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Loan No.: 50-2853381

White Stone

SCHILLECI WHITE STONE, LLC,
as Borrower

to

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Lender

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

Dated as of October 6, 2005

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MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**") is made as of October 6, 2005 by SCHILLECI WHITE STONE, LLC, an Alabama limited liability company, as Borrower ("**Borrower**"), whose address is c/o JMS Realty, LLC, 1761 Plat Place, Montgomery, Alabama 36117, to WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, as Lender ("**Lender**"), whose address is Commercial Real Estate Services, 8739 Research Drive URP - 4, NC 1075, Charlotte, North Carolina 28262.

WITNESSETH:

THAT FOR AND IN CONSIDERATION OF THE SUM OF TEN AND NO/100 DOLLARS (\$10.00), AND OTHER VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, BORROWER HEREBY IRREVOCABLY GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, SETS OVER AND ASSIGNS TO LENDER, ITS SUCCESSORS AND ASSIGNS, all of Borrower's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter acquired by Borrower (collectively, the "**Mortgaged Property**");

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

(B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Premises (the "**Improvements**");

(C) All furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Borrower and now or hereafter located on, attached to or used in and about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Borrower as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Premises or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

(D) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, and other emblements now or hereafter located on the Premises or under

or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(E) All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Premises or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

(F) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Premises;

(G) All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Lender pursuant to this Mortgage or any other of the Loan Documents (as hereinafter defined), including, without limitation, all funds now or hereafter on deposit in the Reserves (as hereinafter defined);

(H) All leases, subleases (including, without limitation, oil, gas and mineral leases), licenses, concessions and occupancy agreements of all or any part of the Premises or the Improvements whether written or oral, now or hereafter entered into (each, a "**Lease**" or "**Space Lease**" and collectively, "**Leases**" or "**Space Leases**"), and all rents, royalties, issues, profits, bonus money, revenue, income, rights and other benefits (collectively, the "**Rents and Profits**") of the Premises or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future Leases or other agreement pertaining thereto or arising from any of the Leases or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees or licensees (each, a "**Tenant**" and collectively, "**Tenants**"), as applicable, of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject, however, to the provisions contained in Section 2.7 hereinbelow;

(I) All contracts and agreements now or hereafter entered into covering any part of the Premises or the Improvements (collectively, the "**Contracts**") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Premises or the Improvements (including plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Premises or the Improvements;

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

(K) All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including, without limitation, trademarks, trade names, service marks and symbols now or hereafter used in connection with

any part of the Premises or the Improvements, all names by which the Premises or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Premises or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Premises or the Improvements (collectively, the "**General Intangibles**");

(L) All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Premises or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Premises or the Improvements;

(M) All building materials, supplies and equipment now or hereafter placed on the Premises or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Premises or the Improvements;

(N) All right, title and interest of Borrower in any insurance policies or binders now or hereafter relating to the Mortgaged Property, including any unearned premiums thereon;

(O) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

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

FOR THE PURPOSE OF SECURING:

(1) The loan (the "**Loan**") evidenced by that certain Promissory Note (such Promissory Note, together with any and all renewals, amendments, modifications, consolidations and extensions thereof, is hereinafter referred to as the "**Note**") of even date with this Mortgage, made by Borrower payable to the order of Lender in the principal face amount of Nine Million One Hundred Sixty Thousand and No/100 Dollars (\$9,160,000.00), together with interest as therein provided;

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the Debt (as hereinafter defined) including, but not limited to, the Environmental Indemnity Agreement (as hereinafter defined)(the Note, this Mortgage, and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "**Loan Documents**") and the payment of all other sums herein or therein covenanted to be paid;

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

(4) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, including, without limitation, all prepayment fees, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof, it being contemplated by Borrower and Lender that Borrower may hereafter become so indebted to Lender.

(All of the sums referred to in Paragraphs (1) through (4) above are herein referred to as the "*Debt*").

TO HAVE AND TO HOLD the Mortgaged Property unto Lender, its successors and assigns forever, and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property, subject to the Permitted Encumbrances (as hereinafter defined), to Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof;

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note or under the other Loan Documents, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and the Debt shall have been paid and all other covenants contained in the Loan Documents shall have been performed, then, in such case, the liens, security interests, estates and rights granted by this Mortgage shall be satisfied and the estate, right, title and interest of Lender in the Mortgaged Property shall cease, and upon payment to Lender of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, Lender shall promptly satisfy and release this Mortgage of record and the lien hereof by proper instrument.

ARTICLE I.

REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Lender, its successors and assigns, that:

1.1 Organization; Special Purpose. Borrower has been duly organized and is validly existing and in good standing under the laws of the state of its formation, with requisite power and authority, and all rights, licenses, permits and authorizations, governmental or otherwise, necessary to own its properties and to transact the business in which it is now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, business and operations. Borrower possesses all franchises, patents, copyrights, trademarks, trade names, licenses and permits

necessary for the conduct of its business substantially as now conducted. Borrower is a Single-Purpose Entity in compliance with the provisions of Section 2.29 hereof.

1.2 Title. Borrower has good, marketable and indefeasible fee simple title to the Mortgaged Property, subject only to those matters expressly set forth as exceptions to or subordinate matters in the title insurance policy insuring the lien of this Mortgage delivered as of the date hereof which Lender has agreed to accept, excepting therefrom all preprinted and/or standard exceptions (such items being the "**Permitted Encumbrances**"), and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer, encumber and mortgage its interest in the Mortgaged Property in the manner and form hereby done or intended. Borrower will preserve its interest in and title to the Mortgaged Property and will forever warrant and defend the same to Lender against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever, subject to the Permitted Encumbrances. There are no security agreements or financing statements that encumber the Borrower's interest in or to all or any portion of the Mortgaged Property other than (i) as disclosed in writing to Lender by Borrower or in any UCC searches obtained by Lender prior to the date hereof; (ii) equipment leases, if any; (iii) financing statements that appear of record in the public records of (A) the county where the Premises is located, (B) the Office of the Secretary of State of the State where the Premises is located (or other UCC central filing office for said State), or (C) the Office of the Secretary of State of the State of Delaware; and (iv) the security agreements and financing statements created in favor of Lender. There are no claims for payment for work, labor or materials affecting the Premises for work performed by or for Borrower which are or may become a lien prior to, or of equal priority with, the liens created by the Loan Documents. To the best of Borrower's knowledge, none of the Permitted Encumbrances, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Mortgage, materially and adversely affect the value of the Premises, materially and adversely impair the use or operations of the Premises as now operated, or impair Borrower's ability to pay its obligations in a timely manner. The foregoing warranty of title shall survive the foreclosure of this Mortgage and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Mortgaged Property pursuant to any foreclosure.

1.3 No Bankruptcy Filing. No bankruptcy, insolvency proceedings or liquidation of all or a substantial portion of the Mortgaged Property is pending or contemplated by Borrower or, to the best knowledge of Borrower, against Borrower or by or against any endorser or cosigner of the Note or of any portion of the Debt, or any guarantor or indemnitor under any guaranty or indemnity agreement executed in connection with the Note or the loan evidenced thereby and secured hereby (an "**Indemnitor**"). No petition in bankruptcy has been filed against Borrower or any general partner, manager, sole member, managing member or majority shareholder of Borrower, as applicable (collectively, the "**Borrower Parties**", each a "**Borrower Party**"), and no Borrower Party or any principal of a Borrower Party has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors.

1.4 Full and Accurate Disclosure. To the best of Borrower's knowledge, no statement of fact made by Borrower in any Loan Documents contains any untrue statement of a material

fact or omits to state any material fact necessary to make statements contained therein not misleading in any material respect. To the best of Borrower's knowledge, there is no material fact presently known to Borrower that has not been disclosed to Lender which materially adversely affects, or, as far as Borrower can foresee, might materially adversely affect, the Mortgaged Property or the business, operations or condition (financial or otherwise) of Borrower. All financial data, including the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of Borrower and the Mortgaged Property (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of Borrower and the Mortgaged Property as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered, except as disclosed therein. Borrower has no contingent liabilities, liabilities for taxes, unusual forward or long-term commitments, unrealized or anticipated losses from any unfavorable commitments or any liabilities or obligations that are prohibited by this Mortgage. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower or the Mortgaged Property from that set forth in said financial statements.

1.5 Proceedings; Enforceability. The execution, delivery and performance of this Mortgage, the Note and all of the other Loan Documents have been duly authorized by all necessary action to be, and are, binding and enforceable against Borrower in accordance with the respective terms thereof and do not contravene, result in a breach of or constitute a default (nor upon the giving of notice or the passage of time or both will constitute a default) under the partnership agreement, articles of incorporation, operating agreement or other organizational documents of Borrower or any contract or agreement of any nature to which Borrower is a party or by which Borrower or any of its property may be bound and do not violate or contravene any law, order, decree, rule or regulation to which Borrower is subject. To the best of Borrower's knowledge, the Loan Documents are not subject to, and Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

1.6 No Conflicts. To the best of Borrower's knowledge, Borrower is not required to obtain any consent, approval or authorization from or to file any declaration or statement with, any governmental authority or agency in connection with or as a condition to the execution, delivery or performance of this Mortgage, the Note or the other Loan Documents which has not been so obtained or filed. To the best of Borrower's knowledge, Borrower has obtained or made all necessary (i) consents, approvals and authorizations and registrations and filings of or with all governmental authorities or agencies and (ii) consents, approvals, waivers and notifications of partners, stockholders, members, creditors, lessors and other non-governmental persons and/or entities, in each case, which are required to be obtained or made by Borrower in connection with the execution and delivery of, and the performance by Borrower of its obligations under, the Loan Documents.

1.7 Federal Reserve Regulations; Investment Company Act. 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 Regulation T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation T, U or X or any other

regulation of such Board of Governors, or for any purpose prohibited by law or any Loan Document. Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

1.8 Taxes. Borrower and any general partner or managing member of Borrower, if any, has filed all federal, state and local tax returns required to be filed as of the date hereof and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower and any general partner or managing member, if any, as of the date hereof. Borrower and any general partner or managing member, if any, believe that their respective tax returns properly reflect the income and taxes of Borrower and said general partner or managing member, if any, for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit. Borrower and the Mortgaged Property are not liable for any past due obligations for sales and payroll taxes.

1.9 ERISA. Borrower (i) has no knowledge of any material liability that has been incurred or is expected to be incurred by Borrower that is or remains unsatisfied for any taxes or penalties with respect to any "employee benefit plan", as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), or any "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "**Code**") or any other benefit plan (other than a multi-employer plan) maintained, contributed to, or required to be contributed to by Borrower or by any entity that is under the common control with Borrower within the meaning of ERISA Section 4001(a)(14) (collectively, a "**Plan**") or any plan that would be a Plan but for the fact that it is a multi-employer plan within the meaning of ERISA Section 3(37) and (ii) has made and shall continue to make when due all required contributions to all such Plans, if any. To the best of Borrower's knowledge, each such Plan, if any, has been and will be administered in compliance with its terms and the applicable provisions of ERISA, the Code and any other applicable Federal or state law and no action shall be taken or fail to be taken that would result in the disqualification or loss of the tax-exempt status of any such Plan, if any, intended to be qualified or tax-exempt. To the best of Borrower's knowledge, the assets of Borrower do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

1.10 Property Compliance. To the best of Borrower's knowledge, and except as otherwise disclosed to Lender in writing or in any survey or report provided to or obtained by Lender, the Premises and the Improvements and the current intended use thereof by Borrower comply in all material respects with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Mortgaged Property. No legal proceedings are pending or, to the knowledge of Borrower, threatened with respect to the zoning of the Premises. Neither the zoning nor any other right to construct, use or operate the Premises

is in any way dependent upon or related to any property other than the Premises or pursuant to any easements, operating agreements or other agreements that have been obtained. To the best of Borrower's knowledge, all certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Premises have been obtained and are in full force and effect. The Premises and Improvements constitute one or more separate tax parcels for purposes of ad valorem taxation. The Premises and Improvements do not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements, except easements for utilities, access, parking and drainage, which have been obtained.

1.11 Utilities. All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Premises and the Improvements for their intended purposes are available to the Mortgaged Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or perpetual private easements approved by Lender. To the best of Borrower's knowledge, the Mortgaged Property is free from delinquent water charges, sewer rents, taxes and assessments (other than any such charges, rents, taxes or assessments that are payable by tenants or other third parties).

1.12 Public Access. All streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Premises and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Premises and the Improvements without further condition or cost to Borrower. All curb cuts, driveways and traffic signals shown on the survey delivered to Lender prior to the execution and delivery of this Mortgage are existing and have been fully approved by the appropriate governmental authority.

1.13 Litigation; Agreements. Except as otherwise disclosed by Borrower to Lender in writing, there are no judicial, administrative, mediation or arbitration actions, suits or proceedings pending or, to the best of Borrower's knowledge, threatened against or affecting Borrower (or, if Borrower is a partnership or a limited liability company, any of its general partners or members) or the Mortgaged Property which, if adversely determined, would materially impair either the Mortgaged Property or Borrower's ability to perform the covenants or obligations required to be performed under the Loan Documents. To the best of Borrower's knowledge, and except for the Permitted Encumbrances, the Leases and any other such agreements, or instruments, Borrower is not a party to any agreement or instrument or subject to any restriction which might adversely affect Borrower or the Mortgaged Property, or Borrower's business, properties, operations or condition, financial or otherwise. To the best of Borrower's knowledge, Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Mortgaged Property is bound.

1.14 Physical Condition. As of the date of this Mortgage, (i) the Mortgaged Property is free from unrepaired material damage caused by fire, flood, accident or other casualty, (ii) no part of the Premises or the Improvements has been taken in condemnation, eminent domain or

like proceeding nor is any such proceeding pending or, to Borrower's knowledge and belief, threatened or contemplated, (iii) to the best of Borrower's knowledge, and except as may otherwise be disclosed in that certain Engineering Report (the "**Engineering Report**"), dated September 12, 2005 and prepared by IVI International, Inc., (A) the Improvements are structurally sound, in good repair and free of defects in materials and workmanship and have been constructed and installed in substantial compliance with the plans and specifications relating thereto, and (B) all major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition.

1.15 Contracts. Borrower has delivered to Lender true, correct and complete copies of all Contracts and all amendments thereto or modifications thereof. Each Contract constitutes the legal, valid and binding obligation of Borrower and, to the best of Borrower's knowledge and belief, is enforceable against any other party thereto. To the best of Borrower's knowledge, no default exists, or with the passing of time or the giving of notice or both would exist, under any Contract which would, in the aggregate, have a material adverse effect on Borrower or the Mortgaged Property. No Contract provides any party with the right to obtain a lien or encumbrance upon the Mortgaged Property superior to the lien of this Mortgage. All Contracts affecting the Mortgaged Property have been entered into at arms-length in the ordinary course of Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

1.16 Leases. Borrower has delivered (i) a true, correct and complete schedule (the "**Rent Roll**") of all Space Leases affecting the Mortgaged Property as of the date hereof, which accurately and completely sets forth in all material respects for each such Space Lease, the following: the name of the Tenant, the Space Lease expiration date, extension and renewal provisions, the base rent payable, the security deposit held thereunder and (ii) true, correct and complete copies of all Leases described in the Rent Roll. Each Lease constitutes the legal, valid and binding obligation of Borrower and, to the best of Borrower's knowledge and belief, is enforceable against the Tenant thereunder. To the best of Borrower's knowledge, and except as disclosed in writing to Lender, no default exists, or with the passing of time or the giving of notice or both would exist, under any Lease which would, in the aggregate, have a material adverse effect on Borrower or the Mortgaged Property. Except as disclosed in the rent roll delivered by Borrower at the time of the execution of this Mortgage, no Tenant under any Lease has, as of the date hereof, paid rent more than thirty (30) days in advance, and the rents under such Leases have not been waived, released, or otherwise discharged or compromised. All security deposits required under such Leases have been fully funded and are held by Borrower in a separate segregated account or as otherwise required by applicable law. Except as otherwise disclosed in writing to Borrower, all work to be performed by Borrower under the Leases has been substantially performed, all contributions to be made by Borrower to the Tenants thereunder have been made and all other conditions precedent to each such Tenant's obligations thereunder have been satisfied. Except as otherwise disclosed in writing to Borrower, each Tenant under a Lease has entered into occupancy of the demised premises. To the best of Borrower's knowledge and belief, each Tenant is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors (except as disclosed in the rent roll or otherwise disclosed in writing to Lender). No Lease provides any party with

the right to obtain a lien or encumbrance upon the Mortgaged Property superior to the lien of this Mortgage.

1.17 Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code, and the related Treasury Department regulations, including temporary regulations.

1.18 Management Agreement. The property management agreement relating to the Premises (the "*Management Agreement*") is in full force and effect and to the best of Borrower's knowledge, there is no default, breach or violation existing thereunder by any party thereto beyond the expiration of applicable notice and grace periods thereunder and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach 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.

1.19 Fraudulent Transfer. Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor, and Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower's total liabilities, including subordinated, unliquidated, disputed or contingent liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Borrower).

All of the representations and warranties in this Article I and elsewhere in the Loan Documents (i) shall survive for so long as any portion of the Debt remains owing to Lender and (ii) shall be deemed to have been relied upon by Lender, except to the extent, if any, that Lender has obtained actual knowledge to the contrary as the result of any investigations or reports heretofor made or obtained by or on behalf of Lender.

ARTICLE II.

COVENANTS OF BORROWER

For the purposes of further securing the Debt and for the protection of the security of this Mortgage, for so long as the Debt or any part thereof remains unpaid, Borrower covenants and agrees as follows:

2.1 Defense of Title. If, while this Mortgage is in force, the title to the Mortgaged Property or the interest of Lender therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Borrower, at Borrower's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel approved by Lender, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Lender determines that Borrower is not adequately performing its obligations under this Section, Lender may, after ten (10) days' written notice to Borrower and without limiting or waiving any other rights or remedies of Lender hereunder, take such steps with respect thereto as Lender shall deem necessary or proper and any and all costs and expenses reasonably incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

2.2 Performance of Obligations. Borrower shall pay when due the principal of and the interest on the Debt in accordance with the terms of the Note. Borrower shall also pay all charges, fees and other sums required to be paid by Borrower as provided in the Loan Documents, in accordance with the terms of the Loan Documents, and shall observe, perform and discharge all obligations, covenants and agreements to be observed, performed or discharged by Borrower set forth in the Loan Documents in accordance with their terms. Further, Borrower shall promptly and strictly perform and comply with all covenants, conditions, obligations and prohibitions required of Borrower in connection with any other document or instrument affecting title to the Mortgaged Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Mortgage.

2.3 Insurance. Borrower shall, at Borrower's expense, maintain in force and effect on the Mortgaged Property at all times while this Mortgage continues in effect the following insurance:

(a) Insurance against loss or damage to the Mortgaged Property by fire, lightning, windstorm, tornado, hail, terrorism (which terrorism coverage, if cancelled by Borrower's current insurance carrier, shall only be required to be replaced if available at commercially reasonable rates), riot and civil commotion, vandalism, malicious mischief, burglary and theft and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by an "all-risk" or "special causes of loss" type of insurance policy. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost (insurable value) of the Improvements (as established by an MAI appraisal), without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Lender's election, by reference to such indices, appraisals or information as Lender determines in its reasonable discretion in order to reflect increased value due to inflation. Absent such annual adjustment, each policy shall contain inflation guard coverage insuring that the policy limit will be increased over time to reflect the effect of inflation. "Full replacement cost," as used herein and elsewhere in this Section 2.3, means, with respect to the Improvements,

the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor. Borrower shall also maintain insurance against loss or damage to furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Mortgaged Property and owned by Borrower from time to time to the extent applicable. Each policy shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Lender's approval. The maximum deductible shall be \$10,000.00.

