

**DOCUMENT PREPARED BY AND
WHEN RECORDED, RETURN TO:**

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Attn: Garrett Delehanty, Esq.

"THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9-402(6), CODE OF ALABAMA, 1975, AS AMENDED."

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

GREY SHOAL, L.L.C.
(Mortgagor)

to

ARCHON FINANCIAL, L.P.
(Mortgagee)

Dated: As of April 16, 2004

Property Location:
1 Stonecrest Drive
Birmingham, Alabama

Loan No. 09-0001911

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF MORTGAGOR, AS "DEBTOR", AND MORTGAGEE, AS "SECURED PARTY".

Archon Financial, L.P.
Mortgage, Assignment of Rents,
Security Agreement and Fixture Filing
Stonecrest Apartments, Birmingham, AL

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THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "**Mortgage**"), made as of April 16, 2004, by **GREY SHOAL, L.L.C.**, an Alabama limited liability company having its principal place of business at 753 E. Glenn Avenue, Auburn, Alabama 36830 ("**Mortgagor**"), to **ARCHON FINANCIAL, L.P.**, a Delaware limited partnership, having its principal place of business at 600 East Las Colinas Boulevard, Suite 450, Irving, Texas 75039 ("**Mortgagee**").

W I T N E S S E T H:

To secure (i) the payment of an indebtedness in the original principal sum of Fifteen Million Three Hundred Fifty Thousand and No/100 Dollars (\$15,350,000), lawful money of the United States of America, to be paid with interest according to a certain Mortgage Note of even date herewith made by Mortgagor to Mortgagee (the Mortgage Note together with all extensions, renewals, modifications, substitutions, consolidations and amendments thereof being hereinafter collectively called the "**Note**") and all other sums due hereunder, under the other Loan Documents (hereinafter defined) and under the Note, including, without limitation, interest, default interest, late charges, prepayment premiums and any sums advanced by Mortgagee to protect or preserve the hereinafter defined Mortgaged Property (said indebtedness and interest due under the Note and all other sums due hereunder under the Note and the other Loan Documents being hereinafter collectively referred to as the "**Debt**"), and (ii) the full and prompt performance of each and every other obligation of Mortgagor contained herein or in the Loan Documents (collectively the "**Obligations**"), Mortgagor has deeded, mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned, and hypothecated and by these presents does hereby irrevocably, unconditionally and absolutely deed, mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Mortgagee the real property described in Exhibit A attached hereto (the "**Premises**") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located or erected thereon (the "**Improvements**");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "**Mortgaged Property**"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, all rights to as-extracted collateral produced from or allocated to the Premises including without limitation oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand

whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, (including software embedded therein), whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter all of the foregoing items in this subparagraph (b) collectively referred to as the "**Equipment**"), including any leases of any of the Equipment, any deposits existing at any time in connection with any of the Equipment, and the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interests" as defined in the Uniform Commercial Code, as in effect from time to time in the State where the Premises are located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Premises, Improvements or the Equipment, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises, Improvements or the Equipment;

(d) all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (collectively, the "**Leases**") (the tenants, lessees, licensees, occupants or other users under the Leases are collectively hereinafter referred to as "tenants") and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements (the "**Rents**"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering all or any portion of the Premises, Improvements or Equipment, including, without limitation, the

right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Premises, Improvements or Equipment;

(f) all accounts, escrows, impounds, reserves, documents, instruments, chattel paper (whether tangible or electronic), claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, all promissory notes, and all franchises, trade names, trademarks, copyrights, symbols, service marks, books, records, recorded data of any kind or nature (regardless of the medium), plans, specifications, schematics, designs, drawings, permits, consents, licenses (including liquor licenses, to the extent assignable), license agreements, operating contracts, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Premises, Improvements or Equipment) and all management, franchise, service, supply and maintenance contracts and agreements, and any other agreements, permits or contracts of any nature whatsoever now or hereafter obtained or entered into by or on behalf of Mortgagor with respect to the operation or ownership of the Premises, Improvements or Equipment; and all approvals, actions, refunds, rebates or reductions of real estate taxes and assessments (and any other governmental impositions related to the Premises, Improvements or Equipment) resulting as a result of tax certiorari or any applications or proceeding for reduction; and all causes of action that now or hereafter relate to, are derived from or are used in connection with the Premises, Improvements or Equipment, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter all of the items referred to in this subparagraph (f) collectively referred to as the "**Intangibles**");

(g) all letter of credit rights (whether or not the letter of credit is evidenced by a writing) Mortgagor now has or hereafter acquires relating to the Premises, Improvements, Equipment, Intangibles and other properties, rights, title and interests hereinabove described;

(h) all commercial tort claims Mortgagor now has or hereafter acquires relating to the Premises, Improvements, Equipment, Intangibles and other properties, rights, title and interests hereinabove described;

(viii) any and all monies or funds now or hereafter deposited in or with respect to any impound, escrow or similar funds established pursuant to or held under any of the Loan Documents, including but not limited to the Tax and Insurance Impound and the Replacement Escrow Fund (as such terms are hereinafter defined); and

(j) all accounts and proceeds (cash or non-cash), products, offspring, rents and profits from any of the foregoing, including, without limitation, those from the conversion (whether voluntary or involuntary), sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents (hereinafter defined) in a timely manner, then the liens, security interests, estates and rights granted by the Mortgage shall terminate; otherwise same shall remain in full force and effect. A certificate or statement from Mortgagee confirming that the Obligations have been paid on full of or fully performed and discharged shall be sufficient evidence thereof for the purposes of reliance by third parties on that fact.

All of the covenants, conditions and agreements contained in (i) the Note and (ii) all and any of the documents other than the Note and this Mortgage now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, which evidences, secures or guarantees all or any portion of the Debt or otherwise is executed and/or delivered in connection with the Note and this Mortgage are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein; provided, however, that notwithstanding any provision of this Mortgage to the contrary, the obligations of the Mortgagor under that certain Environmental and Hazardous Substance Indemnification Agreement of even date herewith executed by Mortgagor in favor of Mortgagee (the "**Environmental Indemnity**") shall not be deemed or construed to be secured by the lien of this Mortgage or otherwise restricted or affected by the foreclosure of the lien hereof or any other exercise by Mortgagee of its remedies hereunder or under any other Loan Document, such Environmental Indemnity being intended by the signatories thereto to be its (or their) unsecured obligation. The Note is evidence of that certain loan made to Mortgagor by Mortgagee (the "**Loan**"). The term "**Loan Documents**" as used in this Mortgage means collectively the Note, this Mortgage, and any and all other documents securing, evidencing, or guaranteeing all or any portion of the Loan or otherwise executed and/or delivered in connection with the Loan.

1. Certain Representations, Warranties and Covenants of Mortgagor. Mortgagor represents, warrants, covenants and agrees as follows:

(a) Mortgagor covenants and agrees to pay the Debt and perform the Obligations at the time and in the manner provided in the Note and in this Mortgage.

(b) Mortgagor represents and warrants to Mortgagee that Mortgagor (i) has good, marketable, indefeasible and insurable title to the Mortgaged Property, (ii) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (iii) is duly qualified to transact business and is in good standing in the state where the Premises are located, (iv) has, to its best knowledge and belief, all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Premises and Improvements, (v) has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Mortgaged Property pursuant to, and to keep and observe all of, the terms of this Mortgage and the other Loan Documents, and (vi) possesses an unencumbered fee estate in the Premises and the Improvements and owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage. Mortgagor represents and warrants that this Mortgage is and will remain a valid and enforceable first lien on and security interest in the Mortgaged Property, subject only to said exceptions. Mortgagor shall

forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever. The exceptions shown in the title insurance policy insuring the lien of this Mortgage do not and will not materially and adversely affect or interfere with the value, or current use or operation, of the Premises and Improvements, or the security intended to be provided by this Mortgage or Mortgagor's ability to repay the Debt in accordance with the terms of the Loan Documents

(c) Mortgagor covenants and agrees with Mortgagee to pay (i) all taxes, assessments, governmental impositions, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "**Taxes**"), (ii) all ground rents, maintenance charges, other impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises (the "Other Charges"), now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof, and (iii) all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered to the Premises or the Improvements, when the same are due and payable. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property for the payment of Taxes, Other Charges and the claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered to the Premises or the Improvements, subject to the provisions of Paragraph 29 below, and shall promptly pay for all utility services provided to the Mortgaged Property as the same become due and payable. Mortgagor will deliver to Mortgagee receipts for payment or other evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent no later than thirty (30) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid (provided, however, that Mortgagor is not required to furnish such receipts for payment of Taxes in the event that Mortgagor has previously deposited with Mortgagee sufficient funds to pay all such Taxes from the Tax and Insurance Impound).

(d) Mortgagor represents and warrants to Mortgagee that (i) Mortgagor is not an "investment company," or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended, or 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 subject to any other federal or state law or regulation that purports to restrict or regulate Mortgagor's ability to borrow money; (ii) no part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulations T, U or X or any other Regulations of such Board of Governors, or for any purpose prohibited by legal requirements or by the terms and conditions of the Loan Documents; (iii) the Loan is solely for the business purpose of Mortgagor, and is not for personal, family, household, or agricultural purposes; and (iv) the Note, this Mortgage and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Note, this Mortgage or the other Loan Documents, or the exercise of any right

thereunder, render this Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(e) Mortgagor represents and warrants to Mortgagee that to Mortgagor's best knowledge and belief Mortgagor (i) has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Premises and Improvements and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and none of which are subject to revocation, suspension, forfeiture or modification, (ii) the Premises and Improvements and the present and contemplated use and occupancy thereof are in full compliance with all applicable laws, (iii) the Improvements are served by all utilities required for the current or contemplated use thereof and all utility services are provided by public utilities and the Improvements have accepted or are equipped to accept such utility services, (iv) all public roads and streets necessary for service of and access to the Premises and Improvements for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public, (v) the Improvements are served by public water and sewer systems, (vi) the Improvements are free from damage caused by fire or other casualty, (vii) all costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full, (viii) except for personal property owned by tenants, Mortgagor has paid in full for, and is the owner of, all of the Equipment and other personal property used in connection with the operation of the Improvements, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby, and (ix) there is no proceeding pending (or notice of such proceeding received by Mortgagor) for the total or partial condemnation of, or affecting, the Premises or Improvements.

(f) Mortgagor represents and warrants to Mortgagee that to Mortgagor's best knowledge and belief, (i) all of the Improvements which were included in determining the appraised value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Premises, and no improvements on adjoining properties encroach upon the Premises or Improvements, and no easements or other encumbrances, except those which are insured against by title insurance, encroach upon any of the Improvements so as to affect the value or marketability of the Mortgaged Property and (ii) the Premises and Improvements are assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements are assessed and taxed together with the Premises and Improvements or any portion thereof. Mortgagor agrees that if the Premises and Improvements are not taxed and assessed as one or more tax parcels exclusive of all other real property, the term "**Taxes**" will include all taxes, assessments, water rates and sewer rents now or hereafter levied, assessed or imposed against all other property, whether or not owned by Mortgagor, that is taxed and assessed as part of any tax parcel that includes all or any portion of the Premises or Improvements.

(g) Mortgagor represents and warrants to Mortgagee that to its best knowledge and belief, except as expressly disclosed in writing in the Leases or the rent roll for the Improvements delivered to Mortgagee prior to the date hereof, (i) Mortgagor is the sole owner of the entire

lessor's interest in the Leases, (ii) the Leases are valid and enforceable and in full force and effect, (iii) all of the Leases are arm's-length agreements with bona fide, independent third parties, (iv) no party under any Lease is in default in any material respect, (v) all Rents due have been paid in full, (vi) the terms of all alterations, modifications and amendments to the Leases are reflected in the written documents delivered to Mortgagee prior to the date hereof, (vii) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated (except such pledge or hypothecation that will be fully terminated and released in connection with the filing and recordation of this Mortgage), (viii) none of the Rents have been collected for more than one (1) month in advance (except a security deposit that shall not be deemed rent collected in advance), (ix) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis, (x) there exist no offsets or defenses to the payment of any portion of the Rents and Mortgagor has no monetary obligation to any tenant under any Lease, (xi) Mortgagor has received no notice from any tenant challenging the validity or enforceability of any Lease, (xii) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease, (xiii) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision respecting the Premises or Improvements, (xiv) no person has any possessory interest in, or right to occupy, the Premises or Improvements except under and pursuant to a Lease, (xv) all security deposits relating to the Leases reflected on the rent roll delivered by Mortgagor to Mortgagee have been collected in cash by Mortgagor, and (xvi) no brokerage commissions or finders fees are due and payable regarding any Lease.

(h) Mortgagor represents and warrants to Mortgagee that (i) there is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to Mortgagor's best knowledge and belief, threatened or contemplated against Mortgagor, Guarantor, or any of their respective general partners, managers or managing members, as the case may be, (such person being sometimes referred to as the "Governing Entity"), or any Affiliate (defined below) of Mortgagor, Guarantor or either of their respective Governing Entities, or any person who owns or controls, directly or indirectly, ten percent (10%) or more of the beneficial ownership interests of Mortgagor, Guarantor or either of their respective Governing Entities, or against or affecting any portion of the Mortgaged Property, which has not been disclosed by Mortgagor in writing to Mortgagee, (ii) Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code and the related Treasury Department regulations, (iii) during the ten (10) year period preceding the date hereof, no petition in bankruptcy has been filed by or against Mortgagor, its Governing Entity or Guarantor, or any Affiliate of Mortgagor, its Governing Entity or Guarantor, or any person who owns or control, directly or indirectly, ten percent (10%) or more of the beneficial ownership interests of Mortgagor, its Governing Entity or Guarantor, (iv) Mortgagor has not entered into the Loan or any of the Loan Documents with the actual intent to hinder, delay, or defraud any creditor, (v) Mortgagor has received reasonably equivalent value in exchange for its obligations under the Loan Documents, (vi) giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of the Mortgagor's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Mortgagor's total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities, (vii) Mortgagor does not have any known material contingent liabilities, (viii) Mortgagor does not have any material financial obligation under any indenture, mortgage, deed of trust, loan agreement, or

other agreement or instrument to which Mortgagor is a party or by which Mortgagor or any of the Mortgaged Property is otherwise bound, other than obligations incurred in the ordinary course of the operation of the Mortgaged Property and other than obligations under the Loan and the Loan Documents, and (ix) Mortgagor has not borrowed or received other debt financing that has not been heretofore paid in full (or will be paid in full as of the date hereof from the proceeds of the Loan).

(i) Mortgagor represents and warrants to Mortgagee that to Mortgagor's best knowledge and belief the Mortgaged Property is, and Mortgagor covenants and agrees to cause the Mortgaged Property at all times to remain, in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Mortgaged Property.

(j) As of the date of this Mortgage, (i) the Mortgaged Property is managed by Mortgagor, (ii) there is no agreement in place governing the management of the Mortgaged Property, and (iii) no fee is paid to any party for the management of the Mortgaged Property. Mortgagor further covenants that at any time during the term of the Loan Mortgagor enters into an agreement for the management of the Mortgaged Property or pays a fee for management of the Mortgaged Property, (A) Mortgagor shall first obtain Mortgagee's written approval of the property manager (the "**Manager**") and property management agreement (the "**Management Agreement**"), and (B) Manager shall not be entitled to receive compensation for its services conducted in connection with the Mortgaged Property in excess of 4% of gross rental income collected from the Mortgaged Property. At the time a Management Agreement is in place with respect to the Mortgaged Property, the following provisions of this sub-paragraph shall apply. The Management Agreement pursuant to which Manager operates the Mortgaged Property is in full force and effect and there is no default or violation by any party thereunder. The fee due under the Management Agreement, and the terms and provisions of the Management Agreement, are subordinate to this Mortgage and the Manager shall attorn to Mortgagee. Mortgagor shall not terminate, cancel, modify, renew or extend the Management Agreement, or enter into any agreement relating to the management or operation of the Mortgaged Property with Manager or any other party without the express prior written consent of Mortgagee, which consent shall not be unreasonably withheld. If at any time Mortgagee consents to the appointment of a new manager, such new manager and Mortgagor shall, as a condition of Mortgagee's consent, execute a Manager's Consent and Subordination of Management Agreement in the form then used by Mortgagee. If Mortgagor proposes to enter into an agreement relating to the management or operation of the Mortgaged Property with any person other than Manager or the Mortgagor's Governing Entity, Mortgagee may condition its consent to such new arrangement upon Mortgagee's receipt of written recommendations from the Rating Agencies (as hereinafter defined) to the effect that the proposed change in property manager will not result in a requalification, reduction or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction (as hereinafter defined), if Mortgagee reasonably determines it necessary or prudent to do so. Mortgagor shall reimburse Mortgagee on demand for all of Mortgagee's actual out-of-pocket costs incurred in processing Mortgagor request for consent to new property management arrangements.

