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MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

PELHAM RETAIL INVESTMENTS, LLC

an Alabama limited liability company

(BORROWER)

TO

LASALLE BANK NATIONAL ASSOCIATION

a national banking association

(MORTGAGEE)

Property Name:	**AutoZone - Pelham**
Property Address:	**2180 Highway 31 South** **Pelham, Alabama 35124**
Property County:	**Shelby**
Borrower Tax ID:	**N/A**

This instrument was prepared by and
after recording return to:
Katheryne L. Zelenock
Miller Canfield Paddock and Stone, PLC
840 West Long Lake Road
Suite 200
Troy, MI 48098

-o-

Title Group

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DEFINED TERMS

Throughout this Mortgage, the following terms shall have the following meanings, which are fully incorporated into this Mortgage. Other terms are defined in the body of this Mortgage:

Borrower:	Pelham Retail Investments, LLC, an Alabama limited liability company
Borrower's Address:	713 Mill Springs Lane, Birmingham, Alabama 35244
Property Address:	2180 Highway 31 South, Pelham, Alabama 35124
Lender:	LaSalle Bank National Association, a national banking association, and its successors and assigns as holders of the Note
Lender's Address:	135 S. LaSalle Street, Suite 3410 Chicago, Illinois 60603 Attention: Real Estate Capital Markets – Servicing Department Re: AutoZone - Pelham
Note:	That Promissory Note of even date herewith made by Borrower to the order of Lender in the Principal Amount, together with any modifications, renewals or extensions thereof or substitutions therefor, as any of the foregoing may be amended, consolidated, modified or supplemented from time to time
Principal Amount:	One Million Two Hundred Fifty Thousand and No/100 Dollars ($1,250,000.00)
Maturity Date:	October 1, 2016
Land:	The property described on *Exhibit A* to this Mortgage
Personal Property:	The property described on *Exhibit B* to this Mortgage
Replacement Reserve Monthly Payment:	$310.00
TI and Leasing Reserve Monthly Payment:	$774.25
Permitted Use:	Retail
Guarantor(s):	Len B. Shannon, III and Thomas K. Genetti
Required Rating:	A General Policy Rating of A-:VIII or better in Best's Key Rating Guide
Loan:	The loan from Lender to Borrower evidenced by the Note and secured by this Mortgage and the other Loan Documents
Indebtedness:	All payment obligations of Borrower or any Guarantor under the Loan Documents. All other obligations of Borrower or any Guarantor under the Loan Documents are hereinafter sometimes collectively referred to as the "***Obligations***".
Loan Documents:	The Note, this Mortgage, and any other documents now or hereafter evidencing or securing the Indebtedness and/or the Obligations
Other Terms:	(i) "***Business Day***" means any day other than a Saturday, Sunday, legal holiday or other day on which commercial banks in Chicago, Illinois or New York City, New York, are authorized or required by law to close; (ii) "***day***" or a "***date***" refer to a calendar day unless specifically referred to as a Business Day; and (iii) "***include***" and "***including***" mean "including but not limited to" unless specifically set forth to the contrary.

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THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING ("***Mortgage***") is made as of September 19, 2006, by Borrower to and for the benefit of Lender.

RECITALS:

A. Borrower has executed and delivered the Note to Lender, providing for monthly installments of principal and interest, with the balance thereof, if not sooner due or paid as set forth in the Note, due and payable on the Maturity Date; and

B. Lender wishes to secure (i) the payment of the Indebtedness (which includes for this purpose any additional Indebtedness accruing to Lender on account of any future payments, advances or expenditures by Lender pursuant to the Note, this Mortgage or any other agreement, document, or instrument securing the payment of the indebtedness evidenced by the Note), and (ii) the prompt performance of the Obligations, including without limitation each and every covenant, condition, and agreement of Borrower or any Guarantor now or hereafter arising contained in the Loan Documents.

NOW, THEREFORE, TO SECURE TO LENDER the repayment of the Indebtedness and the performance of the Obligations, Borrower has mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned, hypothecated and granted and by these presents does hereby irrevocably mortgage, give, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign, hypothecate and grant a security interest in and to Lender the following described property and all proceeds thereof (which property is hereinafter sometimes collectively referred to as the "***Property***"):

A. The Land;

B. All improvements of every nature whatsoever now or hereafter situated on the Land and owned by Borrower (the "***Improvements***"), and all machinery, furnishings, equipment, fixtures, mechanical systems and other personal property now or hereafter owned by Borrower and used in connection with the operation of the Improvements;

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

D. All agreements affecting the use, enjoyment or occupancy of the Land and/or Improvements now or hereafter entered into (the "***Leases***"), including any and all guaranties of those Leases, and the immediate and continuing right to collect all rents, income, receipts, royalties, profits, issues, service reimbursements, fees, accounts receivables, revenues and prepayments of any of the same from or related to the Land and/or Improvements from time-to-time accruing under the Leases and/or the operation of the Land and/or Improvements (the "***Rents***"), reserving to Borrower, however, so long as no Event of Default (defined in *Paragraph 21*) has occurred hereunder, a revocable license to receive and apply the Rents in accordance with the terms and conditions of *Paragraph 14* of this Mortgage;

E. The Personal Property;

F. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Land and the Improvements, whether from the exercise of the right of

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eminent domain or condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of those rights), or for a change of grade, or for any other injury to or decrease in the value of the Land and Improvements;

G. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

H. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and Condemnation Awards, into cash or liquidation claims; and

I. Any and all proceeds and products of any of the foregoing and any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness and the performance of Borrower's obligations under the Loan Documents, including (without limitation) the Replacement Reserve, the TI and Leasing Reserve, and all other escrows established with Lender by Borrower.

AND without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable law, Borrower expressly grants to Lender, as a secured party, a security interest in the portion of the Property that is or may be subject to the provisions of the Uniform Commercial Code that are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures are collectively referred to as the "***Real Property***") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and mortgaged hereby.

TO HAVE AND TO HOLD the Property and all parts thereof, together with the rents, issues, profits and proceeds thereof unto Lender to its own proper use, benefit, and advantage forever, subject, however, to the terms, covenants, and conditions herein.

At no time shall the principal amount of the Indebtedness, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed **two hundred percent (200%)** of the original amount of the Note.

Borrower covenants and agrees with Lender as follows:

1. **Payment of Indebtedness; Performance of Obligations**. Borrower shall promptly pay when due the Indebtedness and shall promptly perform all Obligations.

2. **Taxes and Other Obligations**. Borrower shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes (including without limitation intangibles taxes, documentary stamps taxes and recording taxes, if any), assessments and other similar charges levied against the Property, and all ground rents, if applicable (collectively "***Taxes***"), together with all fines, impositions and other charges and obligations, including charges and obligations for any present or future repairs or improvements made on the Property, or for any other goods or services or utilities furnished to the Property, which may become a lien on or charge against the Property prior to this Mortgage, subject, however, to Borrower's right to contest that lien or charge upon the posting of security reasonably satisfactory to Lender so long as that contest stays the enforcement or collection of that lien or charge. Should Borrower fail to make the foregoing payments, Lender may, at its option and at the expense of Borrower, pay the amounts due for the account of Borrower. Upon Lender's request, Borrower shall immediately furnish to Lender all notices of amounts due and receipts evidencing payment. Borrower shall promptly notify Lender of any lien on all or any part of the Property and shall promptly discharge any unpermitted lien or encumbrance.

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3. **Reserves**.

(a) Taxes. Borrower shall pay to Lender, at the time of and in addition to the monthly installments of principal and/or interest due under the Note, a sum equal to 1/12 of the amount estimated by Lender from time-to-time to be sufficient to enable Lender to pay all Taxes at least 30 days before they become due and payable. So long as no Event of Default exists hereunder, Lender shall apply the sums so paid by Borrower to pay Taxes. The obligation of Borrower to pay Taxes is not affected or modified by the provisions of this paragraph.

(b) Insurance Premiums. Borrower shall pay to Lender, at the time of and in addition to the monthly installments of principal and/or interest due under the Note, a sum equal to 1/12 of the amount estimated by Lender from time-to-time to be sufficient to enable Lender to pay at least 30 days before they become due and payable, all insurance premiums due for the annual renewal of the coverage afforded by the insurance policies required hereunder upon the expiration thereof ("***Insurance Premiums***"). So long as no Event of Default exists hereunder, Lender shall apply the sums so paid by Borrower to pay those Insurance Premiums. The obligation of Borrower to pay Insurance Premiums is not affected or modified by the provisions of this paragraph.

(c) Replacement Reserve. At the time of and in addition to the monthly installments of principal and/or interest due under the Note, Borrower shall pay to Lender the Replacement Reserve Monthly Payment (this reserve being referred to as the "***Replacement Reserve***"). The funds contained in the Replacement Reserve shall be utilized by Borrower solely for exterior, structural, HVAC and mechanical improvements that are customarily accounted for as capital expenses, and other capital improvements approved in advance by Lender. Lender will make disbursements from the Replacement Reserve for the actual cost of such items and approved capital improvements upon Borrower's providing Lender with receipts, invoices, lien waivers, photographs and other documentation requested by Lender to insure that the work and/or materials related to the requested disbursement have been completed and/or provided. Minimum draws must be at least $10,000.00, and shall occur no more frequently than once per month.