(b) If the "all-risk" or "special causes of loss" policy required in subsection (a) above excludes coverage for wind damage, Borrower shall maintain separate coverage for such risk. Furthermore, if the Mortgaged Property is located in the State of Florida, or within twenty five (25) miles of the ocean coast of States of Texas, Louisiana, Mississippi, Alabama, Georgia, North Carolina, Hawaii or South Carolina, windstorm insurance must be maintained in an amount equal to the lesser of (i) the full replacement cost of the Mortgaged Property or (ii) the maximum limit of coverage available with respect to the Improvements and Equipment. If available, a minimum of twelve (12) months general business income coverage specifically relating to wind damage shall be required. The maximum deductible shall be \$10,000.00.

(c) Ordinance and law insurance is required only if the Mortgaged Property is "non-conforming" with respect to any zoning requirements. If required, Borrower shall maintain "Coverage A" against loss on value to the undamaged portion of the Improvements for the full replacement cost of the Improvements. Borrower shall also maintain "Coverage B" against the cost of demolition in an amount equal to ten percent (10%) of the total value of the Improvements and "Coverage C" against increased cost of reconstruction in an amount equal to twenty percent (20%) of the total value of the Improvements. The maximum deductible shall be \$10,000.00.

(d) Commercial General Liability Insurance against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Premises or the Improvements in amounts not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate plus umbrella coverage in an amount not less than \$5,000,000.00. Lender hereby retains the right to periodically review the amount of said liability insurance being maintained by Borrower and to require an increase in the amount of said liability insurance should Lender deem an increase to be reasonably prudent under then existing circumstances. The maximum deductible shall be \$10,000.00.

(e) Boiler and machinery insurance is required if steam boilers or other pressure-fired vessels are in operation at the Premises. Minimum liability coverage per accident must equal the greater of the replacement cost (insurable value) of the Improvements housing such boiler or pressure-fired machinery or \$2,000,000.00. If one or more large HVAC units is in operation at the Premises, "Systems Breakdowns" coverage shall be required, as determined by Lender. Minimum liability coverage per accident must equal the value of such unit(s). If available, a minimum of twelve (12) months general business income coverage specifically relating to boiler and machinery damage shall be required. The maximum deductible shall be \$10,000.00. Co-insurance is prohibited.

(f) If the Improvements or any part thereof is situated in an area designated by the Federal Emergency Management Agency ("**FEMA**") as a special flood hazard area (Zone A or Zone V), flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Debt if replacement cost coverage is not available for the type of building insured), or (ii) the maximum insurance available under the appropriate National Flood Insurance Administration program. If available, a minimum of eighteen (18) months general business income coverage specifically relating to flood damage shall be required. The maximum deductible shall be \$3,000.00 per building or a higher minimum amount as required by FEMA or other applicable law.

(g) If the Mortgaged Property is situated in an area designated by FEMA as a high probability earthquake area (Zone 2b or greater), Lender may require a Probable Maximum Loss ("**PML**") study to be conducted at the Mortgaged Property. If the PML study reveals a PML equal to or exceeding ten percent (10%) of the full replacement cost of the Improvements, Borrower shall be required to maintain earthquake insurance in an amount equal to the PML percentage of full replacement cost of the Improvements. If available, a minimum of twelve (12) months Business Income coverage specifically relating to earthquake damage shall be required. The maximum deductible shall be no more than five percent (5%) of the value at risk or the lowest deductible available in the State in which the Mortgaged Property is located.

(h) During the period of any construction, renovation or alteration of the existing Improvements which exceeds the lesser of 10% of the principal amount of the Note or \$500,000, at Lender's request, a completed value, "All Risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount approved by Lender, may be required. During the period of any construction of any addition to the existing Improvements, a completed value, "All Risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount approved by Lender, shall be required. The maximum deductible shall be \$10,000.00.

(i) When required by applicable law, ordinance or other regulation, Worker's Compensation and Employer's Liability Insurance covering all persons subject to the worker's compensation laws of the state in which the Mortgaged Property is located. Additionally, if Borrower has direct employees, Hired and Non-Owned Auto Insurance is required in an amount equal to \$1,000,000 per occurrence. The maximum deductible shall be \$10,000.00.

(j) In addition to the specific risk coverages required herein, general business income (loss of rents) insurance in amounts sufficient to compensate Borrower for all Rents and Profits or income during a period of not less than twelve (12) months. The "actual loss" amount of coverage shall be adjusted annually to reflect the greater of (i) estimated Rents and Profits or income payable during the succeeding twelve (12) month period or (ii) the projected operating expenses, capital expenses and debt service for the Mortgaged Property as approved by Lender in its sole discretion. Additionally, Lender, in its sole discretion, may require an "Extended Period of Indemnity" endorsement for an additional six (6) months to allow for re-leasing of the Mortgaged Property. The maximum deductible shall be \$10,000.00.

(k) Such other insurance on the Mortgaged Property or on any replacements or substitutions thereof or additions thereto as may from time to time be reasonably required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, without limitation, Sinkhole, Mine Subsidence and Environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (i) be with insurers fully licensed and authorized to do business in the state within which the Premises is located and who have and maintain a rating of at least (A) A- or higher from Standard & Poors and (B) AV or higher from A.M. Best, (ii) contain the complete address of the Premises (or a complete legal description), (iii) be for terms of at least one year, with premium prepaid, and (iv) be subject to the approval of Lender as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates, and (v) include a standard, non-contributory, mortgagee clause naming EXACTLY:

Wachovia Bank, National Association,
its Successors and Assigns ATIMA
c/o Wachovia Bank, National Association, as Servicer
P.O. Box 563956
Charlotte, North Carolina 28256-3956

(A) as an additional insured under all liability insurance policies, (B) as the first mortgagee on all property insurance policies and (C) as the loss payee on all loss of rents or loss of business income insurance policies.

Borrower shall, as of the date hereof, deliver to Lender evidence that said insurance policies have been prepaid as required above and certified copies of such insurance policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance satisfactory to Lender. Borrower shall renew all such insurance and deliver to Lender certificates and policies evidencing such renewals at least thirty (30) days before any such insurance shall expire. Borrower further agrees that each such insurance policy: (i) shall provide for at least thirty (30) days' prior written notice to Lender prior to any policy reduction or cancellation for any reason other than non-payment of premium and at least ten (10) days' prior written notice to Lender prior to any cancellation due to non-payment of premium; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of subrogation against Lender; (iv) in the event that the Premises or the Improvements constitutes a legal non-conforming use under applicable building, zoning or land use laws or ordinances, shall include an ordinance or law coverage endorsement which will contain Coverage A: "Loss Due to Operation of Law" (with a minimum liability limit equal to Replacement Cost With Agreed Value Endorsement), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction" coverages; and (v) may be in the form of a blanket policy provided that, in the event that any such coverage is provided in the form of a blanket policy,

Borrower hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Mortgaged Property or by any other action not relating to the Mortgaged Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Mortgaged Property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the Mortgaged Property as if a separate policy were issued for 100% of Replacement Cost at the time of loss and otherwise meet all of Lender's applicable insurance requirements set forth in this Section 2.3. The delivery to Lender of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies relating to the Mortgaged Property by Borrower to Lender as further security for the Debt. In the event of foreclosure of this Mortgage, or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Debt, all right, title and interest of Borrower in and to all proceeds payable under such policies then in force concerning the Mortgaged Property shall thereupon vest in the purchaser at such foreclosure, or in Lender or other transferee in the event of such other transfer of title. Approval of any insurance by Lender shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Mortgage or evidence of their renewal as required herein, Lender may, but shall not be obligated to, procure such insurance and Borrower shall pay all amounts advanced by Lender therefor, together with interest thereon at the Default Interest Rate from and after the date advanced by Lender until actually repaid by Borrower, promptly upon demand by Lender. Any amounts so advanced by Lender, together with interest thereon, shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Lender shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Lender has caused the insurance to be placed with the insurer after failure of Borrower to furnish such insurance. After the insurance policies, companies and coverages for the Mortgaged Property are approved by Lender, Borrower may obtain insurance for the Mortgaged Property in addition to that required by Lender as part of the policies from the companies approved by Lender provided that (i) Lender is an additional insured on such insurance, (ii) Lender receives complete copies of all policies evidencing such insurance, and (iii) such insurance complies with all of the applicable requirements set forth herein. Borrower shall not obtain additional insurance from insurance companies not approved by Lender or additional insurance that would be deemed co-insurance with the insurance approved by Lender, without the prior written consent of Lender which consent will not be unreasonably withheld.

2.4 Payment of Taxes. Borrower shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 3.3 of this Mortgage, all taxes and assessments which are or may become a lien on the Mortgaged Property or which are assessed against or imposed upon the Mortgaged Property. Borrower shall furnish Lender with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such taxes and assessments at least fifteen (15) days prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Borrower may, in good faith, by appropriate proceedings and upon notice to Lender, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued, (b) Lender determines, in its subjection opinion, that such contest suspends the obligation to pay the tax and that nonpayment

of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Mortgaged Property or any part thereof or any interest of Lender therein, and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted tax or assessment, Borrower deposits in the Impound Account (as hereinafter defined) an amount, or Borrower provides Lender with a bond issued by a company reasonably satisfactory to Lender, in either case in an amount determined by Lender to be adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Borrower shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final (in which case Lender shall return to Borrower any sums then held in the Impound Account as security for such payment and deposited under clause (c) above); and provided further that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Mortgaged Property may be sold, lost or forfeited.

2.5 Casualty and Condemnation. Borrower shall give Lender prompt written notice of (i) the occurrence of any casualty affecting the Mortgaged Property or any portion thereof, (ii) the institution of any proceedings for eminent domain or for the condemnation of the Mortgaged Property or any portion thereof or (iii) any written notification threatening the institution of any proceedings for eminent domain or for the condemnation of the Mortgaged Property or any portion thereof or any written request to execute a deed in lieu of condemnation affecting the Mortgaged Property or any portion thereof. All insurance proceeds on the Mortgaged Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking, or any deed in lieu of condemnation, affecting all or any part of the Mortgaged Property or for any damage or injury to it for any loss or diminution in value of the Mortgaged Property, are hereby assigned to and shall be paid to Lender. Lender shall deposit such proceeds in an account bearing interest for the benefit of Borrower in the event such proceeds exceed \$1,000,000.00. Lender may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries, and Lender is hereby authorized, in its own name or in Borrower's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Borrower shall from time to time deliver to Lender any instruments required to permit such participation; provided, however, that so long as no Event of Default has occurred and is continuing, Lender shall not have the right to participate in the adjustment of any loss which is not in excess of five percent (5%) of the then outstanding principal balance of the Note. Lender shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, reasonable legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

(a) In the event that less than sixty-five percent (65%) of the fair market value or net rentable square footage of the Improvements located on the Premises have been taken or destroyed, then if and so long as:

(1) no Event of Default is then continuing hereunder or under any of the other Loan Documents, and

(2) the Mortgaged Property can, in Lender's judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage within the earlier to occur of (A) twelve (12) months after the receipt of insurance proceeds or condemnation awards by either Borrower or Lender but in any event prior to the expiration or lapse of rent loss or general business income necessary to satisfy current obligations of the Loan, and (B) sixty (60) days prior to the stated maturity date of the Note, and

(3) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Mortgaged Property as described in Section (a)(2) above, and

(4) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by Borrower, the full amount of which shall, at Lender's option, have been deposited with Lender) for such restoration or repair (including, without limitation, for any costs and expenses of Lender to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Note during such restoration or repair, and

(5) the economic feasibility of the Improvements after such restoration or repair will be such that income from their 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 Lender in its determination to make the loan secured hereby, and

(6) in the event that the insurance proceeds or condemnation awards received as a result of such casualty or partial taking exceed five percent (5%) of the then outstanding principal balance of the Note, Borrower shall have delivered to Lender, at Borrower's sole cost and expense, an appraisal report in form and substance reasonably satisfactory to Lender appraising the value of the Mortgaged Property as so restored or repaired to be sufficient to provide a loan-to-value ratio of no more than, and a debt service coverage ratio of no less than, the ratios considered by Lender in its determination to make the loan secured hereby, each as determined by Lender in Lender's reasonable discretion; and

(7) Borrower so elects by written notice delivered to Lender within fifteen (15) days after settlement of the aforesaid insurance or condemnation claim,

Lender shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required for such restoration or repair, and any funds deposited by Borrower therefor, to Borrower in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Lender of plans and specifications, contractors and form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Lender in its

discretion, with any remainder being applied by Lender for payment of the Debt in whatever order Lender directs in its sole discretion, or at the discretion of Lender, the same may be paid, either in whole or in part, to, or for the benefit of, Borrower for such purposes as Lender shall designate in its discretion.

(b) In all other cases, namely, in the event that sixty-five percent (65%) or more of the fair market value or net rentable square footage of the Improvements located on the Premises have been taken or destroyed or Borrower does not elect to restore or repair the Mortgaged Property pursuant to clause (a) above or otherwise fails to meet the requirements of clause (a) above, then, in any of such events, Lender shall elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security, to do either of the following: (1) accelerate the maturity date of the Note and declare any and all of the Debt to be immediately due and payable and apply the remainder of such sums received pursuant to this Section to the payment of the Debt in whatever order Lender directs in its absolute discretion, with any remainder being paid to Borrower, or (2) notwithstanding that Borrower may have elected not to restore or repair the Mortgaged Property pursuant to the provisions of Section 2.5(a)(7) above, require Borrower to restore or repair the Mortgaged Property in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the deposit by Borrower with Lender, within thirty (30) days after demand therefor, of any deficiency reasonably determined by Lender to be necessary in order to assure the availability of sufficient funds to pay for such restoration or repair, including Lender's costs and expenses to be incurred in connection therewith, the prior approval by Lender of plans and specifications, contractors and form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Lender in its discretion, and apply the remainder of such sums toward such restoration and repair, with any balance thereafter remaining being applied by Lender for payment of the Debt in whatever order Lender directs in its sole discretion, or at the discretion of Lender, the same may be paid, either in whole or in part, to, or for the benefit of, Borrower for such purposes as Lender shall designate in its discretion.

Any reduction in the Debt resulting from Lender's application of any sums received by it hereunder shall take effect only when Lender actually receives such sums and elects to apply such sums to the Debt and no prepayment premium, penalty or fee shall be due or paid in connection with the application of such insurance or condemnation proceeds to the Debt; and if Borrower shall prepay the unpaid portion of the Debt in full within ninety (90) days after Lender's receipt and application of insurance or condemnation proceeds to the Debt, Borrower may do so without any prepayment premium, penalty or fee. In any event, the unpaid portion of the Debt shall remain in full force and effect and Borrower shall not be excused in the payment thereof; partial payments received by Lender, as described above, shall be applied first to the final payment due under the Note and thereafter to installments due under the Note in the inverse order of their due date. If Borrower elects or Lender directs Borrower to restore or repair the Mortgaged Property after the occurrence of a casualty or partial taking of the Mortgaged Property as provided above, Borrower shall promptly and diligently, at Borrower's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such

casualty or partial taking in accordance with the foregoing provisions and Borrower shall pay to Lender all costs and expenses of Lender incurred in administering said rebuilding, restoration or repair, provided that Lender makes such proceeds or award available for such purpose. Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm the foregoing assignment to Lender of any award, damage, insurance proceeds, payment or other compensation. Lender is hereby irrevocably constituted and appointed the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any portion of the Debt is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such 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 acquittances therefor.

2.6 Construction Liens. Borrower shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Premises or the Improvements which constitute a lien on the Borrower's or Lender's right, title and interest in the Premises; provided, however, that, Borrower shall have the right to contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Lender and provided that neither the Mortgaged Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Borrower shall contest any such claim or demand, Borrower shall promptly notify Lender of such contest and thereafter shall, upon Lender's request, promptly provide a bond, cash deposit or other security reasonably satisfactory to Lender to protect Lender's interest and security should the contest be unsuccessful. If Borrower shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Lender may do so and any and all expenses incurred by Lender, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt.

2.7 Rents and Profits. As additional and collateral security for the payment of the Debt and cumulative of any and all rights and remedies herein provided for, Borrower hereby absolutely and presently assigns to Lender all existing and future Rents and Profits. Borrower hereby grants to Lender the sole, exclusive and immediate right, without taking possession of the Mortgaged Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Borrower does hereby irrevocably make, constitute and appoint Lender its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any portion of the Debt is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof). Lender shall be without liability for any loss which may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of an Event of Default under this Mortgage or under any other of the Loan Documents, Borrower shall have a

license to collect, receive, use, distribute and enjoy the Rents and Profits when due and prepayments thereof for not more than one (1) month prior to due date thereof. Such license may not be terminated by Lender until the occurrence of an Event of Default hereunder. Upon the occurrence and continuance of an Event of Default hereunder or under any other of the Loan Documents, Borrower's license shall terminate without notice to Borrower and Lender may thereafter, without taking possession of the Mortgaged Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Borrower shall be the agent of Lender in collection of the Rents and Profits, and all of the Rents and Profits so collected by Borrower shall be held in trust by Borrower for the sole and exclusive benefit of Lender, and Borrower shall, within one (1) business day after receipt of any Rents and Profits, pay the same to Lender to be applied by Lender as hereinafter set forth. Neither the demand for or collection of Rents and Profits by Lender shall constitute any assumption by Lender of any obligations under any agreement relating thereto. Lender is obligated to account only for such Rents and Profits as are actually collected or received by Lender. Borrower irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Lender of an Event of Default hereunder or under any other of the Loan Documents, pay said Rents and Profits to Lender without liability to determine the actual existence of any Event of Default claimed by Lender. Borrower hereby waives any right, claim or demand which Borrower may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Lender, and any such payment shall discharge such payor's obligation to make such payment to Borrower. All Rents and Profits collected or received by Lender may be applied against all expenses of collection, including, without limitation, reasonable attorneys' fees (at both trial and appellate levels), against costs of operation and management of the Mortgaged Property and against the Debt, in whatever order or priority as to any of the items so mentioned as Lender directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Lender of any rights under this Section nor the application of any Rents and Profits to the Debt shall cure or be deemed a waiver of an Event of Default hereunder or under any other of the Loan Documents. The assignment of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Mortgaged Property. Borrower has executed an Assignment of Leases and Rents and Profits dated of even date herewith (the "*Lease Assignment*") in favor of Lender covering all of the right, title and interest of Borrower, as landlord, lessor or licensor, in and to any Leases. All rights and remedies granted to Lender under the Lease Assignment shall be in addition to and cumulative of all rights and remedies granted to Lender hereunder.

2.8 Leases.

(a) Borrower covenants and agrees that it shall not enter into any Lease affecting 5,000 square feet or more of the Mortgaged Property or having a term of five (5) years or more, without the prior written approval of Lender, which approval shall not be unreasonably withheld. The request for approval of each such proposed new Lease shall be made to Lender in writing and shall state that, pursuant to the terms of this Mortgage, failure to approve or disapprove such proposed Lease within fifteen (15) business days is deemed approval and Borrower shall furnish to Lender (and any loan servicer specified from time to time by Lender):

(i) such biographical and financial information about the proposed Tenant as Lender may require

in conjunction with its review, (ii) a copy of the proposed form of Lease, and (iii) a summary of the material terms of such proposed Lease (including, without limitation, rental terms and the term of the proposed lease and any options). It is acknowledged that Lender intends to include among its criteria for approval of any such proposed Lease the following: (i) such Lease shall be with a bona-fide arm's-length Tenant; (ii) such Lease shall not contain any rental or other concessions which are not then customary and reasonable for similar properties and Leases in the market area of the Premises; (iii) such Lease shall provide that the Tenant pays for its expenses; (iv) the rental shall be at least at the market rate then prevailing for similar properties and leases in the market areas of the Premises; and (v) such Lease shall contain subordination and attornment provisions in form and content acceptable to Lender. Failure of Lender to approve or disapprove any such proposed Lease (or to approve or disapprove any modification, amendment, waiver or other action with respect to a Lease that requires Lender's consent under this Mortgage or the Assignment of Leases and Rents of even date herewith) within fifteen (15) business days after receipt of such written request and all the documents and information required to be furnished to Lender with such request shall be deemed approval, provided that the written request for approval specifically mentioned the same.