(k) Mortgagor's exact legal name is correctly set forth above Mortgagor's signature at the end of this Mortgage. Mortgagor is incorporated in or organized under the laws of the State of Alabama. Mortgagor will not change or permit any change to be made in its name, identity, nature of legal form or state of its incorporation or organization, unless in each instance Mortgagor shall have notified Mortgagee in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all actions reasonably deemed necessary by Mortgagee, including without limitation the execution and delivery of additional financing statements, financing statement amendments, security agreements and other instruments, to effectively evidence or perfect Mortgagee's security interest in the Mortgaged Property as a result of such changes. Mortgagor's principal place of business and its chief executive office, and the place where Mortgagor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including without limitation software, writings, plans, specifications and schematics concerning the Mortgaged Property, has for the preceding four months (or, if less, the entire period of the existence of Mortgagor) been and will continue to be (unless Mortgagor notifies Mortgagee of any change in writing at least 30 days prior to the date of such change) at 753 E. Glenn Avenue, Auburn, Alabama 36830. Mortgagor's organizational identification number, if any, assigned by the State of Alabama, is correctly set forth on the front page of this Mortgage. Mortgagor shall promptly notify Mortgagee of any change of its organizational number or, if Mortgagor does not now have an organizational identification number but acquires one after the date hereof, of such organizational number.

(l) Mortgagor warrants, represents and covenants that neither Mortgagor, Guarantor nor any of their respective officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Mortgagor or Guarantor) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("**EO13224**"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("**OFAC**") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>) (iii) who commits, threatens to commit or supports "terrorism", as that term is defined in EO 13224, or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses [i] – [iv] above are herein referred to as a "**Prohibited Person**"). Mortgagor covenants and agrees that neither Mortgagor, Guarantor nor any of their respective officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Mortgagor or Guarantor) will (i) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. Mortgagor further covenants and agrees to deliver (from time to time) to Mortgagee any such certification or other evidence as may be requested by Mortgagee in its sole and absolute discretion, confirming that (i) neither Mortgagor, Guarantor or their respective officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Mortgagor or Guarantor) is a Prohibited Person and (ii) neither Mortgagor, Guarantor or their respective officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in

Mortgagor or Guarantor) has engaged in any business, transaction or dealings with a Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person.

2. **Insurance.** Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall obtain and maintain during the entire term of this Mortgage (the "**Term**") the following policies of insurance:

(a) All Risk or Special Causes of Loss Property Form including Business Interruption.

(i) Comprehensive all risk insurance (including, without limitation, coverage against riot and civil commotion, vandalism, malicious mischief, water, mold (based on a covered peril), fire, burglary, theft and terrorism) on the Improvements and all other insurable portions of the Mortgaged Property and in each case (A) insuring against any peril now or hereafter included within the classification "Special Form Cause of Loss" (also known as "All Risk of Physical Loss"), (B) in an amount equal to 100% of the "**Full Replacement Cost**," (C) containing an agreed amount endorsement with respect to the Improvements, Equipment and all other insurable portions of the Mortgaged Property waiving all co-insurance provisions, and (D) providing that the deductible shall not exceed the sum of \$25,000.00, unless agreed to in writing by Mortgagee. For the purposes of this Mortgage the term "**Full Replacement Cost**" means the actual replacement cost of the Improvements and Equipment (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, a recognized independent insurance broker or an independent appraiser selected and paid by Mortgagor and in no event less than the coverage required pursuant to the terms of any Lease.

(ii) Business income interruption insurance (A) with loss payable to Mortgagee, (B) covering losses of income and Rents derived from the Premises and Improvements and any non-insured property on or adjacent to the Premises resulting from any risk or casualty whatsoever, (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and all other insurable portions of the Mortgaged Property have been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date of the loss, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period, and (D) in an amount equal to one hundred percent (100%) of the projected gross income from the Mortgaged Property for a period of twelve (12) months. The amount of such business income insurance shall be determined by Mortgagee prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Mortgaged Property for the succeeding twelve (12) month period. All insurance proceeds payable to Mortgagee pursuant to this Subparagraph 2(a)(ii) shall be held by Mortgagee and shall be applied to the Debt and/or disbursed to Mortgagor for payment of the costs and expenses to maintain and operate the Premises and Improvements in such amounts and at such times as Mortgagee may determine; provided,

however, that nothing herein contained shall be deemed to relieve Mortgagor of its obligation to pay the Debt on the respective dates of payment provided for in the Note except to the extent such amounts are actually paid out of the proceeds of such business income insurance. The perils covered by this insurance shall be the same as those accepted on the real property, including flood and earthquake, as necessary. This coverage shall be written on the same basis as the property policy stated in Subparagraph 2(a)(i) above.

(iii) The policy of insurance required pursuant to Subparagraph 2(a)(i) above shall contain Demolition Costs, Increased Cost of Construction and "Ordinance or Law Coverage" or "Enforcement" endorsements in amounts satisfactory to Mortgagee if any of the Improvements or the use of the Premises shall at any time constitute legal non-conforming structures or uses or the ability to rebuild the Improvements is restricted or prohibited.

(iv) If windstorm coverage is excluded from the policy required under Subparagraph 2(a)(i) above, Mortgagor must provide separate windstorm insurance in an amount equal to the lesser of the original principal balance of the Loan and the maximum amount permitted by law, if the Premises are located in area where Mortgagee requires such insurance. Deductibles larger than \$25,000 are subject to approval by Mortgagee.

(v) At all times during which structural construction, repairs or alterations are being made with respect to the Improvements: (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the commercial general liability insurance policy described in Subparagraph 2(b), and (B) the insurance provided for in Subparagraph 2(a)(i) written on a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subparagraph 2(a)(i), (3) including permission to occupy the Improvements, and (4) with an agreed amount endorsement waiving co-insurance provisions. The amount of such coverage must be approved by Mortgagee.

(b) **Commercial General Liability/Umbrella Liability.** Commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Premises and Improvements, such insurance (A) to be on the so-called "occurrence" form containing minimum limits per occurrence of \$1,000,000.00 and \$2,000,000.00 in the aggregate, together with excess and/or umbrella liability in an amount of at least \$10,000,000.00; (B) to contain a liquor liability endorsement if any part of the Premises or Improvements are covered by a liquor license; (C) to continue at not less than the aforesaid limit until required to be changed by Mortgagee in writing by reason of changed economic conditions making such protection inadequate; (D) to cover at least the following hazards, (1) premises and operations, (2) products and completed operations on an "if any" basis, (3) independent contractors, (4) blanket contractual liability for all written and oral contracts, (5) contractual liability covering the indemnities contained in Paragraph 36 hereof to the extent the same is available, and (6) all legal liability imposed upon Mortgagor and all court costs and attorneys' fee incurred in connection with the ownership, operation and maintenance of the Mortgaged

Property; and (E) to be without any deductible. If Mortgagor has a multi-location policy or loan, the coverage must be maintained on a "per-location basis".

(c) **Flood Insurance.** Flood insurance will be required if any portion of the Improvements is situated in a federally designated "special flood hazard area" (for example, Zones A and V) as designated by the Federal Emergency Management Agency, or any successor thereto, as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended, (the "**Flood Insurance Acts**"). The minimum amount of flood insurance required is the lesser of one hundred percent (100%) of the Full Replacement Cost (plus business interruption coverage) or the maximum limit of coverage available for the Improvements under the Flood Insurance Act. The maximum deductible shall be no more than \$25,000.

(d) **Sinkhole, Mine Subsidence and Earthquake.** Sinkhole, mine subsidence and earthquake insurance shall be obtained and maintained if in the opinion of a professional engineer with experience in this professional area there is a foreseeable risk of loss due to this hazard. If necessary, as determined by such engineer, Mortgagor shall maintain coverage in the full principal amount of the Loan.

(e) **Boiler and Machinery Coverage.** Comprehensive broad form boiler and machinery insurance (without exclusion for explosion) covering all steam boilers, heating and air conditioning equipment, high pressure piping, machinery and equipment, sprinkler systems, pressure vessels, refrigeration equipment and piping, or similar apparatus now or hereafter installed in the Improvements (including "system breakdown coverage") and insuring against loss of occupancy or use arising from any breakdown, in an amount at least equal to the lesser of the outstanding principal amount of the Note or \$2,000,000.00, with a deductible no greater than \$10,000, unless approved by Mortgagee.

(f) **Worker's Compensation and Employer's Liability.** Workers' compensation, subject to the statutory limits of the state in which the Premises are located, and employer's liability insurance with a limit of at least \$1,000,000.00 per accident and per disease per employee, and \$1,000,000.00 for disease aggregate in respect of any work or operations on or about the Premises and Improvements, or in connection with the Premises and Improvements or their operation (if applicable).

(g) **Miscellaneous.** Such other insurance as may from time to time be reasonably required by Mortgagee in order to protect its interests, including such insurance as may now be or hereafter becomes available that Mortgagee reasonably deems prudent in light of then prevailing market or industry practices or applicable law.

All policies of insurance (the "**Policies**") required pursuant to this Paragraph 2 (i) shall be issued by companies approved by Mortgagee and licensed to do business in the state where the Mortgaged Property is located, with a claims paying ability rating of "BBB" or better by Standard & Poor's Ratings and a rating of "A: IX" or better in the current Best's Insurance Reports, (ii) shall name Mortgagee and its successors and/or assigns as their interest may appear as the Mortgagee, (iii) shall contain a

non-contributory standard Mortgagee clause and a lender's loss payable endorsement, or their equivalents, naming Mortgagee as the person to which all payments made by such insurance company shall be paid, (iv) shall contain a waiver of subrogation against Mortgagee, (v) shall be maintained throughout the Term without cost to Mortgagee, (vi) shall be assigned to Mortgagee, (vii) on or prior to the date hereof, Mortgagor shall deliver to Mortgagee either certified copies of the Policies in effect on the date hereof (the "Current Policies") or ACORD Form 25-S, Certificate of Liability Insurance, and ACORD Form 28, Evidence of Commercial Property Insurance (the "**ACORD Certificates**") with respect to the Current Policies (and each ACORD Certificate must specify the mortgagee, loss payee and additional insured status and/or waivers of subrogation, state the amounts of all deductibles and self-insured retentions, if any, set forth notice requirements for cancellation, material change, or non-renewal of insurance and be accompanied by copies of all required endorsements, provided that Mortgagor shall deliver to Mortgagee certified copies of the Current Policies not more than thirty (30) days after the date hereof; (viii) at least fifteen (15) days prior to the expiration of the Policies, Mortgagor shall deliver to Mortgagee either the original policies (or copies of the same certified by the issuers thereof) issued in renewal of each of the expiring Policies or ACORD Certificates with respect thereto, provided that Mortgagor shall deliver to Mortgagee the original policies (or copies of the same certified by the issuers thereof) issued in renewal of the expired Policies not more than thirty (30) days after the expiration of the subject Policies or upon actual issuance of the renewal policies (ix) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that Mortgagee shall not be liable for the payment of any of the Insurance Premiums, that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under said Policies, that no act or negligence of Mortgagor, or anyone acting for Mortgagor, or of any tenant under any Lease or other occupant, or failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Mortgagee is concerned, and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation, and (x) shall be satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee as to amounts, form, risk coverage, deductibles, loss payees and insureds. Mortgagor shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Mortgagee evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Mortgagee (provided, however, that Mortgagor is not required to furnish such receipts for payment of Insurance Premiums in the event that no Event of Default exists and Mortgagor has previously deposited with Mortgagee sufficient funds to pay all such Insurance Premiums from the Tax and Insurance Impound). If Mortgagor does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Mortgagee may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Mortgagor agrees to reimburse Mortgagee for the cost of such Insurance Premiums promptly on demand. Mortgagor covenants and agrees to promptly forward to Mortgagee a copy of each written notice received by Mortgagor of any modification, reduction or cancellation of any of the Policies or of any of the coverages afforded under any of the Policies. Within thirty (30) days after request by Mortgagee, Mortgagor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Mortgagee, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

3. Casualty and Condemnation.

(a) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**") or if Mortgagor shall have knowledge of the actual or threatened commencement of any condemnation or eminent domain proceeding that would affect any portion of the Premises or Improvements (a "**Condemnation**"), Mortgagor shall give prompt written notice thereof to Mortgagee and, with respect to a Condemnation, shall deliver to Mortgagee copies of any and all papers served in connection with such Condemnation.

(b) Mortgagee may participate in any proceedings for any taking by any public or quasi-public authority accomplished through a Condemnation or any transfer made in lieu of or in anticipation of a Condemnation (which transfer in lieu and Condemnation are collectively referred to as a "**Taking**") to the extent permitted by law. Upon Mortgagee's written request, Mortgagor shall deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Mortgagee, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Mortgagor shall not make any consent or agree to a Taking without the prior written consent of Mortgagee in each instance, which consent shall not be unreasonably withheld or delayed in the case of a Taking of an insubstantial portion of the Mortgaged Property.

(c) Subject to the terms of Paragraph 4 below, all insurance proceeds payable under the Policies and all awards or payments payable on account of a Taking ("**Award**"), and all causes of action, claims, compensation, awards and recoveries for any other damage, injury, or loss or diminution in value of the Mortgaged Property, are hereby assigned to and shall be paid to Mortgagee. Mortgagor agrees to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the foregoing assignment to Mortgagee. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as the attorney-in-fact of Mortgagor (which power of attorney shall be irrevocable so long as any of the Debt is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Mortgagor and shall not be affected by any disability or incapacity suffered by Mortgagor subsequent to the date hereof), with full power of substitution, subject to the terms of Paragraph 4, to settle for, collect and receive all proceeds of insurance and any Award and any other awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittance therefor.

(d) Mortgagee shall not be limited to the interest paid on an Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. Mortgagor shall cause any Award that is payable to Mortgagor to be paid directly to Mortgagee. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of the Award, Mortgagee shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the Award, or a portion thereof, to the extent sufficient to pay the unpaid portion, if any, of the Debt.

(e) The reasonable expenses incurred by Mortgagee in the adjustment and collection of the proceeds of insurance or an Award shall become part of the Debt and be secured hereby and shall be reimbursed by Mortgagor to Mortgagee upon demand or, at Mortgagee's election, deducted by and reimbursed to Mortgagee from such proceeds.

4. Use of the Proceeds of Insurance or Award.

(a) In case of loss or damages covered by any of the Policies and in case of an Award for any Taking, the following provisions shall apply:

(i) In the event of a Casualty that does not exceed the lesser of \$500,000.00 or ten percent (10%) of the original principal amount of the Note, Mortgagor may settle and adjust any claim without the consent of Mortgagee and agree with the insurance company or companies on the amount to be paid upon the loss provided that such adjustment is carried out in a competent and timely manner. In such case, Mortgagor is hereby authorized to collect and receive any such insurance proceeds.

(ii) In the event of a Casualty that does exceed \$500,000.00 but does not exceed five percent (5%) of the original principal amount of the Note, Mortgagee may settle and adjust any claim, provided, however, that any final agreement with the insurance company or companies of the amount to be paid for the Casualty shall be subject to the approval of Mortgagor as hereinafter provided, such approval not to be unreasonably withheld, delayed or conditioned. In any such case, the proceeds under the Policies shall be due and payable solely to Mortgagee and held in escrow by Mortgagee in accordance with the terms of this Mortgage. Mortgagor shall have the right to participate in the settlement discussions with the applicable insurance company or companies and Mortgagee shall keep Mortgagor apprised of all settlement offers and discussions and the results thereof. Mortgagee shall provide ten (10) business days advance written notice to Mortgagor of the terms and amount of any proposed final agreement on any such claim (such proposed final amount, the “**Mortgagee Approved Settlement Amount**”). If Mortgagor disapproves of Mortgagee's settlement of the claim on such terms and at such amount, Mortgagor must furnish written notice of such disapproval (any such notice, an “**Arbitration Notice**”) to Mortgagee within ten (10) business days after Mortgagor's receipt of Mortgagee's notice, such notice of disapproval by Mortgagor to state Mortgagor's election to implement the arbitration procedure set forth in this Paragraph 4 below. Mortgagor's failure to furnish notice of disapproval prior to the expiration of such ten (10) business day period shall constitute and be deemed Mortgagor's consent and approval to Mortgagee's settlement of the applicable claim for an amount not less than the Mortgagee Approved Settlement Amount.

(iii) In the event of a Casualty that exceeds five percent (5%) of the original principal amount of the Note, Mortgagee may settle and adjust any claim related thereto without the consent of Mortgagor and agree with the insurance company or companies on the amount to be paid on the loss, and the proceeds of any such policy shall be due and payable solely to Mortgagee and held in escrow by Mortgagee in accordance with the terms of this Mortgage.