(d) TI and Leasing Reserve. At the time of and in addition to the monthly installments of principal and/or interest due under the Note, Borrower shall pay to Lender the TI and Leasing Reserve Monthly Payment (this reserve being referred to as the "***TI and Leasing Reserve***") until that time when the balance in the TI and Leasing Reserve equals $55,746.00 *(the "**Minimum TI and Leasing Reserve Balance**")*. Thereafter, if at any time there is a draw causing the TI and Leasing Reserve to contain less than the Minimum TI and Leasing Reserve Balance (whether on account of expenditures approved by Lender or its servicer or otherwise), Borrower shall continue to pay Lender, for deposit into the TI and Leasing Reserve, the TI and Leasing Reserve Monthly Payment until the balance in the TI and Leasing Reserve again equals the Minimum TI and Leasing Reserve Balance. Whenever the balance in the TI and Leasing Reserve again equals the Minimum TI and Leasing Reserve Balance, Borrower may suspend making monthly payments into the TI and Leasing Reserve. The funds contained in the TI and Leasing Reserve shall be disbursed to and utilized by Borrower solely for tenant improvements made and leasing commissions due pursuant to the leases entered into in accordance with *Paragraph 7* below or otherwise approved in advance by Lender, but only after those tenants are in occupancy under their leases, open for business and paying the full contracted rent without assertion of any right of offset or rent abatement. Lender will make disbursements from the TI and Leasing Reserve for the actual cost of approved tenant improvements and leasing commissions upon Borrower's providing Lender with receipts, invoices, lien waivers, photographs and other documentation requested by Lender to insure that the work and/or materials related to the requested disbursement have been completed and/or provided. Minimum draws must be at least $10,000.00, and shall occur no more frequently than once per month.

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(e) General Reserve Terms. In making any payment of Taxes or Insurance Premiums, Lender may do so according to any bill, statement or estimate obtained by Lender in good faith, without inquiry into the accuracy of that bill, statement or estimate or into the validity thereof. All sums under each of the foregoing Reserves may be commingled with Lender's general funds, and no interest shall be payable thereon nor shall these sums constitute trust funds. The required balances and monthly payment amounts for each Reserve may be adjusted from time-to-time by Lender to reflect increases in related costs and expenses anticipated and estimated by Lender. If the amount on deposit with Lender in either the Tax or Insurance Reserves is insufficient to fully pay Taxes or Insurance Premiums as provided above, Borrower shall, within 10 days following notice at any time from Lender, deposit with Lender the additional sums required for full payment. Borrower hereby grants Lender a first priority security interest in all Reserve funds and Borrower shall execute any other documents and take any other actions necessary to provide Lender with such a perfected security interest. Upon the occurrence of an Event of Default, and/or upon the Maturity Date, Lender may apply any amounts then held in any of the Reserves to the payment of the Indebtedness in such order as Lender may elect in its sole and absolute discretion.

4. **Insurance Coverage**. Borrower shall keep the Improvements insured against loss or damage under, and shall maintain during the entire term of this Mortgage, comprehensive general liability coverage and those other coverages requested by Lender, by carrier(s), in amounts and in form at all times satisfactory to Lender, which carrier(s), amounts and form shall not be changed without Lender's prior written consent. Those policies of insurance shall be issued by insurers qualified under the laws of the state in which the Land is located, duly authorized and licensed to transact business in that state and reflecting the Required Rating. Borrower shall maintain all coverages on the Property required by Lender at the closing of the Loan, and all other coverages deemed reasonably necessary by Lender from time-to-time during the term of the Loan. Any failure by Lender to insist on full compliance with all of the foregoing insurance requirements at closing does not constitute a waiver of Lender's right to subsequently require full compliance with these requirements. All policies required hereunder shall be evidenced by certificates of insurance on the Accord 28 form of certificate (as that form may be updated and renamed from time to time), naming Lender as loss payee and as additional insured. Unless Borrower provides Lender with evidence of the insurance coverage as required by this Mortgage, Lender may purchase insurance at Borrower's expense to protect Lender's interests. This insurance may, but need not, also protect Borrower's interests. The coverage purchased by Lender may not pay any claim made by Borrower or any claim that is made against Borrower. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained substitute insurance as required by this Mortgage. Borrower is responsible for the costs of any insurance purchased by Lender. The cost of any insurance purchased by Lender may be added to the Indebtedness and, if so, the Contract Rate (as defined in the Note, including Default Interest and any other charges provided in the Note) will apply to this added amount. The effective date of coverage may be the date when Borrower's prior coverage lapsed or the date when Borrower failed to provide proof of coverage. The coverage purchased by Lender may be considerably more expensive than insurance Borrower can obtain on its own, and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

5. **Application of Insurance Proceeds and Condemnation Awards**.

(a) Notice of Insurance Loss and Adjustment of Claims. In case of loss or damage by fire or other casualty, Borrower shall give immediate written notice thereof to the insurance carrier(s) and to Lender. Lender is authorized and empowered to make or file proofs of loss or damage (in each case only so long as that loss or damage is equal to or greater than $25,000.00) and to settle and adjust any claim under insurance policies which insure against those risks, or to direct Borrower, in writing, to agree with the insurance carrier(s) on the amount to be paid in regard to that loss. The proceeds of any insurance claim are hereby assigned to and shall be paid to Lender as further security for the payment of the Indebtedness and performance of the Obligations and applied as set forth herein.

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(b) Notice of Taking and Prosecution of Claims. Borrower shall immediately notify Lender of any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect or any part thereof (a "***Taking***"), and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other Taking, whether direct or indirect, and to settle or compromise any claim in connection with that Taking, provided the claim is for an amount equal to or greater than $25,000.00. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any Taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation (hereafter a "***Condemnation Award***"), are hereby assigned to and shall be paid to Lender as further security for the payment of the Indebtedness and performance of the Obligations, and applied as set forth herein.

(c) Application of Proceeds and Awards. Provided no Event of Default then exists hereunder, the net insurance proceeds and net proceeds of any Condemnation Award (collectively the "***Net Proceeds***") (in each case after deducting only Lender's reasonable costs and expenses, if any and including reasonable attorney fees, in collecting the same) shall be made available for the restoration or repair of the Property if, in Lender's sole judgment (a) restoration or repair and the continued operation of the Property is economically feasible (as determined by Lender), (b) the value of Lender's security is not reduced, (c) the loss or condemnation, as applicable, does not occur in the 6-month period preceding the stated Maturity Date and Lender's independent consultant certifies that the restoration of the Property can be completed at least 90 days prior to the Maturity Date, and (d) Borrower deposits with Lender an amount, in cash, which Lender, in its sole discretion, determines is necessary, in addition to the Net Proceeds, to pay in full the cost of the restoration or repair (including the cost to carry the Property and make all required payments under the Loan Documents during the period of restoration or repair). Notwithstanding the foregoing, it shall be a condition precedent to any disbursement of insurance proceeds held by Lender hereunder that Lender shall have approved (X) all plans and specifications for any proposed repair or restoration, (Y) the construction schedule and (Z) the architect's and general contractor's contract for all restoration that exceeds $25,000.00 in the aggregate. Lender may establish other conditions it deems reasonably necessary to assure that the work is fully completed in a good and workmanlike manner free of all liens or claims by reason thereof. Borrower's deposits made pursuant to this subparagraph shall be used before the Net Proceeds for that restoration or repair. If the Net Proceeds are made available for restoration or repair, that work shall be completed by Borrower in an expeditious and diligent fashion, and in compliance with all applicable laws, rules and regulations.

At Lender's option, the Net Proceeds shall be disbursed pursuant to a construction escrow acceptable to Lender. If following the final payments for the completion of that restoration or repair there are any Net Proceeds remaining, those Net Proceeds shall be paid (i) to Borrower to the extent Borrower was required to make a deposit pursuant to this subparagraph, (ii) then to fund any shortfall in the Replacement Reserve, (iii) then to Lender to be applied to the Indebtedness, whether or not due and payable until paid in full, and (iv) then to Borrower. If an Event of Default then exists, or any of the conditions set forth in clauses (a) through (d) of this subparagraph have not been met or satisfied, the Net Proceeds shall be applied to the Indebtedness, whether or not due and payable, with any excess paid to Borrower.

6. **Preservation and Maintenance of Property**. Borrower shall (a) not commit waste or permit impairment or deterioration of the Property; (b) not abandon the Property; (c) keep the Property in good repair and restore or repair promptly, in a good and workmanlike manner, all or any part of the Property to the equivalent of its original condition, ordinary wear and tear excepted, or such other condition as Lender may approve in writing, upon any damage or loss thereto, if net insurance proceeds are made available to cover in whole or in part the costs of that restoration or repair; (d) comply with all laws, ordinances, regulations and requirements of any governmental body and all requirements of any documents applicable to the Property; (e) provide for management of the Property by Borrower or by a

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property manager satisfactory to Lender pursuant to a contract in form and substance satisfactory to Lender; (f) not take any steps whatsoever to convert the Property, or any portion thereof, to a condominium or cooperative form of management; (g) not install or permit to be installed on the Property any underground storage tank or above-ground storage tank without Lender's written consent; and (h) give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security granted by the Loan Documents or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish, expand or alter any Improvement or any fixture, equipment, machinery or appliance in or on the Land and owned or leased by Borrower except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

7. **Protection of Lender's Security**. If Borrower fails to pay the Indebtedness or perform the Obligations, or if any action or proceeding is commenced which affects the Property or Lender, at Lender's option, Lender may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect the Property or Lender's interest herein, including entry upon the Property to make repairs and perform environmental tests and studies. Any amounts disbursed by Lender pursuant to this *Paragraph 7* (including attorneys' costs and expenses), taxes, assessments and insurance premiums), with interest thereon at the "***Default Rate***" (defined in the Note) from the date of disbursement, shall become additional Indebtedness of Borrower secured by the Loan Documents and shall be due and payable on demand. Nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder.

8. **Leases**. Borrower shall perform its obligations as landlord in all Leases and use reasonable efforts to enforce those Leases in accordance with their terms. Upon request by Lender, Borrower shall (i) deliver to Lender a copy of each requested Lease (including all modifications, amendments and waivers), and (ii) execute and record any additional assignments to Lender of the landlord's interest in any Lease, in form and substance satisfactory to Lender. Borrower shall not be authorized to enter into any ground lease of the Property, without Lender's prior written approval. Borrower shall not, without Lender's prior written consent, modify, amend, surrender or terminate any Lease, which consent shall not be unreasonably withheld or delayed. All Leases of space in the Property shall be on the form of lease previously approved by Lender with tenants and for a use acceptable to Lender. All Leases of space in the Property executed or renewed after the date hereof must be approved by Lender prior to the execution thereof by Borrower.