(b) Prior to execution of any Leases of space in the Improvements after the date hereof, Borrower shall submit to Lender, for Lender's prior approval, which approval shall not be unreasonably withheld, a copy of the form Lease Borrower plans to use in leasing space in the Improvements or at the Mortgaged Property. Lender acknowledges and agrees that it has approved the form lease provided to Lender in connection with the Loan. All such Leases of space in the Improvements or at the Mortgaged Property shall be on terms consistent with the terms for similar leases in the market area of the Premises, shall provide for free rent only if the same is consistent with prevailing market conditions and shall provide for market rents then prevailing in the market area of the Premises. Such Leases may also provide for security deposits in reasonable amounts consistent with prevailing market conditions. Borrower shall also submit to Lender for Lender's approval, which approval shall not be unreasonably withheld, prior to the execution thereof, any proposed Lease of the Improvements or any portion thereof that differs materially and adversely from the aforementioned form Lease (other than revisions to the form Lease that are negotiated in good faith and at arms length and that are consistent with sound and customary leasing and management practices for similar property). Borrower shall not execute any Lease for all or a substantial portion of the Mortgaged Property, except for an actual occupancy by the Tenant, lessee or licensee thereunder, and shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all Leases with respect to the Mortgaged Property, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. Borrower shall furnish to Lender, within ten (10) days after a request by Lender to do so, but in any event by January 1 of each year, a current rent roll, certified by Borrower as being true and correct to the best of its knowledge, containing the names of all Tenants with respect to the Mortgaged Property, the terms of their respective Leases, the spaces occupied and the rentals or fees payable thereunder and the amount of each Tenant's security deposit. Upon the request of Lender, Borrower shall deliver to Lender a copy of each such Lease. Borrower shall not do or suffer to be done any act, or omit to take any action, that might result in a default by the landlord, lessor or licensor under any such Lease or allow the Tenant thereunder to withhold payment of rent or cancel or terminate same and shall not further assign any such Lease or any such Rents and

Profits. Borrower, at no cost or expense to Lender, shall use good faith efforts to enforce, short of termination, the performance and observance of each and every condition and covenant of each of the parties under such Leases. Borrower shall not, without the prior written consent of Lender, anticipate, discount, release, waive, compromise or otherwise discharge any rent payable under any of the Leases. Notwithstanding the foregoing, at any time and from time to time, Lender shall be entitled to, and Borrower hereby grants to Lender the right to, undertake any and all action as may be required (in the reasonable discretion of Lender) to cure any default, or event which with the passage of time following any notice and cure period shall constitute a default by Borrower, under such leases. Borrower shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld), modify any of the Leases, terminate or accept the surrender of any Leases, waive or release any other party from the performance or observance of any obligation or condition under such Leases except, with respect only to Leases affecting less than 5,000 square feet and having a term of five (5) years or less, in the normal course of business in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Mortgaged Property is located. Lender reserves the right to condition its consent to any termination or surrender of any Lease upon the payment to Lender of any lease termination or other payment due from the applicable tenant in connection with such termination or surrender. Borrower and Lender agree that all such sums paid to Lender shall be held by Lender as a tenant improvement and leasing commission reserve and shall be considered a "**Reserve**" as described in Section 3.1 hereof and all such amounts shall be held, maintained, applied and disbursed in accordance with Lender's standard procedures relating to similar reserves for tenant improvement and leasing commission reserves, as set forth in that certain Escrow Agreement dated of even date herewith among Borrower, Lender and the escrow holder named therein. Borrower shall not permit the prepayment of any rents under any of the Leases for more than one (1) month prior to the due date thereof.

(c) Each Lease executed after the date hereof affecting any of the Premises or the Improvements must provide, in a manner approved by Lender, that the Tenant will recognize as its landlord, lessor or licensor, as applicable, and attorn to any person succeeding to the interest of Borrower upon any foreclosure of this Mortgage or deed in lieu of foreclosure. Each such Lease shall also provide that, upon request of said successor-in-interest, the Tenant, lessee or licensee shall execute and deliver an instrument or instruments confirming its attornment as provided for in this Section; provided, however, that neither Lender nor any successor-in-interest shall be bound by any payment of rent for more than one (1) month in advance, or any amendment or modification of said Lease made without the express written consent of Lender or said successor-in-interest.

(d) Upon the occurrence of an Event of Default under this Mortgage, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Mortgage, forthwith, upon demand of Lender, Borrower shall surrender to Lender, and Lender shall be entitled to take actual possession of, the Mortgaged Property or any part thereof personally, or by its agent or attorneys. In such event, Lender shall have, and Borrower hereby gives and grants to Lender, the right, power and authority to make and enter into Leases with respect to the Mortgaged Property or portions thereof for such rents and for such periods of occupancy and upon conditions and



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provisions as Lender may deem desirable in its sole discretion, and Borrower expressly acknowledges and agrees that the term of any such Lease may extend beyond the date of any foreclosure sale of the Mortgaged Property, it being the intention of Borrower that in such event Lender shall be deemed to be and shall be the attorney-in-fact of Borrower for the purpose of making and entering into Leases of parts or portions of the Mortgaged Property for the rents and upon the terms, conditions and provisions deemed desirable to Lender in its sole discretion and with like effect as if such Leases had been made by Borrower as the owner in fee simple of the Mortgaged Property free and clear of any conditions or limitations established by this Mortgage. The power and authority hereby given and granted by Borrower to Lender shall be deemed to be coupled with an interest, shall not be revocable by Borrower so long as any portion of the Debt is outstanding, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof. In connection with any action taken by Lender pursuant to this Section, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Lender in managing the Mortgaged Property, other than gross negligence or willful misconduct of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease covering the Mortgaged Property or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder. Borrower shall, and does hereby, indemnify Lender for, and hold Lender harmless from, any and all claims, actions, demands, liabilities, loss or damage which may or might be incurred by Lender under any such Lease or under this Mortgage or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such Lease other than those finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of Lender. Should Lender incur any such liability, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees (at both trial and appellate levels), together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the Debt. Nothing in this Section shall impose on Lender any duty, obligation or responsibility for the control, care, management or repair of the Mortgaged Property, or for the carrying out of any of the terms and conditions of any such Lease, nor shall it operate to make Lender responsible or liable for any waste committed on the Mortgaged Property by the Tenants or by any other parties or for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property. Borrower hereby assents to, ratifies and confirms any and all actions of Lender with respect to the Mortgaged Property taken under this Section. Notwithstanding anything to the contrary provided in this Mortgage, the Assignment or any other Loan Documents, neither Lender nor any receiver shall have the right directly or indirectly to enforce any operating covenant contained in any department store lease, operating agreement or other agreement unless and until Lender or its successors or assigns acquires title to the Mortgaged Property by foreclosure or deed in lieu of foreclosure.

2.9 Alienation and Further Encumbrances.

(a) Borrower acknowledges that Lender has relied upon the principals of Borrower and their experience in owning and operating the Mortgaged Property and properties similar to the Mortgaged Property in connection with the closing of the loan evidenced by the Note. Accordingly, except as specifically allowed hereinbelow in this Section 2.9 and notwithstanding anything to the contrary contained in Section 6.6 hereof, in the event that the Mortgaged Property or any part thereof or direct or indirect interest therein or in Borrower shall be sold, conveyed, disposed of, alienated, hypothecated, leased (except to Tenants of space in the Improvements in accordance with the provisions of Section 2.8 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Borrower shall be divested of its title to the Mortgaged Property or any direct or indirect interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Lender and any Rating Agency being first obtained, which consent may be withheld in Lender's or any Rating Agency's sole discretion, then the same shall constitute a default hereunder and Lender shall have the right, at its option, to declare any or all of the Debt, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article V hereof. A sale prohibited by the preceding sentence shall not be deemed to include condemnation of all or part of the Mortgaged Property or the execution of a contract of sale of the Mortgaged Property which is expressly conditioned on Borrower obtaining Lender's consent to such sale in accordance with such contract provided such sale shall be void if Lender shall not consent thereto. Except as provided in Section 2.9(b) below, a prohibited sale, conveyance, disposition, hypothecation, alienation, mortgage, encumbrance, assignment, lease, pledge or transfer within the meaning of this Section 2.9(a) shall be deemed to include, among other things: (i) an installment sales agreement wherein Borrower agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents and Profits; (iii) if Borrower or any partner or member of Borrower is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock, in all instances in one or a series of transactions by which an aggregate of more than 49% of such corporation's stock shall be vested in a party or parties who are not stockholders as of the date hereof or any change in the control of such corporation; (iv) if Borrower or any partner or member of Borrower is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing member, manager or joint venturer or the transfer, assignment or pledge of any ownership interest of any general partner, managing member, manager or joint venturer in Borrower or the transfer, assignment or pledge of any ownership interest in any general partner, managing member, manager or joint venturer (whether in the form of a beneficial or partnership interest or in the form of a power of direction, control or management, or otherwise); or (v) if Borrower or any partner or member of Borrower is a limited partnership or limited liability company, the voluntary or involuntary sale, conveyance, transfer or pledge of any limited partnership interests or membership interests (or the limited partnership interests or membership interests of any limited partnership or limited liability company directly or indirectly controlling

such limited partnership or limited liability company by operation of law or otherwise) or the creation or issuance of new limited partnership interests or membership interests (whether in one or a series of transactions), by which an aggregate of more than 49% of such limited partnership interests or membership interests are held by, or pledged to, parties who are not currently limited partners or members. Notwithstanding the foregoing, however, and in addition to and not in limitation of the transfers permitted pursuant to Section 2.9(b) hereof, (i) limited partnership interests and/or non-managing member interests in Borrower or in any general partner or member of Borrower shall be freely transferable without the consent of Lender so long as following such transfer, no more than 49% of the beneficial economic interest in Borrower (whether directly or indirectly) has been transferred in the aggregate and the persons responsible for the management and control of the Mortgaged Property and Borrower as of the date hereof remain in legal, beneficial and actual control and management of the Mortgaged Property and Borrower, (ii) any involuntary transfer caused by the death of Borrower or any general partner, shareholder, joint venturer, manager, member or beneficial owner of a trust shall not be an Event of Default under this Mortgage so long as Borrower is promptly reconstituted, if required, following such death and so long as those persons responsible for the control and management of the Mortgaged Property remain unchanged as a result of such death or any replacement management or controlling parties are approved by Lender which approval may be conditioned upon, among other things, receipt by Lender of a written confirmation from each Rating Agency that such transfer or replacement management or controlling parties will not result in a qualification, downgrade or withdrawal of any ratings issued in connection with any Secondary Market Transaction (a "**No-Downgrade Confirmation**") and (iii) gifts for estate planning purposes of any individual's interests in Borrower or in any of Borrower's general partners, managers, managing members or joint venturers to Immediate Family Members (as hereinafter defined) of such individual, or to a trust or other Entity (as hereinafter defined), for the benefit of any one or more of such individual or Immediate Family Members shall not be an Event of Default under this Mortgage so long as Borrower is reconstituted promptly, if required, following such gift and so long as those persons responsible for the control and management of the Mortgaged Property remain unchanged following such gift or any replacement management or controlling parties are approved by Lender which approval may be conditioned upon, among other things, receipt by Lender of a No-Downgrade Confirmation from each Rating Agency. Notwithstanding any provision of this Mortgage to the contrary, except as provided by Section 2.9(b) below, no person or entity may become an owner of a direct or indirect interest in Borrower, which interest exceeds forty-nine (49%) percent, without Lender's written consent in each instance and a written statement from the applicable rating agency to the effect that the transfer of interest will not result in a downgrading, withdrawal or qualification of the respective ratings in effect immediately prior to such transfer for any securities issued in connection with a Secondary Market Transaction (as hereinafter defined).

(b) Notwithstanding the foregoing provisions of Section 2.9(a) to the contrary, the following provisions shall apply:

As used herein, the following terms shall have the meanings indicated below:

1. "Entity" and "Entities" shall mean and include any and all general partnerships, limited partnerships, corporations, limited liability companies, limited liability

partnerships, joint ventures, trusts, estates, business trusts, cooperatives, associations, charitable trusts, charitable organizations and other comparable business or charitable entities;

2. "Person" or "Persons" shall mean and include any and all individuals or Entities, and the heirs, executors, administrators, legal representatives and successors of such Person or Persons;
3. "Ownership Interests" shall mean and include any and all interests in Borrower or in any of its permitted successors or assigns, or in any of its or their constituent members, managers, general or limited partners, stockholders or other investors owned directly or indirectly through one or more intermediaries by any Person or Persons including but not limited to any and all membership interests in any Entity that is a limited liability company, any and all stock interests in any Entity that is a corporation, any and all partnership interests (whether general or limited) in any Entity that is a general partnership, limited partnership or limited liability partnership and any and all legal or beneficial interests in any Entity that is a trust, estate or similar Entity;
4. "Immediate Family Members" shall mean and include, with respect to any Person who is an individual, all of the following: (i) such Person; (ii) such Person's spouse, parents, grandparents, brothers, sisters, parents-in-law, brothers-in-law, sisters-in-law, nephews and nieces; (iii) the children, grandchildren and other lineal descendants of all of the foregoing Persons referred to in clauses (i) and (ii) above (whether natural, adopted or step); (iv) the spouses of all of the foregoing Persons referred to in clauses (i), (ii) and (iii) above and their children, grandchildren and other lineal descendants (whether natural, adopted or step); and (v) any and all Entities that are directly or indirectly owned by or are for the benefit of any one or more or all of the Persons referred to in clauses (i), (ii), (iii) and (iv) above;
5. "Owner Entity" and "Owner Entities" shall mean and include any and all Persons (including both individuals and Entities) who own any Ownership Interests, whether directly or indirectly through one or more intermediaries, and their respective Immediate Family Members;
6. "Outsider Entity" and "Outsider Entities" shall mean and include any and all Persons (including both individuals and entities) other than Owner Entities; and
7. "Merger" shall mean and include a merger, consolidation or change of charter or name by, a transfer of all of the stock or other Ownership Interests in, or a sale of all or substantially all of the assets of, a corporation or other Entity.

Notwithstanding anything to the contrary provided herein, it is understood and agreed that the following transfers shall be permitted without the payment of any fee, without any change in the terms and provisions of the Loan Documents and without constituting a "Sale" or otherwise affecting the assumption rights under Section 2.9(c) hereof: (A) the Owner Entities may sell,

assign and transfer their Ownership Interests between and among themselves; (B) transfers of Ownership Interests caused by the death of any natural Person; (C) transfers of any Ownership Interests to any charitable trusts or other charitable organizations; (D) any Owner Entities, other than a general partner or managing member of the Borrower, may sell, assign or transfer their Ownership Interests to any real estate investment trust or other Entity whose stock or other securities are traded on any stock exchange (it being understood and agreed that a general partner or managing member of the Borrower may not sell, assign or transfer its Ownership Interests in the Borrower to any such publicly-traded Entity, but that the other Owner Entities may sell, assign or transfer their respective Ownership Interests in said general partner or managing member to any such publicly-traded Entity); (E) any Person may sell, assign or transfer any stock or other securities that are traded on any stock exchange; (F) any Owner Entities, other than a general partner or managing member of the Borrower, may sell, assign or transfer their Ownership Interests to any Outsider Entities, except that the Owner Entities may not transfer their Ownership Interests in any such general partner or managing member of the Borrower to any Outsider Entities except as and to the extent permitted under clause (B), (C), (D), (E) or (G) of this sentence; (G) the Owner Entities, collectively, may sell, assign and transfer up to and including forty-nine percent (49%) aggregate of Ownership Interests in any general partner or managing member of the Borrower to Outsider Entities; provided that such Outsider Entities shall not own more than forty-nine percent (49%) aggregate of the Ownership Interests in such general partner or managing member of the Borrower (except as and to the extent permitted under clause (B), (C), (D) or (E) of this sentence, and (H) any Owner Entity that is a corporation or other Entity whose stock or other Ownership Interests are publicly traded may consolidate with or merge into any other corporation or other Entity whose stock or other securities are publicly traded; provided, however, in connection with any such sales, assignments or transfers pursuant to this sentence, the following conditions shall be satisfied: (i) there shall not be any change in the management of the Mortgaged Property or if those Persons responsible for the management and control of the Mortgaged Property change after such transfer, sale or assignment, such change in the Person responsible for the management and control of the Mortgaged Property shall be subject to the approval of Lender, which approval shall not be unreasonably withheld or delayed provided a substitute property manager is retained with similar real estate experience in managing and leasing retail shopping centers; and (ii) Borrower shall give written notice of such sale, transfer or assignment to Lender promptly after its occurrence (except that no notice shall be required for transfers pursuant to clauses (A), (B), (E) or (H) of the first sentence of this paragraph). In addition, any foreclosure of the Mortgaged Property pursuant to and in accordance with the provisions hereof relating to a second mortgage (as set forth in subparagraph (e) hereof), and any pledge, assignment, foreclosure or other transfer of Ownership Interests pursuant to and in accordance with the provisions hereof relating to subordinate financing (as set forth in subparagraph (d) below) shall be permitted without the payment of any fee, without any changes in the terms and provisions of the Loan Documents and without constituting a "Sale" or otherwise affecting the assumption rights under Section 2.9(c) hereof.

(c) Notwithstanding the foregoing provisions of this Section, Lender shall consent to one or more sales, conveyances or transfers of the Mortgaged Property in its entirety (hereinafter, a "***Sale***") to any person or entity provided that, for each Sale, each of the following terms and conditions are satisfied:

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

(2) Borrower gives Lender written notice of the terms of such prospective Sale not less than sixty (60) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Lender all such information concerning the proposed transferee of the Mortgaged Property (hereinafter, "**Buyer**") as Lender would require in evaluating an initial extension of credit to a borrower and pays to Lender a non-refundable application fee in the amount of \$5,000. Lender shall have the right to approve or disapprove the proposed Buyer. In determining whether to give or withhold its approval of the proposed Buyer, Lender shall consider the Buyer's experience and track record in owning and operating facilities similar to the Mortgaged Property, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, that, notwithstanding Lender's agreement to consider the foregoing factors in determining whether to give or withhold such approval, such approval shall be given or withheld based on what Lender determines to be commercially reasonable in Lender's sole discretion and, if given, may be given subject to such conditions as Lender may deem appropriate;

(3) Borrower pays Lender, concurrently with the closing of each Sale, an amount equal to all out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Lender in connection with the Sale, plus, for each Sale following the first Sale, a non-refundable assumption fee in an amount equal to one percent (1.0%) of the then outstanding principal balance of the Note;

(4) The Buyer assumes and agrees to pay the Debt subject to the provisions of Section 6.27 hereof and, prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions (including, without limitation, a REMIC opinion and a non-consolidation opinion if required in connection with the original closing of the Loan secured by this Mortgage) as Lender may reasonably require, provided, however, that such documents and agreements shall not materially change the terms and conditions of the Loan Documents;

(5) A party associated with the Buyer approved by Lender in its sole discretion assumes the obligations of the current Indemnitor under its guaranty or indemnity agreement and such party associated with the Buyer executes, without any cost or expense to Lender, a new guaranty or indemnity agreement in form and substance satisfactory to Lender and delivers such legal opinions as Lender may require;

(6) Borrower and the Buyer execute, without any cost or expense to Lender, new financing statements or financing statement amendments (and new financing

statements as may be necessary) and any additional documents reasonably requested by Lender;

(7) Borrower delivers to Lender, without any cost or expense to Lender, such replacement policy or endorsements to Lender's title insurance policy, hazard insurance policy endorsements or certificates and other similar materials as Lender may deem necessary at the time of the Sale, all in form and substance reasonably satisfactory to Lender, including, without limitation, a replacement policy or an endorsement or endorsements to Lender'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 in subparagraph (4) of this Section, with no additional exceptions added to such policy without Lender's prior approval or as otherwise permitted hereunder, and insuring that fee simple title to the Mortgaged Property is vested in the Buyer;

(8) Borrower and any current Indemnitor execute and deliver to Lender, without any cost or expense to Lender, a release of Lender, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents, through and including the date of the closing of the Sale, which agreement shall be in form and substance reasonably satisfactory to Lender and shall be binding upon the Buyer and any new Indemnitor; and Lender shall execute and deliver to Borrower at Borrower's cost and expense a release of Borrower, its officers, directors, members, managers, and/or partners, from all claims and liability under the Loan Documents for acts or events occurring or liability arising after the date of closing of the Sale;

(9) Subject to the provisions of Section 6.27 hereof, such Sale is not construed so as to relieve Borrower of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale, whether or not same is discovered prior or subsequent to the closing of such Sale, and Borrower executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of said personal liability. Borrower shall be released from and relieved of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising after the closing of such Sale;

(10) Such Sale is not construed so as to relieve any current Indemnitor of its obligations under any guaranty or indemnity agreement for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale, and each such current Indemnitor executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of each such guaranty and indemnity agreement. Each such current Indemnitor shall be released from and relieved of any of its obligations under any guaranty or indemnity agreement executed in connection with the loan secured hereby for any acts or events occurring or obligations arising after the closing of such Sale;

(11) The Buyer shall furnish, if the Buyer is a corporation, partnership or other entity, all appropriate papers evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the Debt, which papers shall include certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners of the Buyer. The Buyer and such constituent partners, members or shareholders of Buyer (as the case may be), as Lender shall reasonably require, shall be Single-Purpose Entities, whose formation documents shall be approved by counsel to Lender;

(12) Borrower delivers to Lender a No-Downgrade Confirmation with respect to the proposed sale or, in the event the Secondary Market Transaction has not yet occurred, Lender shall, in its sole discretion, have approved the Sale; and

(13) The applicable transfer will not result in an increase in the real property taxes for the Premises and Improvements that would cause the debt service coverage ratio of the Debt to be less than 1.20 on a trailing twelve calendar month basis.'