(iv) In the event of a Taking where the Award is in an aggregate amount less than ten percent (10%) of the original principal balance of the Note and the Taking does not affect any portion of the Improvements or any portion of the Premises which in Mortgagee's reasonable determination is integral to the operation of the Premises and Improvements, or in the event of a Casualty where the loss is in an aggregate amount less than twenty-five percent (25%) of the original principal balance of the Note, and (A) no Event of Default or an event which with notice and/or the passage of time would constitute an Event of Default exists, (B) in the reasonable judgment of Mortgagee (1) the Mortgaged Property can be restored within six (6) months after insurance proceeds or the proceeds of the Award are made available and not less than six (6) months prior to the stated Maturity Date to a condition at least equal to the condition thereof that existed prior to the Casualty or Taking, (2) such restored Mortgaged Property will be such that income from its operation is reasonably anticipated to be sufficient to pay operating expenses of the Mortgaged Property and debt service on the Debt in full with the same coverage ratio considered by Mortgagee in its determination to make the Loan (such assessment by Mortgagee to include consideration of the effect of the termination of any Leases due to such Casualty or Taking), (3) Leases covering in the aggregate not less than sixty-five percent (65%) of the rentable square footage of the Improvements will be in full force and effect upon completion of the Repair Work (defined below), (4) all necessary government approvals will be obtained to allow the rebuilding and reoccupancy of the Improvements, (5) there are sufficient sums available (through insurance proceeds, the Award and contributions by Mortgagor, the full amount of which shall at Mortgagee's option have been deposited with Mortgagee) for the Repair Work (defined below) (including, without limitation, for any reasonable costs and expenses of Mortgagee to be incurred in administering the Repair Work) and for payment of the Debt as it becomes due and payable during the Repair Work, and (C) Mortgagor shall have delivered to Mortgagee, at Mortgagor's sole cost and expense, an appraisal report in form and substance satisfactory to Mortgagee from an appraiser showing the value of the Mortgaged Property as proposed to be restored or repaired to be not less than the appraised value of the Mortgaged Property as of the date of this Mortgage, then, and only then, the proceeds of insurance or of the Award (after reimbursement of any expenses incurred by Mortgagee) shall be applied in the manner set forth below to reimburse Mortgagor for the cost of work of restoring, repairing, replacing or rebuilding (collectively the "**Repair Work**") the Mortgaged Property or the part thereof subject to the Casualty or Taking. Mortgagor hereby covenants and agrees to commence and diligently to prosecute the Repair Work; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of the Repair Work in excess of the net proceeds of insurance or Award made available pursuant to the terms hereof.

(v) Except as provided above in Subparagraph 4(a)(iv), in the event of any Casualty or Taking Mortgagee may elect in its absolute sole discretion and without regard to the adequacy of the security for the Debt, to (A) apply the proceeds of insurance collected upon any Casualty or Award collected upon any Taking to the payment of the Debt, with or without accelerating the Maturity Date of the Note and declaring the entire outstanding Debt to be immediately due and payable, or (B) hold the insurance proceeds

or Award proceeds and make them available to Mortgagor for the cost of the Repair Work in the manner set forth below. If Mortgagee elects under this subparagraph to apply the proceeds of insurance or Award to the payment of the Debt and no Event of Default exists, any such application to the Debt shall be considered an Involuntary Prepayment not requiring payment of the prepayment consideration set forth below. If an Event of Default or an event which with notice and/or the passage of time would constitute an Event of Default exists and any proceeds of insurance or of an Award are applied to the Debt then Mortgagor shall pay to Mortgagee an additional amount equal to the greater of (1) the Yield Maintenance Premium (hereinafter defined), if any, that would be required hereunder if an Involuntary Prepayment (as hereinafter defined) has been defeased, or (2) three percent (3%) of the Involuntary Prepayment. The term **"Involuntary Prepayment"** shall mean an amount or amounts that Mortgagee receives representing (i) insurance proceeds or other payments as a result of a Casualty, or (ii) Awards or other payments made in connection with a Taking, and applies to the payment of the principal amount of the Debt. If Mortgagee elects to apply the proceeds of insurance collected upon any Casualty or Award collected upon any Taking to the payment of the Debt and the amount of such proceeds so applied do not pay the Debt in full, Mortgagor shall have the right on the next regularly scheduled payment date under the Note to prepay the entire remaining outstanding Debt together with an additional amount equal to the greater of (1) the Yield Maintenance Premium, if any, that would be required hereunder if such remaining outstanding portion of the Debt had been defeased, or (2) one percent (1%) of such remaining outstanding balance. Any application to the Debt pursuant to this Subparagraph 4(a)(v) shall (I) be applied to those payments of principal and interest last due under the Note but shall not postpone any payments otherwise required pursuant to the Note other than such last due payments and (II) cause the Note to be re-amortized in accordance with its terms and conditions.

(vi) In the event Mortgagor is either entitled to disbursements from the insurance proceeds or Award proceeds held by Mortgagee or Mortgagee elects to make such proceeds available to Mortgagor for the Repair Work, such proceeds shall be disbursed to Mortgagor for costs and expenses incurred by Mortgagor for the Repair Work following (A) the receipt by Mortgagee of a written request from Mortgagor for disbursement and a certification by Mortgagor to Mortgagee that the applicable item of Repair Work has been completed, (B) the delivery to Mortgagee of invoices, receipts or other evidence verifying the cost of performing the Repair Work, and (C) for disbursement requests in excess of \$10,000.00 with respect to any single item of Repair Work, or for any single item of Repair Work that is structural in nature, delivery to Mortgagee of (1) affidavits, lien waivers or other evidence reasonably satisfactory to Mortgagee showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and who are furnishing or have furnished material or labor to the Mortgaged Property have been paid all amounts due for labor and materials furnished to the Mortgaged Property, (2) a certification from an inspecting architect or other third party acceptable to Mortgagee describing the completed Repair Work and verifying its completion and value, and (3) a new (or amended) certificate of occupancy for the portion of the Improvements covered by such Repair Work, if said new certificate of occupancy is required by law, or a certification by

Mortgagor that no new certificate of occupancy is required by law. Mortgagee shall not be required to make any such advances more frequently than one time in any calendar month. Mortgagee may, in any event, require that all plans and specifications for the Repair Work be submitted to and approved by Mortgagee prior to commencement of the Repair Work, which approval shall not be unreasonably withheld, delayed or conditioned. In no event shall Mortgagee assume any duty or obligation for the adequacy, form or content of any such plans and specifications, or for the performance, quality or workmanship of any Repair Work. With respect to disbursements to be made by Mortgagee, no payment made prior to the final completion of the Repair Work shall exceed ninety percent (90%) of the value of the Repair Work performed from time to time; funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the Repair Work, free and clear of all liens or claims for lien. Any surplus which may remain out of the proceeds of insurance or Award held by Mortgagee after payment of the costs of the Repair Work shall, in the sole and absolute discretion of Mortgagee, be retained by Mortgagee and applied to payment of the Debt or paid to the party or parties legally entitled to such surplus.

(vii) If Mortgagor delivers an Arbitration Notice to Mortgagee, Mortgagor and Mortgagee shall, within five (5) business days after Mortgagee's receipt of any such notice, jointly designate an independent and unaffiliated individual who has not less than ten (10) years experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Premises and Improvements. Not later than five (5) business days after such joint designation of such individual, each of Mortgagor and Mortgagee shall submit to such individual its separate determinations of the commercially reasonable settlement amount for the applicable Casualty together with any documentation and other backup therefor and shall simultaneously therewith provide a copy of such submission to the other party. The individual so appointed shall review the applicable submissions and within ten (10) days after such individual's designation select one of the submitted settlement amounts as more accurately reflective of the commercially reasonable settlement amount. Notice of such selection shall be furnished to Mortgagor and Mortgagee by the applicable individual prior to the expiration of such ten-day period. Upon such selection, Mortgagee shall be authorized to settle the applicable claim for an amount not less than the settlement amount so selected without any further right of consent of Mortgagor.

(viii) In the event that Mortgagor and Mortgagee are unable to agree on one individual to act as arbitrator within the five (5) business day period following Mortgagee's receipt of the Arbitration Notice as contemplated under subparagraph (vii) above, then, in such case, the procedure set forth in this subparagraph (viii) shall be observed in lieu thereof. Not later than five (5) business days after Mortgagee's receipt of the applicable notice to arbitrate, Mortgagor and Mortgagee shall each designate an independent and unaffiliated individual who has not less than ten (10) years experience

with respect to settlement of claims resulting from casualties in respect of properties similar to the Premises and Improvements and notify the other party of such appointment by identifying the appointee. Not later than five (5) business days after both arbitrators are appointed, the two selected arbitrators shall select a third arbitrator who shall also be an independent and unaffiliated individual who has not less than ten (10) years experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Premises and Improvements, such selection to take place within five (5) business days after such arbitrator's appointment. Mortgagor and Mortgagee shall submit to such third arbitrator their separate determinations of the commercially reasonable settlement amount together with any documentation and other backup therefor and shall simultaneously therewith provide a copy of such submission to the other party. The third arbitrator so appointed shall review the applicable submissions and within ten (10) days after such individual's designation select one of the submitted settlement amounts as more accurately reflective of the commercially reasonable settlement amount. Notice of such selection shall be furnished to Mortgagor and Mortgagee by the applicable individual prior to the expiration of such ten-day period. Upon such selection, Mortgagee shall be authorized to settle the applicable claim for an amount not less than the settlement amount so selected without any further right of consent of Mortgagor.

(ix) Time shall be of the essence with respect to the performance of any and all rights and obligations under this Paragraph 4. The decisions of the arbitrator(s), if any, engaged under this Paragraph 4, shall be final and binding and may not be appealed to any court of competent jurisdiction or otherwise except upon a claim of fraud or corruption. All of the costs and expenses of the arbitrator(s), if any, engaged under this Paragraph 4, shall be the sole responsibility of Mortgagor.

(x) Notwithstanding anything to the contrary contained herein, the proceeds of insurance or Award disbursed to Mortgagor in accordance with the terms and provisions of this Mortgage shall be reduced by the reasonable costs (if any) incurred by Mortgagee in the adjustment and collection thereof and in the reasonable costs incurred by Mortgagee of paying out such proceeds (including, without limitation, reasonable attorneys' fees and costs paid to third parties for inspecting the Repair Work and reviewing the plans and specifications therefor).

(b) If Mortgagor undertakes the Repair Work, Mortgagor shall promptly and diligently, at Mortgagor's sole cost and expense and regardless of whether the insurance proceeds or Award, as appropriate, shall be sufficient for the purpose, complete the Repair Work to restore the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to the Casualty or Taking in accordance with the foregoing provisions.

(c) Any reduction in the Debt resulting from Mortgagee's application of any sums received by it under this Paragraph 4 shall take effect only when Mortgagee actually receives such sums and elects to apply such sums to the Debt and, in any event, the unpaid portion of the Debt shall remain in full force and effect and Mortgagor shall not be excused in the payment thereof. Partial payments received by Mortgagee, as described in the preceding sentence, shall be

applied against the Note consistent with the prepayment provisions described therein for casualty or condemnation proceeds.

5. Tax and Insurance Impound. As of the date of this Mortgage, Mortgagor shall pay to Mortgagee on demand for deposit into the Tax and Insurance Impound (as defined below) an amount (i) equal to one-twelfth of the Taxes estimated by Mortgagee to be due to the applicable taxing authorities as of the date such Taxes are first due and payable without penalty or interest after the date hereof multiplied by the number of months elapsed from and including the first month for which such Taxes have been assessed to and including the first month occurring after the month in which this Mortgage becomes effective, and (ii) one-twelfth of the Insurance Premiums that Mortgagee estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof multiplied by the number of months elapsed from and including the first month in which the currently effective Policies became effective to and including the first month occurring after the month in which this Mortgage becomes effective. Thereafter, Mortgagor shall pay to Mortgagee on the first day of each calendar month (a) one-twelfth of the Taxes that Mortgagee estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Mortgagee sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (b) one-twelfth of the Insurance Premiums that Mortgagee estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Mortgagee sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (the fund into which said amounts in (a) and (b) above shall be deposited is hereinafter called the "**Tax and Insurance Impound**"). The monthly payment into the Tax and Insurance Impound and the payments of interest and principal payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor agrees to notify Mortgagee immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has or obtains knowledge and authorizes Mortgagee or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. Mortgagor hereby pledges to Mortgagee and grants to Mortgagee a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Impound as additional security for the payment of the Debt. Provided that there are sufficient amounts on deposit in the Tax and Insurance Impound and no Event of Default exists, Mortgagee will apply the Tax and Insurance Impound to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant hereto. In making any payment relating to the Tax and Insurance Impound, Mortgagee may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amounts on deposit in the Tax and Insurance Impound shall exceed the amounts due for Taxes and Insurance Premiums, Mortgagee shall, in its sole discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Tax and Insurance Impound. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If at any time Mortgagee determines that the amounts on deposit in the Tax and Insurance Impound are not or will not be sufficient to pay the Taxes and Insurance Premiums, Mortgagee shall notify Mortgagor of such determination and Mortgagor shall increase its monthly payments to Mortgagee by the amount that Mortgagee estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Taxes and/or expiration of the Policies, as the case may be. Whenever an Event of Default exists, Mortgagee may apply any sums then present in the Tax and Insurance Impound to the payment of the Debt in any order in its sole discretion. Until expended or

applied as above provided, any amounts in the Tax and Insurance Impound shall constitute additional security for the Debt. The Tax and Insurance Impound shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. Unless otherwise required by applicable law, Mortgagor shall not receive interest or other earnings on the Tax and Insurance Impound, which shall be held in Mortgagee's name at a financial institution selected by Mortgagee in its sole discretion. If Mortgagee so elects at any time, Mortgagor shall provide, at Mortgagor's expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Mortgagee. If Mortgagee does not so elect, Mortgagor shall reimburse Mortgagee for the cost of making annual tax searches throughout the Term.

6. Replacement Escrow Fund. Mortgagor shall pay \$4,777.50 to Mortgagee on the first day of each calendar month, the amount estimated by Mortgagee in its sole discretion to be due for replacements and repairs required to be made to the Mortgaged Property (the "**Replacement Escrow Fund**"). Mortgagor's obligation to make the monthly \$4,777.50 payment for deposit in the Replacement Escrow Fund shall be suspended at any time when the undisbursed balance in the Replacement Escrow Fund as of the last day of the calendar month preceding the applicable monthly payment date is at least \$114,612.00 (the "**Replacement Reserve Cap Amount**"), the intent hereof being that the monthly payments shall resume and continue following any such suspension to the extent that the undisbursed balance is less than the Replacement Reserve Cap Amount. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter deposited in the Replacement Escrow Fund as additional security for the payment of the Debt. Provided that no Event of Default exists, Mortgagee shall make disbursements from the Replacement Escrow Fund as requested, in writing, by Mortgagor, and approved by Mortgagee in its reasonable discretion, on a quarterly basis in increments of no less than \$5,000 upon delivery by Mortgagor of copies of paid invoices (or with respect to requests in excess of \$10,000, unpaid invoices) for the amounts requested, a certification from the Mortgagor stating: (a) the nature and type of the related replacement or repair, (b) that the related replacement or repair has been completed in a good and workmanlike manner and (c) that the related replacement or repair has been paid for in full (or, with respect to requests in excess of \$10,000, will be paid for in full from the requested disbursement) and, if required by Mortgagee, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment. Any disbursement by Mortgagee hereunder for a capital item in excess of \$10,000 and not already paid for by Mortgagor, shall be made by joint check, payable to Mortgagor and the applicable contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with such capital item. Mortgagee may require an inspection of the Mortgaged Property at Mortgagor's expense prior to making a disbursement in order to verify completion of replacements and repairs for which reimbursement is sought. The Replacement Escrow Fund shall be held in an interest bearing account in Mortgagee's name at a financial institution selected by Mortgagee in its sole discretion. All earnings or interest on the Replacement Escrow Fund shall be and become a part of such Replacement Escrow Fund and shall be disbursed as provided in this Paragraph 6(a). All costs and expenses incurred by Mortgagee in establishing and maintaining such interest bearing account shall be paid by Mortgagor, Mortgagee may charge such costs and expenses directly against the Replacement Escrow Fund, and Mortgagor shall thereafter promptly pay to Mortgagee for deposit into the Replacement Escrow Fund the full amount of such charges and expenses. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Replacement Escrow Fund to the payment of the Debt in any order in its sole discretion. The Replacement Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. Following the delivery and recording of a satisfaction, release, reconveyance or discharge of this Mortgage duly executed by Mortgagee, any funds remaining on deposit in the Replacement Escrow Fund will be disbursed to Mortgagor.

7. Leases and Rents.

(a) For Ten Dollars (\$10.00) and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged and confessed, Mortgagor has absolutely GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does absolutely and unconditionally GRANT, BARGAIN, SELL, and CONVEY the Rents unto Mortgagee, in order to provide a source of future payment of the Debt subject only to the permitted exceptions applicable thereto and the License (herein defined), it being the intention of Mortgagor and Mortgagee that this conveyance be presently and immediately effective; TO HAVE AND TO HOLD the Rents unto Mortgagee, forever, and Mortgagor does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Rents unto Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Mortgagor shall pay or cause to be paid the Debt as and when the same shall become due and payable and shall perform and discharge or cause to be performed and discharged the Obligations on or before the date the same are to be performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles, and interests conveyed pursuant to this assignment of rents shall become vested in Mortgagor without the necessity of any further act or requirement by Mortgagor or Mortgagee.