Notwithstanding anything contained herein to the contrary, Borrower may enter into a proposed Lease, including the amendment, renewal or extension of an existing Lease (a "***Renewal Lease***"), without Lender's prior written consent, provided the proposed Lease or Renewal Lease (i) provides for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) as of the date that Lease or Renewal Lease is executed by Borrower (unless, in the case of a Renewal Lease, the rent payable during that renewal, or a formula or other method to compute that rent, is provided for in the original Lease), (ii) is an arms-length transaction with a bona fide, independent third party tenant, (iii) is written on the standard form of lease previously approved by Lender, (iv) is not for premises greater than or equal to ten percent (10%) of the gross leaseable area of the Property, (v) is not for a rental greater than or equal to ten percent (10%) of the total gross rental revenues of the Property; (vi) shall have an initial term of not less than three (3) years or greater than ten (10) years, (vii) is for the same use as the current use of the Property, (viii) shall not contain any options for renewal or expansion by the tenant thereunder at rental rates which are either below comparable market levels or less than the rental rates paid by the tenant during initial lease term; and (ix) shall be to a tenant which is experienced, creditworthy and reputable. If Lender consents to any new Lease of space in the Property or the renewal of any existing Lease of space in the Property, at Lender's request, Borrower shall cause the tenant thereunder to execute a subordination and attornment agreement in form and substance satisfactory to Lender contemporaneously with the execution of that Lease. Borrower expressly understands that any and all new or proposed leases or Renewal Leases are included in the definition of "***Lease***" or "***Leases***" as those terms may be used throughout this Mortgage or any of the other Loan Documents. *Notwithstanding anything contained herein to the contrary*, Borrower may terminate a Lease without Lender's consent in the ordinary course of business if (a) the related tenant is

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in default and (b) either (x) such Lease is for less than ten percent (10%) of the then currently occupied and rentable square feet of space at the Property, or (y) Borrower has executed a Lease with a replacement tenant for the premises in question. To the extent Lender's consent is required under this *Paragraph 8*, and the Lease in question is for less than 25% of both the gross leaseable area of the Property and the total gross rental revenues of the Property, Borrower shall submit a request to Lender with the following language prominently displayed at the top and on the cover of any such request in allcaps, boldface, 14 point type or larger: **"IMMEDIATE RESPONSE REQUIRED, CONSENT DEEMED GIVEN IF NO RESPONSE WITHIN 10 BUSINESS DAYS."** If no response has been received within 10 Business Days of Lender's receipt of such request, Borrower shall submit a second request to Lender with the following language prominently displayed at the top and on the cover of any such request in allcaps, boldface, 14 point type or larger: **"IMMEDIATE RESPONSE REQUIRED, CONSENT DEEMED GIVEN IF NO RESPONSE WITHIN 5 BUSINESS DAYS."** If no response has been received within 5 Business Days of Lender's receipt of such second request, Lender's consent shall be deemed to be given.

9. **Inspection**. Subject to the rights of tenants under their leases, Lender and its agents and designees may make or cause to be made reasonable entries upon and inspections of the Property, including for performing any environmental inspections and testing of the Property, and inspections of Borrower's books, records, and contracts at all reasonable times upon reasonable advance notice, which notice may be given in writing or orally. Borrower shall cooperate with Lender and its agents and designees with respect to those inspections, including any related to the sale or potential sale of all or any portion of the Loan by Lender and any Securitization or potential Securitization involving the Loan.

10. **Books and Records**. Borrower shall keep and maintain at all times at Borrower's Address, or another place Lender approves in writing, complete and accurate books of accounts and records adequate to correctly reflect the results of the operation of the Property and copies of all written contracts, Leases and other instruments affecting the Property.

11. **Financial Reporting**. So long as any Indebtedness remains outstanding, and unless Lender otherwise consents in writing, Borrower shall provide the following financial information to Lender:

(a) Operating Statements. Within 15 days after the end of each calendar month prior to Securitization of the Loan (the "***Stub Period***"), and thereafter within 45 days after the end of each of Borrower's fiscal quarters ("***Quarterly***") and within 60 days after the end of each of Borrower's Fiscal years ("***Annually***"), a statement of income and expenses ("***Operating Statements***") in reasonable detail, prepared in accordance with sound accounting practices (relating to the real estate industry) applied on a consistent basis, and dated and certified as true and complete by Borrower.

(b) Rent Rolls, Etc.. Within 15 days after the end of each calendar month during the Stub Period, and Quarterly thereafter, a rent roll in a form acceptable to Lender, dated and certified as true and complete by Borrower, containing the following information: (a) a rent schedule for the Property, including tenant name, respective space occupied, lease expiration dates, rent and other amounts payable, rent paid-to date, security deposit, and aged accounts receivable, and on a Quarterly basis only upon request by Lender (b) a leasing activity report, (c) a capital expenditure report indicating the type and amount of each capital expenditure, and (d) any other information that Lender may reasonably require.

(c) Financial Statements. Balance sheets both Quarterly and Annually, and Annually a statement of cash flows.

(d) Guarantor Information. In addition, Borrower shall cause each Guarantor to provide to Lender a copy of his/her/its financial statements as required by *Section 5.10* of that certain Guaranty of even date herewith executed by each such Guarantor.

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(e) Other Information. Borrower shall also provide to Lender any other financial information relating to Borrower, Guarantors and/or the Property that Lender may reasonably request in writing from time-to-time upon at least 10 days' prior written notice.

(f) Form and Certification. Rent Rolls, Operating Statements, balance sheets and statements of cash flow shall each be presented in reasonable detail, prepared in accordance with sound accounting practices (relating to the real estate industry) applied on a consistent basis, and certified as true and complete by Borrower. All information to be provided to Lender pursuant to this *Paragraph 11* must be in a form acceptable to Lender. All required certifications of financial information shall be signed by an authorized general partner, manager, managing member or chief financial officer of Borrower.

(g) Failure to Provide Information-Late Charge. Borrower acknowledges that Lender will incur additional expenses if any of the foregoing separate financial reports are not delivered to Lender as required above (each of which is hereafter referred to as a "***Late Delivery***"), that it will be impracticable to quantify those expenses, and that the Financial Late Charge established in this subparagraph is a reasonable estimate of those expenses. Therefore, Borrower shall pay to Lender, as a late charge, $500 for each such Late Delivery, and an additional $500 for each full month during which each such Late Delivery remains undelivered, in each case following written notice from Lender (the "***Financial Late Charge***"). In addition, if any Late Delivery remains uncured after 30 days prior notice from Lender, Lender shall have the right, in its sole discretion, to engage a certified public accounting firm acceptable to Lender to prepare the tardy financial report, on an audited basis. The Financial Late Charge, together with any costs and expenses of any such accounting firm paid by Lender, shall be paid by Borrower on demand, and shall be added to the secured Indebtedness, with interest thereon from the date advanced by Lender at the Default Rate.

12. **Hazardous Substances**. Borrower covenants and agrees that it (a) shall not use, generate, store, or allow to be generated, stored or used, any Hazardous Substances (hereinafter defined) on the Property, except in the ordinary course of Borrower's business and in accordance with all Environmental Laws (hereinafter defined), (b) shall at all times maintain the Property in full compliance with all applicable Environmental Laws, including timely remediating the Property if and when required, and (c) shall cause compliance by all tenants and sub-tenants on the Property with Borrower's covenants and agreements contained in this *Paragraph 12*. Borrower shall immediately notify Lender in writing of (i) any investigation, claim or other proceeding by any party caused or threatened in connection with any Hazardous Substances on the Property, or the failure or alleged failure of the Property to comply with any applicable Environmental Laws, in each case of which Borrower has any knowledge, or (ii) Borrower's discovery of any condition on or in the vicinity of the Property which may cause the Property to fail to comply with applicable Environmental Laws.

The term "***Environmental Laws***" shall include any present and future federal, state and/or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction or decree and/or other governmental directive or requirement, as well as common law, which pertains or relates to health, safety or the environment (including but not limited to, ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("***CERCLA***"), the Resource Conservation and Recovery Act of 1976, as amended ("***RCRA***"), and any state or federal lien or superlien or environmental clean-up statutes, and regulations, rules, guidelines, or standards promulgated pursuant thereto all as amended from time-to-time. The term "***Hazardous Substances***" shall include any substance, whether solid, liquid or gaseous: (i) which is listed, defined or regulated as a "hazardous substance," "hazardous waste" or "solid waste," or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Laws; or (ii) which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, lead paint, or motor fuel or other petroleum hydrocarbons; or (iii) which causes or poses a threat to cause a contamination or nuisance on the Property or any adjacent property or a hazard to the environment or to the health or safety of persons on or about the Property.

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13. **Representations, Warranties and Covenants**. Borrower represents, warrants and Covenants to Lender as follows:

(a) Organizational Status. Borrower is duly organized and existing and in good standing under the laws of the state in which it is organized, and is qualified or licensed to do business in all jurisdictions in which that qualification or licensing is required, including where the Land is located. All of Borrower's organizational documents delivered to Lender are complete and accurate in every material respect.

(b) Authorization and Validity. The execution and delivery of the Loan Documents and the performance of the obligations thereunder are within Borrower's powers and consistent with the terms of its organizational documents, and have been duly authorized by all necessary action. The Loan Documents constitute valid and binding obligations of Borrower as well as the other parties executing them in favor of Lender, and are enforceable in accordance with their respective terms, except where that enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally, or by the application of rules of equity.

(c) No Violations or Conflicts. (i) the execution and delivery of the Loan Documents, the payment of the Indebtedness, and the performance of the Obligations do not violate any law or conflict with any agreement or court order by which Borrower is bound, and (ii) no consent or approval of any governmental authority or any third party is required for the execution or delivery of the Loan Documents, the payment of Indebtedness, and the performance of the Obligations.

