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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO §7-9A-502(c), CODE OF ALABAMA, 1975, AS AMENDED, AND SHOULD BE CROSS INDEXED IN THE INDEX OF FIXTURE FILINGS.

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HELENA I, LLC
(Mortgagor or Borrower)

to

CWCAPITAL LLC
(Mortgagee or Lender)

**MORTGAGE, ASSIGNMENT OF LEASES
AND RENTS AND SECURITY AGREEMENT**

Dated: As of May 9, 2007

PROPERTY LOCATION:

Helena Market Place
335 Helena Market Place
Helena, Alabama

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

KELLEY DRYE & WARREN LLP
200 Kimball Drive
Parsippany, New Jersey 07054
Attention: Stephen G. Hauck, Esq.

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "**Mortgage**" or "**Security Instrument**"), made as of May 9, 2007, by HELENA I, LLC a Delaware limited liability company, having its principal place of business at 365 South Street, Morristown, New Jersey 07960 ("**Mortgagor**" or "**Borrower**"), to CWCAPITAL LLC, a Massachusetts limited liability company, having its principal office at One Charles River Place, 63 Kendrick Street, Needham, Massachusetts 02494 ("**Mortgagee**" or "**Lender**").

W I T N E S S E T H:

To secure the payment of an indebtedness in the original principal sum of Four Million Eight Hundred Twenty-Five Thousand and 00/100 Dollars (\$4,825,000.00), lawful money of the United States of America, to be paid with interest according to a certain Promissory Note of even date herewith made by Mortgagor to Mortgagee (the promissory note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "**Note**", and the loan evidenced by the Note hereinafter being referred to as the "**Loan**") and all other sums due hereunder, under the other Loan Documents (hereinafter defined) and under the Note (said indebtedness and interest due under the Note and all other sums due hereunder under the Note and the other Loan Documents being hereinafter collectively referred to as the "**Debt**"), Mortgagor has mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned, and hypothecated and by these presents does hereby deed, mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Mortgagee, with power of sale, the real property described in Exhibit A attached hereto (the "**Premises**") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "**Improvements**");

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

GRANTING CLAUSE ONE

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

GRANTING CLAUSE TWO

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

GRANTING CLAUSE THREE

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

GRANTING CLAUSE FOUR

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

GRANTING CLAUSE FIVE

All proceeds of and any unearned premiums on any insurance policies covering the Security 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 Security Property;

GRANTING CLAUSE SIX

The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Security Property and to commence any action or proceeding to protect the interest of Mortgagee in the Security Property;

GRANTING CLAUSE SEVEN

All accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Security Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Security Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Security Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "Intangibles"); and

GRANTING CLAUSE EIGHT

All proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Security Property unto and to the use and benefit of Mortgagee, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents (hereinafter defined) in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements.

Borrower shall pay the Debt at the time and in the manner provided in the Note and in this Security Instrument. All the covenants, conditions and agreements contained in (a)

the Note and (b) all and any of the documents including the Note and this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which evidences, secures or guarantees all or any portion of the payments due under the Note or otherwise is executed and/or delivered in connection with the Note and this Security Instrument (the "**Loan Documents**") are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

2. **Warranty of Title.**

Borrower warrants that Borrower has good, marketable and insurable title to the Security Property and has the full power, authority and right to execute, deliver and perform its obligations under this Security Instrument and to deed, encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Borrower possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Security Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "**Permitted Exceptions**") and that this Security Instrument is and will remain a valid and enforceable first lien on and security interest in the Security Property, subject only to said exceptions. Borrower shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

3. **Insurance.**

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain during the entire term of this Security Instrument (the "**Term**") policies of insurance against loss or damage by fire, lightning, hail, windstorm, explosion, vandalism, malicious mischief, riot, civil commotion, acts of terrorism, burglary and theft, and such perils as are included in a standard "all-risk" endorsement, and against loss or damage by all risks and hazards covered by a standard extended coverage insurance policy. Such insurance shall be in an amount equal to the greater of (i) the then full replacement cost of the Improvements and Equipment, without deduction for physical depreciation, or (ii) the outstanding principal balance of the Loan. The policies of insurance carried in accordance with this Section shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" and no coinsurance or if coinsurance, then an "Agreed Amount Endorsement" with a waiver of depreciation, and shall have a deductible no greater than \$10,000 or five percent (5%) of net cash flow after debt service, whichever is less.

(b) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain during the Term the following policies of insurance:

(i) Flood insurance if any part of the Security Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards in an amount equal to the replacement cost of the Security Property or such other amount to be determined by Lender.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and containing minimum limits per occurrence of \$1,000,000 and \$2,000,000 in the aggregate for any policy year with no deductible or self insured retention. In addition, at least \$5,000,000 excess and/or umbrella liability insurance shall be obtained and maintained for any and all claims, including all legal liability imposed upon Borrower and all court costs and attorneys' fee incurred in connection with the ownership, operation and maintenance of the Security Property. Lender shall be named an Additional Insured with respect to all liability coverage.

