewith;

(m) if any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Property and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(n) if Borrower shall fail to perform any of the other terms, covenants or conditions of the Note, this Mortgage or any other Loan Document, other than as set forth in (a) through (m) above, for thirty (30) days after notice from Lender, provided that if such default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default up to but not exceeding a maximum period of ninety (90) days.

Section 11.2. Remedies. (a) Remedies Available. During the existence of any Event of Default, Lender may, in addition to any other rights or remedies available to it hereunder, at law

or in equity, take such action, without notice or demand, as it deems advisable to protect and enforce any one or more of its rights against Borrower and in and to the Property, including, without limitation, the following actions:

(i) declare all or any portion of the unpaid Debt to be immediately due and payable; provided, however, that upon the occurrence of any of the events specified in Section 11.1(h) the entire Debt will be immediately due and payable without notice or demand or any other declaration of the amounts due and payable;

(ii) enter into or upon the Property, either personally or by its agents, nominees or attorneys, and dispossess Borrower and its agents and servants therefrom, with or without bringing an action to foreclose this Mortgage and without applying for a receiver for the Rents and without any payment of rent or other compensation to Borrower, but subject to the rights of the tenants under the Leases. Thereupon Lender may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with any or all of the Property and conduct the business thereat, (B) make alterations, additions, renewals, replacements and improvements to or on any of the Property, (C) exercise all rights and powers of Borrower with respect to all or any portion of the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases and contracts, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Property, and (D) apply the receipts from the Property to the payment of the Debt, after deducting therefrom all expenses (including, without limitation, reasonable attorneys' fees and disbursements) reasonably incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Lender's third-party agents;

(iii) have an Appraisal or other valuation of the Property performed by an Appraiser (and Borrower covenants and agrees it shall cooperate in causing any such valuation or Appraisal to be performed) and any cost or expense incurred by Lender in connection therewith shall constitute a portion of the Debt and be secured by this Mortgage and shall be immediately due and payable to Lender with interest, at the Default Rate, until the date of payment to Lender;

(iv) institute proceedings for the complete foreclosure of this Mortgage, or take such other action as may be allowed pursuant to Legal Requirements, at law or in equity, for the enforcement of this Mortgage, in which case all or any part of the Property may be sold for cash or credit in one or more parcels;

(v) with or without entry, and in accordance with all applicable Legal Requirements, institute proceedings for the partial foreclosure of this Mortgage, or take such other action as may be allowed pursuant to Legal Requirements, at law or in equity, for the enforcement of this Mortgage for the portion of the Debt then due and payable, subject to the lien of this Mortgage continuing unimpaired and without loss of priority so as to secure the balance of the Debt not then due;

(vi) sell all or any portion of the Property and any or all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in whole or in parcels, in any order or manner, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, at the discretion of Lender, and in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on the remaining portion of the Property;

(vii) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained in any of the Loan Documents;

(viii) recover judgment on the Note or any guaranty either before, during or after (or in lieu of) any proceedings for the enforcement of this Mortgage;

(ix) apply, ex parte, for the appointment of a custodian, trustee, receiver, liquidator or conservator of the Property or any part thereof, irrespective of the adequacy of the security for the Debt and without regard to the solvency of Borrower or of any Person liable for the payment of the Debt, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Rent with respect to any of the Property pursuant to this Mortgage or the Assignment;

(x) require Borrower or any receiver appointed to collect the Rents to pay Lender monthly in advance the fair and reasonable rental value for any portion of the Property used or occupied by Borrower. Upon demand by Lender or such receiver, Borrower shall immediately vacate and surrender possession to Lender or such receiver. In default thereof, Borrower may be evicted by Lender or such receiver by summary proceedings or otherwise; or

(xi) pursue any or all such other rights or remedies as Lender may have under applicable law or in equity; provided, however, that the provisions of this Section 11.2(a) shall not be construed to extend or modify any of the notice requirements or grace periods provided for hereunder or under any of the other Loan Documents.

(xii) If an Event of Default exists, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Lender may from time to time elect to sell) under the power of sale which is hereby given to the Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Premises to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Premises to be sold is located. If there is Premises to be sold in more than one county, publication shall be made in all counties where the Premises to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a

newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Lender may bid at any sale held under this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, the Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Debt shall have been paid in full and this Mortgage shall have been terminated as provided herein.

(xiii) To the extent permitted by applicable law, the Borrower hereby authorizes and empowers the Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Borrower, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(xiv) If an Event of Default exists, the Lender shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Mortgage, but without declaring the whole Debt due. Any such sale may be made subject to the unmatured part of the Debt, and such sale, if so made, shall not affect the unmatured part of the Debt, but as to such unmatured part of the Debt this Mortgage shall remain in full force and effect as though no sale had been made under this Section. Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Debt, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Debt without exhausting the power of foreclosure and the power to sell the Property for any other part of the Debt, whether matured at the time or subsequently maturing.

(xv) In case of any sale of the Property as authorized by this Section, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Debt or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

Each of the foregoing remedies may be pursued individually, concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting any other rights and remedies of Lender hereunder, at law or in equity.

(b) Application of Proceeds. The proceeds or avails of any sale made under or by virtue of this Section 11.2, together with any other sums which then may be held by Lender under this Mortgage, whether under the provisions of this Section 11.2 or otherwise, shall be applied as follows:

First: To the payment of the third-party costs and expenses reasonably incurred in connection with any such sale and to advances, fees and expenses, including, without limitation, reasonable fees and expenses of Lender's legal counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances reasonably made or incurred by Lender under this Mortgage, together with interest as provided herein on all such expenses, liabilities and advances made by Lender;

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

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

Fourth: The surplus, if any, to Borrower unless otherwise required by Legal Requirements.

Lender and any receiver or custodian of the Property shall be liable to account for only those rents, issues, proceeds and profits actually received by it.

(c) Rights Pertaining to Sales. (i) Lender may adjourn from time to time any sale to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or adjourned sale. Except as otherwise provided by any applicable Legal Requirements, Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(ii) Upon the completion of any sale made by Lender under or by virtue of this Section, Lender, or any officer of any court empowered to do so, shall execute and deliver to any accepted purchaser good and sufficient instruments granting, conveying, assigning and transferring all estate, right, title and interest in and to the Property sold without any covenant or warranty whatsoever express or implied, or as otherwise determined by Lender. Lender is hereby irrevocably appointed the true and lawful attorney-in-fact of Borrower (coupled with an interest), in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property so sold. For that purpose Lender may execute all necessary instruments of conveyance, assignment, transfer and delivery, and substitute one or more Persons with like power. Borrower hereby ratifies and confirms all that such attorney-in-fact or substitutes shall lawfully do by virtue hereof. Borrower, if so requested by Lender, shall ratify and confirm any such sale by executing and delivering to Lender or any purchaser all such instruments as Lender deems necessary or desirable. Any sale made pursuant to this Section, whether by power of sale, judicial foreclosure or otherwise, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity of Borrower in and to the Property so sold, and shall, to the fullest extent permitted by Legal Requirements, be a perpetual bar both at law and in equity against Borrower and against any and all Persons

claiming or who may claim the same, or any part thereof, from, through or under Borrower.