(d) Title. (i) Borrower lawfully holds and possesses fee simple title to the Property, with the right and power (without limitation) to mortgage, assign and encumber the Property as provided in this Mortgage; (ii) this Mortgage is a first lien on the Property; (iii) the Property is otherwise unencumbered, and Borrower will warrant and defend title to the Property against all claims and demands, subject to easements and restrictions listed in a schedule of exceptions to coverage in the title insurance policy accepted by Lender insuring Lender's interest in the Property; and (iv) Borrower has no operations, assets or activities other than the Property.

(e) Permitted Use. The use of the Property is limited to the Permitted Use and related uses. Unless required by applicable law, Borrower shall not permit changes in the use of any part of the Property from the use existing at the time of the execution of this Mortgage. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

(f) Permits and Compliance. (i) All material permits, licenses, authorizations, approvals, and certificates, including certificates of completion and occupancy permits, required by law, ordinance or regulation have been obtained and are and shall remain in full force and effect; and (ii) Borrower and the use and occupancy of the Land and all improvements thereon are and shall remain in compliance with all laws, regulations, and ordinances, including without limitation, all restrictive covenants of record and zoning and building laws.

(g) Encroachments. All of the improvements on the Land lie wholly within the boundaries of and building line restrictions relating to the Land and no improvements located on adjoining lands encroach upon the Land so as to affect the value or marketability of the Property, except as shown in the survey, if any, previously delivered to Lender and/or those which are insured against by the title insurance policy accepted by Lender insuring Lender's interest in the Property.

(h) Utilities. The Property is served by public utilities, water and sewer (or septic facilities) and services in the surrounding community, including police and fire protection, public transportation, refuse removal, public education, and enforcement of safety codes, all of which

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are adequate in relation to the improvements and location on which the Property is located (taking into account the Permitted Use of the Property).

(i) Parking. The Property has parking and other amenities necessary for the operation of the business currently conducted thereon which are adequate in relation to the premises and location on which the Property is located.

(j) Separate Tax Parcel. The Property is a contiguous parcel and is assessed as one or more wholly separate tax parcels, separate from any other tax parcel, and there are no delinquent taxes or other outstanding charges adversely affecting the Property.

(k) Insurance. No action, omission, misrepresentation, negligence, fraud or similar occurrence has taken place on the part of any person that would reasonably be expected to result in the failure or impairment of full and timely coverage under any insurance policies providing coverage for the Property.

(l) Information Supplied. All information in the application for the Loan submitted to Lender (the "***Loan Application***") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application or in satisfaction of the terms thereof, is accurate, complete and correct in all material respects. There has been no material adverse change in the representations made or information heretofore supplied by or on behalf of Borrower or any Guarantor in connection with the Loan or the Loan Application as to Borrower, any Guarantor, or the Property. There has been no material adverse change in any condition, fact, circumstance or event that would make any such representations or information inaccurate, incomplete or otherwise misleading.

(m) Litigation. Except as listed on *Exhibit C* hereto (or otherwise clearly and specifically disclosed in writing to Lender prior to the date hereof), (i) there is no litigation, arbitration, condemnation proceeding or other proceeding or governmental investigation pending or, to Borrower's knowledge, threatened against or relating to Borrower, any Guarantor, or the Property, there are no outstanding judgment(s) against or relating to Borrower or any Guarantor or the Property, (ii) neither Borrower nor any Guarantor has (A) had any property foreclosed upon, (B) given a deed in lieu of foreclosure, (C) declared bankruptcy, or (D) been involved in any criminal proceedings where Borrower or Guarantor was the defendant, and (iii) neither Borrower nor any Guarantor has defaulted on any loan or other indebtedness. In addition, neither Borrower nor any Guarantor currently has or holds an equity interest in any entity that has a securitized loan that is being serviced by a special servicer.

(n) Insolvency. None of Borrower or any Guarantor is insolvent, and there has been no (i) assignment made for the benefit of the creditors of any of them, (ii) appointment of a receiver for any of them or for the properties of any of them, or (iii) any bankruptcy, reorganization, or liquidation proceeding instituted by or against any of them.

(o) Use of Proceeds. The proceeds evidenced by the Note will be used by Borrower solely and exclusively for proper business purposes (including, if Borrower so elects, the lawful distribution of net excess proceeds of the Loan to Borrower's partners, members and/or shareholders, after payment of all sums required under the Loan Documents) and will not be used for the purchase or carrying of registered equity securities within the purview and operation of any regulation issued by the Board of Governors of the Federal Reserve System or for the purpose of releasing or retiring any indebtedness that was originally incurred for any such purpose.

(p) Leases. All Leases of space in the Property existing as of the date hereof are in writing.

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(q) Publicity. Lender shall be allowed to advertise in the various news or financial media that Lender has provided the Loan to Borrower, but Borrower shall not do so without Lender's prior written permission.

(r) Tax Returns. Borrower and all Guarantors have filed all required federal, state, county, municipal, and city income and other tax returns and have paid all taxes and related liabilities due pursuant to those returns or pursuant to any assessments received by them. Neither Borrower nor any Guarantor knows of any basis for any additional assessment in respect to any such taxes and related liabilities for prior years.

(s) Revenue Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State, shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Borrower will pay that tax or charge and any interest and penalties thereon.

(t) No Defense. As of the date hereof, Borrower and Guarantors have no valid offset, defense, counterclaim, abatement or right to rescission with respect to any of the Loan Documents.

(u) Brokers. Borrower has dealt with no broker in connection with this Loan other than Laureate Capital ("***Broker***") and Borrower shall pay all fees and expenses owing to any mortgage broker and will indemnify, defend and hold Lender harmless from any and all brokerage claims related to the Loan. Notwithstanding the foregoing, Lender may, at its sole election, pay incentive fees or other compensation (collectively, "***Incentives***") to Broker. Those Incentives are intended to encourage Broker to bring loans to Lender, and may be based on a variety of different factors, including the amount of the Loan, the Contract Rate (as defined in the Note) the spread, the number of loan applications or loans referred to Lender, the amount of investigative, due diligence or other assistance provided by Broker, or other factors. Any cash payments to Broker are not referenced in the Loan Documents.

Except as otherwise provided herein, each and all of the representations, warranties, covenants and obligations of Borrower shall survive the execution, delivery and recording of the Loan Documents and shall continue in full force and effect until the Indebtedness is paid in full.

14. **Lease Assignment**. Borrower acknowledges that Borrower is concurrently delivering to Lender, as additional security for the repayment of the Loan, an Assignment of Leases and Rents (the "***Assignment***") pursuant to which Borrower has assigned to Lender all of Borrower's right, title and interest in the Leases and the Rents and income from the Property. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Borrower agrees to abide by all of the provisions of the Assignment.

15. **Subordination, Non-Disturbance and Attornment Agreements/Estoppel Certificates**. Borrower shall, within 10 days after Lender's request, furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by the Loan Documents and any right of set-off, counterclaim or other defense which exists against those sums and the Obligations. If the Property includes commercial property, Borrower shall use best efforts (including institution of litigation) to deliver to Lender upon request, tenant subordination, non-disturbance and attornment agreements/estoppel certificates from each commercial tenant at the Property in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver those certificates more frequently than two (2) times in any calendar year.

16. **Transfers; Assumption; Due on Sale/Encumbrance**.

(a) No Transfer. Without Lender's prior written consent, Borrower shall not cause, suffer or permit any direct or indirect, voluntary or involuntary, sale, installment sale, lease,

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conveyance, partition, exchange, mortgage, pledge, hypothecation, assignment or other encumbrance, conveyance or disposition, including by operation of law, or the entry into any agreement to do so, of the Property or any interest therein, or in any part thereof or any Lease or Rents with respect thereto, or of any direct or indirect (including beneficial) ownership interest in Borrower (including the interest of any general partner, manager or managing member of Borrower), or in its general partner, manager or managing member, as applicable, or the dissolution of Borrower or its general partner, manager or managing member, as applicable (all of the foregoing hereafter collectively referred to as a "***Transfer***"), except for the following (and provided that none of the following has an effect on the continuing status of Borrower or any change of control or management right of or with respect to Borrower):

(1) Individual Leases of space in the Property to tenants for actual occupancy in accordance with the provisions of *Paragraph 8*.

(2) A transfer that occurs by reason of a Taking.

(3) The disposal of personalty that is obsolete or no longer used or useful, so long as that personalty is replaced with similar items of equivalent value, function and design, and in which Lender has a first lien and mortgage.

(4) A sale, encumbrance, pledge, hypothecation, or transfer of ownership interests in Borrower or in its general partner, manager or managing member, as applicable, which individually or collectively in the aggregate total no more than 49% of the total ownership and/or controlling interests (including beneficial interests) of Borrower or that general partner, manager or managing member, as applicable.

(5) Transfers for estate planning purposes to immediate family members or to trusts or entities created for the benefit of immediate family members, in each case, however, limited to a spouse, parent, natural or adopted child and/or natural or adopted grandchild of the transferor (if the transferor is a Guarantor, however, that Guarantor must retain control of the transferred interest and shall not be released from any guaranty or indemnity agreement by reason of that transfer).

(6) Transfers by operation of law or upon death by devise or descent.

(7) Transfers to Guarantor(s).

With respect to any such permitted transfer, Borrower shall (i) give Lender at least 30 days prior written notice thereof (except those occurring by reason of death, of which Borrower shall give Lender written notice promptly after gaining knowledge thereof), (ii) furnish Lender with copies of any documentation executed in connection therewith promptly after execution thereof, and (iii) shall reimburse Lender for all costs and expenses, including reasonable attorney fees, incurred by Lender in connection therewith.

(b) Assumption. Notwithstanding the foregoing provisions of this *Paragraph 16*, a sale of the Property and assumption of this Loan (hereinafter, an "***Assumption***") in its entirety will be permitted during the term of the Note to any person or entity, subject to Lender's prior written consent, which will not be unreasonably withheld or delayed, provided that each of the following terms and conditions are satisfied without cost or expense to Lender and in form and substance satisfactory to Lender:

(1) Borrower is in compliance with all terms and conditions of the Loan Documents and no default has occurred and is then continuing hereunder or under any of the other Loan Documents and the proposed transferee ("***Transferee***") agrees to continue to comply with and be bound by all provisions of the Loan Documents.