(b) Mortgagee hereby grants to Mortgagor a limited license (the "**License**") subject to termination of the License and the other applicable terms and provisions of Paragraph 25 hereof, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents, and to give proper receipts, releases, and acquittances therefor. Mortgagor hereby agrees to receive all Rents and hold the same as a trust fund to be applied, and to apply the Rents so collected, first to the payment of the Debt, next to the performance and discharge of the Obligations, and next to the payment of all expenses associated with the ownership and operation of the Premises and Improvements. Thereafter, Mortgagor may use the balance of the Rents collected in any manner not inconsistent with the Loan Documents. Neither this Assignment nor the receipt of Rents by Mortgagee shall effect a pro tanto payment of any portion of the Debt, and such Rents shall be applied as provided in this Paragraph 7. Furthermore, and notwithstanding the provisions of this Paragraph 7, no credit shall be given by Mortgagee for any Rents until the money collected is actually received by Mortgagee, and no such credit shall be given for any Rents after termination of the License, after foreclosure or other transfer of the Mortgaged Property (or part thereof from which Rents are derived pursuant to this Mortgage) to Mortgagee or any other third party.

(c) Upon receipt from Mortgagee of a Lease Rent Notice (as defined in Paragraph 25 hereof), each lessee under the Leases is hereby authorized and directed to pay directly to Mortgagee all Rents thereafter accruing, and the receipt of Rents by Mortgagee shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Lease Rent Notice shall be sufficient authorization for such lessee to make all future payments of Rents directly to Mortgagee and each such lessee shall be entitled to rely on such Lease Rent Notice and shall have no liability to Mortgagor for any Rents paid to Mortgagee after receipt of

such Lease Rent Notice. Rents so received by Mortgagee for any period prior to foreclosure under this Mortgage or acceptance of a deed in lieu of such foreclosure shall be applied by Mortgagee to the payment of the following in such order and priority as Mortgagee shall determine: (i) the Debt and all expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rent as it becomes due and payable and (ii) all expenses associated with the ownership and operation of the Premises and Improvements. In no event will this Paragraph 7 reduce the Debt except to the extent, if any, that Rents are actually received by Mortgagee and applied upon or after said receipt to the Debt in accordance with the preceding sentence. Without impairing its rights hereunder, Mortgagee may, at its option, at any time and from time to time, release to Mortgagor Rents so received by Mortgagee or any part thereof. As between Mortgagor and Mortgagee, and any person claiming through or under Mortgagor, other than any lessee under the Leases who has not received a Lease Rent Notice, this Assignment of Rents is intended to be absolute, unconditional and presently effective (and not an assignment for additional security), and the Lease Rent Notice hereof is intended solely for the benefit of each such lessee and shall never inure to the benefit of Mortgagor or any person claiming through or under Mortgagor, other than a lessee who has not received such notice. It shall never be necessary for Mortgagee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Mortgage with respect to Rents. **MORTGAGOR SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY LESSEE FOR THE PAYMENT OF ANY RENTS TO MORTGAGEE HEREUNDER, AND MORTGAGOR HEREBY INDEMNIFIES AND AGREES TO HOLD FREE AND HARMLESS EACH LESSEE FROM AND AGAINST ALL LIABILITY, LOSS, COST, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY SUCH LESSEE BY REASON OF SUCH LESSEE'S COMPLIANCE WITH ANY DEMAND FOR PAYMENT OF RENTS MADE BY MORTGAGEE CONTEMPLATED BY THIS MORTGAGE.**

(d) At any time during which Mortgagor is receiving Rents directly from any of the lessees under the Leases, Mortgagor shall, upon receipt of written direction from Mortgagee, make demand and/or sue for all Rents due and payable under one or more Leases, as directed by Mortgagee, as it becomes due and payable, including Rents which are past due and unpaid. If Mortgagor fails to take such action, or at any time during which Mortgagor is not receiving Rents directly from lessees under the Leases, Mortgagee shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Mortgagor, all Rents due and payable under the Leases, as it becomes due and payable, including Rents which are past due and unpaid.

(e) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor at such commercial or savings bank or banks as may be reasonably satisfactory to Mortgagee. Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Mortgagee, shall, if permitted pursuant to any legal requirements, name Mortgagee as payee or Mortgagee thereunder (or at Mortgagee's option, be fully assignable to Mortgagee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon

request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Whenever an Event of Default exists, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, turn over to Mortgagee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Mortgaged Property, to be held by Mortgagee subject to the terms of the Leases.

(f) Mortgagor covenants and agrees (i) to perform punctually all obligations and agreements to be performed by it as lessor or party thereto under any Lease, and under any operating agreement, reciprocal easement agreement or similar such agreement; (ii) to do all things necessary or appropriate in the ordinary course of its business to compel performance by each other party to each of such instruments of such other party's obligations and agreements thereunder; (iii) not to collect any of the Rents more than one (1) month in advance; (iv) not to execute any other assignment of lessor's interest in the Leases or the Rents and (v) not to permit any subletting of any space covered by a Lease or an assignment of the tenant's rights under a Lease except in strict accordance with the terms of such Lease. Except as otherwise permitted hereunder, Mortgagor shall not give any notice, approval or consent or exercise any rights under or in respect of any Lease or any of such other instruments, which action, omission, notice, approval, consent or exercise of rights would release any tenant or other party from, or reduce any tenant's or any other party's obligations or liabilities under, or would result in the termination, surrender or assignment of, or the amendment or modification of in any material adverse respect, or would impair the validity of, any Lease or any of such other instruments, if any of the foregoing would affect the Mortgaged Property in any material adverse respect, without the prior written consent of Mortgagee, and any attempt to do any of the foregoing without such consent shall be of no force and effect.

(g) Mortgagor will promptly deliver to Mortgagee a copy of any notice from any other party to an operating agreement, reciprocal easement agreement or similar such agreement, or any tenant under any Lease (other than any Lease covering a residential dwelling unit or manufactured or mobile home pad site), in any such case claiming that Mortgagor is in default in the performance or observance of any of the terms, covenants or conditions thereof to be performed or observed by Mortgagor and Mortgagor will use commercially reasonable efforts to provide in each Lease (other than any Lease covering a residential dwelling unit or manufactured or mobile home pad site) executed after the date hereof to which Mortgagor is a party that any tenant delivering any such notice shall send a copy of such notice directly to Mortgagee. Following Mortgagee's written request, Mortgagor shall deliver to Mortgagee a duplicate original or certified copy of each Lease covering any portion of the Premises or Improvements.

(h) Mortgagor shall not enter into any Lease after the date hereof that would, evaluated alone or in conjunction with any then existing Leases, result in any material impairment of the fair market value, as of the date such Lease is executed by Mortgagor, of the Premises or Improvements. Mortgagor may enter into any Lease which is not inconsistent with the provisions of this Paragraph 7 and the other applicable provisions of this Mortgage and the Loan Documents, if any. Each Lease entered into after the date hereof and each renewal or extension on or after the date hereof of any Lease (a "**Renewal Lease**") shall (i) except Leases covering dwelling units, be with a tenant with experience in the business to be conducted at the space to be covered by such Lease, (ii) be with a tenant whom Mortgagor has reasonably determined is creditworthy in light

of the financial obligations to be assumed by such tenant under the Lease or Renewal Lease, (iii) have an initial term of not less than three (3) or more than ten (10) years, except Leases covering residential dwelling units or manufactured or mobile home pad sites, (iv) provide for rent and other items to be payable in amounts at least equal to the fair market rental value (taking into account the type and quality of the tenant and the space covered by such Lease), as of the date such Lease or Renewal Lease is executed by Mortgagor (unless, in the case of a Renewal Lease, the rent payable during such renewal, or a formula or other method to compute such rent, is provided for in the original Lease), (v) not have a material adverse effect on the value of the Premises and Improvements as a whole or the ability of Mortgagor to pay the Debt, (vi) other than Leases to employees of Mortgagor or Manager which are entered into in the ordinary course of the prudent operation of the Mortgaged Property in accordance with the prevailing market practices (to the extent such practices are prudent), constitute an arm's-length transaction with a bona fide, independent third-party tenant, (vii) be expressly subject and subordinate to this Mortgage and contain provisions for the agreement by the tenant thereunder to attorn to Mortgagee and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Premises and Improvements by any purchaser at a foreclosure sale, (viii) except Leases covering residential dwelling units, require the tenant thereunder to execute and deliver to Mortgagor an estoppel certificate addressing the issues set forth in Paragraph 12(b) of this Mortgage, (ix) except in connection with Leases covering residential dwelling units or manufactured or mobile home pad sites, contain a provision requiring continuous operations of tenant's business on the premises and a prohibition against tenant operating a competing business at or near the Premises, unless Mortgagor certifies to Mortgagee in writing that one or both of such provisions are not customary, usual or marketable for Leases covering properties of the size and type of the Premises and Improvements within the real property market in which the Premises and Improvements compete, and (x) be written on the standard form of lease (without any material changes) approved in writing by Mortgagee. Subject to the provisions below covering Material Leases, Mortgagor may, without the consent of Mortgagee, amend, modify or waive the provisions of any Lease, provided that such action is in the normal course of Mortgagor's business in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Improvements are located, does not have a material adverse effect upon the value of any of the Premises and Improvements, and provided further that such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this Mortgage and the other Loan Documents, as applicable. Following Mortgagee's written request, Mortgagor shall deliver to Mortgagee a duplicate original or certified copy of the amendment, modification or waiver. Subject to the provisions below covering Material Leases, Mortgagor may terminate or permit the termination of any Lease or accept surrender of all or any portion of the space demised under any Lease or acquire any Lease or reduce the rentals reserved under or shorten the term of any Lease so long as such action is in the normal course of Mortgagor's business in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Improvements are located, and does not materially adversely affect the value of the Premises and Improvements (taking into account the planned alternative uses of the space) or the ability of Mortgagor to pay the Debt. All Leases and Renewal Leases, and amendments, modifications, terminations or waivers thereof not meeting the foregoing requirements may not be entered into by Mortgagor without the prior written approval of Mortgagee.

(i) Mortgagor shall not enter into any Lease with an affiliate of Mortgagor without the prior written consent of Mortgagee. Mortgagor shall not enter into any Lease that grants the tenant thereunder a right or option to purchase all or any portion of the Premises and Improvements.

(j) Notwithstanding anything contained herein to the contrary, Mortgagor shall not, without the prior written consent of Mortgagee, enter into, renew, extend, amend, modify, waive any provisions of, terminate, permit the termination of, or accept surrender of all or any portion of the space demised under, any Material Lease. The term "**Material Lease**" shall mean any existing commercial Lease that covers or proposed commercial lease agreement that would cover more than 1,000 rentable square feet of the Premises or Improvements, but shall not include any existing Lease or proposed lease covering a residential dwelling unit or manufactured or mobile home pad site unless any such residential unit Lease, or proposed lease, covers 14 or more residential units, or any such residential unit Lease or proposed lease is with a tenant that is affiliated with other tenants at the Improvements so that such tenant and affiliated tenants lease (or would lease) in the aggregate 14 or more residential units. Nothing in this subparagraph shall prohibit Mortgagor from accepting a tenant's election of a right to extend the term of any Material Lease existing as of the date hereof or which Material Lease is subsequently approved by Mortgagee pursuant to the terms hereof if such right to extend is expressly provided for in such Material Lease, the exercise of such right is at the sole option of the tenant thereunder and the length of the extended term and the rental to be paid during the extended term are fixed amounts set forth in such Material Lease.

(k) Any Lease, Renewal Lease, Material Lease, or modification, amendment, waiver, renewal or extension of a Lease or Material Lease that may not be entered into by Mortgagor under this Mortgage without the prior approval of the Mortgagee (a "**Lease Under Review**") must be submitted to Mortgagee together with a comparison of such Lease Under Review compared against the standard form of lease then being used by Mortgagor. Mortgagee shall have fifteen (15) business days after its acknowledged receipt of a Lease Under Review to approve or disapprove the same or to request additional information or materials in connection with its review (the "**Additional Due Diligence Material**"). If Mortgagee disapproves a Lease Under Review, Mortgagee shall provide Mortgagor with a written explanation of the reasons for disapproval. If Mortgagee has not approved or disapproved a Lease Under Review within fifteen (15) business days of its acknowledged receipt of such Lease Under Review or of the Additional Due Diligence Material, if any, Mortgagee requested as provided above, then such Lease Under Review shall be deemed approved.

8. Transfer or Encumbrance of the Mortgaged Property.

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor and its controlling principals in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt

or performance of the Obligations, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Accordingly, except for Transfers (as defined below) expressly permitted by the terms of this Mortgage below, Mortgagor covenants and agrees not to effect any Transfer or permit any Transfer to occur without in each instance the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion. Any Transfer not expressly permitted by this Mortgage made without the prior written consent of Mortgagee shall constitute an Event of Default and Mortgagee shall have the option to exercise any and all remedies on account of the same, including accelerating the Maturity Date and declaring the entire outstanding Debt immediately due and payable.

(b) The term "**Transfer**" means (i) any direct, indirect, voluntary or involuntary, sale, conveyance, assignment, alienation, disposition, mortgage, encumbrance, pledge or other transfer of all or any part of the Mortgaged Property, or of all or any portion of the ownership interests in (or, through constituent parties, any of the ultimate beneficial ownership interests in) Mortgagor, including any transfer of ownership interests resulting from the death of a natural person or by operation of law, or (ii) Mortgagor shall be divested of its title to the Mortgaged Property or any interest therein, in any manner or way, whether voluntarily or involuntarily. A Transfer includes, without limitation, (A) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (B) an agreement by Mortgagor leasing all or a substantial part of the Premises or Improvements for other than actual occupancy by a space tenant thereunder pursuant to a Lease in accordance with the terms of the applicable Loan Documents; (C) a sale, assignment, pledge, encumbrance or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (D) any change in control of Mortgagor, Guarantor or either of their respective Governing Entities, or (E) any pledge, hypothecation, assignment, transfer or other encumbrance of any ownership interest in Mortgagor, Guarantor or either of their respective Governing Entities.

(c) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon any Transfer made without Mortgagee's prior written consent. This provision shall apply to every Transfer whether voluntary or not, or whether or not Mortgagee has consented to any previous Transfer.

(d) Mortgagee's consent to any Transfer shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future Transfer. Any Transfer made in contravention of this Paragraph 8 shall be null and void and of no force and effect.

(e) In connection with the review, approval and documentation of any Transfer Mortgagor shall pay or reimburse Mortgagee on demand all reasonable out-of-pocket expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums, rating agency fees, and the cost of legal opinions relating to REMIC or similar tax issues) incurred by Mortgagee in connection with the review, approval and documentation of such Transfer.

(f) Notwithstanding anything to the contrary in this Paragraph 8, Transfers of ownership interests in Mortgagor or of ownership interests in any entity that directly or indirectly holds an ownership interest in Mortgagor may be consummated without the prior consent of Mortgagee and without payment of a Transfer Fee (as defined below), provided that with respect to each such Transfer permitted by this subparagraph (f) all of the following conditions are first satisfied:

(i) After taking into account any prior Transfer, whether to the proposed transferee or otherwise, no single Transfer (or series of Transfers) shall result in (A) the proposed transferee, together with all of the proposed transferee's Family Members or any affiliates thereof, owning in the aggregate (directly, indirectly or beneficially) more than forty-nine percent (49%) of the ownership interests in Mortgagor (or in any entity directly or indirectly holding an ownership interest of more than 49% in Mortgagor), or (B) a Transfer in the aggregate of more than forty-nine percent (49%) of the ownership interests in Mortgagor (or in any entity directly or indirectly holding an ownership interest of more than 49% in Mortgagor) that exist as of the date hereof.

(ii) No Transfer otherwise permitted under this Subparagraph (f), regardless of the amount of ownership interest subject to the Transfer, shall result in a change of control of Mortgagor or its Governing Entity, or the day to day operations of the Mortgaged Property.

(iii) Mortgagor shall give Mortgagee notice of each Transfer (at least 10 days in advance of any Transfer other than one resulting from the death of an individual) together with copies of all instruments effecting such Transfer.

(iv) Mortgagee shall have received payment of all out-of-pocket costs and expenses, if any, incurred by Mortgagee in connection with such Transfer.

(v) No Event of Default shall exist.

(vi) If required by Mortgagee, Mortgagor shall have delivered to Mortgagee an endorsement to the policy of title insurance that insures the lien of this Mortgage to the effect that the validity and priority of the lien of this Mortgage and the effectiveness of such title insurance policy are not adversely affected by the Transfer effected pursuant to this subparagraph.

(vii) If required by Mortgagee, Mortgagor and Guarantor shall have executed and delivered to Mortgagee such documents as Mortgagee may reasonably require affirming the continued effectiveness of all of the Loan Documents notwithstanding the Transfer effected pursuant to this subparagraph.