(iii) In the event of any sale made pursuant to this Section 11.2, the entire Debt immediately thereupon shall become due and payable, anything in the Loan Documents to the contrary notwithstanding.

(iv) Upon any sale made pursuant to this Section 11.2, Lender may bid for and, if the highest bidder therefore, acquire all or any portion of the Property. In lieu of paying cash therefor, Lender may make settlement for the purchase price by crediting against the Debt the net sales price after deducting therefrom the expenses of the sale and the costs of the action.

(d) No Release. No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Property or upon any other property of Borrower shall release or impair the lien of this Mortgage upon the Property, or any liens, rights, powers or remedies of Lender hereunder until the Debt is paid in full.

Section 11.3. Interest After Default. If any portion of the Debt is not paid when due (whether by acceleration or otherwise), and after any applicable grace period, then Borrower shall pay interest at the Default Rate on the entire outstanding principal balance of the Debt from the date on which such amount first becomes due until the earlier of the cure of all Events of Default or the payment of the entire amount due to Lender, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclose this Mortgage. All unpaid and accrued interest shall be secured by this Mortgage as part of the Debt. Nothing in this Section 11.3 or in any other provision of this Mortgage shall constitute an extension of the time for payment of the Debt.

Section 11.4. Borrower's Actions After Default. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by Lender in connection therewith, Borrower shall (a) after receipt of notice of the institution of any such action, waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding, (b) if required by Lender, consent to the appointment of a receiver or receivers of the Property and of all the earnings, revenues, rents, issues, profits and income thereof, and (c) waive any defense Borrower might have for the failure of Lender to make any tenants party defendants to a foreclosure proceeding or to foreclose their rights in any such proceeding.

Section 11.5. Control by Lender After Default. Notwithstanding the appointment of any custodian, receiver, liquidator or trustee of Borrower, any of its property, or the Property, to the extent permitted by Legal Requirements, Lender shall be entitled to obtain possession and control of all of the Property in accordance with the terms hereof.

Section 11.6. Right to Cure Defaults. Upon the occurrence of any Event of Default hereunder, Lender or its agents, without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, may, but without obligation to do so, perform, pay or otherwise cure any defaulted obligation of Borrower in such manner and to such extent as Lender may deem necessary to protect the Property or the lien of this Mortgage. Lender and its

agents are authorized to enter upon the Property, or appear in, defend, or bring any action or proceeding, to protect Lender's interest in the Property, foreclose this Mortgage or collect the Debt. Lender's costs and expenses in connection with this Section 11.6 (including reasonable attorneys' fees to the extent permitted by law), shall (i) constitute a portion of the Debt, (ii) be due and payable to Lender upon demand and (iii) accrue interest at the Default Rate from the date so demanded to the date Lender is paid in full.

Section 11.7. Recovery of Sums Required to Be Paid. Lender shall have the right from time to time to take action to recover any sums which constitute a part of the Debt as the same become due and payable hereunder (after the expiration of any grace period or the giving of any notice herein provided, if any), without regard to whether 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 any default by Borrower existing at the time such earlier action was commenced.

Section 11.8. Marshaling and Other Matters. Borrower hereby waives, to the fullest extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement, redemption (both equitable and statutory) and homestead laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Property or any interest therein. Borrower hereby expressly waives all rights of redemption from sale, whether equitable or statutory, under any order or decree of foreclosure of this Mortgage. Such waiver shall bind Borrower, and every Person acquiring any interest in or title to the Property subsequent to the date hereof and all other Persons, to the fullest extent permitted by applicable law.

Section 11.9. No Impairment; No Releases. The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Lender may grant with respect to any of the Debt; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant with respect to the Property; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

ARTICLE XII. COVENANTS REGARDING INDEBTEDNESS AND CHANGES IN BORROWER

Section 12.1. Covenants Regarding Indebtedness and Changes in Borrower. Borrower represents, warrants and covenants as follows:

(a) Borrower does not own and will not own any asset or property other than (i) the Property, and (ii) incidental personal property necessary for the ownership or operation of the Property.

(b) Borrower has not engaged and will not engage in any business other than to purchase, sell, own, trade, hold, develop, lease, manage and otherwise operate the Property and Borrower will conduct and operate its business as presently conducted and operated.

(c) Borrower has not entered into and will not enter into any contract or agreement with (i) any Affiliate of Borrower, (ii) any constituent party of Borrower, (iii) any guarantor (an “Indemnitor”) of the Debt or any part thereof, or (iv) any Affiliate of any constituent party of Borrower or any Indemnitor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm’s length basis with third parties other than any such party. Borrower has maintained and will maintain an arm’s length relationship with its Affiliates.

(d) Borrower has not incurred and will not incur, create or assume any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt and (ii) unsecured trade payables incurred in the ordinary course of its business of owning and operating the Property, provided that such trade payables (A) are not evidenced by a note, (B) are not, unless being contested in accordance with the terms of this Mortgage, outstanding for more than sixty (60) days with trade creditors and are in amounts as are normal and reasonable under the circumstances, and (C) do not exceed two percent of the outstanding principal of the Loan in the aggregate. No indebtedness other than the Debt may be secured (senior, subordinate or pari passu) by the Property.

(e) Borrower has not made and will not make any loans or advances to any third party (including any Affiliates of Borrower or any Indemnitor), has not pledged and shall not pledge its assets for the benefit of any other Person and shall not acquire obligations or securities of its Affiliates.

(f) Borrower is and will remain solvent and shall not incur any indebtedness which Borrower will not be able to repay at its maturity, and Borrower has paid and will pay its debts and liabilities from its own assets as the same shall become due. Borrower agrees to give prompt notice to Lender of the insolvency or bankruptcy filing of Borrower or any general partner, managing member, manager or controlling shareholder of Borrower, and of the death, insolvency or bankruptcy filing of any Indemnitor.

(g) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence as a Special Purpose Entity, and neither Borrower nor any partner, limited or general, member or shareholder thereof, will amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation and bylaws, articles of organization or operating agreement, trust or other organizational documents of Borrower in a manner which adversely affects Borrower’s existence as a Special Purpose Entity.