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(2) Borrower gives Lender written notice of the terms of the prospective Assumption not less than sixty (60) days before the date on which that Assumption is scheduled to take place and, concurrently, gives Lender all such information concerning Transferee that Lender reasonably requests.

(3) The proposed Transferee is approved by Lender. In determining whether to give or withhold its approval, Lender shall consider the Transferee's (i) experience in owning and operating a facility similar to the Property, (ii) entity structure, (iii) financial strength, (iv) general business standing and (v) relationships and experience with contractors, vendors, tenants, lenders and other business entities.

(4) Borrower pays all of Lender's reasonable out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees and any rating agency approval fees (whether the requested transfer is approved or rejected), plus a nonrefundable "***Assumption Fee***" equal to 1% of the outstanding principal balance of the Note at the time of Assumption. Lender's out-of-pocket expenses incurred shall be payable by Borrower whether or not Lender consents to the Assumption. Lender may require Borrower to pay an advance deposit to Lender or its agent to defray some or all of those costs and expenses (which will not relieve Borrower of the obligation to pay all costs and expenses that exceed the amount of that deposit).

(5) Transferee executes and delivers such documents and agreements as Lender shall reasonably require to evidence and effectuate the Assumption and delivers such legal opinions as Lender may reasonably require, including, without limitation: (a) hazard insurance endorsements or certificates and other similar materials as Lender may deem necessary; (b) an endorsement or endorsements to Lender's loan title insurance policy insuring the lien of this Mortgage, extending the effective date of that policy through the date of Assumption, with no additional exceptions added to that policy, except for items consented to by Lender or permitted under this Mortgage, and insuring that fee simple title to the Property is vested in the Transferee.

(6) Borrower executes and delivers to Lender, without any cost or expense to Lender, a release of Lender, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents through and including the date of the closing of the Assumption, which agreement shall be in form and substance satisfactory to Lender and shall be binding upon the Transferee.

(7) Subject to the provisions of *Paragraph 14* of the Note (entitled Exculpation), the Assumption is not construed so as to relieve Borrower of any personal liability under the Note or any of the Loan Documents for any act or events occurring or obligations arising prior to or simultaneously with the closing of that Assumption (excluding payment of the principal amount of the Note and interest accrued thereon), and Borrower executes, without any cost or expense to Lender, such documents and agreements reasonably required by Lender to evidence and effectuate the ratification of that personal liability.

(8) Transferee shall furnish, if Transferee is a corporation, partnership or other entity, all appropriate papers evidencing Transferee's capacity in good standing and the qualification of the signers to execute the assumption of the Obligations, which papers shall include certified copies of all documents relating to the organization and formation of Transferee and of the entities, if any, which are partners, members or shareholders of Transferee. Transferee, as well as such constituent

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parties as Lender shall require, shall be single purpose entities, whose formation documents shall be approved by counsel to Lender.

(9) An opinion of counsel satisfactory to Lender and its counsel stating that (i) Transferee's formation documents provide proof for the matters described in *subparagraph (8)*, above, (ii) if required by any rating agency rating the applicable REMIC securities once the Loan has been securitized, the assets of the Borrower will not be consolidated with the assets of any other entity having an interest in, or affiliation with, Transferee, in the event of a bankruptcy or insolvency of any such entity, (ii) the assumption of the Obligations has been duly authorized, executed and delivered and the Loan Documents are valid, binding and enforceable against Transferee in accordance with their terms, (iii) Transferee and any entity which is a controlling stockholder, general partner, manager or managing member of Transferee have been duly organized and are in good standing and in existence, and (iv) with respect to any other matters reasonably requested by Lender or requested by the Rating Agencies or the master servicer for the REMIC holding this Mortgage.

(10) If the Loan has previously been securitized pursuant to *Paragraph 42*, and if required by Lender, Lender shall have received evidence in writing from the Rating Agencies to the effect the proposed transfer will not result in a downgrade, qualification, reduction or withdrawal of any rating initially assigned or to be assigned to any securities issued in connection with the Loan.

(c) Guarantor(s). No Assumption shall relieve any current Guarantors of their obligations under any guarantees or indemnity agreements executed in connection with the Note, provided that if Transferee or a party associated with Transferee approved by Lender in its sole discretion assumes the obligations of the current Guarantors under their guarantees or indemnity agreements and Transferee or such party associated with Transferee if applicable, executes, without any cost or expense to Lender, a new guarantee and/or indemnity agreement in form and substance satisfactory to Lender, then Lender shall release the current Guarantors from all obligations first arising under their guarantees or indemnity agreements after the closing of the approved Assumption.

(d) Lender's Rights. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Note immediately due and payable upon a prohibited Transfer without Lender's consent. This provision shall apply to every Transfer whether or not Lender has consented to any previous Transfer.

17. **No Additional Liens**. Borrower covenants not to execute any mortgage, deed of trust, security agreement, assignment of leases and rents or other agreement granting a lien (except the liens granted to Lender by the Loan Documents) or, except as set forth in *Paragraph 2* above, take or fail to take any other action which would result in a lien against the interest of Borrower in the Property without Lender's prior written consent.

18. **Single Asset Entity**. Borrower shall not directly or indirectly hold or acquire any legal or equitable ownership interest in any real or personal property other than the Property, or become a shareholder of or a member or partner in any entity which acquires any property other than the Property, until such time as the Indebtedness has been fully repaid and all Obligations are satisfied. Borrower's articles of incorporation, partnership agreement or operating agreement, as applicable, (i) limit its purpose to the acquisition, ownership, operation and disposition of the Property, (ii) prohibit other activities, mergers, consolidations and asset sales while the Loan is outstanding, (iii) contain separateness covenants, and (iv) provide that those purposes shall not be amended without Lender's prior written consent. Borrower covenants as follows:

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(a) To maintain its assets, accounts, books, records, financial statements, stationery, invoices, and checks separate from and not commingled with any of those of any other person or entity;

(b) To conduct its own business in its own name, pay its own liabilities out of its own funds (including paying salaries of its own employees), allocate fairly and reasonably any overhead for shared employees and office space, and to maintain an arm's length relationship with its affiliates;

(c) To hold itself out as a separate entity, correct any known misunderstanding regarding its separate identity, and observe all organizational formalities;

(d) Not to guarantee or become obligated for the debts of any other entity or person or hold out its credits as being available to satisfy the obligations of others, including not acquiring obligations or securities of its partners, members or shareholders;

(e) Not to pledge its assets for the benefit of any other entity or person or make any loans or advances to any person or entity;

(f) Not to enter into any contract or agreement with any Guarantor or any party directly or indirectly controlling, controlled by or under common control with Borrower or any Guarantor (an "***Affiliate***"), except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any Guarantor or Affiliate;

(g) To maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character, and maintain a sufficient number of employees in light of its contemplated business operations;

(h) Neither Borrower nor any constituent party of Borrower will seek to sell assets of Borrower or the dissolution or winding up, in whole or in part, of Borrower, nor will Borrower merge with or be consolidated into any other entity;

(i) Borrower has maintained and will continue to maintain its assets segregated from those of any constituent party of Borrower or any Affiliate, Guarantor or any other person or entity;

(j) Borrower shall obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage; and

(k) Borrower does not have and will not incur any other indebtedness other than (i) the Indebtedness, and (ii) unsecured trade payables (that are customary and not evidenced by a promissory note) related to the ownership and operation of the Property and incurred in the ordinary course of business and which shall not exceed 60 days in duration from the date those trade payables are first incurred by Borrower, and which shall not exceed $25,000.

Borrower represents and warrants that, since its inception, it has not owned any asset, conducted any business or operation or engaged in any business or activity other than ownership and operation of the Property. Borrower further represents and warrants that (i) it has no debts or obligations other than normal accounts payable in the ordinary course of business, this Mortgage, and the Loan it secures, and any other indebtedness or obligation of Borrower has been paid in full prior to or through application of proceeds from the funding of the Loan.

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19. **Borrower and Lien Not Released**. Without affecting the liability of Borrower or any other person liable for the payment of the Indebtedness, and without affecting the lien or charge of this Mortgage as security for the payment of the Indebtedness, Lender may, from time-to-time and without notice to any junior lien holder or holder of any right or other interest in and to the Property: (a) release any person so liable, (b) waive or modify any provision of this Mortgage or the other Loan Documents or grant other indulgences, (c) release all or any part of the Property, (d) take additional security for any obligation herein mentioned, (e) subordinate the lien or charge of this Mortgage, (f) consent to the granting of any easement, or (g) consent to any map or plan of the Property.

20. **Uniform Commercial Code Security Agreement and Fixture Filing**. This Mortgage shall constitute a security agreement and fixture filing pursuant to the Uniform Commercial Code in effect from time-to-time for any of the items specified herein as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code (collectively, the "***Collateral***"), and Borrower, pursuant to the terms of this Mortgage, hereby grants Lender a security interest in the Collateral to secure the Indebtedness and the Obligations. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Lender may require to perfect a security interest with respect to those items. Borrower shall pay all costs of filing those financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Borrower shall, at Lender's request, at any time and from time-to-time, execute and deliver to Lender those financing statements, amendments and other documents and do other actions that Lender deems necessary in order to establish and maintain valid, attached and perfected first security interests in the Collateral in favor of Lender, free and clear of all liens, claims and rights of third parties whatsoever. Borrower hereby irrevocably authorizes Lender at any time, and from time-to-time, to execute and file in any jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Borrower or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein that financing statement or amendment is filed, or (ii) as being of an equal or lesser scope or within greater detail, and (b) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein that financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Borrower is an organization, the type of organization and any organization identification number issued to the Borrower, and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Borrower agrees to furnish any such information to Lender promptly upon request. Borrower further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Lender in any jurisdiction prior to the date of this Mortgage. In addition, Borrower covenants to: (W) obtain acknowledgments from any bailee holding Collateral; (X) obtain consents from any letter of credit issuers; (Y) notify and take steps to perfect Lender's security interest in any Commercial Tort Claims; and (Z) take any action necessary to vest control in Lender of any of Borrower's electronic chattel paper. If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise or pursue, or cause to be exercised or pursued, immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including without limitation, the right to take possession of the Collateral or any part thereof, and to take those other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender, with respect to the Collateral, sent to Borrower in accordance with the provisions hereof at least five (5) days prior to that action, shall constitute commercially reasonable notice to Borrower. Capitalized words and phrases used herein in this *Paragraph 20* and not otherwise defined herein shall have the respective meanings

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assigned to those terms in either: (i) Article 9 of the Uniform Commercial Code as in force in Illinois at the time the financing statement was filed by Lender, or (ii) Article 9 as in force at any relevant time in Illinois, the meaning to be ascribed thereto with respect to any particular item of property shall be that under the more encompassing of the two definitions.