(d) Notwithstanding the foregoing provisions of this Section, Borrower shall be permitted to obtain subordinate financing secured by interests in Borrower provided (i) the subordinate lender executes a subordination and standstill agreement acceptable to Lender in its reasonable discretion, (ii) the Mortgaged Property with such subordinate financing and with any Expansion Parcel (as hereinafter defined) and/or improvements to be financed thereby and pro forma income therefrom will support a minimum debt service coverage ratio of 1.15 to 1.0 and does not have a loan to value ratio in excess of 85%, as determined by Lender in its reasonable discretion, and (iii) Borrower reimburses Lender for all reasonable costs and expenses incurred by Lender in connection with and directly related to such subordinate financing, but Borrower shall not be required to pay any administrative fee in connection with this subsection.

(e) Notwithstanding the foregoing provisions of this Section, Borrower shall be permitted to obtain subordinate financing secured by a subordinate lien on the Mortgaged Property provided (i) the subordinate lender executes a subordination and standstill agreement acceptable to Lender in its reasonable discretion, (ii) the Mortgaged Property with such subordinate financing and with any Expansion Parcel and/or improvements to be financed thereby and pro forma income therefrom will support a minimum debt service coverage ratio of 1.20 to 1.0 and does not have a loan to value ratio in excess of 80%, as determined by Lender in its reasonable discretion, and (iii) Borrower reimburses Lender for all reasonable costs and expenses incurred by Lender in connection with and directly related to such subordinate financing, but Borrower shall not be required to pay any administrative fee in connection with this subsection.

(f) Notwithstanding the foregoing provisions of this Section, Lender shall release from the lien of this Mortgage and the other Loan Documents, (A) the parcel forming a part of the Mortgaged Property and more particularly shown and identified or described as a "Release Parcel" on Exhibit B attached hereto (the "**Movie Gallery Release Parcel**"), and (B) one or more of the Expansion Parcels (as hereinafter defined) which may from time to time become part of the Mortgaged Property and more particularly shown and identified or described as an "Expansion

Parcel" on Exhibit C attached hereto (the parcels described on Exhibit B and Exhibit C are hereinafter referred to individually as a "**Release Parcel**") and shall enter into such Cross Operating and Reciprocal Easement Agreements ("**COREAs**") and/or amendments thereto with Borrower and shall approve such amendments to any existing Leases and/or existing COREAs as may be required in connection therewith, and said transferee or transferees as may be reasonably required in connection therewith, upon not less than thirty (30) or more than ninety (90) days' prior written notice to Lender upon satisfaction of each of the following terms and conditions:

- (i) No Event of Default shall have occurred and be continuing.
- (ii) The following conditions shall have been satisfied, and Lender shall in addition have received a certificate of an authorized representative of Borrower, not less than ten (10) days prior to the proposed transfer or release of the Release Parcel, stating that:
 - (A) the proposed use of the Release Parcel shall be consistent with the use of the Remaining Realty (as defined below) or, if not consistent therewith, such proposed use shall not have a material adverse effect on the Remaining Realty;
 - (B) the portion of the realty remaining subject to the lien of this Mortgage after release of a Release Parcel (the "**Remaining Realty**") will continue to be in compliance with the standards of maintenance and operation at the Mortgaged Property, and remain in full compliance with all laws, ordinances, regulations and legal requirements and with the terms of all Leases and agreements and restrictions on the Remaining Realty;
 - (C) the proposed use of the Release Parcel will not violate the provisions of any Lease or agreements and restrictions affecting the Remaining Realty as same may be amended in connection with said transaction;
 - (D) If required by applicable law, Borrower shall cause the Release Parcel to be or be a part of a separate parcel of land for all building, subdivision and zoning purposes;
 - (E) Borrower shall cause the Release Parcel to be assessed for real property taxes as a separate parcel of land for the tax year following the tax year in which such release occurs; and
 - (F) title to the Release Parcel shall have been or shall simultaneously be conveyed to a person or entity other than Borrower;
- (iii) A title policy endorsement to the Lender's title insurance policy to the effect that the release of the Release Parcel will not have an adverse effect on the priority of the lien of this Mortgage with respect to the Remaining Realty, if available.
- (iv) An opinion of counsel in form and substance reasonably satisfactory to Lender that the release of the Release Parcel from the lien of this Mortgage will not directly

or indirectly result in or cause any REMIC Trust (as defined in the Note) that then holds the Note to fail to maintain its status as a REMIC Trust.

(v) Evidence in writing from the applicable rating agencies to the effect that the release of the Movie Gallery Release Parcel will not result in a downgrading, withdrawal or qualification of the respective ratings in effect immediately prior to such release for any securities issued in connection with the securitization which are then outstanding; provided, however, that the foregoing requirement shall not apply with respect to the release of an Expansion Parcel.

(vi) Borrower shall pay Lender a release price for the Movie Gallery Release Parcel ("**Release Price**") in an amount equal to the lesser of (A) the amount set forth on Exhibit D attached hereto or (B) the amount required for a Partial Defeasance (as defined in the Note) of the Note so that, following the completion of all transactions contemplated by Borrower in connection with said release and after taking into account the effects of said transactions on the value of and cash flow from the Remaining Realty, the loan-to-value ratio of the Undeleased Note (as defined in the Note) shall be no more than, and the debt service coverage ratio of the Undeleased Note shall be no less than, said ratios considered by Lender in its determination to make the loan secured hereby.

(vii) Borrower shall, at its sole cost and expense, prepare any and all documents and instruments necessary to effect the release of the Release Parcel, all of which shall be subject to the reasonable approval of Lender, and Borrower shall pay all costs reasonably incurred by Lender (including, but not limited to, reasonable attorneys' fees and disbursements, title search costs or endorsement premiums) in connection with the review, execution and delivery of such release and COREAs, but shall not be required to pay any administrative fee in connection with this subsection.

(viii) All agreements and instruments to be delivered to Lender pursuant to this Section shall be in form and substance reasonably satisfactory to Lender and its counsel.

(ix) In connection with the release of the Movie Gallery Release Parcel, Borrower shall comply with the provisions in Section 1.5(d) of the Note with respect to Partial Defeasance.

(g) Notwithstanding the foregoing provisions of this Section, Borrower shall be permitted to ground lease one or more Release Parcels to a person or entity other than Borrower, and Lender shall enter into such COREAs and attornment and recognition agreements with the Borrower, ground lessee and ground lessee's mortgagee as may be reasonably required in connection therewith, and shall approve such amendments to existing Leases and/or existing COREAs as may be reasonably required in connection therewith, upon not less than thirty (30) nor more than ninety (90) days' prior written notice to Lender upon satisfaction of each of the following terms and conditions:

(i) No Event of Default shall have occurred and be continuing.

(ii) The following conditions shall have been satisfied, and Lender shall in addition have received a certificate of an authorized representative of Borrower, not less than ten (10) days prior to the proposed ground lease of a Release Parcel stating that:

- (A) The proposed use of the Release Parcel shall be consistent with the use of the Remaining Realty or, if not consistent therewith, such proposed use shall not have a material adverse effect on the Remaining Realty;
- (B) The Mortgaged Property will continue to be in compliance with the standards of maintenance and operation at the Mortgaged Property, and shall remain in full compliance with all laws, ordinances, regulations and legal requirements and with the terms of all Leases and agreements and restrictions on the Mortgaged Property;
- (C) The proposed use of the Release Parcel will not violate the provisions of any Lease or agreements and restrictions affecting the Mortgaged Property as same may be amended in connection with said transaction; and
- (D) The Release Parcel shall have been or shall simultaneously be ground leased to a person or entity other than Borrower;

(iii) Borrower shall, at its sole cost and expense, prepare any and all documents and instruments necessary to effect the ground lease of a Release Parcel, all of which shall be subject to the reasonable approval of Lender, and Borrower shall pay all costs reasonably incurred by Lender (including, but not limited to, reasonable attorneys' fees and disbursements, title search costs or endorsement premiums) in connection with the review, execution and delivery of such documents, but shall not be required to pay any administrative fee in connection with this subsection.

(iv) All agreements and instruments to be delivered to Lender pursuant to this Section shall be in form and substance reasonably satisfactory to Lender and its counsel.

(h) If Borrower from time to time acquires fee title to or a leasehold estate in all or any part or parts of one or more parcels of real property adjoining the Mortgaged Property (said adjoining parcels acquired by Borrower hereinafter referred to individually as an "**Expansion Parcel**," and with respect to more than one, as "**Expansion Parcels**", as more particularly described on Exhibit C attached hereto) which Borrower desires to subject to the lien and security interest of Lender under this Mortgage and the other Loan Documents, Borrower shall have the right to subject such Expansion Parcel to the lien of this Mortgage and the other Loan Documents, upon not less than 30 nor more than 120 days' prior written notice to Lender, upon satisfaction of each of the following terms and conditions:

- (i) No Event of Default shall have occurred and be continuing.
- (ii) Borrower shall deliver to Lender:

(A) an amendment and modification of this Mortgage, the Assignment and such other of the Loan Documents (including UCC-1 financing statements) as Lender requires (collectively, the "*Amendments*"), granting Lender a first-priority lien on such Expansion Parcel;

(B) an opinion of local counsel reasonably satisfactory to Lender which includes standard due execution, enforceability, perfection and usury opinions similar to those initially provided in connection with the Mortgaged Property;

(C) a title insurance policy satisfactory to Lender insuring that such Amendments create a valid and enforceable first-priority lien on such Expansion Parcel subject to exceptions acceptable to Lender in its reasonable discretion;

(D) upon request by Lender, an opinion of counsel in form and substance reasonably satisfactory to Lender that the addition of the Expansion Parcel will not directly or indirectly result in or cause any REMIC Trust that then holds the Note to fail to maintain its status as a REMIC Trust; and

(E) such other documents, instruments or reports reasonably deemed necessary by Lender to effectuate the addition of such Expansion Parcel contemplated hereby including, without limitation, an appraisal report, a zoning report, an engineering report and an environmental report with respect to such Expansion Parcel.

(iii) Lender shall prepare any and all documents and instruments necessary to effect the addition of such Expansion Parcel as part of the Mortgaged Property, including the Amendments, and Borrower shall pay all costs and expenses incurred by Lender (including, but not limited to, reasonable attorneys' fees, recording fees and title insurance premiums) in connection with the addition of such Expansion Parcel contemplated hereby, but shall not be required to pay any administrative fee in connection with this subsection.

(iv) The Amendments and all other agreements and instruments to be delivered to Lender pursuant to this Section 2.9(f) shall be in form and substance reasonably satisfactory to Lender and its counsel.

2.10 Payment of Utilities, Assessments, Charges, Etc. Borrower shall pay when due all utility charges which are incurred by Borrower or which may become a charge or lien against any portion of the Mortgaged Property for gas, electricity, water and sewer services furnished to the Premises and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Premises and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

2.11 Access Privileges and Inspections. Lender and the agents, representatives and employees of Lender shall, subject to the rights of Tenants, have full and free access to the Premises and the Improvements and any other location where books and records concerning the

Mortgaged Property are kept at all reasonable times and, except in the event of an emergency, upon not less than 24 hours prior notice (which notice may be telephonic) for the purposes of inspecting the Mortgaged Property and of examining, copying and making extracts from the books and records of Borrower relating to the Mortgaged Property. Borrower shall lend assistance to all such agents, representatives and employees of Lender.

2.12 Waste; Alteration of Improvements. Borrower shall not commit, suffer or permit any waste on the Mortgaged Property nor take any actions that might invalidate any insurance carried on the Mortgaged Property. Borrower shall maintain the Mortgaged Property in good condition and repair. No part of the Improvements may be removed, demolished or materially altered other than as provided under any Lease or Leases at the Mortgage Property, without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed, Borrower shall not commence construction of any improvements on the Premises other than improvements required for the maintenance or repair of the Mortgaged Property, except as may be required by the Leases at the Mortgaged Property. Lender reserves the right to condition its consent to any material alteration, removal, demolition or new construction on the following: (i) such conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Lender of plans and specifications, construction budgets, contractors and form of construction contracts and the furnishing to Lender of evidence regarding funds, permits, approvals bonds, insurance, lien waivers, title endorsements, appraisals, surveys, certificates of occupancy, certificates regarding completion, invoices, receipts and affidavits from contractors and subcontractors, in form and substance satisfactory to Lender in its discretion and (ii) Borrower's agreement to pay all fees, costs and expenses incurred by Lender in granting such consent, including, without limitation, reasonable attorneys' fees and expenses.

2.13 Zoning. Without the prior written consent of Lender, Borrower shall not seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Premises or the Improvements. Borrower shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Premises or the Improvements. Borrower shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Mortgaged Property. Borrower shall keep all licenses, permits, franchises and other approvals necessary for the operation of the Mortgaged Property in full force and effect. Borrower shall operate the Mortgaged Property as a retail shopping center for so long as the Debt is outstanding. If, under applicable zoning provisions, the use of all or any part of the Premises or the Improvements is or becomes a nonconforming use, Borrower shall not cause or permit (to the extent within Borrower's control) such use to be discontinued or abandoned without the prior written consent of Lender. Further, without Lender's prior written consent, Borrower shall not file or subject any part of the Premises or the Improvements to any declaration of condominium or co-operative or convert any part of the Premises or the Improvements to a condominium, co-operative or other form of multiple ownership and governance.

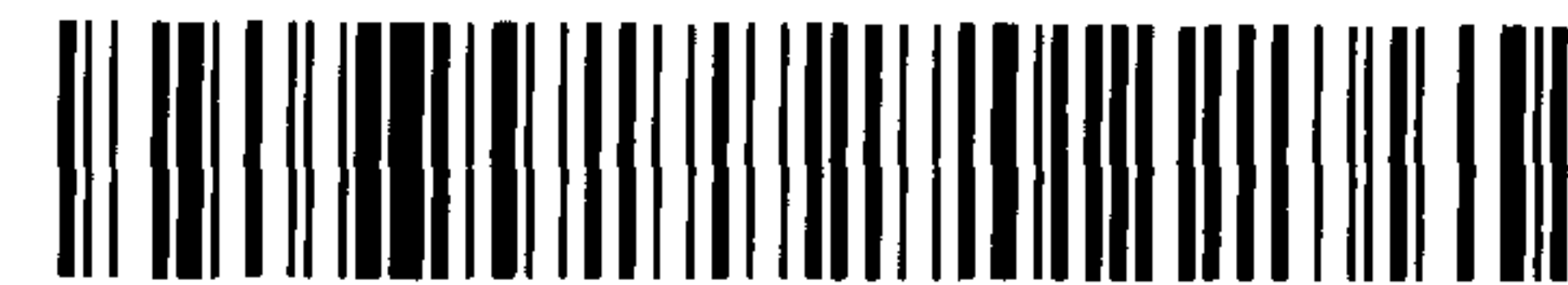
2.14 Financial Statements and Books and Records. Borrower shall keep accurate books and records of account of the Mortgaged Property and its own financial affairs sufficient

to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender and its duly authorized representatives shall have the right to examine, copy and audit Borrower's records and books of account at all reasonable times. So long as this Mortgage continues in effect, Borrower shall provide to Lender, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which must be certified to Lender as being true and correct in all material respects by Borrower or the person or entity to which they pertain, as applicable, and be prepared in accordance with generally accepted accounting principles consistently applied and be in form and substance reasonably acceptable to Lender:

- (a) copies of all federal income tax returns filed by Borrower, within thirty (30) days after the date of filing;
- (b) monthly operating statements for the Mortgaged Property, within twenty (20) days after the end of each of the first (1st) twelve (12) calendar months following the date hereof; and
- (c) annual balance sheets for the Mortgaged Property and annual financial statements for Borrower, and each Indemnitor, within one hundred twenty (120) days after the end of each calendar year;
- (d) such other information with respect to the Mortgaged Property, Borrower, the principals or general partners in Borrower, and each Indemnitor, which may be reasonably requested from time to time by Lender, within a reasonable time after the applicable request.

If any of the aforementioned materials are not furnished to Lender within the applicable time periods or Lender has a reasonable basis to be dissatisfied with the form or accuracy of any of the foregoing and has notified Borrower of its dissatisfaction, in addition to any other rights and remedies of Lender contained herein, (i) Borrower shall pay to Lender upon demand, at Lender's option and in its sole discretion, an amount equal to \$2,500 for each of the aforementioned materials that is not delivered in accordance with generally accepted accounting principles, provided Lender has given Borrower at least 30 days' notice of such failure, and (ii) Lender shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Lender, in which event Borrower agrees to pay, or to reimburse Lender for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit.

2.15 Further Assurances. Borrower shall, on the request of Lender and at the expense of Borrower: (a) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the contents of any of the other Loan Documents; (b) promptly execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby



and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Mortgaged Property; (c) promptly execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically, without limitation, any financing statement) deemed advisable by Lender to protect, continue or perfect the liens or the security interests hereunder against the rights or interests of third persons; and (d) promptly furnish to Lender, upon Lender's request, a duly acknowledged written statement and estoppel certificate addressed to such party or parties as directed by Lender and in form and substance supplied by Lender and reasonably acceptable to Borrower, setting forth to the best of Borrower's knowledge (i) all amounts due under the Note, (ii) whether any Event of Default has occurred hereunder, (iii) whether any offsets or defenses exist against the Debt and (iv) such other matters as Lender may reasonably require.