(viii) Upon consummation of such Transfer the legal and financial structure of Mortgagor (and if applicable, its Governing Entity), and the single purpose nature of Mortgagor (and if applicable, its Governing Entity), satisfies all of the applicable requirements of this Mortgage (including Paragraph 9), and such Transfer does not result in a requalification, reduction or withdrawal of any rating initially assigned or to be

assigned by the Rating Agencies in a Secondary Market Transaction (as hereinafter defined).

(ix) If required by Mortgagee, Mortgagor shall have delivered to Mortgagee a legal opinion from legal counsel of Mortgagor's choosing but reasonably acceptable to Mortgagee and in form and substance reasonably satisfactory to Mortgagee addressing the "bankruptcy remote" issues commonly found in so-called "non-consolidation legal opinions.

(g) Transfers of ownership interests in Mortgagor or of ownership interests in any entity that directly or indirectly holds an ownership interest in Mortgagor occurring solely by devise, descent or by operation of law upon the death of a natural person, or a Transfer of ownership interests in Mortgagor or of ownership interests in any entity that directly or indirectly holds an ownership interest in Mortgagor for bona fide estate planning purposes, that are not covered by the terms of Subparagraph 8(f), and Transfers of ownership interests in Guarantor, will nevertheless not require the consent of Mortgagee or require the payment of a Transfer Fee if (i) all transferees are Family Members, (ii) none of the transferees is then or ever has been a debtor in a bankruptcy or reorganization proceeding or is then or ever has been a defendant in a criminal enforcement proceeding involving any matter classified as a felony under applicable law or involving charges of moral turpitude or fraud, (iii) the person or entity in control of Mortgagor (or Guarantor, if applicable) following the Transfer and the day-to-day operations of the Mortgaged Property is acceptable to Mortgagee in all respects based upon Mortgagee's then applicable underwriting criteria and requirements, and (iv) the requirements of clauses (iii) through (ix) of Subparagraph 8(f) are satisfied.

(h) For purposes of this Paragraph 8, (i) "control" means the power to direct the management and policies of Mortgagor, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise, and (ii) a "Family Member" means a spouse, child, grandchild or other lineal descendant of the transferor or transferee, as the case may be, and any trust established for the benefit of a spouse, child, grandchild or other lineal descendant of the transferor or transferee, as the case may be.

(i) Notwithstanding anything to the contrary in this Paragraph 8, Mortgagor shall have the right to transfer the Mortgaged Property in its entirety (a "**Property Transfer**") if, and only if, all of the following conditions are first satisfied:

(i) No Event of Default or event which with the giving of notice or the passage of time would constitute an Event of Default shall exist.

(ii) Mortgagor gives Mortgagee written notice of the terms of such prospective Property Transfer not less than thirty (30) days before the date on which such Property Transfer is scheduled to be consummated and, concurrently therewith, gives Mortgagee all reasonable information concerning the proposed transferee of the Mortgaged Property ("**Transferee**") and the proposed person or entity that will assume Guarantor's obligations under the Guaranty ("**Transferee Guarantor**") as Mortgagee would require in evaluating an initial extension of credit to a borrower and pays to

Mortgagee a non-refundable application fee in the amount of \$5,000.00 (the "**Application Fee**").

(iii) Mortgagee approves in writing the Transferee and, if applicable, the Transferee Guarantor, which approval Mortgagee may withhold in its reasonable discretion. In determining whether to give or withhold its approval of the Transferee and Transferee Guarantor, Mortgagee may consider the Transferee's experience in owning and operating facilities similar to the Premises and Improvements, the Transferee's entity structure, the Transferee's and, if applicable, the Transferee Guarantor's financial strength and creditworthiness, and the Transferee's and, if applicable, the Transferee Guarantor's general business standing and their relationships with contractors, vendors, tenants, lenders and other business entities. In connection with such consideration by Mortgagee, Mortgagee may review such financial statements, credit reports, tax returns and other information reasonably requested by Mortgagee.

(iv) Mortgagee shall have determined in its reasonable discretion that Transferee's proposed property manager has sufficient experience in the ownership and management of properties similar to the Premises and Improvements, and Mortgagee shall have received reasonable evidence thereof (and Mortgagee reserves the right to approve the Transferee without approving the substitution of the property manager).

(v) To the extent Mortgagee determines it necessary or prudent to do so, Mortgagee shall have received written recommendations from the Rating Agencies (as hereinafter defined) to the effect that the proposed Property Transfer will not result in a requalification, reduction or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction (as hereinafter defined). The term "**Rating Agencies**" as used herein shall mean each of Standard & Poor's Ratings Services, a division of McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., and Fitch, Inc., or any other nationally-recognized statistical rating agency which has been approved by Mortgagee;

(vi) Without any cost or expense to Mortgagee, Transferee and, if applicable, Transferee Guarantor execute and deliver to Mortgagee an assumption agreement in form and substance acceptable to Mortgagee evidencing such Transferee's agreement to abide and be bound by the terms of the Note, this Mortgage and the other Loan Documents and, if applicable, such Transferee Guarantor's agreement to abide and be bound by the terms of the Guaranty, and Transferee executes and delivers new financing statements or financing statement amendments, and Transferee and Transferee Guarantor deliver such additional documents and legal opinions as reasonably requested by Mortgagee to evidence and effectuate said assumption, including a legal opinion letter in form and substance reasonably acceptable to Mortgagee addressing the "bankruptcy remote" issues commonly found in so-called "non-consolidation legal opinions" issued by counsel to Transferee reasonably acceptable to Mortgagee.

(vii) If Transferee is other than a natural person, Mortgagee is in receipt of all documents evidencing the Transferee's capacity and good standing, and the qualification

of the signers to execute the assumption of the Debt, which documents shall include, without limitation, certified copies of all documents relating to the organization and formation of the Transferee and Transferee's Governing Entity. Transferee and such Governing Entity must satisfy all of the applicable requirements of Paragraph 9 of this Mortgage.

(viii) Mortgagor executes and delivers to Mortgagee, without any cost or expense to Mortgagee, a release of Mortgagee, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents, through and including the date of the consummation of the Property Transfer, which agreement shall be in form and substance reasonably satisfactory to Mortgagee.

(ix) Mortgagor delivers to Mortgagee, without any cost or expense to Mortgagee, such endorsements to Mortgagee's mortgagee policy of title insurance, hazard insurance endorsements or certificates and other similar materials as Mortgagee may deem reasonably necessary at the time of the Property Transfer, all in form and substance reasonably satisfactory to Mortgagee, including, without limitation, an endorsement or endorsements to Mortgagee's title insurance policy insuring the lien of this Mortgage, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above, with no additional exceptions added to such policy, and insuring that fee simple title to the Premises and Improvements are vested in the Transferee.

(x) Concurrently with the consummation of the Property Transfer, Mortgagor pays to Mortgagee in cash a non-refundable transfer fee equal to one percent (1%) of the then outstanding amount of the Debt (the "**Transfer Fee**"), which Transfer Fee is in addition to the Application Fee. The Application Fee shall be used to pay Mortgagee's reasonable and customary out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums, Rating Agency fees and the cost of legal opinions relating to REMIC or similar tax issues, incurred by Mortgagee in connection with the Property Transfer. Mortgagor's obligation to pay such out-of-pocket costs and expenses and attorneys' fees of Mortgagee in connection with such Property Transfer shall not exceed the Application Fee.

(j) Without limiting the foregoing, if a Property Transfer has been consummated following satisfaction of all of the conditions precedent set forth in Subparagraph 8(i) above and Mortgagee has received from Transferee and, if applicable, Transferee Guarantor, the written assumption agreement described in Subsection 8(i)(vi) above, then, and only then, the parties who have executed this Mortgage shall be relieved of all obligations under the Note, this Mortgage and the other Loan Documents, and the Guarantor, if applicable, shall be relieved of all obligations under the Guaranty, but in each instance only as to acts or events occurring, or obligations arising, after consummation of such Property Transfer.

(k) Notwithstanding any other term or provision of this Paragraph 8 to the contrary, Transfers of ownership interests in Mortgagor or of ownership interests in any entity that directly or indirectly holds an ownership interest in Mortgagor may not be consummated without the prior consent of Mortgagee for the period ending upon the first to occur of (i) a Secondary Market Transaction or (ii) one hundred eighty (180) days after the date of this Mortgage, upon which date this subparagraph shall terminate and be of no further force or effect.

9. Single Purpose Entity/Separateness. Mortgagor represents, warrants and covenants as follows:

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

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

(c) Mortgagor will not enter into any contract or agreement with any affiliate of the Mortgagor, any constituent party of Mortgagor, any guarantor (a "**Guarantor**") of the Debt or any part thereof or any affiliate of any constituent party or Guarantor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(d) Mortgagor has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt, (ii) unsecured trade and operational debt incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances and such debt is not evidenced by a promissory note executed by Mortgagor, provided that the outstanding amount of such trade and operational debt shall never be more than four percent (4%) of the stated principal sum of the Note at any one time and Mortgagor covenants to pay all such trade and operational debt within sixty (60) days of the date the same is incurred, and (iii) debt incurred in the ordinary course of Mortgagor's business to finance equipment and other personal property used on the Premises the removal of which would not materially damage the Improvements or materially impair the value of the Improvements, provided that such debt is not evidenced by a promissory note executed by Mortgagor or is secured by any property other than the item of equipment or personal property so financed. No indebtedness other than the Debt may be secured (subordinate or pari passu) by the Mortgaged Property.

(e) Mortgagor has not made and will not make any loans or advances to any third party (including any affiliate or constituent party, any Guarantor or any affiliate of any constituent party or Guarantor), and shall not acquire obligations or securities of its affiliates or any constituent party.

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

(g) Mortgagor has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, good standing and right to do business in the state where it is organized or registered and in the state where the Premises are located, and Mortgagor will not, and will not permit its Governing Entity, or Guarantor (if Guarantor is other than a natural person), to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, articles or organization and operating agreement, trust or other organizational documents of Mortgagor or the Governing Entity, without the prior written consent of Mortgagor.

(h) Mortgagor will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and Mortgagor will file its own tax returns, provided, however, that Mortgagor's assets may be included in a consolidated financial statement with its affiliates provided that the appropriate notations shall be made on such consolidated financial statement to indicate the separateness of Mortgagor and such affiliates and to indicate that none of such affiliates assets and credit are available to satisfy the debts and other obligations of Mortgagor.

(i) Mortgagor 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 of Mortgagor, any constituent party of Mortgagor, any Guarantor or any affiliate of any constituent party of Mortgagor or Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(j) Mortgagor 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.

(k) Neither Mortgagor, Guarantor nor any Governing Entity of Mortgagor or Guarantor, will seek the dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of the Mortgagor, Guarantor or such Governing Entity.

(l) Mortgagor will not commingle the funds and other assets of Mortgagor with those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party of Mortgagor or Guarantor, or any other person.

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

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

(o) If Mortgagor is a single-member limited liability company, (i) Mortgagor's operating agreement (the "**LLC Agreement**") provides for the continued existence of Mortgagor in the event of the bankruptcy or dissolution of the sole member, and (ii) Mortgagor has furnished to Mortgagee as of the date of this Mortgage an opinion of counsel reasonably acceptable to Mortgagee and its counsel that (i) Mortgagor is a legal entity formed in the state of its organization; (ii) the LLC Agreement constitutes a legal, valid and binding agreement of the sole member and is enforceable against the sole member in accordance with its terms; (iii) under the law of the state in which Mortgagor has been organized Mortgagor is a separate legal entity and the existence of Mortgagor as a separate legal entity shall continue until the cancellation of Mortgagor's articles of organization; (iv) the LLC Agreement provides for the continued existence of Mortgagor in the event of the bankruptcy or dissolution of the sole member, and such provisions would be enforceable under the laws of the state in which Mortgagor has been organized notwithstanding the bankruptcy or dissolution of the sole member; (v) no creditor of the sole member shall have any right to satisfy its claim against sole member by obtaining possession of, or otherwise realizing upon, the Mortgaged Property or any other assets of Mortgagor; (vi) if properly presented to a state court in the state in which Mortgagor has been organized, such state court applying such state's law, would conclude that until such time that no amounts remain due and payable and no obligations remain outstanding under the Loan Documents, in order for a person to file a voluntary bankruptcy petition on behalf of Mortgagor, the unanimous vote of the individuals serving as the managers of Mortgagor or as the managers or directors of Mortgagor's Governing Entity or of the sole member or of the sole member's Governing Entity, as the case may be, is required; and (vii) although on application to a court of competent jurisdiction a judgment creditor of the sole member may be able to charge the sole member's share of any profits and losses of Mortgagor and the sole member's right to receive distributions of Mortgagor's assets (the "Sole Member's Interest") and the court may appoint a receiver of the share of the distributions due or to become due to the sole member in respect of Mortgagor, the receiver shall have only the rights of an assignee of the Sole Member's Interest.

(p) If Mortgagor is a limited partnership or a limited liability company, its Governing Entity, shall be an entity whose sole asset is its interest in Mortgagor and each such Governing Entity will at all times comply, and will cause Mortgagor to comply, with each of the representations, warranties, and covenants contained in this Paragraph 9 as if such representation, warranty or covenant was made directly by such Governing Entity.

10. Maintenance of Mortgaged Property. Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair and in keeping with the condition and repair of properties of a similar use, value, age, nature and construction. Mortgagor shall not use, maintain or operate the Mortgaged Property in any manner which constitutes a public or private nuisance or which makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto. Mortgagor shall comply with all of the recommendations concerning the maintenance and repair of the Mortgaged Property which are contained in the inspection and engineering report which was delivered to Mortgagee in connection with the origination of the Loan. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the

Equipment with items of the same utility and of equal or greater value) without the prior written consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Mortgagor shall promptly repair, replace or rebuild any part of the Improvements or Equipment that is destroyed by any Casualty, or becomes damaged, worn or dilapidated or that is affected by any Taking and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Premises or Improvements or any part thereof. If under applicable zoning provisions the use of all or any portion of the Premises or Improvements is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee. Mortgagor shall not (i) change the use of the Premises or Improvements or (ii) take any steps whatsoever to convert the Premises or Improvements, or any portion thereof, to a condominium or cooperative form of management. Mortgagor will not install or permit to be installed on the Premises any underground storage tank. Mortgagor shall not commit or suffer any waste of the Mortgaged Property or make any change in the use of the Mortgaged Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Mortgaged Property, or take any action that might invalidate or give cause for cancellation of any of the Policies, or do or permit to be done thereon anything that may in any way impair the value of the Mortgaged Property in any material respect or the lien of this Mortgage. Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Premises, regardless of the depth thereof or the method of mining or extraction thereof.

11. Defeasance.

(a) At any time after the date which is the earlier of four years following the date hereof or two years after the date of a Secondary Market Transaction (as defined in Paragraph 19(b)), and provided no Event of Default exists, Mortgagor may obtain the release of the Mortgaged Property from the lien of this Mortgage upon the satisfaction of the following conditions precedent:

(i) not less than thirty (30) days prior written notice to Mortgagee specifying a regularly scheduled payment date (the "**Release Date**") on which the Defeasance Deposit (hereinafter defined) is to be made;

(ii) the payment to Mortgagee of interest accrued and unpaid on the principal balance of the Note to and including the Release Date;

(iii) the payment to Mortgagee of all other sums, not including scheduled interest or principal payments, due under the Note, this Mortgage, the Assignment of Leases, and the other Loan Documents;

(iv) the payment to Mortgagee of the Defeasance Deposit; and

(v) the delivery to Mortgagee of:

(A) a security agreement, in form and substance satisfactory to Mortgagee, creating a first priority lien on the Defeasance Deposit and the U.S. Obligations (hereinafter defined) purchased on behalf of Mortgagor with the Defeasance Deposit in accordance with this provision of this paragraph (the "**Security Agreement**");

(B) a release of the Mortgaged Property from the lien of this Mortgage (for execution by Mortgagee) in a form appropriate for the jurisdiction in which the Mortgaged Property is located;

(C) an officer's certificate of Mortgagor certifying that the requirements set forth in this Subparagraph (a) have been satisfied;

(D) an opinion of counsel for Mortgagor in form and substance and delivered by counsel satisfactory to Mortgagee stating, among other things (x) that Mortgagee has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations purchased by Mortgagee on behalf of Mortgagor, (y) that the Security Agreement is enforceable against Mortgagor in accordance with its terms and (z) that the defeasance will not cause any trust to fail to qualify as a "real estate mortgage investment conduit" (a "**REMIC**"), within the meaning of Section 860D of the Internal Revenue Code of 1986;

(E) evidence in writing from the applicable Rating Agencies to the effect that such release will not result in a re-qualification, reduction or withdrawal of any rating in effect immediately prior to such defeasance for any securities issued in connection with a Secondary Market Transaction; and

(F) such other certificates, opinions, documents or instruments as Mortgagee may reasonably request.

In connection with the conditions set forth in Subparagraph 11(a)(v) above, Mortgagor hereby appoints Mortgagee as its agent and attorney-in-fact for the purpose of using the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled payment dates after the Release Date upon which interest and principal payments are required under the Note and in amounts equal to the scheduled payments due on such dates under the Note (the "**Scheduled Defeasance Payments**"). Mortgagor, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to Mortgagee and applied to satisfy the obligations of the Mortgagor under the Note.