21. **Events of Default**. The occurrence of any one or more of the following events shall constitute an "***Event of Default***" under this Mortgage:

(a) Borrower's failure to pay (i) within five (5) days of the due date, any of the Indebtedness, including any payment due under the Note, or (ii) the outstanding Indebtedness, including all accrued and unpaid interest thereon, in full on the Maturity Date; or

(b) Borrower's failure to provide Lender with evidence of renewal of any insurance required hereunder within 10 days of Lender's request therefore; or

(c) Borrower's failure to pay when due any Taxes levied against the Property, or ground rents, if applicable, except to the extent sums sufficient to pay those amounts have been escrowed with Lender as required under *Paragraph 3* and Borrower has given notice of the respective amounts due to Lender; or

(d) Borrower's failure to strictly comply with *Paragraphs 16, 17 and 18* of this Mortgage; or

(e) Borrower's failure to comply with the financial reporting requirements of *Paragraph 11* within 10 days after notice from Lender; or

(f) a petition under any Chapter of Title 11 of the United States Code or any similar law or regulation is filed by or against Borrower or any Guarantor (and in the case of an involuntary petition in bankruptcy, that petition is not discharged within 60 days of its filing), or a custodian, receiver or trustee for any of the Property is appointed, or Borrower or any Guarantor makes an assignment for the benefit of creditors, or any of them are adjudged insolvent by any state or federal court of competent jurisdiction, or an attachment or execution is levied against any of the Property; or

(g) the occurrence of an "Event of Default" under and as defined in any other Loan Document; or

(h) Borrower is in default in the payment of any indebtedness (other than the Indebtedness) and that default is declared and is not cured within the time, if any, specified therefor in any agreement governing the same; or

(i) any statement, report or certificate made or delivered to Lender by Borrower or any Guarantor is not materially true and complete, or any representation or warranty made or delivered to Lender by Borrower or any Guarantor is not materially true and correct; or

(j) seizure or forfeiture of the Property, or any portion thereof, or Borrower's interest therein, resulting from criminal wrongdoing or other unlawful action of Borrower, its affiliates, or any tenant in the Property under any federal, state or local law; or

(k) failure of Borrower, within 30 days after notice and demand, to satisfy each and every Obligation, other than those set forth in the subparagraphs above; provided, however, if that failure to satisfy those Obligations cannot by its nature be cured within 30 days, and if Borrower commences to cure that failure promptly after written notice thereof and thereafter diligently pursues the curing thereof (and then in all events cures that failure within 60 days after

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the original notice thereof), Borrower shall not be in default hereunder during that period of diligent curing.

22. **Acceleration**. Upon the occurrence of an Event of Default, the Indebtedness, at the option of the Lender, shall become immediately due and payable without notice to Borrower.

23. **Rights and Remedies; Receiver**. Upon the occurrence of an Event of Default, and at any time thereafter without notice to or the consent of Borrower, Lender shall have the following rights and remedies:

(a) Immediate Rights. Lender shall be entitled to immediately exercise and pursue or cause to be exercised or pursued any or all of the rights and remedies provided in this Mortgage or any other Loan Document or otherwise available at law or in equity. Each remedy provided in the Loan Documents is distinct and cumulative to all other rights or remedies under the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever, including without limitation the right to do any one or more of the following:

(1) To the extent permitted by law, enter upon, take possession of and manage the Property for the purpose of collecting the Rents;

(2) Require Borrower to hold all Rents collected in trust for the benefit of Lender;

(3) Dispossess by the usual summary proceedings any Tenant defaulting in the payment of Rent to Borrower;

(4) Lease the Property or any part thereof;

(5) Repair, restore, and improve the Property;

(6) Apply the Rent after payment of Property expenses as determined by Lender to Borrower's indebtedness under the Loan Documents;

(7) Enforce the power of sale in this Mortgage;

(8) Institute a proceeding or proceedings, judicial or nonjudicial, by advertisement or otherwise as permitted by law, for the complete foreclosure of this Mortgage, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, including selling the Property, and all of Borrower's estate, right, title, interest, claim and demand therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real or personal property, or both, at public venue at the courthouse for the county in which the Property is located (or such other place as may be proper for the conduct of that sale in the jurisdiction in which the Property is located) to the highest bidder for cash at that time and place and upon those terms as Lender may deem expedient, or as may be required by applicable law, after first giving notice as required by applicable law, and in the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Property; and

(9) Commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Mortgage or to obtain specific enforcement of any covenant, condition or agreement in this Mortgage or the other Loan Documents and/or an injunction against the violation thereof. Borrower

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agrees that each of those covenants, conditions and agreements shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Borrower waives the defense of laches and any applicable statute of limitations. Lender may recover judgment on the Note either before, during or after any proceeding for enforcement of this Mortgage.

(b) Surrender of Possession. (i) Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession, or to the extent permitted by law, Lender itself, or by officers, receivers or agents appointed by it, may enter and take possession of all or any part of the Property, and may exclude Borrower and its agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers and accounts of Borrower; and (ii) if Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after that demand by Lender, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring the delivery to Lender of the Property, and Borrower specifically consents to the entry of that judgment or decree. Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Property and conduct the business thereof. Lender shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it or its representatives which was taken or omitted in good faith.

(c) Bidding and Proceeds of Foreclosure Sale. Upon any foreclosure sale, Lender may bid for and purchase the Property and shall be entitled to apply all or part of the Indebtedness as a credit to the purchase price. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the order of priority set forth in the Note with the excess, if any, being applied to any parties entitled thereto as their rights may appear.

(d) Appointment of Receiver or Mortgagee in Possession. If an Event of Default is continuing or if Lender shall have accelerated the Indebtedness, Borrower covenants and consents that Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the Indebtedness, without any showing of fraud or mismanagement on the part of Borrower or the insolvency of any party bound for its payment, without regard to the existence of a declaration that the Indebtedness, or any portion thereof, is immediately due and payable, and without regard to the filing of a notice of default, to the appointment of a receiver or the immediate appointment of Lender to take possession of and to operate the Property, and to collect and apply the rents, issues, profits and revenues thereof, the appointment of which receiver is hereby consented to.

The foregoing remedies shall be cumulative of any other judicial remedies available to Lender under this Mortgage or the other Loan Documents, at law or in equity. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Lender.

24. **Expenditures and Expenses**. Borrower acknowledges and confirms that Lender shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance and attornment agreement. In addition, in any civil action to foreclose the lien hereof or otherwise enforce Lender's rights, there shall be allowed and included as additional Indebtedness and Obligations in the order or judgment for foreclosure and sale or other order all expenditures and expenses which may be paid or incurred by or on behalf of Lender including the reasonable fees, costs and expenses of attorneys, receiver's fees, costs and expenses, appraiser's fees, engineers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimates as to items to be expended after entry of that order or judgment) of procuring all abstracts of title, title searches and examination, title insurance policies, Torrens' Certificates and similar data and

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assurances with respect to the title that Lender deems reasonably necessary either to prosecute that civil action, or to evidence to bidders at any sale pursuant to that order or judgment, the true condition of the title to, or the value of, the Property (collectively the "***Reimbursable Expenses***"). All Reimbursable Expenses, and those other costs, expenses and fees incurred by Lender from time-to-time hereafter in the protection of the Property, in enforcing the Obligations, and/or the maintenance of the lien established by any of the Loan Documents, including accountants' and attorneys' fees, costs and expenses in any advice, litigation, or proceeding affecting the Loan Documents or the Property, whether instituted by Lender, Borrower or any other party, or in preparation for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable to Lender by Borrower, and, to the extent those services relate to the Hazardous Substances Indemnification Agreement of even date herewith from Borrower and Guarantors in favor of Lender, by Borrower and Guarantors, with interest thereon at the Default Rate set forth in the Note, and shall be secured by the Loan Documents. In addition, Borrower shall be liable for the payment of all commissions and brokerage fees relating to the Loan.

25. **Forbearance by Lender Not a Waiver**. Any forbearance by Lender in exercising any right or remedy under any of the Loan Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. Lender's acceptance of less than full compliance with insurance or other requirements at Closing of the Loan does not constitute a waiver of Lender's right to require full compliance thereafter. Lender's acceptance of payment of any sum secured by any of the Loan Documents after the due date of that payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness, nor shall Lender's receipt of any awards, proceeds or damages under *Paragraph 5* hereof operate to cure or waive Borrower's default in payment or sums secured by any of the Loan Documents. With respect to all Loan Documents, only waivers made in writing by Lender shall be effective against Lender.

26. **Waiver of Statute of Limitations**. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligation secured by any of the Loan Documents.

27. **Waiver of Homestead and Redemption**. Borrower hereby waives all rights of homestead exemption in the Property. To the extent permitted by applicable law, Borrower hereby waives all right of redemption on behalf of Borrower and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Mortgage, except decree or judgment creditors of Borrower.