(h) Borrower has maintained and will maintain all of its books, records, financial statements and bank accounts in its own name and separate from those of its Affiliates and any constituent party of Borrower and Borrower has filed and will file its own tax returns. Borrower has prepared and maintained and will prepare and maintain its financial records and accounts in accordance with sound accounting principles consistently applied and susceptible to audit.

(i) Borrower has been and 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 Affiliate thereof) including the general partner or any member of Borrower or any Affiliate of the general partner or any member of Borrower, shall correct any known misunderstanding regarding its status as a separate entity, has conducted and shall conduct business in its own name, has not and shall not identify itself or any of its Affiliates as a division or part of the other, and has maintained and utilized and shall maintain and utilize separate stationery, invoices and checks.

(j) Borrower will file its own tax returns or, if Borrower is part of a consolidated group for purposes of filing tax returns, Borrower will be shown as a separate member of such group.

(k) 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.

(l) Neither Borrower nor any constituent party of Borrower will seek the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of Borrower.

(m) Borrower has not and will not commingle the funds and other assets of Borrower with those of any Affiliate or constituent party of Borrower, any Indemnitor, any Affiliate of any such constituent party or Indemnitor, or any other Person.

(n) Borrower has maintained 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 of Borrower, any Indemnitor, any Affiliate of any such constituent party or Indemnitor, or any other Person.

(o) Borrower does not and will not guarantee, become obligated for or hold itself out to be responsible for the debts or obligations of any other Person or the decisions or actions respecting the daily business or affairs of any other Person. Borrower has not and will not hold its assets out as being available for the payment of any liability of any other Person.

(p) Borrower will not permit any Affiliate independent access to its bank accounts.

(q) Borrower has paid and shall pay the salaries of its own employees from its own funds and maintain a sufficient number of employees in light of its contemplated business operations.

(r) Borrower has allocated and shall allocate fairly and reasonably any overhead for any office space which Borrower shares with any other Person.

(s) Borrower will not file or consent to the filing of a petition for bankruptcy, reorganization, assignment for the benefit of creditors or similar proceeding under any federal or state bankruptcy, insolvency, reorganization or other similar law with respect to Borrower, without (i) if Borrower shall be a limited liability company, the unanimous consent of its members, (ii) if Borrower shall be a partnership, the unanimous consent of all of its partners, or (iii) if Borrower shall be a corporation, the unanimous consent of its directors.

(t) If Borrower is a limited partnership or a limited liability company, the general partner or manager of Borrower (the "SPE Entity") shall be an entity whose sole asset is its interest in Borrower and the SPE Entity will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Paragraph 12 as if such representation, warranty or covenant was made directly by the SPE Entity.

ARTICLE XIII. ENVIRONMENTAL COMPLIANCE

Section 13.1. Indemnity. (a) Borrower hereby assumes liability for, and agrees to pay, protect, defend, indemnify and save Lender harmless from and against any and all Costs which may be imposed upon, incurred by or asserted or awarded against Lender or the Property, and arising directly or indirectly from: (i) the violation or alleged violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Borrower; (ii) the actual or alleged presence, release or threat of release of, or exposure to any Hazardous Materials on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Borrower; (iii) any actual or alleged personal injury or property damage arising out of or related to Hazardous Materials and the Property; (iv) any acts or omissions that exacerbate an existing condition at the Property or that give rise to liability under any Environmental Law; (v) the failure by Borrower to comply fully with the terms and conditions of Article XIII of this Mortgage; (vi) the breach of any representation or warranty contained in Article XIII of this Mortgage; (vii) the enforcement of Article XIII of this Mortgage; (viii) complying with Environmental Laws in connection with the Property or surrounding areas or (ix) assessment, investigation, containment, monitoring, remediation and/or removal of any and all Hazardous Materials from the Property or any surrounding areas.

(b) Notwithstanding any provision hereof to the contrary, Borrower shall have no liability under this Mortgage with respect to Costs relating to Hazardous Materials which are initially placed on, in or under the Property after the earlier of (i) Lender taking actual possession and control of the Property following an Event of Default, and (ii) Lender completing a foreclosure or other sale pursuant to which Lender takes title to the Property. Borrower shall have no liability under this Mortgage to Lender with respect to Costs which result directly and solely from Lender's willful misconduct or gross negligence.

(c) Borrower's obligation to defend Lender hereunder shall include defense at both the trial and appellate levels and shall be with attorneys, consultants and experts acceptable to Lender.

Section 13.2. Representations Regarding Hazardous Materials. Borrower hereby represents and warrants to and covenants and agrees with Lender as follows:

(a) The Property and all businesses or operations conducted thereon are in compliance with all Environmental Laws;

(b) No Hazardous Materials have been disposed of on or released (as used herein, "release" shall have the meaning provided in 42 U.S.C. § 9601(22)) at, onto or under the Property by Borrower or, to the Borrower's best knowledge, after due inquiry and investigation, by any other Person;

(c) No Hazardous Materials are located in, on or under, or have been handled, generated, stored, processed or discharged from the Property by Borrower or, to the Borrower's best knowledge, after due inquiry and investigation, by any other Person, except for those substances used by Borrower or tenants of the Property in the ordinary course of their business in compliance with all Environmental Laws and not reasonably expected to give rise to liability under Environmental Laws;

(d) The Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to or arising under Environmental Laws;

(e) There are no underground storage receptacles or surface impoundments, landfills or dumps for Hazardous Materials on the Property;

(f) Borrower has received no notice of, and to the best of Borrower's knowledge and belief, there exists no investigation, action, proceeding or claim by any Governmental Authority or by Person which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Borrower know of any basis for any of the foregoing;

(g) Except as previously disclosed to Lender in writing, there is no asbestos-containing material or lead-based paint at the Property, nor are there any PCBs, endangered species habitats or wetlands at the Property;

(h) Borrower has received no notice that, and to the best of Borrower's knowledge and belief, there has been no claim by any Person that any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on, in or under any other property, nor does Borrower know of any basis for such a claim;

(i) Except as previously disclosed in writing to Lender, Borrower has not knowingly waived or released any Person from liability with regard to Hazardous Materials in, on, under or

around the Property, nor retained or assumed, contractually or otherwise, any other Person's liability relative to Hazardous Materials or any claim, action or proceeding relating thereto; and

(j) Neither the Property nor any other property owned by Borrower (i) is included or, to Borrower's knowledge, after due inquiry, proposed for inclusion on the National Priorities List issued pursuant to CERCLA by the United States Environmental Protection Agency (the "EPA") or on any of the inventories of other potential "Problem" sites issued by the EPA or other applicable Governmental Authority nor (ii) otherwise identified by the EPA as a potential CERCLA site or included or, to Borrower's knowledge, after due inquiry, proposed for inclusion on any such list or inventory issued pursuant to any other Environmental Law or issued by any other Governmental Authority.