(b) Upon compliance with the requirements of this Paragraph 11, the Mortgaged Property shall be released from the lien of this Mortgage and the pledged U.S. Obligations shall be the sole source of collateral securing the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by Subparagraph (a) above and satisfy the Mortgagor's obligations under this paragraph shall be remitted to the Mortgagor with the release of the Mortgaged Property from the lien of this Mortgage. In

connection with such release, Mortgagee may establish or designate a successor entity (the "**Successor Mortgagor**") and Mortgagor shall transfer and assign all obligations, rights and duties under and to the Note together with the pledged U.S. Obligations to such Successor Mortgagor. The right of Mortgagee to establish or designate a Successor Mortgagor shall be retained by Mortgagee notwithstanding the sale or transfer of this Mortgage unless such obligation is specifically assumed by the transferee. Such Successor Mortgagor shall assume the obligations under the Note and the Security Agreement and Mortgagor shall be relieved of its obligations thereunder. The Mortgagor shall pay \$1,000.00 to any such Successor Mortgagor as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Mortgage to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this paragraph, but Mortgagor shall pay all costs and expenses incurred by Mortgagee, including Mortgagee's attorneys' fees and expenses, incurred in connection with this Paragraph 11.

(c) For purposes of this paragraph, the following terms shall have the following meanings:

(i) The term "**Defeasance Deposit**" shall mean an amount equal to the sum of one-hundred percent (100%) of the entire unpaid principal balance of the Note, the Yield Maintenance Premium, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of this paragraph;

(ii) The term "**Yield Maintenance Premium**" shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments; and

(iii) The term "**U.S. Obligations**" shall mean direct, non-callable obligations of the United States of America.

12. Estoppel Certificates and No Default Affidavits.

(a) After written request by Mortgagee, Mortgagor, within ten (10) days, shall furnish Mortgagee or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, no Events of Default or events which, with the passage of time or the giving of notice or both, would constitute an Event of Default exist under any of the Loan Documents, (vii) that, except as expressly set forth in such statement, all representations and warranties of Mortgagor set forth herein and in the other Loan Documents are true and correct in all material respects as of the date of such statement, (viii) that the Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such

modification, (ix) whether any offsets or defenses exist against the Debt or Obligations and, if any are alleged to exist, a detailed description thereof, (x) that all Leases are in full force and effect and (provided the Improvements are not a residential multifamily property) have not been modified (or if modified, setting forth all modifications), (xi) the date to which the Rents thereunder have been paid pursuant to the Leases, (xii) whether or not, to the best knowledge of Mortgagor, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in material default, setting forth the specific nature of all such material defaults, (xiii) the amount of security deposits held by Mortgagor under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiv) as to any other matters reasonably requested by Mortgagee and reasonably related to the Leases, the Debt and Obligations, the Mortgaged Property or this Mortgage.

(b) Except with respect to Leases covering residential dwelling units or manufactured or mobile home pad sites, upon Mortgagee's written request, subject to the provisions of the Leases, Mortgagor shall obtain from each tenant whose Lease requires such tenant to execute and deliver an estoppel certificate (and with respect to any tenant whose Lease does not require the same Mortgagor shall use its best efforts to obtain such certificate), and shall thereafter promptly deliver to Mortgagee duly executed estoppel certificates from any one or more tenants under the Leases as requested by Mortgagee, attesting to such facts regarding the Leases as Mortgagee may require, including, but not limited to, attestations that each Lease covered thereby is in full force and effect with no material defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, except as security, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease. Mortgagor shall not be required to deliver such certificates more frequently than one (1) time in any calendar year, other than the calendar year during which a Secondary Market Transaction occurs.

13. Changes in Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable, in which event the payment of the Debt shall be without any prepayment or yield maintenance premium or penalty.

14. No Credits on Account of the Debt. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable, in which event the payment of the Debt shall be without any prepayment or yield maintenance premium or penalty.

15. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

16. Controlling Agreement. It is expressly stipulated and agreed to be the intent of Mortgagor, and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Paragraph 16 shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Debt, and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee 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 Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

17. Financial Statements.

(a) Mortgagor represents and warrants to Mortgagee that the financial statements heretofore furnished to Mortgagee are, as of the dates specified therein, complete and correct in all material respects and fairly present the financial condition of the Mortgagor and any other persons or entities that are the subject of such financial statements, and are prepared in accordance with sound accounting principles consistently applied. Mortgagor does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Mortgagor and reasonably likely to have a materially adverse effect on the Mortgaged Property or the operation of the Improvements, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operation or business of Mortgagor from that set forth in said financial statements.

(b) Mortgagor will maintain full and accurate books and records of accounts in accordance with sound accounting principles consistently applied in which full, true and correct entries shall be promptly made with respect to Mortgagor, the Mortgaged Property and the

operation thereof, and will permit all such books and records (including without limitation all contracts, statements, invoices, bills and claims for labor, materials and services supplied for the construction, repair or operation of the Improvements) to be inspected or audited and copies made by Mortgagee and its representatives during normal business hours and at any other reasonable times. Mortgagor will furnish, or cause to be furnished, to Mortgagee on or before forty-five (45) calendar days after the end of each calendar quarter the following items, each certified by Mortgagor as being true and correct, in such format and in such detail as Mortgagee may request: (i) a written statement (rent roll) dated as of the last day of each such calendar quarter identifying each of the Leases by the term, space occupied, rental required to be paid, security deposit paid, any rental concessions, commencement date, expiration date, options to renew or expand, expense recovery provisions, and identifying any defaults or payment delinquencies thereunder; (ii) monthly and year-to-date operating statements prepared for each calendar month during each such calendar quarter reporting period detailing the total revenues received, total expenses incurred, total cost of all capital improvements, total debt service and total cash flow. From the date hereof through the earlier of the date twelve (12) months after the date hereof or the date of disposition of the Loan by Mortgagee in a Secondary Market Transaction (defined in Paragraph 19(b)), the Mortgagor shall furnish on a monthly basis each of the items listed in the immediately preceding sentence (collectively, the "**Pre-Securitization Financials**") within twenty (20) days after the end of each calendar month. Mortgagor's annual financial statements shall include, except with respect to tenants occupying and Leases covering residential dwelling units or manufactured or mobile home pad sites, (i) a list of the tenants, if any, occupying more than twenty (20%) percent of the total floor area of the Improvements, and (ii) a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which Leases shall expire in each such year, each such percentage to be expressed on both a per year and a cumulative basis. Within ninety (90) days following the end of each calendar year, Mortgagor shall furnish statements of its financial affairs and condition including a balance sheet and a statement of profit and loss for the Mortgagor in such detail and format as Mortgagee may request, and setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar year. Mortgagor's annual financial statements shall be accompanied by a certificate executed by its chief financial officer or by an authorized representative of its Governing Entity, as applicable, stating that each such annual financial statement presents fairly the financial condition of the Mortgaged Property being reported upon and has been prepared in accordance with sound accounting principles consistently applied. At any time and from time to time Mortgagor shall deliver to Mortgagee or its agents such other financial data as Mortgagee or its agents shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property.

(c) In the event that Mortgagor fails to provide to Mortgagee or its designee any of the financial statements, certificates, reports or information (the "**Required Records**") required by this Paragraph 17 within thirty (30) days after the date upon which such Required Record is due, Mortgagor shall pay to Mortgagee, at Mortgagee's option and in its sole discretion, an amount equal to \$5,000; provided that, Mortgagee has given at least fifteen (15) days prior written notice to Mortgagor of such failure by Mortgagor to timely submit the applicable Required Record and the opportunity to cure such default by delivering the applicable Required Record during such fifteen (15) day period. Notwithstanding the foregoing, in the event that

Mortgagor fails to provide Mortgagee with Pre-Securitization Financials on or before the date they are due, Mortgagor shall pay to Mortgagee at Mortgagee's option and in its sole discretion, an amount equal to \$5,000 for each month that Mortgagor fails to deliver the required Pre-Securitization Financials.

18. Performance of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any of the Intangibles or any other agreement or recorded instrument affecting or pertaining to the Mortgaged Property. Mortgagor further covenants and agrees to (a) give prompt notice to the Mortgagee of any notice received by the Mortgagor concerning any of the Intangibles or any such other agreement or recorded instruments, together with a complete copy of any such notice, (b) enforce, short of termination thereof, the performance and observance of each and every term, covenant and provision of the Intangibles and any such other agreement and recorded instrument to be performed or observed, if any, and (c) not terminate any of the Intangibles or any such other agreement or recorded statement without the prior written consent of the Mortgagee.

19. Further Acts, Etc.

(a) Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements, financing statement amendments or continuation statements, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby deeded, mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage or for facilitating the sale of the Loan and the Loan Documents as described in Paragraph 19(b) below. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, financing statement amendments, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property, including any statements describing the collateral as being all assets of Mortgagor, it being acknowledged that all such assets are intended to be included in the Collateral. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this paragraph.

(b) Mortgagor acknowledges that Mortgagee and its successors and assigns may (i) sell, assign or transfer this Mortgage, the Note and other Loan Documents to one or more

investors as a whole loan, (ii) grant participation interests in the Loan to investors or issue to investors mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement to one or more investors, (iii) deposit this Mortgage, the Note and other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets, (vi) transfer any and all of the servicing rights with respect to the Loan, or delegate any or all of its responsibilities as Mortgagee under the Loan Documents, or (v) deem the Note to have been subdivided into multiple components with notational balances as Mortgagee may determine (provided that the aggregate sum of the notational balances shall equal the then outstanding principal balance of the Note) and require each of the multiple components to be evidenced by a separately physical promissory note, or (vi) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (i) through (vi) are hereinafter each referred to as "**Secondary Market Transaction**"); provided, however, notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, Mortgagor shall not be obligated to take any action nor shall any such requirements be imposed in connection with a Secondary Market Transaction that would: (i) change the outstanding principal balance of the Loan; (ii) increase the interest rate or payments on the Loan; (iii) increase the rate of amortization of the Loan; (iv) shorten the maturity date of the Loan; (v) alter in any material way the transfer restrictions relating to direct or indirect interests in the Mortgaged Property (including any equity interests in the direct or indirect owners of Mortgagor); (vi) affect the limitations on recourse against Mortgagor; (vii) increase the amounts of reserves or escrows; (viii) violate any existing agreement to which Mortgagor, Guarantor or any of their affiliates is a party or any applicable law; or (ix) materially change any obligation of Mortgagor under the other Loan Documents. Mortgagor shall cooperate with Mortgagee in effecting any such Secondary Market Transaction and shall cooperate to implement all requirements imposed by any Rating Agency involved in any Secondary Market Transaction, provided that except for any of Mortgagor's own counsel fees, Mortgagor shall not be obligated to incur any costs or expenses to provide such cooperation. Subject to the foregoing provisions of this Subparagraph, Mortgagor shall execute such notes, modification and other agreements and provide such information, legal opinions and documents relating to Mortgagor, Guarantor, if any, the Mortgaged Property and any tenants of the Improvements as Mortgagee may reasonably request in connection with such Secondary Market Transaction. In addition, Mortgagor shall make available to Mortgagee all information concerning its business and operations that Mortgagee may reasonably request. Mortgagee shall be permitted to share all such information with the investment banking firms, Rating Agencies, accounting firms, law firms and other third-party advisory firms involved with the Loan and the Loan Documents or the applicable Secondary Market Transaction. It is understood that the information provided by Mortgagor to Mortgagee may ultimately be incorporated into the offering documents for the Secondary Market Transaction and thus various investors may also see some or all of the information. Mortgagee and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Mortgagor and Mortgagor indemnifies Mortgagee as to any losses, claims, damages or liabilities that arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such information or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, or in light of the circumstances under which they were made, not misleading. Mortgagee may

publicize the existence of the Loan in connection with its marketing for a Secondary Market Transaction or otherwise as part of its business development.

20. Recording of Mortgage, Etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any Mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. **MORTGAGOR HEREBY AGREES, AT ITS SOLE COST AND EXPENSE, TO PROTECT, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE INDEMNIFIED PARTIES (AS DEFINED BELOW) FROM AND AGAINST ANY AND ALL LOSSES (AS DEFINED BELOW) IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY INDEMNIFIED PARTIES AND DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY RELATING TO ANY TAX ON THE MAKING AND/OR RECORDING OF ANY OF THE LOAN DOCUMENTS.**

21. Notice of Certain Events. Mortgagor agrees to give prompt notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor or the death, insolvency or bankruptcy filing of any Guarantor.

22. Events of Default. The Debt shall become immediately due and payable at the option of Mortgagee upon the happening of any one or more of the following events of default (each an "**Event of Default**"):

- (a) failure to make payment of (1) interest or principal within five (5) days after the same is due, or (2) the entire Debt on or before the Maturity Date;
- (b) subject to Mortgagor's right to contest as provided herein, if any of the Taxes or Other Charges are not paid when the same are due and payable (unless and to the extent such failure is due to Mortgagee's failure to pay Taxes when sums sufficient for such purpose are on deposit in the Tax and Insurance Impound and no other Event of Default exists);
- (c) if the Policies are not kept in full force and effect (unless the same results from Mortgagee's failure to pay the applicable premiums therefor when sums sufficient for such purpose are on deposit in the Tax and Insurance Impound and no other Event of Default exists), or if the Policies are not delivered to Mortgagee upon request;

(d) if Mortgagor, Guarantor or either of their respective Governing Entities consummates a Transfer that is not expressly permitted under the terms of this Mortgage without Mortgagee's prior written consent;

(e) if any representation or warranty of Mortgagor, or of any Guarantor, made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor or any Guarantor shall generally not be paying its debts as they become due;

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

(h) if Mortgagor shall be in default under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;

(i) subject to Mortgagor's right to contest certain liens as provided for in this Mortgage, if the Mortgaged Property becomes subject to any lien, except a lien for local real estate taxes and assessments not then due and payable, and such lien is not discharged of record (by payment, bonding or otherwise) within sixty (60) calendar days after the date the same is filed of record;

(j) if any federal tax lien is filed against Mortgagor, Guarantor or either of their respective Governing Entities, or any of the Mortgaged Property, and the same is not discharged of record within thirty (30) calendar days after the date the same is filed of record;

(k) if Mortgagor fails to cure properly any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property within thirty (30) days after Mortgagor first receives notice of any such violations; provided, however, if such default is reasonably susceptible of cure, but not within such thirty (30) day period, then Mortgagor may be permitted up to an additional sixty days, or such lesser period as is permitted by law or ordinance violated or notice of violation thereof, to cure such default provided that Mortgagor commences a cure within such initial thirty (30) day period and thereafter diligently and continuously pursues such cure;

(l) except as permitted in this Mortgage or required pursuant to the terms of any Lease, the alteration, improvement, demolition or removal of any of the Improvements, or any construction on the Premises, without the prior consent of Mortgagee;

(m) if Mortgagor shall continue to be in default under any term, covenant, or provision of the Note or any of the other Loan Documents, beyond applicable cure periods contained in those documents;

(n) if Mortgagor fails to cure a default under any other term, covenant or provision of this Mortgage within thirty (30) days after Mortgagor first receives notice of any such default; provided, however, if such default is reasonably susceptible of cure, but not within such thirty (30) day period, then Mortgagor may be permitted up to an additional sixty (60) days to cure such default provided that Mortgagor diligently and continuously pursues such cure;

(o) if, without Mortgagee's prior written consent, (i) the Management Agreement is terminated by Mortgagor, (ii) Mortgagor permits or consents to a transfer of the ownership, management or control of Manager other than to Mortgagor's Governing Entity, (iii) there is a material change in the Management Agreement, or (iv) if there shall be a material default by Mortgagor under the Management Agreement; or

(p) if Mortgagor ceases to continuously operate the Improvements or any material portion thereof for any reason whatsoever (other than temporary cessation in connection with any repair or renovation thereof undertaken pursuant to the terms of this Mortgage, including but not limited to in connection with a casualty or condemnation, or with the prior written consent of Mortgagee).

23. Late Payment Charge. If any portion of the Debt is not paid within five (5) days of (and including) the date on which it is due, Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum amount permitted by applicable law in order to defray a portion of the expenses incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Mortgage.

24. Mortgagee's Right To Cure Defaults. Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest at the Default Rate (as defined in the Note) for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

25. Remedies.

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property by Mortgagee or otherwise, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(i) Declare the entire Debt to be immediately due and payable.

(ii) Institute a proceeding or proceedings, judicial or nonjudicial, by advertisement or otherwise, for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner.

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

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

(v) Institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, or in any of the other Loan Documents.

(vi) Recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage.

(vii) Apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt.