28. Jury Trial Waiver. **TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY LAW, EACH OF BORROWER AND LENDER, BY ITS ACCEPTANCE OF THIS MORTGAGE, EACH HEREBY WAIVES ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THE LOAN DOCUMENTS AND THE BUSINESS RELATIONSHIP THAT IS BEING ESTABLISHED. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY BORROWER AND BY LENDER, AND BORROWER ACKNOWLEDGES ON BEHALF OF ITSELF AND ITS PARTNERS, MEMBERS, SHAREHOLDERS, AS THE CASE MAY BE, THAT NEITHER LENDER NOR ANY PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT BORROWER AND LENDER HAVE ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THE LOAN DOCUMENTS AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. BORROWER AND LENDER FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THE LOAN DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT**

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LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

29. **Indemnification**. In addition to any other indemnifications provided in any of the other Loan Documents, Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and save harmless Lender or any person or entity who is or will have been involved in the servicing of this Loan, as well as the respective affiliates, subsidiaries, persons controlling or under common control, directors, officers, shareholders, members, partners, employees, agents, servants, representatives, contractors, subcontractors, participants, successors and assigns of any and all of the foregoing (collectively, the "***Indemnified Parties***") from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against any of the Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following (each a "***Covered Claim***"): (a) ownership of this Mortgage, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Indebtedness, the Note, this Mortgage or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Mortgage or the Note or any other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower or any Guarantor becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any failure on the part of Borrower to perform or comply with any of the terms of this Mortgage; (f) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (g) any failure of the Property to comply with any laws or ordinances affecting or which may be interpreted to affect the Property; or (h) any representation or warranty made in the Note, this Mortgage or the other Loan Documents being false or misleading in any respect as of the date that representation or warranty was made. The obligations and liabilities of Borrower under this *Paragraph 29*: (A) shall survive for a period of two (2) years following any release of this Mortgage executed by Lender and satisfaction of the Loan evidenced by the Loan Documents; and (B) shall survive the transfer or assignment of this Mortgage, the entry of a judgment of foreclosure, sale of the Property by nonjudicial foreclosure sale, or delivery of a deed in lieu of foreclosure (including, without limitation, any transfer by Borrower of any of its rights, title and interest in and to the Property to any party, whether or not affiliated with Borrower); provided, however, that (i) any act or omission pursuant to subparagraphs (a) through (h) above was taken or occurred prior to the payment in full of the Indebtedness, and (ii) the foregoing indemnity shall not apply to any otherwise Covered Claim to the extent that it shall directly arise out of the gross negligence or willful misconduct of Lender.

30. **Duty to Defend**. Upon written request by an Indemnified Party with respect to a Covered Claim, Borrower shall defend that Indemnified Party (if requested by an Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of the Indemnified Parties, their attorneys shall control the resolution of the claim or proceeding. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, and other professionals in connection therewith. Any amounts payable to any of the Indemnified Parties by reason of the application of *Paragraph 29* or this paragraph shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate specified in the Note from the date loss or damage is sustained by any of the Indemnified Parties until paid.

31. **ERISA Covenants**. Borrower covenants and agrees that during the term of the Loan (a) Borrower is not and will not become a "party in interest" as defined in Section 3(14) of the Employee Retirement Income Security Act of 1974, as amended, with respect to any employee benefit plan, (b) Borrower will take no action that would cause it to (i) become an "employee benefit plan" or (ii) otherwise be considered "plan assets" as defined in 29 C.F.R. Section 2510.3-101, or "assets of a governmental

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plan" subject to regulation under the state statutes, and (c) Borrower will not sell, assign or transfer the Property, or any portion thereof or interest therein, to any transferee that does not execute and deliver to Lender its written assumption of the obligations of this covenant. Borrower further covenants and agrees to protect, defend, indemnify and hold Lender harmless from and against all loss, cost, damage and expense (including without limitation, all attorneys' fees and excise taxes, costs of correcting any prohibited transaction or obtaining an appropriate exemption) that Lender may incur as a result of Borrower's breach of this covenant. This covenant and indemnity shall survive the extinguishment of the lien of this Mortgage by foreclosure or action in lieu thereof; furthermore, the foregoing indemnity shall supersede any limitations on Borrower's liability under any of the Loan Documents.

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

33. **Notice**. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in the Loan Documents shall be given by mailing that notice by Federal Express, or any other nationally recognized overnight carrier, addressed to Borrower at Borrower's Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by Federal Express or any other nationally recognized overnight carrier to Lender's address stated above, with a copy to LaSalle Bank National Association, 135 S. LaSalle Street, Suite 3400, Chicago, Illinois 60603, Attention: Nate Stearns, Chief Operating Officer, or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in the Loan Documents shall be deemed to have been given to Borrower or Lender on the first Business Day following that mailing in the manner designated herein. In addition, notice may also be given by first class certified mail, return receipt requested, postage prepaid, addressed to the address set forth above for the party to whom that notice is to be given and when notice is given in this manner it shall be deemed received on the third day after that notice was deposited with the United States Postal Service.

34. **Successors and Assigns; Joint and Several Liability; Agents; Captions**. The covenants, agreements, representations and warranties contained in the Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of *Paragraph 16* hereof. All representations, warranties, covenants and agreements of Borrower contained in the Loan Documents shall be joint and several. In exercising any rights under the Loan Documents or taking any actions provided for therein, Lender may act through its employees, agents, or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

35. **Governing Law; Jurisdiction; Severability**. **THIS MORTGAGE SHALL BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES, AND BORROWER AGREES THAT THE PROPER VENUE FOR ANY MATTERS IN CONNECTION HEREWITH SHALL BE IN THE STATE OR FEDERAL COURTS LOCATED IN CHICAGO, ILLINOIS, AS LENDER MAY ELECT AND BORROWER HEREBY SUBMITS ITSELF TO THE JURISDICTION OF THOSE COURTS FOR THE PURPOSE OF ADJUDICATING ANY MATTERS RELATED TO THE LOAN, PROVIDED, HOWEVER, THAT TO THE EXTENT THE MANDATORY PROVISIONS OF THE LAWS OF ANOTHER JURISDICTION RELATING TO (I) THE PERFECTION OR THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTERESTS IN ANY OF THE PROPERTY, (II) THE LIEN, ENCUMBRANCE OR OTHER INTEREST IN THE PROPERTY GRANTED OR CONVEYED BY THIS MORTGAGE, OR (III) THE AVAILABILITY OF AND PROCEDURES RELATING TO ANY REMEDY HEREUNDER OR RELATED TO THIS MORTGAGE ARE REQUIRED TO BE GOVERNED BY SUCH OTHER JURISDICTION'S LAWS, THOSE OTHER LAWS SHALL BE DEEMED TO GOVERN AND CONTROL. THE INVALIDITY, ILLEGALITY OR UNENFORCEABILITY OF ANY PROVISION OF THIS MORTGAGE OR THE LOAN DOCUMENTS SHALL NOT AFFECT OR IMPAIR**

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THE VALIDITY, LEGALITY OR ENFORCEABILITY OF THE REMAINDER OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS, AND TO THIS END, THE PROVISIONS OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS ARE DECLARED TO BE SEVERABLE.

36. **Release Upon Payment in Full**. Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage. Borrower shall pay Lender's reasonable costs incurred in releasing this Mortgage and any financing statements related hereto.

37. **Covenants Running with the Land**. All covenants, conditions, warranties, representations and other obligations contained in this Mortgage and the other Loan Documents are intended by Borrower and Lender to be, and shall be construed as, covenants running with the Property until the lien of this Mortgage has been fully released by Lender.

38. **Loss of Note**. Upon notice from Lender of the loss, theft, or destruction of the Note and upon receipt of indemnity reasonably satisfactory to Borrower from Lender, or in the case of mutilation of the Note, upon surrender of the mutilated Note, Borrower shall make and deliver a new note of like tenor in lieu of the then to be superseded Note.

39. **Changes in the Laws Regarding Taxation**. If any law is amended, enacted or adopted after the date of this Mortgage which deducts the Indebtedness from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Indebtedness of Lender's interest in the Property, Borrower will pay that tax, together with any interest and penalties thereon. In the event Lender is advised by counsel chosen by it that the payment of that tax or interest and penalties by Borrower would be unlawful or taxable to Lender, or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by not less than forty-five (45) days written notice to Borrower, to declare the Indebtedness immediately due and payable.

40. **Exculpation**. This Mortgage and other Loan Documents and all of Borrower's obligations hereunder and thereunder are subject to the provisions of *Paragraph 14* of the Note entitled "Exculpation". All of the provisions of the Note, including *Paragraph 14*, are incorporated herein by this reference.

41. **Disclosure of Information**. Lender shall have the right (but shall be under no obligation) to make available to any party for the purpose of granting participation in or selling, transferring, assigning or conveying all or any part of the Loan any and all information which Lender may have with respect to the Property, Lease(s), Borrower and any Guarantor, whether provided by Borrower, any Guarantor or any third party or obtained as a result of any environmental assessments. Borrower and each Guarantor agree that Lender shall have no liability whatsoever as a result of delivering any such information to any third party, and Borrower and each Guarantor, on behalf of themselves and their successors and assigns, hereby release and discharge Lender from any and all liability, claims, damages, or causes of action, arising out of, connected with or incidental to the delivery of any such information.

42. **Sale of Loan; Securitization**. Lender, at any time and without the consent of Borrower or any Guarantor, may grant participation in or sell, transfer, securitize, assign and convey all or any portion of its right, title and interest in and to the Loan, the servicing of the Loan, this Mortgage, the Note and the other Loan Documents, any guaranties given in connection with the Loan and any collateral given to secure the Loan. Borrower covenants to cooperate with Lender's efforts in the sale, transfer or securitization of the Loan. That cooperation includes Borrower's obligation to (a) make non-material modifications of the Loan Documents (which modifications shall not have a material adverse impact upon Borrower and, accordingly, shall not (i) increase the amount of the Indebtedness, or (ii) change the Contract Rate, as defined in the Note), (b) provide additional information regarding Borrower's and/or any Guarantor's financial statements, (c) deliver updated information regarding Borrower and the Property, (d) cooperate with any third parties, including, but not limited to, Rating Agencies and potential investors to facilitate the rating and securitization of the Loan, (e) review Lender's securitization offering materials to the extent they relate to Borrower, the Property, any Guarantor or the Loan, (f) respond to any inquiries of Lender or other party relating thereto, and (g) deliver an estoppel certificate with respect to the Loan.