Section 13.3. Covenants, Representations and Warranties. (a) Borrower shall, and shall cause all property managers, agents, employees, tenants and other permitted occupants of the Property to: (i) comply with all applicable Environmental Laws, (ii) keep or cause the Property to be kept free from Hazardous Materials (except those substances used by Borrower or tenants of the Property in the ordinary course of their business, in compliance with, and not likely to give rise to liability under, Environmental Laws, (iii) not install or use, or permit the installation or use of, any underground receptacles containing Hazardous Materials on the Property, (iv) expressly prohibit the use, generation, handling, storage, production, release, processing and disposal of Hazardous Materials by all future tenants of the Property (except those substances used by such tenants in the ordinary course of their business, in compliance with, and not likely to give rise to liability under, Environmental Laws) and use all reasonable efforts to prevent existing tenants from taking any such actions, (v) in any event not install on the Property or permit to be installed on the Property polychlorinated biphenyls, urea formaldehyde insulation, asbestos or any substance containing asbestos or any material containing lead-based paint, and (vi) prohibit the disposal and/or release of any Hazardous Materials on, at, beneath, or near the Property.

(b) Borrower immediately shall notify Lender in writing should Borrower become aware of (i) any release of Hazardous Materials or other actual or potential environmental problem or liability with respect to or affecting the Property, (ii) any lien, action or notice of violation or potential liability affecting the Property or Borrower arising under any Environmental Law, (iii) the institution of any investigation, inquiry or proceeding concerning Borrower or the Property pursuant to any Environmental Law or otherwise relating to Hazardous Materials, or (iv) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Mortgage incorrect in any respect if made at the time of such discovery. Borrower shall promptly transmit to Lender copies of any and all citations, orders, notices or, upon written request of Lender, other communications relating to any of the foregoing.

(c) Regardless of the source of contamination, Borrower shall, at its sole expense, promptly take or cause to be taken all actions necessary or advisable for the clean-up of the Property and other property affected by contamination in, on, under or at the Property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions, in

accordance with all the applicable Environmental Laws (and in all events in a manner satisfactory to the applicable Governmental Authority and Lender). Borrower shall further pay or cause to be paid, at no expense to Lender, all clean-up, administrative and enforcement costs of the applicable Governmental Authority which may be asserted against the Property. In the event Borrower fails to do so, or following an Event of Default, Lender, at its sole election, may cause the Property or other affected property to be freed from any Hazardous Materials or otherwise brought into compliance with Environmental Laws. Any cost incurred in connection therewith shall be included in Costs. Borrower hereby grants to Lender access to the Property and an irrevocable license to remove any items deemed by Lender to be Hazardous Materials and to do all things Lender shall deem necessary or prudent to bring the Property into compliance with all Environmental Laws. However, Lender shall have no obligation to inspect or clean up any Hazardous Materials. Lender shall not be deemed a generator of any Hazardous Materials removed from the Property.

(d) Upon the request of Lender, at any time (i) after an Event of Default or (ii) Lender has reasonable grounds to believe that (x) Hazardous Materials are or have been released, stored or disposed of on, in, under or around the Property or (y) the Property may be in violation of Environmental Laws, Borrower shall cause an investigation or audit of the Property to be undertaken by a hydrogeologist, environmental engineer or other appropriate consultant approved by Lender, to determine whether any Hazardous Materials are located on, at, beneath, or near the Property and/or whether the Property is in compliance with Environmental Laws. The scope of any investigation or audit shall be approved by Lender. If Borrower fails to provide reports of such investigation or audit within thirty (30) days after such request, Lender may, but shall have no obligation to, order the same. Borrower hereby grants to Lender and Lender's contractors access to the Property and an irrevocable license to undertake such investigation or audit. All costs of any such investigation or audit shall be included in Costs and shall be paid by Borrower in accordance with the terms of Section 13.4(c) hereof.

(e) In the event that a Lien is filed against the Property pursuant to any Environmental Law, Borrower shall, within thirty (30) days from the date that Borrower receives notice of such Lien (but in any event ten (10) days prior to the date of any sale contemplated pursuant to such Lien, either (i) pay the claim and remove the Lien from the Property, or (ii) furnish (A) a bond satisfactory to Lender in the amount of the claim out of which the Lien arises, (B) a cash deposit in the amount of the claim out of which the Lien arises, (C) other security reasonably satisfactory to Lender in an amount sufficient to discharge the claim out of which the Lien arises, or (D) security in a form and amount satisfactory to the applicable Governmental Authority pursuant to a valid consent or other order, and Borrower shall promptly remove or arrange for the removal of the Lien. Notwithstanding the foregoing, Borrower shall use its best efforts to take all actions and make all payments necessary or prudent to prevent a sale pursuant to any Lien.

(f) The amount of Borrower's liability hereunder is unrelated to the amount of the Loan and any failure of the Loan to be repaid in full. The enforcement of this Mortgage by Lender shall not be construed by Borrower as an indirect attempt to recover any Loan deficiency or loss relating to the failure of the Loan to be repaid in full. Borrower acknowledges that it may

have liability hereunder even if the Loan is repaid in full by reason of a full credit bid at any foreclosure sale under the Mortgage, and that the amount of Borrower's liability hereunder could exceed the entire amount paid by Borrower for the Property.

Section 13.4. Indemnification Procedures. (a) If any action, proceeding, litigation or claim shall be brought or asserted against Lender for any matter which Lender is indemnified hereunder (each, a "**Claim**"), Lender shall notify Borrower in writing thereof and Borrower shall promptly assume the defense thereof, including, without limitation, the employment of counsel acceptable to Lender and the negotiation of any settlement. 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 the expense of Borrower (which expense shall be included in Costs), if Lender has reason to believe that its interests are not being adequately represented or diverge from other interests being represented by such counsel, 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, such failure shall constitute an Event of Default and Lender may, at its sole election, defend or settle such Claim. The liability of Borrower to Lender hereunder for any settlement by Lender shall be conclusively established by any settlement entered into by Lender in good faith, and such good faith shall be conclusively established if the settlement is made on the advice of independent legal counsel for Lender. The amount of Borrower's liability hereunder shall include the settlement consideration and all other Costs, which shall be paid by Borrower as provided in Section 13.4 (c) below. Costs incurred in connection with a Claim shall be reimbursed by Borrower without the requirement of waiting for the ultimate outcome of such Claim.