2.16 Payment of Costs; Reimbursement to Lender. Borrower shall pay all reasonable costs and expenses of every character reasonably incurred in connection with the closing of the loan evidenced by the Note and secured hereby, or otherwise attributable or chargeable to Borrower as the owner of the Mortgaged Property or otherwise attributable to any consent requested of Lender or any Rating Agency under the terms hereof or any other Loan Document, including, without limitation, appraisal fees, recording fees, documentary, stamp, mortgage or intangible taxes, brokerage fees and commissions, title policy premiums and title search fees, uniform commercial code/tax lien/litigation search fees, escrow fees, consultants' fees, No-Downgrade Confirmations and reasonable attorneys' fees (at both trial and appellate levels). If Borrower defaults in any such payment, which default is not cured within any applicable grace and cure period, Lender may pay the same and Borrower shall reimburse Lender on demand for all such costs and expenses incurred or paid by Lender, together with such interest thereon at the Default Interest Rate from and after the date of Lender's making such payment until reimbursement thereof by Borrower. Any such sums disbursed by Lender, together with such interest thereon, shall be additional indebtedness of Borrower secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Further, Borrower shall promptly notify Lender in writing of any litigation or threatened litigation affecting the Mortgaged Property, or any other demand or claim which, if enforced, could impair or threaten to impair Lender's security hereunder. Without limiting or waiving any other rights and remedies of Lender hereunder, if Borrower fails to perform any of its covenants or agreements contained in this Mortgage or in any of the other Loan Documents and such failure is not cured within any applicable grace and cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Lender's interest in the Mortgaged Property or Lender's right to enforce its security, then Lender may, at its option, with or without notice to Borrower, make any appearances, disburse any sums and take any actions as may be reasonably necessary or desirable to protect or enforce the security of this Mortgage or to remedy the failure of Borrower to perform its covenants and agreements (without, however, waiving any default of Borrower). Borrower agrees to pay on demand all expenses of Lender reasonably incurred with respect to the foregoing (including, but not limited to, reasonable fees and disbursements of counsel), together with interest thereon at the Default Interest Rate from and after the date on which Lender incurs such expenses until reimbursement thereof by Borrower. Any such expenses so incurred by Lender, together with interest thereon as provided above, shall be additional indebtedness of Borrower secured by this Mortgage and by all of the other Loan

Documents securing all or any part of the Debt. The necessity for any such actions and of the amounts to be paid shall be determined by Lender in its reasonable discretion. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Borrower hereby acknowledges and agrees that the remedies set forth in this Section 2.16 shall be exercisable by Lender, and any and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower with interest thereon at the Default Interest Rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Lender after the filing by Borrower of a voluntary case or the filing against Borrower of an involuntary case pursuant to or within the meaning of the Bankruptcy Reform Act of 1978, as amended, Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Borrower, Lender, any Indemnitor, the Debt or any of the Loan Documents. Borrower hereby indemnifies and holds Lender harmless from and against all loss, cost and expenses with respect to any Event of Default under this Section 2.16, any liens (i.e., judgments, mechanics' and materialmen's liens, or otherwise), charges and encumbrances filed against the Mortgaged Property, and from any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Premises or the Improvements or any nuisance made or suffered thereon at any time prior to the date of a permitted Sale pursuant to Section 2.9(b) hereof and the date Lender forecloses this Mortgage or takes title to the Premises, except those that are due to Lender's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction, including, without limitation, in any case, reasonable attorneys' fees, costs and expenses as aforesaid, whether at pretrial, trial or appellate level, and such indemnity shall survive payment in full of the Debt. This Section shall not be construed to require Lender to incur any expenses, make any appearances or take any actions.

2.17 Security Interest. This Mortgage is also intended to encumber and create a security interest in, and Borrower hereby grants to Lender a security interest in, all sums on deposit with Lender pursuant to the provisions of Article III hereof or any other Section hereof or of any other Loan Document and all fixtures, chattels, accounts, equipment, inventory, contract rights, general intangibles and other personal property included within the Mortgaged Property, and any and all other property included within the Mortgaged Property with respect to which a security interest can be created or perfected under the applicable Uniform Commercial Code, together with all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "*Collateral*"), whether or not the same shall be attached to the Premises or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Premises and the Improvements. The foregoing security interest shall also cover Borrower's leasehold interest in any of the foregoing property which is leased by Borrower. Notwithstanding the foregoing, all of the foregoing property shall be owned by Borrower and no leasing or installment sales or other financing or title retention agreement in connection

therewith shall be permitted without the prior written approval of Lender other than any existing equipment leases. Borrower shall, from time to time upon the request of Lender, supply Lender with a current inventory of all of the property in which Lender is granted a security interest hereunder, in such detail as Lender may reasonably require. Borrower shall promptly replace all of the Collateral subject to the lien or security interest of this Mortgage when worn or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Lender, remove from the Premises or the Improvements any of the Collateral subject to the lien or security interest of this Mortgage except such as is replaced by an article of equal suitability and value as above provided, owned by Borrower free and clear of any lien or security interest except that created by this Mortgage and the other Loan Documents. All of the Collateral shall be kept at the location of the Premises except as otherwise required by the terms of the Loan Documents and except for books, records, documents and accounts of Borrower which may be kept at the principal office of Borrower or its property manager. Borrower shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

2.18 Security Agreement. This Mortgage constitutes a security agreement between Borrower and Lender with respect to the Collateral in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower to execute and deliver and, if appropriate, to file with the appropriate filing officer or office, such security agreements, financing statements, continuation statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Except with respect to Rents and Profits to the extent specifically provided herein to the contrary, Lender shall have the right of possession of all cash, securities, instruments, negotiable instruments, documents, certificates and any other evidences of cash or other property or evidences of rights to cash rather than property, which are now or hereafter a part of the Mortgaged Property, and Borrower shall promptly deliver the same to Lender, endorsed to Lender, without further notice from Lender. Borrower agrees to furnish Lender with notice of any change in the name, identity, organizational structure, residence, or principal place of business or mailing address of Borrower within ten (10) days of the effective date of any such change. Upon the occurrence and continuation of an Event of Default hereunder, Lender shall have the rights and remedies as prescribed in this Mortgage, or as prescribed by general law, or as prescribed by any applicable Uniform Commercial Code, all at Lender's election. Any disposition of the Collateral may be conducted by an employee or agent of Lender. Any person, including both Borrower and Lender, shall be eligible to purchase any part or all of the Collateral at any such disposition. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Lender's reasonable attorneys' fees actually incurred and paid by or on behalf of Lender (at both trial and appellate levels) and legal expenses), together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Lender shall have the right to enter upon the Premises and the Improvements or any real property where any of the property which is the subject of the security interest granted herein is located to take possession of,

assemble and collect the same or to render it unusable, or Borrower, upon demand of Lender, shall assemble such property and make it available to Lender at the Premises, or at a place which is mutually agreed upon or, if no such place is agreed upon, at a place reasonably designated by Borrower to be reasonably convenient to Lender and Borrower. If notice is required by law, Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale of such property, or adjournments thereof, or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with a foreclosure sale as provided in Section 5.1(e) hereof upon giving the same notice with respect to the sale of the Mortgaged Property hereunder as is required under said Section 5.1(e). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Lender pursuant to any applicable Uniform Commercial Code:

(a) In the event of a foreclosure sale, the Mortgaged Property may, at the option of Lender, be sold as a whole; and

(b) It shall not be necessary that Lender take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and

(c) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender.

This Mortgage may be filed as a financing statement, including but not limited to a fixture filing, pursuant to the applicable Uniform Commercial Code. The name and address of Borrower (as Debtor under any applicable Uniform Commercial Code) are:

SCHILLECI WHITE STONE, LLC
c/o JMS Realty, LLC
1761 Plat Place
Montgomery, Alabama 36117

The name and address of Lender (as Secured Party under any applicable Uniform Commercial Code) are:

WACHOVIA BANK, NATIONAL ASSOCIATION
Commercial Real Estate Services
8739 Research Drive URP – 4, NC 1075
Loan No. 50-2853381
Charlotte, North Carolina 28262

The Borrower is the record owner of the Premises.

2.19 Easements and Rights-of-Way. Borrower shall not grant any easement or right-of-way with respect to all or any portion of the Premises or the Improvements without the prior written consent of Lender, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, notwithstanding anything to the contrary provided in this Mortgage, that Borrower shall be permitted without the consent of Lender (i) to dedicate existing sanitary sewer easements to a public utility if and when such public utility is available, and to vacate any such existing sanitary sewer easements not required by the public utility, (ii) to grant or withhold waivers, consents and approvals and to exercise other rights as the owner of the Mortgaged Property arising under existing declarations, easements, covenants and restrictions affecting the Mortgaged Property and under any future declarations, easements, covenants and restrictions affecting the Mortgaged Property that are either consented to by Lender or otherwise permitted hereunder, (iii) to grant utility, sanitary sewer, drainage, access and parking rights to the Mortgaged Property that either individually, or in the aggregate, do not have a material adverse effect on the Premises or Improvements or the general use of the Mortgaged Property and (iv) to vacate and relocate existing utility, sanitary sewer and drainage easements and to dedicate new and replacement utility, sanitary sewer and drainage easements. Except as provided above, the purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Mortgage and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement or right-of-way. If Lender consents to the grant of an easement or right-of-way, Lender agrees to grant such consent without charge to Borrower other than expenses, including, without limitation, reasonable attorneys' fees, incurred by Lender in the review of Borrower's request and in the preparation of documents effecting the subordination. Notwithstanding the foregoing, in the event Borrower shall determine that it is necessary or desirable to record a conditional exclusive use agreement with respect to Starbucks locating at the Mortgaged Property or at property within the vicinity of the Mortgaged Property, Lender consent or approval shall not be required for the recordation of such agreement. In the event of a foreclosure of the Mortgaged Property, or a deed in lieu of foreclosure, the purchaser shall be subject to such exclusive use agreement.

2.20 Compliance with Laws. Borrower shall at all times comply 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, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Mortgaged Property and

any environmental or ecological requirements, even if such compliance shall require structural changes to the Mortgaged Property; provided, however, that, Borrower may, upon providing Lender with security satisfactory to Lender, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Mortgaged Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Borrower shall not use or occupy, or allow the use or occupancy of, the Mortgaged Property in any manner which violates any Lease of or any other agreement applicable to the Mortgaged Property or any applicable law, rule, regulation or order or 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.

2.21 Additional Taxes. In the event of the enactment after the date hereof of any law of the state in which the Mortgaged Property is located or of any other governmental entity deducting from the value of the Mortgaged Property for the purpose of taxing any lien or security interest thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of deeds of trust, mortgages or security agreements or debts secured by deeds of trust, mortgages or security agreements or the interest of the beneficiary, mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Mortgage or the Debt or Lender, then, and in any such event, Borrower, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if in the opinion of counsel for Lender (a) it might be unlawful to require Borrower to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Lender may elect, by notice in writing given to Borrower, to declare all of the Debt to be and become due and payable in full thirty (30) days from the giving of such notice, and, in connection with the payment of such Debt, no prepayment premium or fee shall be due unless, at the time of such payment, an Event of Default shall have occurred, which Event of Default is unrelated to the provisions of this Section 2.21, in which event any applicable prepayment premium or fee in accordance with the terms of the Note shall be due and payable. Notwithstanding the foregoing, Borrower shall have no obligation to pay income, franchise, profit or similar tax that is or may be imposed upon Lender as a consequence of its general business activities, including the receipt of interest and other amounts under the Note and the other Loan Documents.

2.22 Secured Indebtedness. It is understood and agreed that this Mortgage shall secure payment of not only the indebtedness evidenced by the Note but also any and all substitutions, replacements, renewals and extensions of the Note, any and all indebtedness and obligations arising pursuant to the terms hereof and any and all indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents, all of which indebtedness is equally secured with and has the same priority as any amounts advanced as of the date hereof. It is agreed that any future advances made by Lender to or for the benefit of Borrower from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Lender, or otherwise, made for any purpose, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all

amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage.

2.23 Borrower's Waivers. To the full extent permitted by law, Borrower agrees that Borrower shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the Debt prior to any sale of the Mortgaged Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Mortgaged Property so sold. Borrower, for Borrower and Borrower's successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the Debt (except such notices as are specifically provided for herein); (b) waives, releases, relinquishes and forever forgoes all right to a marshaling of the assets of Borrower, including the Mortgaged Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Mortgaged Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Mortgaged Property sold as an entirety; and (c) waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under applicable law. To the full extent permitted by law, Borrower shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Lender under the terms of this Mortgage to a sale of the Mortgaged Property, for the collection of the Debt without any prior or different resort for collection, or the right of Lender under the terms of this Mortgage to the payment of the Debt out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever. Furthermore, Borrower hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Mortgage or to collect any of the Debt to the fullest extent permitted by law. Borrower covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Borrower shall not seek a supplemental stay or otherwise shall not seek pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against any guarantor or indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

2.24 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND

UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE IN WHICH THE PREMISES IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS MORTGAGE OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN THE COUNTY IN WHICH THE PREMISES IS LOCATED, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (iv) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 4.5 HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW.

(b) BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE DEBT OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

2.25 Attorney-in-Fact Provisions. With respect to any provision of this Mortgage or any other Loan Document whereby Borrower grants to Lender a power-of-attorney, provided no Event of Default has occurred under this Mortgage, Lender shall first give Borrower written notice at least three (3) days prior to acting under such power, which notice shall demand that Borrower first take the proposed action within such period and advising Borrower that if it fails to do so, Lender will so act under the power; provided, however, that, in the event that an Event of Default has occurred, or if necessary to prevent imminent death, serious injury, damage, loss, forfeiture or diminution in value to the Mortgaged Property or any surrounding property or to prevent any adverse affect on Lender's interest in the Mortgaged Property, Lender may act immediately and without first giving such notice. In such event, Lender will give Borrower notice of such action as soon thereafter as reasonably practical.

2.26 Management. The management of the Mortgaged Property shall be by either: (a) Borrower or an entity affiliated with Borrower approved by Lender for so long as Borrower or said affiliated entity is managing the Mortgaged Property in a first class manner; or (b) a professional property management company reasonably approved by Lender. Such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement reasonably approved by Lender. Aronov Realty Management, Inc. is hereby approved as a property manager and JMS Realty, LLC, an Alabama limited liability company ("**JMS**") is hereby approved as a substitute property manager. In no event shall any manager be removed or replaced (other than a replacement by JMS) or the terms of any management agreement modified or amended without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed by Lender provided a substitute property manager is retained with similar real estate experience in managing and leasing retail shopping center. In the event of an Event of Default hereunder or under any management contract then in effect, which default is not cured within any applicable grace or cure period, Lender shall have the right to terminate, or to direct Borrower to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Borrower to retain, a new management agent approved by Lender which approval will not be unreasonably withheld or delayed. All Rents and Profits generated by or derived from the Mortgaged Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Mortgaged Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to this Mortgage and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Mortgaged Property shall be diverted by Borrower and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Mortgaged Property have been fully paid and satisfied.

2.27 Hazardous Waste and Other Substances.

(a) Borrower hereby represents and warrants to Lender that, as of the date hereof, to the best of Borrower's knowledge, information and belief, and except as set forth in that certain Phase I Environmental Site Assessment dated September 7, 2005 and prepared by IVI International, Inc.: (i) none of Borrower nor the Mortgaged Property nor any Tenant at the Premises nor the operations conducted thereon is in direct or indirect violation of or otherwise exposed to any liability under any local, state or federal law, rule or regulation or common law duty pertaining to human health, natural resources or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.) ("**CERCLA**"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Emergency Planning and Community-Right-to-Know Act (42 U.S.C. §11001 et seq.), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.) and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), and the regulations promulgated pursuant to said laws, all as amended from time to time (collectively, "**Environmental Laws**") or otherwise exposed to any liability under any Environmental Law relating to or affecting the Mortgaged Property, whether or not used by or within the control of Borrower; (ii) no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos or asbestos-containing

materials, lead based paint, Toxic Mold (as hereinafter defined) polychlorinated biphenyls, petroleum or petroleum products or byproducts, flammable explosives, radioactive materials, infectious substances, radon gas or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "**Hazardous Substances**") are located on, in or under or have been handled, generated, stored, processed or disposed of on or released or discharged from the Mortgaged Property (including underground contamination), except for those substances used by Borrower or any Tenant in the ordinary course of their respective businesses and in compliance with all Environmental Laws; (iii) radon is not present at the Mortgaged Property in excess or in violation of any applicable thresholds or standards or in amounts that require disclosure under applicable law to any tenant or occupant of or invitee to the Mortgaged Property or to any governmental agency or the general public; (iv) the Mortgaged Property is not subject to any private or governmental lien or judicial or administrative notice or action arising under Environmental Laws; (v) there is no pending, nor, to Borrower's knowledge, information or belief, threatened litigation arising under Environmental Laws affecting Borrower or the Mortgaged Property; (vi) there are no and have been no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances or landfills or dumps on the Mortgaged Property; (vii) Borrower has received no notice of, and to the best of Borrower's knowledge and belief, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Mortgaged Property, nor does Borrower know of any basis for such an investigation, action, proceeding or claim; and (viii) Borrower has received no notice of and, to the best of Borrower's knowledge and belief, there has been no claim by any party that any use, operation or condition of the Mortgaged Property has caused any nuisance or any other liability or adverse condition on any other property, nor does Borrower know of any basis for such an investigation, action, proceeding or claim. For the purposes hereof, "**Toxic Mold**" shall mean any mold or fungus at the Mortgaged Property which is of a type (i) that might pose a significant risk to human health or the environment or (ii) that would negatively impact the value of the Mortgaged Property.

(b) Borrower has not received nor to the best of Borrower's knowledge, information and belief has there been issued, any notice, notification, demand, request for information, citation, summons, or order in any way relating to any actual, alleged or potential violation or liability arising under Environmental Laws.

(c) Neither the Mortgaged Property, nor to the best of Borrower's knowledge, information and belief, any property to which Borrower has, in connection with the maintenance or operation of the Mortgaged Property, directly or indirectly transported or arranged for the transportation of any Hazardous Substances is listed or, to the best of Borrower's knowledge, information and belief, proposed for listing on the National Priorities List promulgated pursuant to CERCLA, CERCLIS (as defined in CERCLA) or on any similar federal or state list of sites requiring environmental investigation or clean-up.

(d) Borrower shall comply with all applicable Environmental Laws. Borrower shall keep the Mortgaged Property or cause the Mortgaged Property to be kept, free

from Hazardous Substances in violation of applicable Environmental Laws (except those substances used by Borrower or any Tenant in the ordinary course of their respective businesses and except in compliance with all Environmental Laws) and in compliance with all Environmental Laws. Except in compliance with all Environmental Laws, Borrower shall not install or use any underground storage tanks and shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all Tenants in quantities or conditions that would violate or give rise to any obligation to take remedial or other action under any applicable Environmental Laws. Without limiting the generality of the foregoing, during the term of this Mortgage, Borrower shall not install in the Improvements or permit to be installed in the Improvements any asbestos or asbestos-containing materials.

(e) Borrower shall promptly notify Lender if Borrower shall become aware of (i) the actual or potential existence of any Hazardous Substances on the Mortgaged Property in violation of any Environmental Laws other than those occurring in the ordinary course of Borrower's business and which do not violate, or would not otherwise give rise to liability under Environmental Laws, (ii) any direct or indirect violation of, or other exposure to liability under, any Environmental Laws, (iii) any lien, action or notice affecting the Mortgaged Property or Borrower resulting from any violation or alleged violation of or liability or alleged liability under any Environmental Laws, (iv) the institution of any investigation, inquiry or proceeding concerning Borrower or the Mortgaged Property pursuant to any Environmental Laws or otherwise relating to Hazardous Substances, or (v) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Mortgage incorrect in any respect if made at the time of such discovery. Immediately upon receipt of same, Borrower, shall deliver to Lender copies of any and all requests for information, complaints, citations, summonses, orders, notices, reports or other communications, documents or instruments in any way relating to any actual, alleged or potential violation or liability of any nature whatsoever arising under Environmental Laws and relating to the Mortgaged Property or to Borrower. Borrower shall remedy or cause to be remedied in a timely manner (and in any event within the time period permitted by applicable Environmental Laws) any violation of Environmental Laws. Without limiting the foregoing, Borrower shall, promptly and regardless of the source of the contamination or threat to the environment or human health, at its own expense, take all actions as shall be necessary or prudent, for the clean-up of any and all portions of the Mortgaged Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Lender) and shall further pay or cause to be paid, at no expense to Lender, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Mortgaged Property. In the event Borrower fails to do so, Lender may, but shall not be obligated to, cause the Mortgaged Property or other affected property to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws and any and all costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. Borrower hereby grants to Lender and its agents and employees access to the Mortgaged Property and a license to remove any items deemed by Lender to be Hazardous Substances and to do all things Lender reasonably

shall deem necessary to bring the Mortgaged Property into conformance with Environmental Laws.