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Borrower agrees to represent and warrant the absence of misstatements and/or omissions in the information relating to Borrower, the Property, any Guarantor and the Loan that are contained in the offering materials and which have been furnished to or approved by Borrower. Borrower shall not be liable for Lender's post-closing costs incurred pursuant to Lender's Securitization of the Loan. Any such sale, transfer, participation, securitization of all or any portion of the Note, this Mortgage and/or other Loan Documentation including, without any limitation, with respect to any whole loan sale or securitization of the Loan shall be deemed a "***Secondary Market Transaction***".

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

44. **No Third Party Beneficiaries**. The provisions of this Mortgage and the other Loan Documents are for the benefit of Borrower and Lender and shall not inure to the benefit of any third party (other than any successor or assignee of Lender). This Mortgage and the other Loan Documents shall not be construed as creating any rights, claims or causes of action against Lender or any of its officers, directors, agents or employees in favor of any party other than Borrower including but not limited to any claims to any sums held in the Replacement Reserve or the TI and Leasing Reserve.

45. **Exhibits and Riders**. The following Exhibits and Riders (which may contain additional representations, warranties, and covenants) are attached to this Mortgage and hereby made a part of this Mortgage: *Exhibit A* (legal description for Land) *Exhibit B* (definition of Personal Property), and *Exhibit C* (pending and threatened litigation).

46. **Customer Identification – USA Patriot Act Notice; OFAC**. Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended (the "***Act***"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lender to identify Borrower in accordance with the Act. Borrower represents and covenants that it is not and will not become a person (individually, a "***Prohibited Person***" and collectively "***Prohibited Persons***") listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury (the "***OFAC List***") or otherwise subject to any other prohibitions or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by OFAC (collectively the "***OFAC Rules***"). Borrower represents and covenants that it also (i) is not and will not become owned or controlled by a Prohibited Person, (ii) is not acting and will not act for or on behalf of a Prohibited Person, (iii) is not otherwise associated with and will not become associated with a Prohibited Person, and (iv) is not providing and will not provide any material, financial or technological support for or financial or other service to or in support of acts of terrorism or a Prohibited Person. Borrower will not transfer any interest in Borrower to or enter into a Lease with any Prohibited Person. Borrower shall immediately notify Lender if Borrower has knowledge that any Guarantor or any member or beneficial owner of Borrower or any Guarantor is or becomes a Prohibited Person or (A) is indicted on or (B) arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Borrower will not enter into any Lease or any other transaction or undertake any activities related to the Loan in violation of the federal Bank Secrecy Act, as amended ("***BSA***"), 31 U.S.C. §5311, *et seq.* or any federal or state laws, rules, regulations or executive orders, including, but not limited to, 18 U.S.C. §§1956, 1957 and 1960, prohibiting money laundering and terrorist financing (collectively "***Anti-Money Laundering Laws***"). Borrower shall (a) not use or permit the use of any proceeds of the Loan in any way that will violate either the OFAC Rules or Anti-Money Laundering Laws, (b) comply and cause all of its subsidiaries to comply with applicable OFAC Rules and Anti-Money Laundering Laws, (c) provide information as Lender may require from time to time to permit Lender to satisfy its obligations under the OFAC Rules and/or the Anti-Money Laundering Laws and (d) not engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of

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evading or avoiding, or attempts to violate, any of the foregoing. Borrower shall immediately notify Lender if any Tenant becomes a Prohibited Person or (A) is convicted of, (B) pleads *nolo contendere* to, (C) is indicted on, or (D) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering.

47. **Counterparts**. This Mortgage may be executed in any number of counterparts each of which shall be deemed to be an original but all of which when taken together shall constitute one agreement.

STATE-SPECIFIC PROVISIONS. [Alabama]

48. **Inconsistencies**. In the event of any inconsistencies between the terms and conditions of the foregoing provisions of this Mortgage and these State Specific Provisions, these State Specific Provisions shall control and be binding.

49. **Power of Sale**. If an Event of Default shall have occurred, Lender may sell the Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Lender may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect. The provisions of Paragraph 23 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Property hereunder.

50. **Application of Foreclosure of Sale Proceeds**. The proceeds of any foreclosure sale pursuant to Paragraph 49, or otherwise shall be applied as follows:

(a) First, to the costs and expenses of (i) retaking, storing and processing the Collateral and preparing the Collateral or the Property (as the case may be) for sale, and (ii) making the sale, including reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note or the other Loan Documents, such repayment to be applied in the manner determined by Lender;

(c) Third, to the payment of the Indebtedness secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents, as applicable, whether or not all of such Indebtedness is then due; and

(d) Fourth, the balance, if any, shall be paid as provided by law.

51. **Lender's Option on Foreclosure**. At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendants

to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

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IN WITNESS WHEREOF, Borrower has executed this Mortgage or has caused the same to be executed by its representatives thereunto duly authorized.

PELHAM RETAIL INVESTMENTS, LLC, an Alabama limited liability company

By: SHANNON INVESTMENT REALTY, L.L.C., an Alabama limited liability company, its Manager

By: _____
Name: Len B. Shannon, III
Its: Manager

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ACKNOWLEDGMENT

STATE OF Alabama }
} ss.
COUNTY OF Jefferson }

On this 14 day of September 2006 the undersigned, a Notary Public in and for the said County and State, hereby certifies that before me personally appeared, Len B. Shannon, III, known to me or proved to me on the basis of satisfactory evidence, to be the Manager of Shannon Investment Realty, L.L.C., an Alabama limited liability company, Manager of PELHAM RETAIL INVESTMENTS, LLC, an Alabama limited liability company, who, having been duly authorized, executed the foregoing instrument as Manager on behalf of said limited liability company and acknowledged the due execution of the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein stated.

Witness my hand and Notarial Seal.

Print Name: _____

County of _____

State of _____

My Commission Expires: _____

ROBERT H. SPRAIN, JR.
NOTARY PUBLIC - ALABAMA
JEFFERSON COUNTY
My Commission Expires
JUNE 29, 2009

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EXHIBIT A

Legal Description of Property

Lot 1 according to the Beers Addition to Pelham as recorded in Map Book 34 Page 13 in the Office of Township the Judge of Probate of Shelby County, Alabama.

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EXHIBIT B

PERSONAL PROPERTY DESCRIPTION

As used herein, the following items are referred to as the "***Personal Property***":

Any and all assets of the Borrower, of any kind or description, tangible or intangible, whether now existing or hereafter arising or acquired, including, but not limited to:

(a) all property of, or for the account of, the Borrower now or hereafter coming into the possession, control or custody of, or in transit to, the Lender or any agent or bailee for the Lender or any parent, affiliate or subsidiary of the Lender or any participant with the Lender in the loans to the Borrower (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise), including all earnings, dividends, interest, or other rights in connection therewith and the products and proceeds therefrom, including the proceeds of insurance thereon; and

(b) the additional property of the Borrower, whether now existing or hereafter arising or acquired, and wherever now or hereafter located, together with all additions and accessions thereto, substitutions for, and replacements, products and proceeds therefrom, and all of the Borrower's books and records and recorded data relating thereto (regardless of the medium of recording or storage), together with all of the Borrower's right, title and interest in and to all computer software required to utilize, create, maintain and process any such records or data on electronic media, identified and set forth as follows:

(i) All Accounts and all Goods whose sale, lease or other disposition by the Borrower has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, the Borrower, or rejected or refused by an Account Debtor;

(ii) All Inventory, including, without limitation, raw materials, work-in-process and finished goods;

(iii) All Goods (other than Inventory), including, without limitation, embedded software, Equipment, vehicles, furniture and Fixtures;

(iv) All Software and computer programs;

(v) All Securities and Investment Property;

(vi) All Chattel Paper, Electronic Chattel Paper, Instruments, Documents, Letter of Credit Rights, all proceeds of letters of credit, Health-Care-Insurance Receivables, Supporting Obligations, notes secured by real estate, Commercial Tort Claims, contracts, licenses, permits and all other General Intangibles, including Payment Intangibles and collateral assignment of beneficial interests in land trusts;

(vii) All insurance policies and proceeds insuring the foregoing property or any part thereof, including unearned premiums; and

(viii) All operating accounts, the loan funds, all escrows, reserves and any other monies on deposit with or for the benefit of Lender, including deposits for the payment of real estate taxes and insurance, maintenance and leasing reserves, and any cash collateral accounts, clearing house accounts, operating accounts, bank accounts of Borrower or any other Deposit Accounts of Borrower.

Capitalized words and phrases used herein and not otherwise defined in this Exhibit B (Personal Property) shall have the respective meanings assigned to those terms in either: (i) Article 9 of the Uniform Commercial Code as in force in Illinois at the time the financing statement was filed by Lender, or (ii) Article 9 as in force at any relevant time in Illinois, the meaning to be ascribed thereto with respect to any particular item of property shall be that under the more encompassing of the two definitions.

THE FOLLOWING INFORMATION IS FURNISHED
FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE

1. The name and address of the record owner of the real estate described in this instrument is:

Pelham Retail Investments, LLC
713 Mill Springs Lane
Birmingham, Alabama 35244

2. The name and address of the debtor (Borrower) is:

Pelham Retail Investments, LLC
713 Mill Springs Lane
Birmingham, Alabama 35244

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3. The name and address of the secured party (Lender) is:

LaSalle Bank National Association
135 South LaSalle Street
Suite 3410
Chicago, Cook County, Illinois 60603
Attention: Real Estate Capital Markets

4. Information concerning the security interest evidenced by this instrument maybe obtained from the secured party at its address above.

5. This document covers assets and personal property which are or are to become fixtures.

EXHIBIT C

PENDING AND THREATENED LITIGATION

NONE

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