(b) Without the prior written consent of Lender, Borrower shall not settle or compromise any Claim in any manner or consent to the entry of any judgment (i) in which the claimant or plaintiff does not unconditionally release Lender from all liability and obligations in respect of such Claim and obtain a dismissal of such Claim with prejudice; or (ii) that may adversely affect Lender (as determined in the sole discretion of Lender) or obligate Lender to pay any sum or perform any obligation.

(c) Borrower shall pay to Lender any and all Costs within ten (10) days after written notice from Lender. All Costs shall be immediately reimbursable to Lender or, upon request of Lender, paid directly to the party sending a bill or other statement to Lender. Any Costs not paid within the aforementioned ten (10) day period shall bear interest at the Default Rate from the date such notice is given until the date paid in full.

Section 13.5. General Provisions. (a) If at any time all or any part of any payment received by Lender pursuant to this Mortgage shall be rescinded or returned for any reason whatsoever, including, without limitation, the insolvency, bankruptcy or reorganization of Borrower, then the obligations of Borrower hereunder shall, to the extent of such rescinded or returned payment, be reinstated and shall continue as though such previous payment received by Lender had never occurred.

(b) Nothing contained in this Mortgage shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to cost recovery or

contribution, which Borrower may have against any other Person under CERCLA or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.

(c) At Lender's election, from time to time, Borrower shall agree to release from the lien of this Mortgage any portion of the Property with respect to which Lender believes in good faith Hazardous Materials have been discovered on, at, in, under, or above and have or are or reasonably likely to have a material adverse effect on the Property, Borrower, Lender or the lien or priority of this Mortgage, or with respect to which Lender believes in good faith an Environmental Law has been or may have been violated which has or is reasonably likely to have a material adverse effect on the Property, Borrower, Lender or the lien or priority of this Mortgage. Borrower shall, at Borrower's expense, cause any consents, agreements and instruments to be entered into that may be reasonably required by Lender in connection with such release, including, without limitation, subdivision consents, appropriate surveys, appraisals of the subdivisions, consents of tenants, access agreements, easement agreements, consents of parties to existing agreements and consents of subordinate lienors. Borrower shall pay for any new title insurance policy or endorsement required by Lender in connection with any such release.

(d) This indemnification and the representations contained in Section 13.2 shall survive the termination of this Mortgage whether by repayment of the Debt, foreclosure or deed in lieu thereof, assignment, or otherwise. Nothing in this Article XIII shall be deemed to deprive Lender of any rights or remedies otherwise available to Lender, including, without limitation, those rights and remedies provided elsewhere in this Mortgage or the other Loan Documents.

ARTICLE XIV. MISCELLANEOUS

Section 14.1. Right of Entry. Lender and its agents and employees shall have the right, subject to the rights of tenants under existing and valid Leases, to enter and inspect, and/or take any action permitted hereunder with respect to the Property at all reasonable times and, except in the event of an emergency, upon reasonable notice.

Section 14.2. No Merger. If Borrower's and Lender's estates become the same, whether by foreclosure or otherwise, this Mortgage and the lien created hereby shall not be destroyed or terminated by the application of the doctrine of merger and Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. Upon the foreclosure of the lien created by this Mortgage, any Leases or subleases then existing and created by Borrower shall not be destroyed or terminated by application of the law of merger or as a result of such foreclosure unless Lender or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any Lease or sublease unless Lender or such purchaser shall give written notice thereof to such Lessee or sublessee.

Section 14.3. Tax Reduction Proceedings. During the existence of an Event of Default, Borrower shall be deemed to have appointed Lender as its attorney-in-fact to seek a reduction or reductions in the assessed valuation of the Property for real property tax purposes or for any other purpose and to prosecute any action or proceeding in connection therewith. This power,

being coupled with an interest, shall be irrevocable for so long as any part of the Debt remains unpaid and any Event of Default shall be continuing.

Section 14.4. Attorney-in Fact. At any time during the term of this Mortgage and upon the failure of Borrower to act or perform in accordance with the requirements of this Mortgage, whether or not an Event of Default has been declared, Lender shall be appointed as attorney-in-fact for Borrower to take any action or make any performance on behalf of Borrower at the sole cost and expense of Borrower. Borrower shall reimburse Lender on demand for all costs and expenses incurred by Lender and such amounts not promptly paid by Borrower shall become part of the Debt. Such power shall be irrevocable for so long as any part of the Debt remains unpaid and shall be coupled with an interest

ARTICLE XV. RULES OF CONSTRUCTION

Section 15.1. Rules of Construction. The following provisions shall apply to this Mortgage and also to any other Loan Document which expressly states that it incorporates by reference these Rules of Construction, and the application of these provisions to such other Loan Documents shall apply with the same import as though such provisions were fully set forth therein:

(a) General Rules of Usage. This Article shall apply to each Loan Document as from time to time amended, modified, replaced, restated, extended or supplemented, including by waiver or consent, and to all attachments thereto and all other documents or instruments incorporated therein. When used in any Loan Document governed by this Article: (i) "hereof," "herein," "hereunder" and comparable terms refer to the entire Loan Document in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto; (ii) references to any gender include, unless the context otherwise requires, references to all genders, (iii) references to the singular include, unless the context otherwise requires, references to the plural, and vice versa; (iv) "shall" and "will" have equal force and effect; (v) references in a Loan Document to "Article," "Section," "Paragraph" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, paragraph or subdivision of or an attachment to such Loan Document, (vi) "include," "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import and (vii) all references to the Property shall include all of the Property or any part or portion of the Property.

(b) Notices. All notices, consents, approvals, statements, requests, reports, demands, instruments or other communications to be given pursuant to any Loan Document (each, a “notice”) shall be in writing and shall be deemed given if addressed to the party intended to receive the same at the address set forth below (i) upon receipt when personally delivered at such address, (ii) four (4) Business Days after the same is deposited in the United States mail as first class registered or certified mail, return receipt requested, postage prepaid, or (iii) one Business Day after the date of delivery of such notice to a nationwide, reputable commercial courier service:

Lender: Merrill Lynch Mortgage Lending, Inc., 4 World Financial Center, 250 Vesey Street, New York, NY, 10080, Attention: Commercial Mortgage Financing

with a copy by the same means sent simultaneously to:

Seyfarth Shaw, Two Seaport Lane, Suite 300, Boston, MA. 02210, Attention: Michael Callahan, Esq.

and Wachovia Securities URP 4, NC-1075, 8739 Research Drive, Charlotte, North Carolina 28288, Attention: Helena Day

Borrower: Ambler, L.L.C., an Alabama limited liability company having an address of 951 18th Street South, Suite 200, Birmingham, Alabama, 35205

Indemnitor: Malcolm S. Bethea, an individual residing at 232 Poinciana Dr., Birmingham, Alabama, 35209 with a copy of any notice to Borrower or Indemnitor by the same means sent simultaneously to: W. Wheeler Smith 3500 Independence Dr., Birmingham, Alabama, 35209.