(f) Borrower covenants and agrees, at Borrower's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Lender), and hold Lender harmless from and against any and all liens, damages (including without limitation, punitive or exemplary damages), losses, liabilities (including, without limitation, strict liability), obligations, settlement payments, penalties, fines, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lender or the Mortgaged Property, and arising directly or indirectly from or out of: (i) any violation or alleged violation of, or liability or alleged liability under, any Environmental Law; (ii) the presence, release or threat of release of or exposure to any Hazardous Substances on, in, under or affecting all or any portion of the Mortgaged Property or any surrounding areas, regardless of whether or not caused by or within the control of Borrower; (iii) any transport, treatment, recycling, storage, disposal or arrangement therefor of Hazardous Substances whether on the Mortgaged Property, originating from the Mortgaged Property, or otherwise associated with Borrower or any operations conducted on the Mortgaged Property at any time; (iv) the failure by Borrower to comply fully with the terms and conditions of this Section 2.27; (v) the breach of any representation or warranty contained in this Section 2.27; or (vi) the enforcement of this Section 2.27, including, without limitation, the cost of assessment, investigation, containment, removal and/or remediation of any and all Hazardous Substances from all or any portion of the Mortgaged Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances on, in, under or affecting any portion of the Mortgaged Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with Environmental Laws in connection with all or any portion of the Mortgaged Property or any surrounding areas. The indemnity set forth in this Section 2.27 shall also include any diminution in the value of the security afforded by the Mortgaged Property or any future reduction in the sales price of the Mortgaged Property by reason of any matter set forth in this Section 2.27. The foregoing indemnity shall specifically not include any such costs relating to Hazardous Substances which are initially placed on, in or under the Mortgaged Property (1) after foreclosure or other taking of title to the Mortgaged Property by Lender or its successor or assigns, or (2)(a) prior to a foreclosure or the taking of title to the Property by Lender but after the date Lender shall exercise its remedies under the Loan Documents and shall have control and possession of the Property by itself or through an agent or a receiver, and (b) directly results from the negligent or unreasonable acts of Lender, its agent or a receiver in operating, leasing, renting or managing the Property. Lender's rights under this Section shall survive payment in full of the Debt and shall be in addition to all other rights of Lender under this Mortgage, the Note and the other Loan Documents.

(g) Upon Lender's request, at any time after the occurrence of an Event of Default or at such other time as Lender has reasonable grounds to believe that Hazardous Substances are or have been released, stored or disposed of on the Mortgaged Property in violation of Environmental Laws, or on property contiguous with the Mortgaged Property, or that the Mortgaged Property may be in violation of the Environmental Laws, Borrower shall perform or cause to be performed, at Borrower's sole cost and expense and in scope, form and substance reasonably satisfactory to Lender, an inspection or audit of the Mortgaged Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Lender indicating the presence or absence of Hazardous Substances on the Mortgaged Property, the compliance or non-compliance status of the Mortgaged Property and the operations conducted thereon with applicable Environmental Laws, or an inspection or audit of the Mortgaged Property prepared by an engineering or consulting firm approved by Lender indicating the presence or absence of friable asbestos or substances containing asbestos or lead or substances containing lead or lead based paint ("**Lead Based Paint**") on the Mortgaged Property. If Borrower fails to provide reports of such inspection or audit within thirty (30) days after such request, Lender may order the same, and Borrower hereby grants to Lender and its employees and agents access to the Mortgaged Property and an irrevocable license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt.

(h) Reference is made to that certain Environmental Indemnity Agreement of even date herewith by and among Borrower and any other principal signatory named therein in favor of Lender (the "**Environmental Indemnity Agreement**"). The provisions of this Mortgage and the Environmental Indemnity Agreement shall be read together to maximize the coverage with respect to the subject matter thereof, as determined by Lender.

(i) If prior to the date hereof, it was determined that the Mortgaged Property contains asbestos-containing materials ("**ACM's**"), Borrower covenants and agrees to institute, within thirty (30) days after the date hereof, an operations and maintenance program (the "**Maintenance Program**") designed by an environmental consultant, satisfactory to Lender, with respect to ACM's, consistent with "Guidelines for Controlling Asbestos-Containing Materials in Buildings" (USEPA, 1985) and other relevant guidelines, and such Maintenance Program will hereafter continuously remain in effect until the Debt secured hereby is repaid in full. In furtherance of the foregoing, Borrower shall inspect and maintain all ACM's on a regular basis and ensure that all ACM's shall be maintained in a condition that prevents exposure of residents to ACM's at all times. Without limiting the generality of the preceding sentence, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify, (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (iii) at Borrower's sole expense, supplemental examination of the Mortgaged Property by consultants specified by Lender, and (iv) variation of the operations and maintenance program in response to the reports provided by any such consultants.

(j) If, prior to the date hereof, it was determined that the Mortgaged Property contains Lead Based Paint, Borrower had prepared an assessment report describing the location and condition of the Lead Based Paint (a "**Lead Based Paint Report**"). If, at any time hereafter, Lead Based Paint is suspected of being present on the Mortgaged Property, Borrower agrees, at its sole cost and expense and within twenty (20) days thereafter, to cause to be prepared a Lead Based Paint Report prepared by an expert, and in form, scope and substance, acceptable to Lender. Borrower agrees that if it has been, or if at any time hereafter it is, determined that the Mortgaged Property contains Lead Based Paint, on or before thirty (30) days following (i) the date hereof, if such determination was made prior to the date hereof or (ii) such determination, if such determination is hereafter made, as applicable, Borrower shall, at its sole cost and expenses, develop and implement, and thereafter diligently and continuously carry out (or cause to be developed and implemented and thereafter diligently and continually to be carried out), an operations, abatement and maintenance plan for the Lead Based Paint on the Mortgaged Property, which plan shall be prepared by an expert, and be in form, scope and substance, reasonably acceptable to Lender (together with any Lead Based Paint Report, the "**O&M Plan**"). If an O&M Plan has been prepared prior to the date hereof, Borrower agrees to diligently and continually carry out (or cause to be carried out) the provisions thereof. Compliance with the O&M Plan shall require or be deemed to require, without limitation, the proper preparation and maintenance of all records, papers and forms required under the Environmental Laws.

2.28 Indemnification; Subrogation.

(a) Borrower shall indemnify, defend and hold Lender harmless against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Mortgaged Property or the Debt, and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including Lender's reasonable attorneys' fees) (at both trial and appellate levels) of whatever kind or nature which may be actually asserted against, imposed on or actually incurred by and paid by or on behalf of Lender in connection with the Debt, this Mortgage, the Mortgaged Property, or any part thereof, or the exercise by Lender of any rights or remedies granted to it under this Mortgage; provided, however, that nothing herein shall be construed to obligate Borrower to indemnify, defend and hold harmless Lender from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (1) enacted against, imposed on or incurred by Lender by reason of Lender's willful misconduct or gross negligence or (2) arising from events or acts occurring after the foreclosure or the taking of title to the Mortgaged Property by Lender.

(b) If Lender is made a party defendant to any litigation or any claim is threatened or brought against Lender concerning the Debt, this Mortgage, the Mortgaged Property, or any part thereof, or any interest therein, or the construction, maintenance, operation or occupancy or use thereof, then Borrower shall indemnify, defend and hold Lender harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' fees (at both trial and appellate levels) and expenses actually incurred by and paid by or on behalf of Lender in any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. If Lender commences an action against Borrower to enforce any of the terms hereof or to prosecute any breach by Borrower of any of the terms hereof or to recover

any sum secured hereby, Borrower shall pay to Lender its reasonable attorneys' fees (at both trial and appellate levels) and expenses actually incurred. The right to such attorneys' fees actually incurred and paid by or on behalf of Lender (at both trial and appellate levels) and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Borrower breaches any term of this Mortgage, Lender may engage the services of an attorney or attorneys to protect its rights hereunder, and in the event of such engagement following any breach by Borrower, Borrower shall pay Lender reasonable attorneys' fees (at both trial and appellate levels) and expenses actually incurred by and paid by or on behalf of Lender, whether or not an action is actually commenced against Borrower by reason of such breach. All references to "attorneys" in this Subsection and elsewhere in this Mortgage shall include, without limitation, any attorney or law firm engaged by Lender, and all references to "fees and expenses" in this Subsection and elsewhere in this Mortgage shall include, without limitation, any reasonable fees of such attorney or law firm, any appellate counsel fees, if applicable.

(c) A waiver of subrogation shall be obtained by Borrower from its insurance carrier and, consequently, Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Borrower, the Mortgaged Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

2.29 Covenants with Respect to Existence, Indebtedness, Operations, Fundamental Changes of Borrower. Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all licenses, and (iv) qualify to do business and remain in good standing under the laws of each jurisdiction, in each case as and to the extent required for the ownership, maintenance, management and operation of the Mortgaged Property. Borrower hereby represents, warrants and covenants as of the date hereof and until such time as either the Debt is paid in full or the occurrence of a Sale pursuant to Section 2.9(c) hereof, that Borrower is and shall remain a Single-Purpose Entity (as hereinafter defined), and will at all times comply, with each of the representations, warranties and covenants contained in this Section 2.29. A "**Single-Purpose Entity**" or "**SPE**" means a corporation, limited partnership or limited liability company that:

(a) is and will be organized solely for the purpose of (i) owning an interest in the Mortgaged Property, (ii) acting as a general or limited partner of a limited partnership that owns an interest in the Mortgaged Property, or (iii) acting as a member or manager of a limited liability company that owns an interest in the Mortgaged Property;

(b) will not dissolve or terminate or materially amend the terms of its certificate of incorporation, partnership agreement or operating agreement or other agreement pursuant to which Borrower is organized; provided, however, that Borrower may amend said organizational documents in order to evidence transfers of Ownership Interests permitted under Section 2.9(b) hereof or otherwise consented to by Lender.

(c) will not, nor will any partner, limited or general, member or shareholder thereof, as applicable, amend, modify or otherwise materially change its partnership certificate, partnership agreement, articles of incorporation, by-laws, operating agreement, articles of organization, or other formation agreement or document, as applicable, in any material term or manner, or in a manner which adversely affects Borrower's existence as a single purpose entity; provided, however, that it may amend said organizational documents in order to evidence transfers of Ownership Interests permitted under Section 2.9(b) hereof or otherwise consented to by Lender.

(d) will not liquidate or dissolve (or suffer any liquidation or dissolution), or enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any entity, except as expressly permitted herein;

(e) will not, nor will any partner, limited or general, member or shareholder thereof, as applicable, violate the material terms of its partnership certificate, partnership agreement, articles of incorporation, by-laws, operating agreement, articles of organization, or other formation agreement or document, as applicable;

(f) has not and will not guarantee, pledge its assets for the benefit of, or otherwise become liable on or in connection with, any obligation of any other person or entity;

(g) does not own and will not own any asset other than (i) the Mortgaged Property, (ii) incidental personal property necessary for the operation of the Mortgaged Property and (iii) security deposits, bank accounts, reserves and general intangibles;

(h) is not engaged and will not engage, either directly or indirectly, in any business other than the ownership, management and operation of the Mortgaged Property;

(i) will not enter into any contract or agreement with any general partner, principal, affiliate or member of Borrower, as applicable, or any affiliate of any general partner, principal or member of Borrower, 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 an affiliate;

(j) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Debt, (ii) trade payables, accrued expenses and indebtedness or liabilities incurred in the ordinary course of business of owning, leasing, managing and operating the Mortgaged Property customarily satisfied within thirty (30) days and in an aggregate amount not to exceed the two percent (2.0%) of the existing principal balance of the Note, (iii) letters of credit and similar obligations required pursuant to any Leases, (iv) subordinate debt as permitted pursuant to Section 2.9(d) or (e) hereof, or (v) as otherwise expressly permitted hereunder; and no other debt will be secured (senior, subordinate or pari passu) by the Mortgaged Property;

(k) has not made and will not make any loans or advances to any third party (including any affiliate) except for loans or advances made in the ordinary course of business to tenants solely with respect to tenant improvements or tenant workouts so long as such loans are arms-length and commercially reasonable;

(l) is and will use best efforts to be solvent and pay its debts from its assets as the same shall become due;

(m) has done or caused to be done and will do all things necessary to preserve its existence, and will observe all formalities applicable to it;

(n) will conduct and operate its business in its own name and as presently conducted and operated;

(o) will maintain financial statements, books and records and bank accounts separate from those of its affiliates, including, without limitation, its general partners or members, as applicable;

(p) 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, without limitation, any affiliate, general partner, or member, as applicable, or any affiliate of any general partner or member of Borrower, as applicable) and will correct any known misunderstanding concerning its separate identity;

(q) for so long as the Borrower is disregarded as a taxpayer for federal income tax purposes, it may file a consolidated tax return with one or more affiliates provided that it is disclosed in said return that it is a separate entity and thereafter, if it is not disregarded as a taxpayer for federal income tax purposes, it will file its own tax returns;

(r) 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;

(s) will not seek the dissolution or winding up, in whole or in part, of Borrower;

(t) will not commingle the funds and other assets of Borrower with those of any general partner, member, affiliate, principal or any other person;

(u) has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person, and

2.30 Embargoed Person. At all times throughout the term of the Loan, including after giving effect to any Sale hereunder, (a) none of the funds or assets of Indemnitor that are used to repay the Loan or of Borrower shall constitute property of, or shall be beneficially owned directly or, to Borrower's best knowledge, indirectly, by any person subject to sanctions or trade

restrictions under United States law ("*Embargoed Person*" or "*Embargoed Persons*") that are identified on (1) the "List of Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury, and/or to Borrower's best knowledge, as of the date thereof, based upon reasonable inquiry by Borrower, on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Order or regulation promulgated thereunder, with the result that the investment in Borrower or any Indemnitor, as applicable (whether directly or indirectly), is prohibited by law, or the Loan made by Lender would be in violation of law, or (2) Executive Order 13224 (September 23, 2001) issued by the President of the United States ("Executive Order Blocking Mortgaged Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), any related enabling legislation or any other similar Executive Orders, and (b) no Embargoed Person shall have any direct interest, and to Borrower's best knowledge, as of the date hereof, based upon reasonable inquiry by Borrower, indirect interest, of any nature whatsoever in Borrower or any Indemnitor, as applicable, with the result that the investment in Borrower or any Indemnitor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

2.31 Anti-Money Laundering. At all times throughout the term of the Loan, including after giving effect to any Transfer permitted pursuant to the Loan Documents, none of the funds of Borrower or any Indemnitor, as applicable, that are used to repay the Loan shall be derived from any unlawful activity, with the result that the investment in Borrower or any Indemnitor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

2.32 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Mortgage or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Lender in its sole discretion, that (i) Borrower 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) Borrower is not subject to Federal or state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

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

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

(3) Borrower qualifies as an "operating company" within the meaning of 29 C.F.R. Section 2510.3-101 or an investment company registered under the Investment Company Act of 1940.

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

ARTICLE III.

RESERVES AND CASH MANAGEMENT

3.1 Reserves Generally.

(a) As additional security for the payment and performance by Borrower of all duties, responsibilities and obligations under the Note and the other Loan Documents, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, mortgages, transfers, delivers, deposits, sets over and confirms unto Lender, and hereby grants to Lender a security interest in, (i) the Payment Reserve, the Impound Account, the Immediate Repairs Reserve, the Replacement Reserve, the Rollover Reserve, as applicable (each as hereinafter defined) and any other reserve or escrow account established pursuant to the terms hereof or of any other Loan Document (collectively, the "**Reserves**"), (ii) the accounts into which the Reserves have been deposited, (iii) all insurance on said accounts, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or hereafter evidencing the Reserves or such accounts, (viii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom), and (ix) all proceeds of the foregoing. Borrower hereby authorizes and consents to the account into which the Reserves have been deposited being held in Lender's name or the name of any entity servicing the Loan for Lender and hereby acknowledges and agrees that Lender, or at Lender's election, such servicing agent, shall have exclusive control over said account. Notice of the assignment and security interest granted to Lender herein may be delivered by Lender at any time to the financial institution where the Reserves have been established, and Lender, or such servicing entity, shall have possession of all passbooks or other evidences of such accounts. Borrower hereby assumes all risk of loss with respect to amounts on deposit in the Reserves. Borrower hereby knowingly, voluntarily and intentionally stipulates, acknowledges and agrees that the advancement of the funds from the Reserves as set forth herein is at Borrower's direction and is not the exercise by Lender of any right of set-off or other remedy upon an Event of Default. Borrower hereby waives all right to withdraw funds from the Reserves except as provided in this Mortgage. If an Event of Default

shall occur hereunder or under any other of the Loan Documents and be continuing, Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including, without limitation, interest) then remaining in the Reserves and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, reasonable attorneys' fees, costs and expenses) to the Debt or any other obligations of Borrower under the other Loan Documents in such manner as Lender shall deem appropriate in its sole discretion, and the excess, if any, shall be paid to Borrower, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, or (C) exercise any other remedies available at law or in equity. No such use or application of the funds contained in the Reserves shall be deemed to cure any Default or Event of Default.

(b) The Reserves shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Lender's option and in Lender's sole discretion, may either be held in a separate account or be commingled by Lender with the general funds of Lender. The Reserves are solely for the protection of Lender and entail no responsibility on Lender's part beyond the payment of the respective items for which they are held following receipt of bills, invoices or statements therefor in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. Upon assignment of this Mortgage by Lender, any funds in the Reserves shall be turned over to the assignee and any responsibility of Lender, as assignor, with respect thereto shall terminate. If the funds in the applicable Reserve shall exceed the amount of payments actually applied by Lender for the purposes and items for which the applicable Reserve is held, such excess may be credited by Lender on subsequent payments to be made hereunder or, at the option of Lender, refunded to Borrower. If, however, the applicable Reserve shall not contain sufficient funds to pay the sums required by the dates on which such sums are required to be on deposit in such account, Borrower shall, within ten (10) days after receipt of written notice thereof, deposit with Lender the full amount of any such deficiency. If Borrower shall fail to deposit with Lender the full amount of such deficiency as provided above, Lender shall have the option, but not the obligation, to make such deposit, and all amounts so deposited by Lender, together with interest thereon at the Default Interest Rate from the date so deposited by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. If there is an Event of Default under this Mortgage, Lender may, but shall not be obligated to, apply at any time the balance then remaining in any or all of the Reserves against the Debt in whatever order Lender shall subjectively determine. No such application of any or all of the Reserves shall be deemed to cure any Event of Default. Upon full payment of the Debt in accordance with its terms or at such earlier time as Lender may elect, the balance of any or all of the Reserves then in Lender's possession shall be paid over to Borrower and no other party shall have any right or claim thereto.

3.2 Payment Reserve.

(a) Contemporaneously with the execution hereof, Borrower has established with Lender a reserve in the amount of the first payments of principal, interest and deposits for any applicable reserves or escrow accounts required under the terms of this Mortgage or the other Loan Documents as calculated by Lender (the "**Payment Reserve**"). Borrower understands

and agrees that, notwithstanding the establishment of the Payment Reserve as herein required, all of the proceeds of the Note have been, and shall be considered, fully disbursed and shall bear interest and be payable on the terms provided therein. No interest on funds contained in the Payment Reserve shall be paid by Lender to Borrower.