(viii) At any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. Mortgagor hereby agrees that Mortgagee shall have the right (in its sole discretion), whenever an Event of Default exists, to terminate the License granted to Mortgagor in Paragraph 7 hereof, and thereafter direct by written notice to the lessees under the Leases ("**Lease Rent Notice**") to pay directly to Mortgagee the Rents due and to become due under the Leases and attorn in respect of all other obligations thereunder directly to Mortgagee,

without any obligation on the part of lessees to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents collected by Mortgagee, shall be applied as provided for in Paragraph 7 of this Mortgage; provided, however, that if the costs, expenses, and attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Debt, shall bear interest at the Default Rate, and shall be immediately due and payable. The entering upon and taking possession of the Mortgaged Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such default is fully cured. Failure or discontinuance by Mortgagee, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Mortgagee, of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Mortgagee, shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Mortgage, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Mortgagor to Mortgagee. In addition, from time to time Mortgagee may elect, and notice hereby is given to each lessee under any Lease, to subordinate the lien of this Mortgage to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election the lien of this Mortgage shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance such subordination will not affect or be applicable to, and expressly excludes any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant and other rights, titles, interests or estates of any nature whatsoever with respect to all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Mortgage and the execution of the Lease identified in such instrument of subordination.

(ix) Enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise.

(x) Pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code.

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

(b) The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

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

(d) Upon the completion of any sale or sales pursuant hereto, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Any sale or sales made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

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

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this paragraph at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by the Note, this Mortgage or in any of the other Loan Documents in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, this

Mortgage or in any of the other Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Note, this Mortgage or in any of the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, this Mortgage or the other Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 25 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Note, this Mortgage or in any of the other Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, Guarantor or surety of any of the Debt.

26. Right of Entry and Inspection. In addition to any other rights or remedies granted under this Mortgage, Mortgagee, and their agents shall have the right to enter and inspect the Premises, Improvements and Equipment at any reasonable time during the Term, and inspect, examine, audit and copy Mortgagor's books and records, including all recorded data of any kind or nature, regardless of the medium of recording. The cost of such inspections, examinations, copying or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations, audits or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, examinations, audits and copying, if not paid for by Mortgagor following demand, may be added to the Debt and shall bear interest thereafter until paid at the Default Rate. If Mortgagor prohibits, bars or fails to permit Mortgagee, or their agents from entering and inspecting the Premises, Improvements and Equipment at any reasonable time during the Term, or from inspecting, examining, auditing and copying Mortgagor's books and records, including all recorded data of any kind or nature, regardless of the medium of recording, for more than five (5) days after a request is made by Mortgagee to do so, Mortgagor agrees to pay Mortgagee on demand the sum of \$1,000.00 for each day after such five (5) day period that Mortgagor so prohibits, bars or fails, and such sum or sums shall be part of the Debt.

27. Security Agreement. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other assets, rights and interests, whether tangible or intangible in nature, including all proceeds and products thereof, and all supporting obligations ancillary to or arising

in any way in connection therewith, of Mortgagor in the Mortgaged Property. It is the intent of Mortgagor and Mortgagee that the lien and security interest granted in this Mortgage encumber all Leases and that all items contained in the definition of "Leases" which are included within the Uniform Commercial Code be covered by the security interest granted in this Paragraph 27; and all items contained in the definition of "Leases" which are excluded from the Uniform Commercial Code be covered by the grant of a mortgage lien against the Mortgaged Property contained in this Mortgage. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph the "**Collateral**"). Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements, financing statement amendments and such further assurances as Mortgagee may from time to time, reasonably consider necessary to create, perfect, and preserve Mortgagee's security interest herein granted. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor; provided that if Mortgagee fails to comply with this sentence in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Uniform Commercial Code. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper. Mortgagee may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Collateral, and such compliance will not be considered or deemed to affect adversely the commercial reasonableness of any sale of the Collateral. Mortgagee may sell the Collateral without giving any warranties as to the Collateral, and specifically disclaim any warranties of title, merchantability, fitness for a specific purpose or the like, and this procedure will not be considered or deemed to affect adversely the commercial reasonableness of any sale of the Collateral. Mortgagor acknowledges that a private sale of the Collateral may result in less proceeds than a public sale, and Mortgagor acknowledges that the Collateral may be sold at a loss to Mortgagor, and that, in such event, Mortgagee shall have no liability or responsibility to Mortgagor or any other party for such loss. If Mortgagee shall require the filing or recording of additional Uniform Commercial Code financing statements, amendments thereto or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code financing statements, amendments thereto or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in

connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Note, this Mortgage or any of the other Loan Documents. Mortgagor hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Mortgagor as authorized by applicable law, including any statements describing the collateral as being all assets of Mortgagor, it being acknowledged that all such assets subject to the Uniform Commercial Code are intended to be included in the Collateral. For purposes of such filings, Mortgagor agrees to furnish promptly any information reasonably requested by Mortgagee. Mortgagor also hereby ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Mortgage. Mortgagor hereby irrevocably appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorney-in-fact, coupled with an interest, with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's name to execute in Mortgagor's name any such documents and to otherwise carry out the purposes of this Paragraph, to the extent that Mortgagor's authorization above is deemed not to be sufficient as a matter of law. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorneys-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof.

28. Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

29. Contest of Certain Claims. At its own expense, Mortgagor may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes, Other Charges or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Mortgagor shall have notified Mortgagee of the same within ten (10) days of obtaining knowledge thereof; (b) such legal proceedings shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety satisfactory to Mortgagee, in the amount of one hundred twenty-five percent of the Taxes (including any amount escrowed by Mortgagee pursuant to Paragraph 5 with respect to the Taxes being contested), Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other mortgage, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Mortgagee, the Mortgaged Property or any part thereof or interest therein may be in danger

of being sold, forfeited, foreclosed, terminated, canceled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

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

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

32. Hazardous Substances. All of the terms and provisions of Article II of the Environmental Indemnity are hereby incorporated into this Mortgage for all purposes as if set verbatim herein.

33. Environmental Operations. All of the terms and provisions of Section 3.1 of the Environmental Indemnity are hereby incorporated into this Mortgage for all purposes as if set verbatim herein.

34. Environmental Monitoring. All of the terms and provisions of Section 3.2 of the Environmental Indemnity are hereby incorporated into this Mortgage for all purposes as if set verbatim herein.

35. Compliance with Law; Alterations.

(a) Mortgagor agrees that the Mortgaged Property shall at all times strictly comply to the extent applicable with all Access Laws.

(b) Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Premises or Improvements, Mortgagor shall not alter the Premises or Improvements in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee, which consent shall not unreasonably be withheld. Mortgagee's approval of the plans, specifications, or working drawings for alterations of the Premises or Improvements shall create no responsibility or liability on behalf of Mortgagee for their completeness, design, sufficiency or their compliance with the Access Laws. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an independent architect, engineer, or other person acceptable to Mortgagee.

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

(d) Mortgagor shall take all appropriate measures to prevent, and will not engage in or knowingly permit any party to engage in, any criminal or illegal activities at the Premises or Improvements.

36. Indemnification.

(a) MORTGAGOR, AT ITS SOLE COST AND EXPENSE, SHALL PROTECT, DEFEND, INDEMNIFY AND SAVE HARMLESS THE INDEMNIFIED PARTIES (DEFINED BELOW) FROM AND AGAINST ALL LOSSES (AS DEFINED BELOW) IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY OF THE INDEMNIFIED PARTIES BY REASON OF (A) OWNERSHIP OF THIS MORTGAGE, THE MORTGAGED PROPERTY OR ANY INTEREST THEREIN OR RECEIPT OF ANY RENTS; (B) ANY ACCIDENT, INJURY TO OR DEATH OF PERSONS OR LOSS OF OR DAMAGE TO PROPERTY OCCURRING IN, ON OR ABOUT THE PREMISES OR IMPROVEMENTS OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (C) ANY USE, NONUSE OR CONDITION IN, ON OR ABOUT THE PREMISES OR IMPROVEMENTS OR ANY PART THEREOF OR ON ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (D) ANY FAILURE ON THE PART OF MORTGAGOR TO PERFORM OR COMPLY WITH ANY OF THE TERMS OF THIS MORTGAGE; (E) PERFORMANCE OF ANY LABOR OR SERVICES OR THE FURNISHING OF ANY MATERIALS OR OTHER PROPERTY IN RESPECT OF THE MORTGAGED PROPERTY OR ANY PART THEREOF; (F) ANY FAILURE OF THE MORTGAGED PROPERTY TO COMPLY WITH ANY APPLICABLE LAW, INCLUDING ACCESS LAWS; (G) ANY REPRESENTATION OR WARRANTY MADE IN THE NOTE, THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS BEING FALSE OR MISLEADING IN ANY MATERIAL RESPECT AS OF THE DATE SUCH REPRESENTATION OR WARRANTY WAS MADE; (H) ANY CLAIM BY BROKERS, FINDERS OR SIMILAR PERSONS CLAIMING TO BE ENTITLED TO A COMMISSION IN CONNECTION WITH ANY LEASE OR OTHER TRANSACTION INVOLVING THE MORTGAGED PROPERTY OR ANY PART THEREOF UNDER ANY LEGAL REQUIREMENT OR ANY LIABILITY ASSERTED AGAINST ANY INDEMNIFIED PARTY WITH RESPECT THERETO; AND (I) ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST ANY INDEMNIFIED PARTY BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON SUCH PARTY'S PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY LEASE. HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO OBLIGATE MORTGAGOR TO INDEMNIFY, DEFEND AND HOLD HARMLESS ANY INDEMNIFIED PARTY FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, ACTIONS, SUITS,

COSTS AND EXPENSES ENACTED AGAINST, IMPOSED ON OR INCURRED BY ANY INDEMNIFIED PARTY BY REASON OF SUCH PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. THIS INDEMNITY SHALL SURVIVE PAYMENT IN FULL OF THE DEBT, THE TERMINATION, SATISFACTION, RELEASE OR ASSIGNMENT OF THIS MORTGAGE AND THE EXERCISE BY MORTGAGEE OF ANY OF ITS RIGHTS OR REMEDIES HEREUNDER, INCLUDING, BUT NOT LIMITED TO, THE ACQUISITION OF THE MORTGAGED PROPERTY BY FORECLOSURE OR A CONVEYANCE IN LIEU OF FORECLOSURE.

(b) As used in this herein, the term (i) "**Indemnified Parties**" means (A) Mortgagee, (B) any officers, directors, shareholders, partners, members, employees, agents, attorneys, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (C) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of an Indemnified Party's assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan; and (ii) the term "**Losses**" means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, demands, causes of action, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense).

(c) Upon written request by any Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by such Indemnified Party. Notwithstanding the foregoing, any Indemnified Party may, in its sole discretion, engage its own attorneys and other professionals to defend or assist it, and, at the option of such Indemnified Party, its attorneys shall control the resolution of any claim or proceeding. Upon demand, Mortgagor shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

(d) Any amounts payable to Mortgagee by reason of the application of this Paragraph 36 shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by the Indemnified Parties until paid.

37. Notices. Any notice, demand, statement, request or consent made hereunder shall be in writing, addressed to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as Mortgagor or Mortgagee, as the case may be, shall designate in writing, and shall be deemed to be received by the addressee on (i) the day such notice is personally delivered to such addressee, (ii) the third (3rd) day following the day such notice is deposited with the United States postal service first class certified mail, return receipt requested, (iii) the day following the day on which such notice is delivered to a nationally recognized overnight courier delivery service, or (iv) the day facsimile transmission is confirmed after transmission of such notice by telecopy to such telecopier number as Mortgagor or Mortgagee, as the case may be, shall have previously designated in writing, provided,

however, that notice given by facsimile transmission shall only be effective if such notice is also delivered by another delivery method permitted hereunder. .

38. Authority. Mortgagor (and the undersigned representative of Mortgagor, if any) represent and warrant that it (or they, as the case may be) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and to deed, mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

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

40. No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

41. Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Mortgaged Property, this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

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

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

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

45. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form. The word "**Mortgagor**" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein;" the word "**Mortgagee**" shall mean "Mortgagee and any subsequent holder of the Note;" the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage together with all extensions, renewals, modifications, substitutions and amendments thereof;" the word "**person**" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity; the words "**Mortgaged Property**" shall include any portion of the Mortgaged Property and any interest therein; the term "**Affiliate**" means, as to any person, any other person that, directly or indirectly, is in control of, is controlled by or is under common control with such person; the word "**Access Laws**" shall refer to "all federal, state and local laws, orders, ordinances, governmental rules and regulations, and court orders affecting or which may be interpreted to affect the Mortgaged Property, or the use thereof, including, without limitation, the Americans with Disabilities Act, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, and the Fair Housing Amendments Act of 1988;" the words "**attorneys' fees**" shall include any and all attorney, paralegal and law clerk fees and disbursements, including, without limitation, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise; the term "**Bankruptcy Code**" means Title 11 of the United States Code, as now or hereafter amended; the term "**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute; and the words "**Loan Documents**" shall include any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements of any of the Loan Documents. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

46. Homestead. Mortgagor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part hereof.

47. Assignments. Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

48. Waiver of Jury Trial. MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE, OR THE OTHER

LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

49. Power of Sale.

(a) Upon the occurrence of an Event of Default, Mortgagee shall sell or offer for sale the Mortgaged Property in such portions, order and parcels as Mortgagee may determine with or without having first taken possession of same, to the highest bidder for cash at one or more public auctions in accordance with the terms and provisions of the law of the State in which the Mortgaged Property is located. Such sale shall be made at the area within the courthouse of the county in which the Mortgaged Property (or any portion thereof to be sold) is situated (whether the parts or parcels thereof, if any, in different counties are contiguous or not, and without the necessity of having any personal property hereby secured present at such sale) which is designated by the applicable court of such County as the area in which public sales are to take place, or, if no such area is designated, at the area at the courthouse designated in the notice of sale as the area in which the sale will take place, on such day and at such times as permitted under applicable law of the State where the Mortgaged Property is located, after advertising the time, place and terms of sale and that portion of the Mortgaged Property in accordance with such law, and after having served written or printed notice of the proposed sale by certified mail on each Mortgagor obligated to pay the Note and other secured indebtedness secured by this Mortgage according to the records of Mortgagee in accordance with applicable law. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

At any such public sale, Mortgagor may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property in fee simple. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold in its entirety or in separate parcels and in such manner or order as Mortgagee in its sole discretion may elect, and if Mortgagee so elects, the personal property covered by this Mortgage may be sold at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State in which the Mortgaged Property is located, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until all the Mortgaged Property is sold or the Note and other secured indebtedness is paid in full. If the Note and other secured indebtedness is now or hereafter further secured by any chattel Mortgages, pledges, contracts or guaranty, assignments of lease, or other security instruments, Mortgagee at its option may exhaust the remedies granted under any of said security instruments either concurrently or independently, and in such order as Mortgagee may determine.

(b) Upon any foreclosure sale or sales of all or any portion of the Mortgaged Property under the power herein granted, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

(c) In the event of a foreclosure or a sale of all or any portion of the Mortgaged Property under the power herein granted, the proceeds of said sale shall be applied, in whatever order Mortgagee in its sole discretion may decide, to the expenses of such sale and of all proceedings in connection therewith (including, without limitation, attorneys' fees and expenses), to fees and expenses of Mortgagee (including, without limitation, Mortgagee's attorneys' fees and expenses), to insurance premiums, liens, assessments, taxes and charges (including, without limitation, utility charges advanced by Mortgagee), to payment of the outstanding principal balance of the Debt, and to the accrued interest on all of the foregoing; and the remainder, if any, shall be paid to Mortgagor, or to the person or entity lawfully entitled thereto.