Any party may change the address to which any notice is to be delivered to any other address within the United States of America by furnishing written notice of such change at least fifteen (15) days prior to the effective date of such change to the other parties in the manner set forth above. Rejection or refusal to accept, or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed to be receipt of any such notice. Any notice to an entity shall be deemed to be given on the date specified in this Section (2), as applicable, without regard to when such notice is delivered by the entity to the individual to whose attention it is directed and without regard to the fact that proper delivery may be refused by someone other than the individual to whose attention it is directed. If a notice is received by an entity, the fact that the individual to whose attention it is directed is no longer at such address or associated with such entity shall not affect the effectiveness of such notice. Notices may be given on behalf of any party by such party’s attorneys.

(c) Severability. Whenever possible, each provision of the Loan Documents shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of any Loan Document shall be prohibited by or invalid or unenforceable under the applicable law of any jurisdiction with respect to any Person or circumstance, such provision

shall be ineffective to the extent of such prohibition, invalidity or unenforceability, without invalidating the remaining provisions of the Loan Document or affecting the validity or enforceability of such provisions in any other jurisdiction or with respect to other Persons or circumstances. To the extent permitted by applicable law, the parties to the Loan Document thereby waive any provision of law that renders any provision thereof prohibited, invalid or unenforceable in any respect.

(d) Remedies Not Exclusive. No remedy conferred upon or reserved to Lender under any Loan Document is intended to be exclusive of any other remedy available to Lender under the Loan Document or any other Loan Document, at law, in equity or by statute, and each and every such remedy shall be cumulative and in addition to every other remedy given thereunder or under any other Loan Document or now or hereafter existing at law or in equity. Remedies may be exercised in any order Lender elects.

(e) Liability. If Borrower or Indemnitor consists of more than one Person, the obligations and liabilities of each such Person under such Loan Document shall be joint and several.

(f) Successors and Assigns. Each Loan Document shall be binding upon Borrower or Indemnitor, as applicable, and their respective successors, assigns, heirs, executors and personal representatives, and shall inure to the benefit of Lender and all subsequent holders of the Loan Document and their respective officers, directors, employees, shareholders, agents, successors and assigns. Nothing in any Loan Document, whether express or implied, shall be construed to give any Person (other than the parties thereto and their permitted successors and assigns as expressly provided therein) any legal or equitable right, remedy or claim under or in respect of such Loan Document or any covenants, conditions or provisions contained therein. If any Loan Document is to be recorded, all of the grants, covenants, terms, provisions and conditions of such Loan Document shall run with the land.

(g) No Oral Modifications. Each Loan Document, and any of the provisions thereof, cannot be altered, modified, amended, waived, extended, changed, discharged or terminated orally or by any act on the part of Borrower, Indemnitor or Lender, but only by an agreement in writing signed by the party against whom enforcement of any alteration, modification, amendment, waiver, extension, change, discharge or termination is sought.

(h) Entire Agreement. Each Loan Document, together with the other applicable Loan Documents, constitutes the entire agreement of the parties thereto with respect to the subject matter thereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

(i) Waiver of Acceptance. Borrower and Indemnitor hereby waive any acceptance of any Loan Document by Lender in writing, and the Loan Document shall immediately be binding upon Borrower or Indemnitor, as the case may be.

(j) Jurisdiction, Court Proceedings. EACH OF BORROWER AND INDEMNITOR, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY,

INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (I) SUBMITS TO PERSONAL, NON-EXCLUSIVE JURISDICTION IN THE STATE OF ALABAMA WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM, RELATING TO OR IN CONNECTION WITH THE LOAN DOCUMENT OR THE LOAN, (II) AGREES THAT ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN SHELBY COUNTY, ALABAMA, (III) SUBMITS TO THE JURISDICTION OF SUCH COURTS, (IV) AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY FORUM OTHER THAN SHELBY COUNTY, ALABAMA (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM), (V) IRREVOCABLY AGREES NOT TO ASSERT ANY OBJECTION WHICH IT MAY EVER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT LOCATED IN ALABAMA AND ANY CLAIM THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND (VI) CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER OR INDEMNITOR, AS THE CASE MAY BE, AT THE ADDRESS FOR NOTICES DESCRIBED HEREINABOVE AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(k) Waiver of Jury Trial. BORROWER, INDEMNITOR AND LENDER, TO THE FULL EXTENT PERMITTED BY LAW, EACH HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, BROUGHT BY ANY OF THEM AGAINST THE OTHER BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO OR IN CONNECTION WITH THE LOAN DOCUMENTS, THE LOAN OR ANY COURSE OF CONDUCT, ACT, OMISSION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, SUCH PERSON'S DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH SUCH PERSON), IN CONNECTION WITH THE LOAN OR THE LOAN DOCUMENT, INCLUDING, WITHOUT LIMITATION, IN ANY COUNTERCLAIM WHICH BORROWER OR INDEMNITOR MAY BE PERMITTED TO ASSERT THEREUNDER OR WHICH MAY BE ASSERTED BY LENDER OR ITS AGENTS AGAINST BORROWER OR INDEMNITOR, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THIS WAIVER BY BORROWER AND INDEMNITOR OF THEIR RIGHT TO A JURY TRIAL IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN.

(l) No Waivers by Lender. No delay or omission of Lender in exercising any right or power accruing upon any default under any Loan Document shall impair any such right or power or shall be construed to be a waiver of any default under such Loan Document or any acquiescence therein, nor shall any single or partial exercise of any such right or power or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. Acceptance of any payment after the occurrence of a default under any Loan Document shall not be deemed to waive or cure such default under such Loan Document; and every power and remedy given by the Loan Documents to Lender may be exercised from time to time as often as may be deemed expedient by Lender. Without limiting the generality of the foregoing, any payment made by Lender for insurance premiums or Taxes or any other amounts in connection with affecting the Property shall not constitute a waiver of Borrower's or Indemnitor's default in making such payments and shall not obligate Lender to make any further payments. Borrower and Indemnitor hereby waive any right to require Lender at any time to pursue any remedy in Lender's power whatsoever.

(m) Waiver of Notice. Except as specifically and expressly provided for in any Loan Document or pursuant to applicable Legal Requirements, neither Borrower nor Indemnitor shall be entitled to any notices of any nature whatsoever from Lender. Each of Borrower and Indemnitor hereby expressly waives the right to receive any notice from Lender with respect to any matter for which the Loan Document does not specifically and expressly provide for the giving of notice by Lender to Borrower or Indemnitor, as the case may be.