(b) For so long as no Event of Default has occurred hereunder or under any of the other Loan Documents, Lender shall, on the First Payment Date (as defined in the Note) under the Note, advance from the Payment Reserve to itself the amount of the monthly installment due and payable by Borrower under the Note on the First Payment Date and shall also advance from the Payment Reserve into the Impound Account the amount of any deposit for taxes and insurance premiums and into the Replacement Reserve (as hereinafter defined) the amount of any deposit for Repairs (as hereinafter defined) and into any other reserve account the amount of any deposit in accordance with the terms of any other Loan Document required to be paid by Borrower concurrently with such monthly installment pursuant to the terms hereof and thereof. Provided no Default or Event of Default has occurred, after the scheduled disbursement from the Payment Reserve, any amounts then remaining in the Payment Reserve shall be paid to Borrower. Nothing contained herein, including, without limitation, the existence of the Payment Reserve, shall release Borrower of any obligation to make payments under the Note, this Mortgage or the other Loan Documents strictly in accordance with the terms hereof or thereof and, in this regard, without limiting the generality of the foregoing, should the amounts contained in the Payment Reserve not be sufficient to pay in full the monthly installments and the Impound Account, Replacement Reserve and any other applicable reserve account deposits referenced above in this subparagraph, Borrower shall be responsible for paying such deficiency on the First Payment Date.

3.3 Impound Account. Borrower shall establish and maintain at all times while this Mortgage continues in effect an impound account (the "***Impound Account***") with Lender for payment of real estate taxes and assessments and insurance on the Mortgaged Property and as additional security for the Debt. Simultaneously with the execution hereof, Borrower shall deposit in the Impound Account an amount determined by Lender to be necessary to ensure that there will be on deposit with Lender an amount which, when added to the monthly payments subsequently required to be deposited with Lender hereunder on account of real estate taxes, assessments and insurance premiums, will result in there being on deposit with Lender in the Impound Account an amount sufficient to pay the next due installment of real estate taxes and assessments on the Mortgaged Property at least one (1) month prior to the earlier of (a) the due date thereof or (b) any such date by which Borrower or Lender is required by law to pay same and the next due annual insurance premiums with respect to the Mortgaged Property at least one (1) month prior to the due date thereof. Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and until the Debt is fully paid and performed, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Mortgaged Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which Borrower is required to maintain hereunder, each as estimated and determined by Lender. So long as no Event of Default has occurred and is continuing, all sums in the Impound Account shall be held by Lender in the

Impound Account to pay said taxes, assessments and insurance premiums before the same become delinquent. If Borrower shall pay the taxes and assessments of the Mortgaged Property before they shall become delinquent and Borrower shall submit to Lender proof of payment thereof, then the amount in the Impound Account held to pay such taxes and assessments shall be released to Borrower, retaining in the Impound Account an amount sufficient when added to anticipated monthly payments of taxes and assessments to enable Lender to pay the next due annual installment of taxes and assessments at least one month prior to the due date thereof. Borrower shall be responsible for ensuring the receipt by Lender, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Account, and so long as no Event of Default has occurred and is continuing, Lender shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. In making any payment from the Impound Account, Lender shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof. No interest on funds contained in the Impound Account, if any, shall be paid by Lender to Borrower.

3.4 Immediate Repairs. Prior to the execution of this Mortgage, Lender has caused the Mortgaged Property to be inspected and such inspection has revealed that the Mortgaged Property is in need of certain maintenance, repairs and/or remedial or corrective work. Lender has agreed to waive the requirement for establishing a reserve for such maintenance, repairs and/or remedial or corrective work provided that Borrower shall cause each of the items described in that certain Engineering Report (the “*Deferred Maintenance*”) to be completed, performed, remediated and corrected to the satisfaction of Lender and as necessary to bring the Mortgaged Property into compliance with all applicable laws, ordinances, rules and regulations on or before the expiration of six (6) months after the effective date hereof, as such time period may be extended by Lender in its sole discretion. Borrower hereby grants to Lender a power-of-attorney, coupled with an interest, to cause the Deferred Maintenance to be completed, performed, remediated and corrected to the satisfaction of Lender upon Borrower’s failure to do so.

3.5 Replacement Reserve. As additional security for the Debt, Borrower shall establish and maintain at all times while this Mortgage continues in effect a repair reserve (the “*Replacement Reserve*”) with Lender for payment of costs and expenses incurred by Borrower in connection with the performance of work to the interior and exterior common areas, roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, exterior walls, exterior doors and doorways, windows, elevators and mechanical and HVAC equipment (collectively, the “*Repairs*”). Commencing on the first monthly Payment Date under the Note and continuing thereafter on each monthly Payment Date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and until the Debt is fully paid and performed, a deposit to the Replacement Reserve in an amount equal to \$580.88 per month. So long as no Event of Default has occurred and is continuing, all sums in the Replacement Reserve shall be held by Lender in the Replacement Reserve to pay the costs and expenses of Repairs. So long as no Event of Default has occurred

and is continuing, Lender shall, to the extent funds are available for such purpose in the Replacement Reserve, disburse to Borrower the amount paid or incurred by Borrower in performing such Repairs within ten (10) days following: (a) the receipt by Lender of a written request from Borrower for disbursement from the Replacement Reserve and a certification by Borrower in a form approved in writing by Lender that the applicable item of Repair has been completed; (b) the delivery to Lender of invoices, receipts or other evidence satisfactory to Lender, verifying the cost of performing the Repairs; (c) for disbursement requests in excess of \$25,000.00, the delivery to Lender of affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and 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; (d) for disbursement requests in excess of \$25,000.00, delivery to Lender of a certification from an inspecting architect or other third party acceptable to Lender describing the completed Repairs and verifying the completion of the Repairs and the value of the completed Repairs; and (e) for disbursement requests in excess of \$25,000.00, delivery to Lender of a new certificate of occupancy for the portion of the Improvements covered by such Repairs, if said new certificate of occupancy is required by law, or a certification by Borrower that no new certificate of occupancy is required. Lender shall not be required to make advances from the Replacement Reserve more frequently than once in any ninety (90) day period. In making any payment from the Replacement Reserve, Lender shall be entitled to rely on such request from Borrower without any inquiry into the accuracy, validity or contestability of any such amount. Lender may make or cause to be made during the term of this Mortgage an annual inspection of the Mortgaged Property to determine the need, as determined by Lender in its reasonable judgment, for further Repairs of the Mortgaged Property, and the reasonable costs of such inspections shall be paid by Borrower. In the event that such inspection reveals that further Repairs of the Mortgaged Property are required, Lender shall provide Borrower with a written description of the required Repairs and Borrower shall complete such Repairs to the reasonable satisfaction of Lender within ninety (90) days after the receipt of such description from Lender, or such later date as may be approved by Lender in its sole discretion. Interest on the funds contained in the Replacement Reserve shall be credited to Borrower as provided in Section 6.31 hereof.

3.6 Rollover LOC. Borrower shall deposit with Lender an irrevocable letter of credit ("**LOC**") in the principal amount of \$400,000.00 from a bank, and in form and substance acceptable to Lender, in its reasonable discretion (the "**Rollover LOC**"). The Rollover LOC shall be held by Lender until such time as Lender is provided evidence reasonably satisfactory to Lender (which may be in the form of a rent roll, an executed lease or leases and a copy of cancelled rent payment checks from one or more tenants) that the annualized total net revenues from tenants who are open for business and paying full, unabated rent at the Mortgaged Property are equal to at least \$1,001,346.00, and at such time the Rollover LOC shall be released by Lender to Borrower. "Total Net Revenues" as used herein for purposes of this Section 3.6 shall mean the gross rents from the Mortgaged Property plus any expense recoveries from tenants.

ARTICLE IV.
EVENTS OF DEFAULT

4.1 Events of Default. The occurrence of any of the following events shall be an Event of Default hereunder:

(a) Borrower fails to pay any money to Lender required hereunder at the time or within any applicable grace period set forth herein, or if no grace period is set forth herein, then within seven (7) days of the date such payment is due (except those regarding payments to be made under the Note or to the Reserves, which failure is not subject to any grace or cure period).

(b) Borrower fails to maintain insurance as required by Section 2.3 hereof or fails to perform any covenant, agreement, obligation, term or condition set forth in Section 2.27 or Section 2.29 hereof.

(c) Borrower fails to perform any other covenant, agreement, obligation, term or condition set forth herein, other than those otherwise described in this Section 4.1, and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Lender to Borrower; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Borrower commences to cure such default promptly after receipt of notice thereof from Lender, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional ninety (90) days.

(d) Any representation or warranty made herein, in or in connection with any application or commitment relating to the Loan evidenced by the Note, or in any of the other Loan Documents to Lender by Borrower, by any principal, general partner, manager or member in Borrower, or by any Indemnitor is determined by Lender to have been false or misleading in any material respect at the time made.

(e) There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbrancing of the Mortgaged Property, Borrower or its general partners or managing members, or any portion thereof or any interest therein, in violation of Section 2.9 hereof.

(f) A default occurs under any of the other Loan Documents which has not been cured within any applicable grace and cure period therein provided.

(g) Subject to paragraph 4.1(h) below, Borrower, any general partner or managing member in Borrower or any Indemnitor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or files a petition in bankruptcy, or is voluntarily adjudicated insolvent or bankrupt or admits in writing the inability to pay its debts as they mature, or petitions or applies to any tribunal for or consents to or fails to

contest the appointment of a receiver, trustee, custodian or similar officer for Borrower, for any such general partner or managing member of Borrower or for any Indemnitor or for a substantial part of the assets of Borrower, of any such general partner or managing member of Borrower or of any Indemnitor, or commences any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

(h) A petition is filed or any case, proceeding or other action is commenced against Borrower, against any general partner or managing member of Borrower or against any Indemnitor seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or a court of competent jurisdiction enters an order for relief against Borrower, against any general partner or managing member of Borrower or against any Indemnitor, as debtor, or an order, judgment or decree is entered appointing, with or without the consent of Borrower, of any such general partner or managing member of Borrower or of any Indemnitor, a receiver, trustee, custodian or similar officer for Borrower, for any such general partner or managing member of Borrower or for any Indemnitor, or for any substantial part of any of the properties of Borrower, of any such general partner or managing member of Borrower or of any Indemnitor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree is not dismissed within ninety (90) days after being commenced; provided, however, that it shall not be a default under this Mortgage if an Indemnitor does, or suffers or permits to occur, any of the acts proscribed in paragraphs 4.1(g) or (h) above (such Indemnitor is herein called a “**Defaulting Indemnitor**”), if within forty-five (45) days after the occurrence of any such act or event proscribed in paragraphs 4.1(g) or (h) above: (i) Borrower shall provide a replacement indemnitor of Borrower’s obligations (“**Replacement Indemnitor**”) who shall be a person or entity reasonably satisfactory to Lender, (ii) the Replacement Indemnitor shall have a financial strength and net worth satisfactory to Lender (if such Replacement Indemnitor shall be a corporation, limited liability company, trust, estate or other entity, then it shall be deemed to satisfy this condition if it shall have a net worth of at least \$500,000 in form reasonably satisfactory to Lender), (iii) the Replacement Indemnitor shall execute and deliver to Lender indemnity or guaranty agreements substantially similar in form and substance to those indemnity and guaranty agreements executed by Indemnitor contemporaneously with the Note, (iv) the Replacement Indemnitor shall deliver to Lender such resolutions, consents, authorizations, opinions of counsel and other documents as reasonably requested by Lender evidencing the due authorization, execution and binding effect of such indemnity or guaranty agreements on and by Replacement Indemnitor, (v) the Replacement Indemnitor and Borrower shall execute or deliver to Lender such other instruments, documents and agreements as Lender shall reasonably request to effect the substitution of the Replacement Indemnitor for the Defaulting Indemnitor, (vi) no other Event of Default is then continuing under this Mortgage or under any of the other Loan Documents and (vii) Borrower shall pay within ten days after demand all of Lender’s reasonable costs and expenses (including attorney’s fees and disbursements) in connection with this paragraph. Provided further, however, that it shall not be an Event of Default under this Mortgage if a manager or general partner of Borrower does, or suffers or permits to occur, any of the acts proscribed in paragraphs 4.1(g) or (h) above, if within

forty-five (45) days after the occurrence of any such act or event proscribed in paragraphs 4.1(g) or (h) above: (i) Borrower shall provide a replacement manager or general partner ("***Replacement Manager***") who shall be a person or entity reasonably satisfactory to Lender, (ii) the Replacement Manager or general partner shall deliver to Lender such resolutions, consents, authorizations, opinions of counsel and other documents as reasonably requested by Lender, (iii) the Replacement Manager or general partner and Borrower shall execute or deliver to Lender such other instruments, documents and agreements as Lender shall reasonably request to effect the substitution of the Replacement Manager for the manager or general partner, (iv) no other Event of Default is then continuing under this Mortgage or under any of the other Loan Documents, (v) it shall be organized to be a single purpose, "bankruptcy remote" entity with organizational documents substantially similar to the organizational documents of the current single purpose, "bankruptcy remote" member of Borrower, and (vi) Borrower shall pay within ten days after demand all of Lender's reasonable costs and expenses (including attorney's fees and disbursements) in connection with this paragraph.

(i) The Mortgaged Property or any part thereof is taken on execution or other process of law in any action against Borrower.

(j) Borrower abandons all or a portion of the Mortgaged Property (other than personal property that is worn out or obsolete and replaced by an article of equal suitability and value as provided in Section 1.21 hereof, where required).

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

(l) The Mortgaged Property, or any part thereof, is subjected to actual or threatened (in writing) waste or to removal, demolition or material alteration so that the value of the Mortgaged Property is materially diminished thereby and Lender determines (in its subjective determination) that it is not adequately protected from any loss, damage or risk associated therewith.

(m) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Borrower, any general partner or any managing member, or any Indemnitor.

ARTICLE V.

REMEDIES

5.1 Remedies Available. If there shall occur an Event of Default under this Mortgage, and such default has not been cured within any applicable grace and cure period, then this Mortgage is subject to foreclosure as provided by law and Lender may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law,

exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the Debt to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.

(b) Entry on the Mortgaged Property. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law, unless such notice and process is waivable, in which case Borrower hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Lender's judgment to complete any unfinished construction on the Premises, to preserve the value, marketability or rentability of the Mortgaged Property, to increase the income therefrom, to manage and operate the Mortgaged Property or to protect the security hereof, and all sums expended by Lender therefor, together with interest thereon at the Default Interest Rate, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the Debt.

(c) Collect Rents and Profits. With or without taking possession of the Mortgaged Property, sue or otherwise collect the Rents and Profits, including those past due and unpaid.

(d) Appointment of Receiver. Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Mortgaged Property, as a matter of strict right and without notice to Borrower and without regard to the adequacy of the Mortgaged Property for the repayment of the Debt or the solvency of Borrower or any person or persons liable for the payment of the Debt, and Borrower does hereby irrevocably consent to such appointment, waive any and all notices of and defenses to such appointment and agree not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Mortgaged Property upon such terms and conditions as said receiver

may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 5.3 below. Such receivership shall, at the option of Lender, continue until full payment of all of the Debt or until title to the Mortgaged Property shall have passed by foreclosure sale under this Mortgage or deed in lieu of foreclosure.

(e) Foreclosure. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions with respect to any of the Debt, pursuant to the statutes in such case made and provided, and sell the Mortgaged Property or cause the Mortgaged Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Lender. In the event foreclosure proceedings are instituted by Lender, all expenses incident to such proceedings, including, but not limited to, reasonable attorneys' fees (at both trial and appellate levels) and costs, shall be paid by Borrower and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt. The Debt and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees (at both trial and appellate levels) and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Lender or its assigns may become the purchaser of the Mortgaged Property or any part thereof.

(f) Judicial Remedies. Proceed by suit or suits, at law or in equity, instituted by or on behalf of Lender, to enforce the payment of the Debt or the other obligations of Borrower hereunder or pursuant to the Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other non-judicial remedies available to Lender with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Lender.

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

5.2 Application of Proceeds. To the fullest extent permitted by law, the proceeds of any sale under this Mortgage shall be applied, to the extent funds are so available, to the following items in such order as Lender in its discretion may determine:

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

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

(c) To payment of the Debt and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Lender chooses in its sole discretion.

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

5.3 Right and Authority of Receiver or Lender in the Event of Default; Power of Attorney. To the extent permitted by law, upon the occurrence and continuance of an Event of Default hereunder and entry upon the Mortgaged Property pursuant to Section 5.1(b) hereof or appointment of a receiver pursuant to Section 5.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Lender's or the receiver's sole discretion, all at Borrower's expense, Lender or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Mortgaged Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Mortgaged Property; (c) exclude Borrower and its agents, servants and employees wholly from the Mortgaged Property; (d) manage and operate the Mortgaged Property; (e) preserve and maintain the Mortgaged Property; (f) make repairs and alterations to the Mortgaged Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Lender may in its sole discretion deem appropriate or desirable to place the Mortgaged Property in such condition as will, in Lender's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Mortgaged Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Mortgaged Property under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Lender as attorney-in-fact and agent of Borrower or in its own name as Lender, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Mortgaged Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Borrower or Lender; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and

powers given to Lender by this Mortgage; and I do any acts which Lender in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any lessee, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Lender, at the request of Lender, to pay all amounts owing under any Lease, contract, concession, license or other agreement to Lender without proof of the Event of Default relied upon. Any such Tenant or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request, notice or demand by Lender for the payment to Lender of any Rents and Profits or other sums which may be or thereafter become due under its Lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such Lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any Event of Default under this Mortgage or under any of the other Loan Documents has actually occurred or is then existing. Borrower hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Mortgaged Property, in Borrower's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any portion of the Debt is outstanding. Any money advanced by Lender in connection with any action taken under this Section 5.3, together with interest thereon at the Default Interest Rate from the date of making such advancement by Lender until actually paid by Borrower, shall be a demand obligation owing by Borrower to Lender and shall be secured by this Mortgage and by every other instrument securing all or any portion of the Debt.

5.4 Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Borrower or Borrower's representatives, successors or assigns, or any other persons claiming any interest in the Mortgaged Property by, through or under Borrower (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Mortgaged Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Lender or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Mortgaged Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Mortgaged Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Mortgaged Property in the appropriate court of the county in which the Premises is located.

5.5 Notice to Account Debtors. Lender may, at any time after an Event of Default hereunder, which default is not cured within any applicable grace and cure period, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Borrower included in the Mortgaged Property to pay Lender

directly. Borrower shall at any time or from time to time upon the request of Lender provide to Lender a current list of all such account debtors and obligors and their addresses.

5.6 Cumulative Remedies. All remedies contained in this Mortgage are cumulative and Lender shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Lender and may be exercised in any order and as often as occasion therefor shall arise. No act of Lender shall be construed as an election to proceed under any particular provisions of this Mortgage to the exclusion of any other provision of this Mortgage or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Lender. No delay or failure by Lender to exercise any right or remedy under this Mortgage shall be construed to be a waiver of that right or remedy or of any Event of Default. Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

5.7 Payment of Expenses. Borrower shall pay on demand all of Lender's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Lender until actually paid by Borrower at the Default Interest Rate, and the same shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Debt.

ARTICLE VI. MISCELLANEOUS TERMS AND CONDITIONS

6.1 Time of Essence. Time is of the essence with respect to all provisions of this Mortgage.

6.2 Release of Mortgage. If all of the Debt is paid, then and only in that event, all rights under this Mortgage, except for those provisions hereof which by their terms survive, shall terminate and the Mortgaged Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be promptly released of record by Lender in due form at Borrower's cost. No release of this Mortgage or the lien hereof shall be valid unless executed by Lender.

6.3 Certain Rights of Lender. Without affecting Borrower's liability for the payment of any of the Debt, Lender may from time to time and without notice to Borrower: (a) release any person liable for the payment of the Debt; (b) extend or modify the terms of payment of the Debt; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the Debt; (d) recover any part of the Mortgaged Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Mortgage or any agreement subordinating the lien hereof.