50. Recourse Provisions. Subject to the qualifications below, Mortgagee shall not enforce the liability and obligation of Mortgagor, to perform and observe the obligations contained in this Mortgage, the Note or in any of the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Mortgagor, except that Mortgagee may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Mortgagee to enforce and realize upon its interests under the Note, this Mortgage or the other Loan Documents or in the Mortgaged Property, the Rents or any other collateral given to Mortgagee pursuant to this Mortgage and the other Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Mortgagor only to the extent of Mortgagor's interest in the Mortgaged Property, the Rents and in any other collateral given to Mortgagee, and Mortgagee, by accepting this Mortgage, the Note and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Mortgagor in any such action or proceeding under or by reason of or in connection with this Mortgage, the Note or any of the other Loan Documents. The provisions of this paragraph shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Mortgage, the Note or any of the other Loan Documents; (ii) impair the right of Mortgagee to name Mortgagor, as a party defendant in any action or suit for foreclosure and sale under this Mortgage; (iii) affect the validity or enforceability of any guaranty or indemnity made in connection with the Loan or any rights and remedies of Mortgagee thereunder; (iv) impair the right of Mortgagee to obtain the appointment of a receiver; (v) impair the enforcement of the Assignment of Leases and Rents executed in connection herewith; or (vi) constitute a waiver of the right of Mortgagee to enforce the liability and obligation of Mortgagor, by money judgment or otherwise, to the extent of, but only to the extent of, any loss, damage, cost, expense, liability, claim or other obligation incurred by Mortgagee (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud, material misrepresentation, gross negligence or willful misconduct by Mortgagor or any of its partners, officers, principals, members, any guarantor or any other person authorized to make statements or representations, or act, on behalf of Mortgagor in connection with the Loan;

(ii) intentional non-passive physical waste committed on the Mortgaged Property; damage to the Mortgaged Property as a result of the intentional misconduct or

gross negligence of Mortgagor or its Governing Entity, or any agent or employee of any such persons; or the removal of any portion of the Mortgaged Property in violation of the terms of the Loan Documents following an Event of Default;

(iii) subject to any right to contest such matters, as provided herein, failure to pay any valid taxes (except to the extent, but only the extent, the entire amount of the unpaid taxes had been paid by Mortgagor to Mortgagee pursuant to Paragraph 5 of this Mortgage, and except to the extent the failure to pay taxes is due to the failure of the Mortgaged Property to generate revenue sufficient to pay the payments required on the Note, such taxes, the premiums for the Policies (as defined in and as required by Paragraph 2 of this Mortgage), and essential operating expenses of the Mortgaged Property not including any payments to any affiliates of Mortgagor), assessments, mechanic's liens, materialmen's liens or other liens which could create liens on any portion of the Mortgaged Property which would be superior to the lien or security title of this Mortgage or the other Loan Documents, to the full extent of the amount claimed by any such lien claimant;

(iv) all legal costs and expenses (including attorneys' fees) reasonably incurred by Mortgagee in connection with litigation or other legal proceedings involving the collection or enforcement of the Loan or preservation of Mortgagee's rights under the Loan Documents, including any costs incurred by Mortgagee arising from or relating to the filing of a petition under the U.S. Bankruptcy Code by or against Mortgagor, other than those customarily incurred by a lender in realizing upon its lien in an uncontested foreclosure sale after an undisputed default;

(v) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity;

(vi) the misapplication or conversion by Mortgagor of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Mortgaged Property, (B) any awards or other amounts received in connection with the condemnation of all or a portion of the Mortgaged Property, or (C) any Rents following an Event of Default;

(vii) any security deposits or other refundable deposits collected with respect to the Mortgaged Property which are not delivered to Mortgagee upon a sale or foreclosure of the Mortgaged Property or other action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such sale or foreclosure or action in lieu thereof; and

(viii) failure to maintain any Policies required under Paragraph 2 of this Mortgage, or to pay or provide the amount of any insurance deductible, to the extent of the applicable deductible, following a Casualty or other insured event, except to the extent, but only the extent, the entire amount of the Premiums for such Policies had been paid by Mortgagor to Mortgagee pursuant to Paragraph 5 of this Mortgage, or the failure to maintain such Policies or pay the amount of such deductible is due to the failure of the

Mortgaged Property to generate revenue sufficient to pay the payments required on the Note, taxes, the premiums for the Policies (as defined in and as required by Paragraph 2 of this Mortgage), and essential operating expenses of the Mortgaged Property not including any payments to any affiliates of Mortgagor.

Notwithstanding anything to the contrary in any of the Loan Documents (i) Mortgagee shall not be deemed to have waived any right which Mortgagee may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt secured by this Mortgage or to require that all collateral shall continue to secure all of the Debt owing to Mortgagee in accordance with the Loan Documents, and (ii) the Debt shall be fully recourse to Mortgagor in the event that: (A) Mortgagor fails to pay the first full monthly payment of principal and interest under the Note when due; (B) the Mortgaged Property or any part thereof becomes an asset in a voluntary bankruptcy or insolvency proceeding under the U.S. Bankruptcy Code; (C) Mortgagor fails to provide any of the financial information required pursuant to Paragraph 17 of this Mortgage within thirty (30) days after the date upon which such financial information is due and Mortgagee has given at least fifteen (15) days prior written notice to Mortgagor of such failure by Mortgagor to provide such information, provided that if such failure to provide such financial information is not reasonably susceptible of cure within such fifteen (15) day period, then Mortgagor may be permitted up to an additional fifteen (15) days within which to provide such financial information as long as Mortgagor diligently and continuously pursues such cure; (D) Mortgagor fails to maintain its status as a single purpose entity as required by, and in accordance with the terms and provisions of this Mortgage; (E) Mortgagor fails to obtain Mortgagee's prior written consent to any subordinate financing or other voluntary lien encumbering the Mortgaged Property or any interests in Mortgagor; (F) Mortgagor fails to obtain Mortgagee's prior written consent to any assignment, transfer, or conveyance of the Mortgaged Property or any interest therein as required by this Mortgage; or (G) any breach of the representations, covenants and agreements of Section 1(l) of this Mortgage occurs.

51. Miscellaneous.

(a) Mortgagor covenants and agrees not to engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Mortgagee of any of its rights under the Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"). Mortgagor further covenants and agrees to deliver to Mortgagee such certifications or other evidence from time to time throughout the Term, as requested by Mortgagee in its sole discretion, that (i) Mortgagor is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Mortgagor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true: (A) Equity interests in Mortgagor are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2); (B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Mortgagor are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or (C) Mortgagor qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e) or an investment company registered under the Investment Company Act

of 1940. Mortgagor represents and warrants to Mortgagee that Mortgagor (1) has no knowledge of any material liability that has been incurred or is expected to be by Mortgagor that is or remains unsatisfied for any taxes or penalties with respect to any "employee benefit plan," or any "plan," within the meaning of Section 4975(e)(1) of the Internal Revenue Code or any other benefit plan (other than a multiemployer plan) maintained, contributed to, or required to be contributed to by Mortgagor or by any entity that is under common control with Mortgagor within the meaning of ERISA Section 4001(a)(14) (a "Plan") or any plan that would be a Plan but for the fact that it is a multiemployer plan within the meaning of ERISA Section 3(37), (2) has made and shall continue to make when due all required contributions to all such Plans, if any, (3) each Plan, if any, has been and will be administered in compliance with its terms and the applicable provisions of ERISA, the Internal Revenue Code, and any other applicable federal or state law, and (4) no action shall be taken or fail to be taken that would result in the disqualification or loss of tax-exempt status of any such Plan, if any, intended to be qualified and/or tax exempt. **MORTGAGOR FURTHER COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ALL LOSSES THAT ANY INDEMNIFIED PARTY MAY INCUR AS A RESULT OF MORTGAGOR'S BREACH OF THE COVENANTS IN THIS PARAGRAPH.** The covenants and indemnity contained in this Paragraph shall survive the extinguishment of the lien of this Mortgage by foreclosure or action in lieu thereof; furthermore, the foregoing indemnity shall supersede any limitations on Mortgagor's liability under any of the Loan Documents.

(b) The Loan Documents contain the entire agreement between Mortgagor and Mortgagee relating to or connected with the Loan. Any other agreements relating to or connected with the Loan not expressly set forth in the Loan Documents are null and void and superseded in their entirety by the provisions of the Loan Documents.

(c) Mortgagor represents and warrants to Mortgagee that there has not been committed by Mortgagor or any other person in occupancy of or involved with the operation or use of the Mortgaged Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Mortgagor's obligations under the Note or under any of the other Loan Documents. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. **IN FURTHERANCE THEREOF, MORTGAGOR HEREBY INDEMNIFIES THE INDEMNIFIED PARTIES AND AGREES TO DEFEND AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL LOSSES INCURRED BY ANY INDEMNIFIED PARTY BY REASON OF THE BREACH OF THE COVENANTS AND AGREEMENTS OR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS PARAGRAPH.** Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor or all or any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result, shall, at the election of Mortgagee, constitute an Event of Default hereunder without notice or opportunity to cure.

(d) Mortgagor acknowledges that, with respect to the Loan, Mortgagor is relying solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Mortgagee or any parent, subsidiary or affiliate of Mortgagee. Mortgagor acknowledges that Mortgagee engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of the Mortgagor or its affiliates. Mortgagor acknowledges that it is represented by competent counsel and has consulted counsel before executing the Loan Documents.

(e) Mortgagor covenants and agrees to pay Mortgagee upon receipt of written notice from Mortgagee, all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and the costs and expenses of any title insurance company, appraisers, engineers or surveyors) incurred by Mortgagee in connection with (i) the preparation, negotiation, execution and delivery of this Mortgage and the other Loan Documents; (ii) Mortgagor's performance of and compliance with Mortgagor's respective agreements and covenants contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iii) Mortgagee's performance and compliance with all agreements and conditions contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Mortgage and the other Loan Documents; and (v) the filing and recording fees and expenses, title insurance fees and expenses, and other similar expenses incurred in creating and perfecting the lien in favor of Mortgagee pursuant to this Mortgage and the other Loan Documents.

(f) **THIS MORTGAGE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.**

52. Reconveyance of Mortgaged Property. Upon the performance of all obligations and the payment in full of all sums secured by this Mortgage, Mortgagee shall reconvey the Mortgaged Property. Upon payment of its fees and any other sums owing to it under this Mortgage, Mortgagee shall reconvey the Mortgaged Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in such conveyance of any matters or facts shall be conclusive of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

53. Indemnification Paragraphs. MORTGAGOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS MORTGAGE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS PURSUANT TO PARAGRAPHS 7, 19, 20, 36 and 51.

54. Special State Provisions. In the event of any inconsistencies between the terms and conditions of any other Paragraph of this Mortgage with applicable law or with this Paragraph of this Mortgage, the terms and conditions of this Paragraph shall control and be binding.

Notwithstanding any provision herein to the contrary, the following provisions shall modify Paragraph 25 of this Mortgage:

(a) Mortgagee may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the courthouse door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money therefor, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid for and purchase said premises, or any part thereof, if Mortgagee is the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect, and Mortgagee may bid for and purchase the Mortgaged Property or any such portion thereof, and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

(b) Mortgagee may foreclose this Mortgage either by sale at public outcry or by proceedings in law or equity, and Mortgagee may become the purchaser at any foreclosure sale if Mortgagee is the highest bidder, and, in the event of sale at public outcry, Mortgagee may sell or cause to be sold, all and singular, the Mortgaged Property and all the estate, right, title and interest, claim and demand therein, such sale or sales to be made at public outcry at the main door of the courthouse of the county in which the Mortgaged Property is located at such time or times and upon such terms as may be required by law or as Mortgagee may determine, after having first given notice of the time, place and terms of sale, together with the description of the property to be sold, by publication once a week for three consecutive weeks prior to said sale in any newspaper then published in the county in Alabama in which the Mortgaged Property is located, and after giving such other notice of the time, place and terms of sale as may be required by law. In the event of a sale hereunder, Mortgagee or owners of the debt and Mortgage, or the auctioneer, shall execute to the purchaser for and in the name of Mortgagor, a good and sufficient deed to the Mortgaged Property. Mortgagee may sell such property either as a whole or in separate parcels and in such order as Mortgagee may direct (Mortgagor waiving any right to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States (or cash equivalents acceptable to Mortgagee to the extent permitted by applicable law), payable at the time of sale. Mortgagee may postpone the sale of all or any part of the Mortgaged Property by public announcement at such time and place of sale, and from time to time after any such postponement may postpone such sale by public announcement at the time fixed by the preceding postponement. Mortgagee shall deliver to the purchaser at such sale its deed conveying the property so sold, but without any covenant or warranty, express or implied, and the recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Mortgagee, may purchase at such sale, and any bid by Mortgagee may be, in whole or in part, in the form of cancellation of all or any part of the Debt.

Remainder of page intentionally blank
Signature page(s) follow

EXECUTED on the date set forth in the acknowledgment below, to be effective on and as of the date first above written.

MORTGAGOR:

GREY SHOAL, L.L.C.

an Alabama limited liability company

By: Grey Shoal Manager, L.L.C.

an Alabama limited liability company

Manager

By:



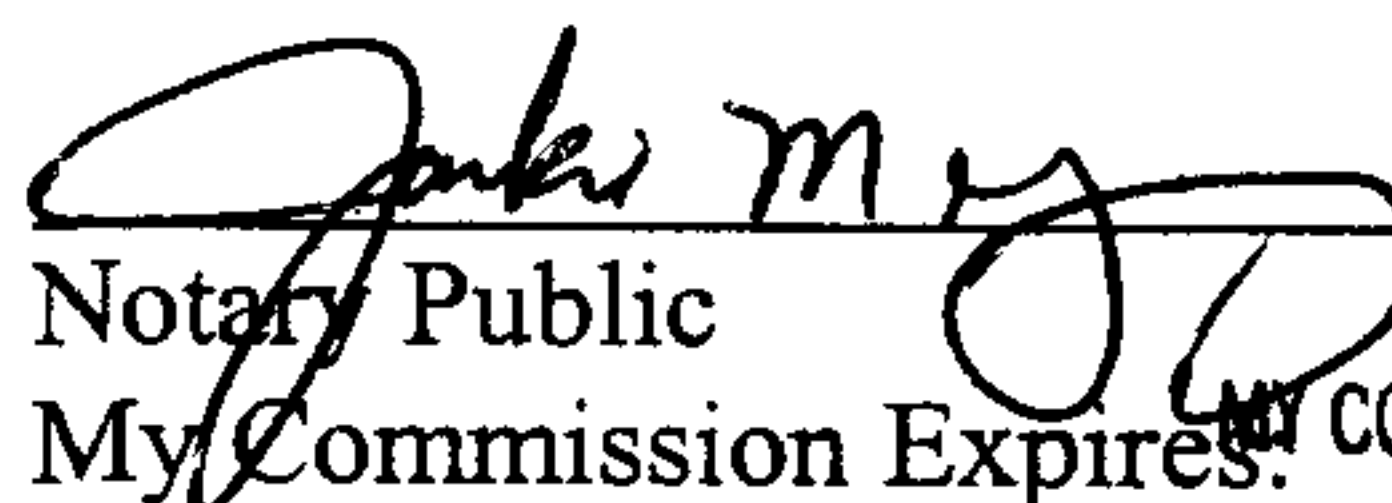
Michael V. Shannon

Managing Member

STATE OF ALABAMA
COUNTY OF LEE

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Michael V. Shannon, whose name as Managing Member of Grey Shoal Manager, L.L.C., an Alabama limited liability company, the manger of Grey Shoal, 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 the instrument, he, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 12 day of April, 2004.


Notary Public

My Commission Expires: MY COMMISSION EXPIRES AUG. 6, 2007

[NOTARY SEAL OR STAMP]

**Signature/Acknowledgement page to Mortgage, Assignment of Rents,
Security Agreement and Fixture Filing**

Archon Financial, L.P.
Mortgage, Assignment of Rents,
Security Agreement and Fixture Filing
Stonecrest Apartments, Birmingham, AL

Exhibit A
Legal Description

20040419000200470 Pg 68/68 23,240.00
Shelby Cnty Judge of Probate, AL
04/19/2004 09:37:00 FILED/CERTIFIED

PARCEL I:

Commence at the Northwest corner of the Southeast quarter of the Northeast quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama: Thence run South along the West line of said quarter-quarter section for a distance of 929.67 feet to the point of beginning. From said point of beginning, continue South along the last described course for a distance of 263.72 feet; thence turn an angle to the left of $91^{\circ} 03' 38''$ and leaving said West line run in an Easterly direction for a distance of 672.11 feet; thence turn an angle to the left of $91^{\circ} 13' 01''$ and run in a Northerly direction for a distance of 263.72 feet; thence turn an angle to the left of $91^{\circ} 12' 58''$ and run in a Westerly direction for a distance of 672.83 feet to the point of beginning of the herein described parcel of land.

Parcel II:

Commence at the Northwest corner of the Southeast quarter of the Northeast quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama: Thence run South along the West line of said quarter-quarter section for a distance of 1193.39 feet to the point of beginning. From said point of beginning, continue South along the last described course for a distance of 792.26 feet; thence turn angle to the left of $90^{\circ} 57' 37''$ and leaving said West line run in an Easterly direction for a distance of 669.92 feet; thence turn an angle to the left of $88^{\circ} 53' 00''$ and run in a Northerly direction for a distance of 793.47 feet; thence turn an angle to the left of $91^{\circ} 13' 01''$ and run in a Westerly direction for a distance of 672.11 feet to the point of beginning of the herein described parcel of land.

PARCEL III:

Commence at the Northwest corner of the Southeast quarter of the Northeast quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama: Thence run South along the West line of said quarter-quarter section and the West line of the Northeast quarter of the Southeast quarter of said Section 5 for a distance of 1985.64 feet to the point of beginning. From said point of beginning, continue South along the last described course for a distance of 663.99 feet to the Southwest corner of the Northeast quarter of the Southeast quarter of said Section 5; thence turn an angle to the left of $91^{\circ} 02' 37''$ and leaving said West line run in an Easterly direction for a distance of 668.13 feet; thence turn an angle to the left of $88^{\circ} 47' 59''$ and run in a Northerly direction for a distance of 663.05 feet; thence turn an angle to the left of $91^{\circ} 07' 00''$ and run in a Westerly direction for a distance of 669.92 feet to the point of beginning of the herein described parcel of land.

PARCEL IV:

Non-Exclusive easement for the benefit of Parcels I, II, & III for the purpose of slope, drainage and access, as created by those certain easement agreements recorded in Shelby Instrument Number 1996-17259 and Shelby Instrument Number 1996-17260, over, under and across the property described therein.