(n) Offsets, Counterclaims and Defenses. Borrower and Indemnitor each hereby knowingly waives the right to assert any counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against either of them by Lender. Any assignee of the Loan Documents or any successor of Lender shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to the Loan Documents which Borrower or Indemnitor may otherwise have against any assignor of the Loan Documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower or Indemnitor in any action or proceeding brought by any such assignee under such Loan Document. Any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower and Indemnitor.

(o) Restoration of Rights. In case Lender shall have proceeded to enforce any right under any Loan Document by foreclosure sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to Lender, then, in every such case, Borrower, Indemnitor and Lender shall be restored to their former positions and rights thereunder.

(p) TIME OF THE ESSENCE. TIME SHALL BE OF THE ESSENCE IN THE PERFORMANCE OF ALL OBLIGATIONS OF BORROWER AND INDEMNITOR UNDER THE LOAN DOCUMENTS.

(q) Governing Law. Each Loan Document shall be governed by, and construed in accordance with, the laws of the State where the Property is located, except to the extent that the

applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.

(r) Savings Clause. Each Loan Document is 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 applicable law to contract or agree to pay. If, by the terms of any Loan Document, 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 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. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the applicable maximum lawful rate of interest from time to time in effect. This provision shall supersede any inconsistent provision of this or any other Loan Document.

(s) Sole Discretion of Lender. Wherever pursuant to any Loan Document, Lender has the right to consent to or approve any matter, or when any arrangement or term is to be satisfactory to Lender or is in Lender's discretion, the decision of Lender to consent or approve or deny consent or disapprove such matter or to decide that arrangements or terms are satisfactory or acceptable or not satisfactory or acceptable shall be in the sole discretion of Lender and shall be final and conclusive, except as may be otherwise specifically provided therein. In addition, Lender shall have the right to refuse to grant its consent, approval or acceptance or to indicate its satisfaction whenever such consent, approval, acceptance or satisfaction shall be required under the Loan Document.

(t) Counterparts. Any Loan Document may be executed in any number of separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same Loan Document. All signatures need not be on the same counterpart.

(u) Exhibits Incorporated; Headings. Any exhibits attached hereto and any provisions of other Loan Documents incorporated by reference herein, if any, shall be deemed to be incorporated therein with the same effect as if fully set forth in the body thereof. The headings and captions of the various articles, sections and paragraphs of the Loan Document are for convenience of reference only and shall not be construed as modifying, defining or limiting, in any way, the scope or intent of the provisions thereof.

(v) No Joint Venture or Partnership. Borrower, Indemnitor and Lender intend that the relationship created under the Loan Document be solely that of mortgagor and mortgagee, borrower and lender, or indemnitor and lender, as the case may be. Nothing therein is intended to create a joint venture, partnership, tenancy-in-common, agency or joint tenancy relationship between Borrower and Lender or Indemnitor and Lender, as the case may be, nor to grant to

Lender any interest in the Property other than that of mortgagee or lender; it being the intent of the parties hereto that Lender shall not share in any loss whatsoever generated by the Property and that Lender shall have no control over the day-to-day management and operation of the Property.

(w) Remedies of Borrower and Indemnitor. If Borrower or Indemnitor, as the case may be, shall seek the approval or consent of Lender under any Loan Document, which Loan Document expressly provides that Lender's approval shall not be unreasonably withheld, and Lender shall fail or refuse to give such consent or approval, the burden of proof as to whether or not Lender acted unreasonably shall be upon Borrower or Indemnitor, as the case may be. In addition thereto, 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 Loan Document it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's and Indemnitor's remedies shall be limited to injunctive relief or declaratory judgment.

(x) Method of Payment. All amounts required to be paid by any party to the Loan Documents to any other party shall be paid in such freely transferable legal tender of the United States of America at the time of payment, either by wire transfer or check (subject to collection).

(y) Conflicts; Construction. In case of a conflict between any provision of any Loan Document and any provision of any other Loan Document, the provision selected by Lender in its sole subjective discretion shall prevail and be controlling. The provisions of the Loan Documents shall be liberally construed in favor of Lender.

(z) True Copy. By executing the Loan Documents, Borrower or Indemnitor, as the case may be, acknowledges that it has received a true copy of the Loan Documents.

(aa) Other Miscellaneous Provisions. With respect to the Loan Documents: (i) any act which Lender is permitted to perform thereunder may be performed at any time and from time to time by Lender or by any Person designated by Lender; and (ii) each appointment of Lender as attorney-in-fact for Borrower or Indemnitor under such Loan Document shall be irrevocable and coupled with an interest.

(ab) The date of this Mortgage is intended as a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on that date.


ARTICLE XVI. STATE SPECIFIC PROVISIONS

Section 16.1. Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article XVI and the other provisions of this Mortgage, the terms and conditions of this Article XVI shall control.

IN WITNESS WHEREOF, Borrower has duly executed this Mortgage the day and year first above written.

Ambler, L.L.C.
an Alabama limited liability company

By: BRE Associates, Inc.
Its Managing Member

By: 
Malcolm S. Bethea
Its President

Borrower's Organizational Identification
Number: 86-1073612

STATE OF ALABAMA)

COUNTY OF Jefferson

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Malcolm S. Bethea, whose name as President of BRE Associates, Inc., an Alabama corporation, as managing member of Ambler, L.L.C., an Alabama 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/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as managing member of said limited liability company as aforesaid.

Given under my hand and official seal, this 21st day of July, 2003.

Lee Mitchell
Notary Public

AFFIX SEAL

My commission expires: 9/29/05

EXHIBIT "A"