6.4 Waiver of Certain Defenses. To the extent permitted by law, no action for the enforcement of the lien hereof or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note or any of the other Loan Documents.

6.5 Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page of this Mortgage or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

6.6 Successors and Assigns; Joint and Several Liability. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Borrower and the successors and assigns of Borrower, including all successors in interest of Borrower in and to all or any part of the Mortgaged Property, and shall inure to the benefit of Lender, its directors, officers, shareholders, employees and agents and their respective successors and assigns and shall constitute covenants running with the land. All references in this Mortgage to Borrower or Lender shall be deemed to include all such parties' successors and assigns, and the term "**Lender**" as used herein shall also mean and refer to any lawful holder or owner, including pledgees and participants, of any of the Debt. If Borrower consists of more than one person or entity, each is jointly and severally liable to perform the obligations of Borrower hereunder and all representations, warranties, covenants and agreements made by Borrower hereunder are joint and several.

6.7 Severability. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

6.8 Gender. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

6.9 Waiver; Discontinuance of Proceedings. Lender may waive any single Event of Default by Borrower hereunder without waiving any other prior or subsequent Event of Default. Lender may remedy any Event of Default by Borrower hereunder without waiving the Event of Default remedied. Neither the failure by Lender to exercise, nor the delay by Lender in exercising, any right, power or remedy upon any Event of Default by Borrower hereunder shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Lender of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Lender of any payment in an amount less than the amount then due on any of the Debt shall be deemed an acceptance on account only and shall not in any way affect the existence of an Event of Default. In case Lender shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right to do so and, in such an event, Borrower and Lender shall be restored to their former positions with respect to the Debt, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if the same had never been invoked.

6.10 Section Headings. The headings of the sections and paragraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

6.11 GOVERNING LAW. THIS MORTGAGE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED, PROVIDED THAT TO THE EXTENT THAT ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING, AND PROVIDED FURTHER THAT THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED SHALL GOVERN AS TO THE CREATION, PRIORITY AND ENFORCEMENT OF LIENS AND SECURITY INTERESTS IN THE MORTGAGED PROPERTY LOCATED IN SUCH STATE.

6.12 Counting of Days. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Premises is located, the period shall be deemed to end on the next succeeding business day. The term "business day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

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

6.14 Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Mortgaged Property, such proceeds have been advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

6.15 Unsecured Portion of Indebtedness. If any part of the Debt cannot be lawfully secured by this Mortgage or if any part of the Mortgaged Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Mortgage.

6.16 Cross Default. An Event of Default hereunder which has not been cured within any applicable grace and cure period shall be a default under each of the other Loan Documents.

6.17 Interest After Sale. In the event the Mortgaged Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by law, the sum for which the same shall have been sold shall, for purposes of redemption (pursuant to the laws of the state in which the Premises is located), bear interest at the Default Interest Rate.

6.18 Inconsistency with Other Loan Documents. In the event of any inconsistency between the provisions hereof and the provisions in any of the other Loan Documents, it is intended that the provisions of the Note, if it shall be the conflicting document, shall control and prevail over the provisions of this Mortgage, and that the provisions of this Mortgage shall control over the provisions of the Lease Assignment, the Indemnity and Guaranty Agreement, the Environmental Indemnity Agreement, and the other Loan Documents.

6.19 Construction of this Document. This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

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

toward the end that this Mortgage may be foreclosed as if owned by a stranger to said other or additional interests.

6.21 Rights With Respect to Junior Encumbrances. Any person or entity purporting to have or to take a junior mortgage or other lien upon the Mortgaged Property or any interest therein shall be subject to the rights of Lender to amend, modify, increase, vary, alter or supplement this Mortgage, the Note or any of the other Loan Documents, and to extend the maturity date of the Debt, and to increase the amount of the Debt, and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the Debt, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Mortgage losing its priority over the rights of any such junior lien.

6.22 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or the principals, general partners or managing members in Borrower, or their respective creditors or property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire Debt at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

6.23 Fixture Filing. This Mortgage shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures. This Mortgage shall also be effective as a financing statement covering minerals or the like (including oil and gas) and is to be filed for record in the real estate records of the county where the Premises is situated. The mailing address of Borrower and the address of Lender from which information concerning the security interests may be obtained, and the name and address of the record owner of the Premises, are set forth in Section 2.18 above.

6.24 After-Acquired Mortgaged Property. All property acquired by Borrower after the date of this Mortgage which by the terms of this Mortgage shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and immediately upon the mortgage, conveyance or assignment or modification or amendment of this Mortgage become subject to the lien and security interest created by this Mortgage. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further mortgages, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Mortgage.

6.25 No Representation. By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the

same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Lender.

6.26 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Mortgage may be detached from any counterpart of this Mortgage without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Mortgage identical in form hereto but having attached to it one or more additional signature pages.

6.27 Personal Liability. Notwithstanding anything to the contrary contained in this Mortgage, the liability of Borrower and its officers, directors, general partners, managers, members and principals for the Debt and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in Section 2.6 of the Note, the provisions of which are incorporated herein by reference and made a part hereof as if set forth in full.

6.28 Recording and Filing. Borrower will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Lender shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges. Borrower shall reimburse Lender, or its servicing agent, for the costs incurred in obtaining a tax service company to verify the status of payment of taxes and assessments on the Mortgaged Property.

6.29 Entire Agreement and Modifications. This Mortgage and the other Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated. This Mortgage and the other Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

6.30 Maximum Interest. The provisions of this Mortgage and of all agreements between Borrower and Lender, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of demand or acceleration of the maturity of the Note or otherwise, shall the amount paid, or agreed to be paid ("**Interest**") to Lender for the use, forbearance or retention of the money loaned under the Note exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, performance or fulfillment of any provision hereof or of any agreement between Borrower and Lender shall, at the time performance or fulfillment of such provision shall be due, exceed the limit for Interest prescribed by law or otherwise transcend the limit of validity prescribed by applicable law, then, ipso facto, the obligation to be performed or

fulfilled shall be reduced to such limit, and if, from any circumstance whatsoever, Lender shall ever receive anything of value deemed Interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive Interest shall be applied to the reduction of the principal balance owing under the Note in the inverse order of its maturity (whether or not then due) or, at the option of Lender, be paid over to Borrower, and not to the payment of Interest. All Interest (including any amounts or payments deemed to be Interest) paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal balance of the Note so that the Interest thereon for such full period will not exceed the maximum amount permitted by applicable law. This Section will control all agreements between Borrower and Lender.

6.31 Interest Payable by Lender. Lender shall cause funds in the Replacement Reserve to be deposited into interest bearing accounts of the type customarily maintained by Lender or its servicing agent for the investment of similar reserves, which accounts may not yield the highest interest rate then available. Interest payable on such amounts shall be computed based on the daily outstanding balance in the Replacement Reserve. Such interest shall be calculated on a simple, non-compounded interest basis based solely on contributions made to the Replacement Reserve by Borrower. All interest earned on amounts contributed to the Replacement Reserve shall be retained by Lender and accumulated for the benefit of Borrower and added to the balance in the Replacement Reserve and shall be disbursed for payment of the items for which other funds in the Replacement Reserve are to be disbursed.

6.32 Secondary Market. Lender may sell, transfer and deliver the Note and the Loan Documents to one or more investors in the secondary mortgage market (a "**Secondary Market Transaction**"). In connection with such sale, Lender may retain or assign responsibility for servicing the loan evidenced by the Note or may delegate some or all of such responsibility and/or obligations to a servicer, including, but not limited to, any subservicer or master servicer, on behalf of the investors. All references to Lender herein shall refer to and include, without limitation, any such servicer, to the extent applicable.

6.33 Dissemination of Information. If Lender determines at any time to sell, transfer or assign the Note, this Mortgage and the other Loan Documents, and any or all servicing rights with respect thereto, or to grant participations therein (the "**Participations**") or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "**Securities**"), Lender may forward to each purchaser, transferee, Lender, servicer, participant, investor, or their respective successors in such Participations and/or Securities (collectively, the "**Investors**") or any rating agency rating such Securities (each a "**Rating Agency**"), each prospective Investor and each of the foregoing's respective counsel, all documents and information which Lender now has or may hereafter acquire relating to the Debt, to Borrower, any guarantor, any indemnitor, and the Mortgaged Property, except and to the extent a lease specifically requires confidentiality, which shall have been furnished by Borrower and any Indemnitor, as Lender determines necessary or desirable.

6.34 Certain Matters Relating to Mortgaged Property Located in the State of Alabama. With respect to the Mortgaged Property which is located in the State of Alabama, notwithstanding anything contained herein to the contrary:

Power of Sale Foreclosure. Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Lender shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, after giving notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale, together with a description of the Mortgaged Property, by publication in a newspaper published in the county or counties wherein the Mortgaged Property or any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as the Lender may from time to time elect to sell) in front of such county's main or front courthouse door, at public outcry, to the highest bidder for cash. The Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Borrower hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Debt shall have been paid in full.

6.35 REMIC Opinions. In the event Borrower requests Lender's consent with respect to any proposed action or Borrower proposes to take any action not otherwise requiring Lender's specific consent under the Loan Documents, which Lender determines, in its reasonable discretion, may affect (i) the "REMIC" status of Lender, its successors or assigns, or (ii) the status of this Mortgage as a "qualified mortgage" as defined in Section 860G of the Internal Revenue Code of 1986 (or any succeeding provision of such law), Lender reserves the right to require Borrower, at Borrower's sole expense, to obtain, from counsel reasonably satisfactory to Lender in its discretion, an opinion, in form and substance satisfactory to Lender in its reasonable discretion, that no adverse tax consequences will arise as a result of the proposed course of action.

6.36 Expansion of Building. In addition to and not in limitation of any expansion rights contained in any Lease or Leases of any space in the Improvements, Borrower at its option shall be permitted to construct an addition to or expansion of the Improvements in the shopping center (the "***Shopping Center Addition***") on a portion of the Mortgaged Property, upon not less than 60 or more than 120 days' prior written notice to Lender, upon satisfaction of the following terms and conditions:

- (a) No Event of Default shall have occurred and be continuing.
- (b) The Shopping Center Addition shall be constructed at Borrower's or the tenant's sole cost and expense (including but not limited to the proceeds of any subordinate financing pursuant to Section 2.9(d) or (e) hereof), in a good and workmanlike manner, and in compliance with all applicable laws, regulations and orders.

(c) The Shopping Center Addition may be leased to an existing tenant or a new tenant.

(d) The Shopping Center Addition will continue to be in full compliance with all laws, ordinances, regulations and legal requirements, with the terms of all Leases of the Mortgaged Property including parking space requirements of such Leases, and with all covenants, restrictions and agreements affecting the Mortgaged Property.

(e) The proposed use and occupancy of the Shopping Center Addition will not violate the provisions of any Lease of the Mortgaged Property including exclusive use provisions of such Leases, or any covenant, restriction or agreement affecting the Mortgaged Property. The consent of any person or entity (unless related to the Lender within the meaning of Section 267(b) or Section 707(b)(1) of the Internal Revenue Code ("**Code**") whose Lease of the Mortgaged Property or operating agreement affecting the Mortgaged Property requires it to consent to construction and development of the Shopping Center Addition for the foregoing purposes shall be obtained (if such consents are then required). To the extent reasonably required, the permitted use of the Shopping Center Addition will be restricted of record, to insure that use of the Shopping Center Addition will not violate the provisions of any Leases of the Mortgaged Property or any covenants, restrictions or agreements affecting the Mortgaged Property.

(f) The design and plans for the Shopping Center Addition shall adequately address and deal with the height, density, visibility, access, parking, utilities, services, attraction and legal requirements of the proposed buildings and improvements of the Shopping Center Addition. Borrower shall deliver to Lender an opinion of an architect, engineer or other real estate professional reasonably satisfactory to Lender to the effect that the design and architecture of the proposed buildings and improvements of the Shopping Center Addition shall be harmonious and consistent with those of the Mortgaged Property.

(g) All of the foregoing documents, items and requirements shall be provided to Lender without cost to Lender, at Borrower's sole cost and expense. Borrower shall not pay Lender any administrative fee in connection with this subsection. In addition, Borrower shall pay all of Lender's other out-of-pocket costs and expenses (including reasonable attorney's fees and disbursements) incurred by Lender in connection with this subsection whether or not the transactions contemplated by this subsection are consummated.

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Shelby Cnty Judge of Probate, AL
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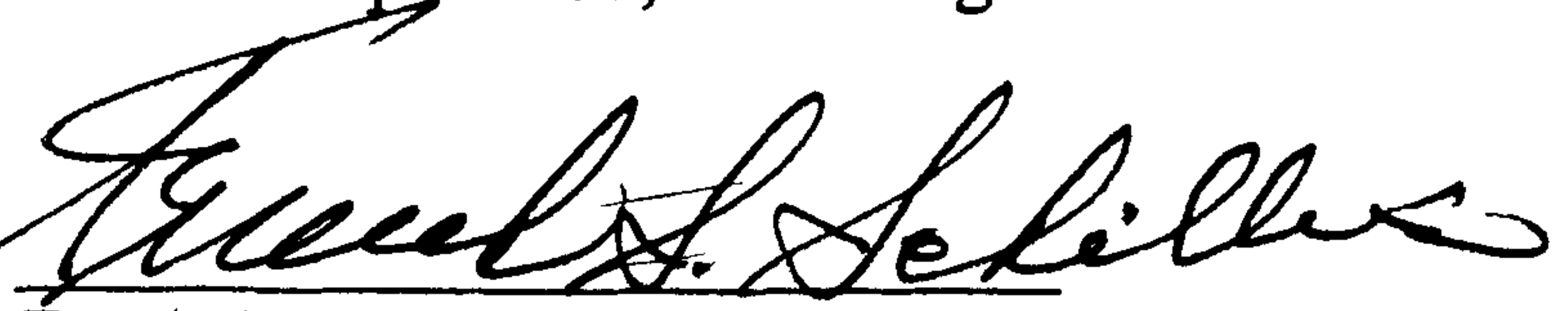
IN WITNESS WHEREOF, Mortgagor has executed this Mortgage on the day and year first written above.

MORTGAGOR:

SCHILLECI WHITE STONE, LLC,
an Alabama limited liability company

By: Schilleci White Stone Management, Inc.,
an Alabama corporation, its Manager

By:



Frank S. Schilleci, President



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Shelby Cnty Judge of Probate, AL
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THE STATE OF ALABAMA

COUNTY OF MONTGOMERY

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Frank S Schilleci, whose name as President of Schilleci White Stone Management, Inc., an Alabama corporation, the manager of Schilleci White Stone, LLC, 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, s/he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as manager of said limited liability company.

Given under my hand and official seal this the 4th day of October, 2005.

Laudenia M. McKeely
NOTARY PUBLIC
My Commission Expires: 6/26/06

(AFFIX NOTARIAL SEAL)

EXHIBIT A
Legal Description


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Shelby Cnty Judge of Probate, AL
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White Stone Shopping Center
Alabaster, Alabama

PARCEL 1:

Lot 7, according to the Map of the White Stone Center Subdivision, as said map appears of record in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 33, at pages 138-A and 138-B.

PARCEL 2:

SLOPE EASEMENT FOR THE BENEFIT OF PARCELS 1 THRU 7 AS CREATED BY THAT CERTAIN EASEMENT AGREEMENT BETWEEN DOUGLAS M. KENT AND NINA KENT AND ALABASTER RETAIL PROPERTY, L.L.C., DATED JANUARY 27, 2003, RECORDED IN INSTRUMENT NUMBER 20030210000081000, OVER, UNDER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY:

An easement located in the Northeast quarter of the Northwest quarter of Section 14, Township 21 South, Range 3 West, Shelby County, Alabama and being more particularly described as follows:

Commence at the Northwest corner of Section 14; thence run South 89 degrees 03 minutes 42 seconds East and along the section line 2343.49 feet; thence run South 25 degrees 30 minutes 31 seconds West 617.60 feet to the POINT OF BEGINNING; thence continue South 25 degrees 30 minutes 31 seconds West 589.55 feet; thence run North 44 degrees 42 minutes 44 seconds East 69.92 feet; thence run North 25 degrees 30 minutes 31 seconds East 355.71 feet; thence run North 17 degrees 42 minutes 15 seconds East 169.38 feet to the POINT OF BEGINNING.

PARCEL 3:

Non-exclusive and perpetual right, privilege and easement for vehicular and pedestrian access, ingress, and egress over and across all roadways, driveways, entrance ways and sidewalks from time to time located on the Common Area of the Shopping Center Tract, each of Outparcels 1 thru 5, both inclusive, and Future Development Area #2 for the purpose of providing pedestrian and vehicular access, ingress, and egress, but not parking, between the Shopping Center Tract, each of Outparcels 1 thru 5, both inclusive, and Future Development Area #2 and for providing such access, ingress and egress to and from publicly dedicated rights of way abutting the Shopping Center Tract, each of Outparcels 1 thru 5, both inclusive, and Future Development Area #2 and the non-exclusive and perpetual right, privilege and easement in, to, over, along, and across those portions of the Common Area on each Tract necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of utility lines, including but not limited to sanitary sewers, storm drains, water (fire and domestic), gas,



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electrical, telephone and communication lines, all as set forth in the Declaration of Restrictions, Covenants and Conditions and Grant of Easements as recorded under Instrument Number 20031124000768400, as amended by that certain Clarification Regarding Curb Cuts Between Outparcel 2 and The Shopping Center Tract recorded under Instrument No. 20040329000157920.

EXHIBIT B

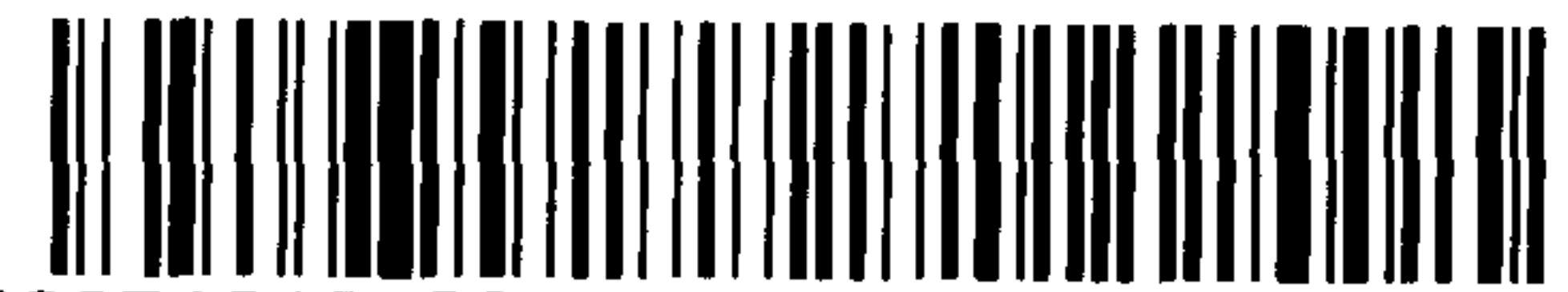
Release Parcel


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Shelby Cnty Judge of Probate, AL
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That portion of the Mortgaged Property leased to the tenant known as Movie Gallery, together with a portion of the adjoining parking lot and common areas reasonably required in order to satisfy applicable zoning and building code requirements.

EXHIBIT C

Expansion Parcels



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Shelby Cnty Judge of Probate, AL
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Lots 1, 2, 3, 4, 5, 8A and 8B according to the Map of White Stone Center Subdivision, as said Map appears of record in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 33, at Pages 138-A and 138B.



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EXHIBIT D

Release Price

Movie Gallery Release Parcel

to be determined by Lender at the time of the
Release of the Movie Gallery Release Parcel
based on the following formula:

Annual Base Rent at the time of the Release
0.0725