Commence at the Northwest corner of the Southwest One-Quarter of Section 11, Township 21 South, Range 3 West; thence run East along the North line of said Quarter Section line for a distance of 1235.17 feet; thence turn an angle to the right of 90 degrees and run South for a distance of 16.74 feet to the point of beginning; from the point of beginning thus obtained turn an angle to the left of 90 degrees 55 minutes 29 seconds and run North 89 degrees 04 minutes 31 seconds East for a distance of 774.99 feet; thence turn an angle to the right of 94 degrees 40 minutes 29 seconds and run South 3 degrees 45 minutes West for a distance of 151.76 feet; thence turn an angle to the left of 93 degrees 45 minutes and run East for a distance of 245.00 feet; thence turn an angle to the right of 93 degrees 45 minutes and run South 3 degrees 45 minutes West for a distance of 93.40 feet to the point of commencement of a curve to the right, said curve having a central angle of 4 degrees 04 minutes 40 seconds and a radius of 2841.09 feet. Said chord bearing is South 5 degrees 47 minutes 20 seconds West; thence run along the arc of said curve in a Southwesterly direction for a distance of 202.20 feet to the end of said curve; thence turn an angle to the right from the tangent extended to said curve of 81 degrees 12 minutes 33 seconds and run South 89 degrees 02 minutes 13 seconds West for a distance of 210.00 feet; thence turn an angle to the left of 76 degrees 10 minutes 06 seconds and run South 12 degrees 52 minutes 07 seconds West for a distance of 55.56 feet; thence turn an angle to the right of 90 degrees and run North 77 degrees 07 minutes 53 seconds West for a distance of 82.00 feet; thence turn an angle to the left of 90 degrees and run South 12 degrees 52 minutes 07 seconds West for a distance of 115.00 feet; thence turn an angle to the right of 63 degrees 40 minutes and run South 76 degrees 32 minutes 07 seconds West for a distance of 85.00 feet; thence turn an angle to the left of 63 degrees 40 minutes and run South 12 degrees 52 minutes 07 seconds West for a distance of 212.94 feet; thence turn an interior angle to the right of 73 degrees 55 minutes 17 seconds and run North 61 degrees 03 minutes 10 seconds West for a distance of 65.77 feet; thence turn an angle to the left of 26 degrees 58 minutes 40 seconds and run North 88 degrees 01 minutes 50 seconds West for a distance of 123.93 feet; thence turn an angle to the right of 13 degrees 18 minutes 35 seconds and run North 74 degrees 43 minutes 15 seconds West for a distance of 61.16 feet; thence turn an angle to the right of 29 degrees 40 minutes 41 seconds and run North 45 degrees 02 minutes 34 seconds West for a distance of 168.05 feet; thence turn an angle to the left of 65 degrees 03 minutes 32 seconds and run South 69 degrees 53 minutes 54 seconds West for a distance of 130.16 feet; thence turn an angle to the left of 29 degrees 25 minutes 03 seconds and run South 40 degrees 28 minutes 51 seconds West for a distance of 72.60 feet; thence turn an angle to the left of 3 degrees 34 minutes 28 seconds and run South 36 degrees 54 minutes 23 seconds West for a distance of 35.20 feet; thence turn an angle to the right of 20 degrees 30 minutes 52 seconds and run South 57 degrees 25 minutes 15 seconds West for a distance of 79.37 feet; thence turn an angle to the right of 47 degrees 35 minutes 07 seconds and run North 74 degrees 59 minutes 38 seconds West for a distance of 177.55 feet; thence turn an angle to the right of 49 degrees 48 minutes 02 seconds and run North 25 degrees 11 minutes 36 seconds West for a distance of 89.68 feet; thence turn an angle to the right of 8 degrees 47 minutes 59 seconds and run North 16 degrees 23 minutes 37 seconds for a distance of 22.48 feet; thence turn an angle to the right of 28 degrees 26 minutes 26 seconds and run North 12 degrees 02 minutes 49 seconds East for a distance of 18.64 feet; thence turn an angle to the right of 22 degrees 06 minutes 47 seconds and run North 34 degrees 09 minutes 36 seconds East for a distance of 48.14 feet; thence turn an angle to the left of 24 degrees 23 minutes 17 seconds and run North 9 degrees 46 minutes 19 seconds East for a distance of 86.54 feet; thence turn an angle to the left of 15 degrees 22 minutes 56 seconds and run North 5 degrees 36 minutes 37 seconds West for a distance of 25.80 feet; thence turn an angle to the left of 27 degrees 43 minutes 06

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EXHIBIT "A" CONTINUED

seconds and run North 33 degrees 19 minutes 43 seconds West for a distance of 47.20 feet; thence turn an angle to the left of 66 degrees 35 minutes 31 seconds and run South 80 degrees 04 minutes 46 seconds West for a distance of 95.59 feet; thence turn an angle to the right 18 degrees 23 minutes 40 seconds and run North 81 degrees 31 minutes 34 seconds West for a distance of 35.87 feet; thence turn an angle to the right of 15 degrees 54 minutes 27 seconds and run North 65 degrees 37 minutes 07 seconds West for a distance of 117.72 feet; thence turn an angle to the right of 28 degrees 09 minutes 54 seconds and run North 37 degrees 27 minutes 13 seconds West for a distance of 147.16 feet; thence turn an angle to the left of 00 degrees 36 minutes 11 seconds and run North 38 degrees 03 minutes 24 seconds West for a distance of 131.44 feet; thence turn an angle to the right of 37 degrees 27 minutes 25 seconds and run North 00 degrees 35 minutes 59 seconds West for a distance of 53.61 feet; thence turn an angle to the right of 55 degrees 34 minutes 51 seconds and run North 54 degrees 58 minutes 52 seconds East for a distance of 64.90 feet; thence turn an angle to the right of 36 degrees 29 minutes 42 seconds and run South 88 degrees 31 minutes 26 seconds East for a distance of 74.07 feet; thence turn an angle to the left of 57 degrees 13 minutes 59 seconds and run North 34 degrees 14 minutes 35 seconds East for a distance of 13.45 feet; thence turn an angle to the left of 14 degrees 12 minutes 31 seconds and run North 20 degrees 02 minutes 04 seconds East for a distance of 40.69 feet; thence turn an angle to the left of 17 degrees 15 minutes 54 seconds and run North 2 degrees 46 minutes 10 seconds East for a distance of 50.14 feet; thence turn an angle to the right of 86 degrees 18 minutes 21 seconds and run North 89 degrees 04 minutes 31 seconds East for a distance of 546.97 feet to the point of beginning.

LESS AND EXCEPT:

A part of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 11, Township 21 South, Range 3 West, identified as Tract No. 26, Project No. STPAA-458(1), Shelby County, Alabama, and being more fully described as follows:

Commence at the Northeast corner of said NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, thence West along the North line of said NE $\frac{1}{4}$ of SW $\frac{1}{4}$ a distance of 402 feet, more or less, to the present Northwest right of way line of Alabama Highway 119; thence Southerly along said right of way line a distance of 186 feet, more or less, to a point that is 75 feet Westerly of and at right angles to the centerline of Project No. STPAA-458(1) at Station 494+00 and the point of beginning of the property herein to be conveyed; thence continue Southerly along said right of way line a distance of 267 feet, more or less, to the South property line; thence West along said property line a distance of 14 feet, more or less to a point that is 75 feet Westerly of and at right angles to said centerline; thence Northerly, parallel with said centerline, along a curve to the left (concave Northerly), having a radius of 4675.0 feet, a distance of 269 feet, more or less, to the point of beginning.

Situated in Shelby County, Alabama.