(iii) Rental loss and/or business interruption insurance in an amount sufficient to compensate Borrower for all Gross Income from Operations during a period of not less than twelve (12) months. The amount of such insurance shall be increased from time to time during the Term as and when new Leases and renewal Leases are entered into and the Rents increase or the estimate of (or the actual) gross revenue, as may be applicable, increases. For purposes of this Security Instrument, "**Gross Income from Operations**" shall mean all income, computed on an accrual basis in accordance with generally accepted accounting practices and principles, derived for each full or partial month during the Term from the ownership and operation of the Security Property from whatever source, including, but not limited to, Leases, all guest room revenues, all food, beverage, and merchandise sales receipts, all interest income, if any, rent, utility charges, escalations, forfeited security deposits, service fees or charges, license fees, parking fees, rent concessions or credits, and any business interruption insurance proceeds but excluding sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any government or governmental agency, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, proceeds of casualty insurance and condemnation awards, and interest on credit accounts. Gross Income from Operations shall not be diminished as a result of this Security Instrument or the creation of any intervening estate or interest in the Security Property or any part thereof.

(iv) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements (without exclusion for explosions), to the extent that such items now or hereafter exist upon the Security Property, in an amount at least equal to the outstanding principal amount of the Note or \$2,000,000, whichever is less.

(v) If the Security Property includes commercial property, worker's compensation insurance with respect to any employees of Borrower, as required by any governmental authority or legal requirement.

(vi) During any period of repair or restoration, builder's "all risk" insurance in an amount equal to not less than the full insurable value of the Security Property insuring against such risks (including, without limitation, fire and extended coverage and collapse of the Improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender.

(vii) If the Security Property is or becomes a legal “non-conforming” use, “Ordinance or Law Coverage” endorsement and insurance coverage to compensate for the cost of demolition, the increased cost of construction and the loss of value on the undamaged portion of the Security Property in an amount equal to the original principal balance of the Loan in amounts as requested by Lender.

(viii) Such other insurance as may be customary for properties of the same type as the Security Property in the geographic area in which the Security Property is located and as may from time to time be reasonably required by Lender in order to protect its interests.

(c) All policies of insurance (the “**Policies**”) required pursuant to this Section: (i) shall be issued by companies approved by Lender and licensed to do business in the state where the Security Property is located, with a claims paying ability rating of “A” or better by Standard & Poor’s Rating Services, a division of the McGraw Hill Companies, Inc. and in the event such insurance companies are rated by Fitch, Inc., a similar rating from Fitch, Inc.; (ii) shall name Lender and its successors and/or assigns as their interest may appear as the Lender/mortgagee; (iii) shall contain a non-contributory standard mortgagee clause and a lender’s loss payable endorsement or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Lender; (v) shall be maintained throughout the Term without cost to Lender; (vi) shall be assigned and the originals delivered to Lender; (vii) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said Policies and that Lender shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation; and (viii) shall be satisfactory in form and substance to Lender and shall be approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Borrower shall pay the premiums for such Policies (the “**Insurance Premiums**”) as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided, however, that Borrower is not required to furnish such evidence of payment to Lender in the event that such Insurance Premiums have been paid by Lender pursuant to Section 6 hereof). If Borrower does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Lender may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices.

4. Casualty.

(a) If the Security Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (an “**Insured Casualty**”), Borrower shall give prompt notice thereof to Lender. Following the occurrence of an Insured Casualty, Borrower, regardless of whether

insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as immediately prior to such damage or destruction, all to be effected in accordance with applicable law. The expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

(b) In case of loss or damages covered by any of the Policies, the following provisions shall apply:

(i) In the event of an Insured Casualty that does not exceed the lesser of (a) \$250,000.00 or (b) twenty five percent (25%) of the then outstanding principal balance of the Note, Borrower may settle and adjust any claim without the consent of Lender and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Borrower is hereby authorized to collect and receipt for any such insurance proceeds.

(ii) In the event an Insured Casualty shall exceed the lesser of (a) \$250,000.00 or (b) twenty five percent (25%) of the then outstanding principal balance of the Note, then and in that event, Lender may settle and adjust any claim without the consent of Borrower and agree with the insurance company or companies on the amount to be paid on the loss and the proceeds of any such policy shall be due and payable solely to Lender and held in escrow by Lender in accordance with the terms of this Security Instrument.

(iii) In the event of an Insured Casualty where the loss is in an aggregate amount less than fifty percent (50%) of the original principal balance of the Note, and if, in the reasonable judgment of Lender, the Security Property can be restored within six (6) months and no later than six (6) months prior to the Anticipated Repayment Date (as defined in the Note) to an economic unit not materially less valuable (including an assessment of the impact of the termination of any Leases due to such Insured Casualty) and not less useful than the same was immediately prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default (as hereinafter defined) shall have occurred and be then continuing, the proceeds of insurance (after reimbursement of any expenses incurred by Lender) shall be applied towards the cost of restoring, repairing, replacing or rebuilding the Security Property or part thereof subject to the Insured Casualty, in the manner set forth below. Borrower hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Borrower shall pay all costs (and if required by Lender, Borrower shall deposit the total thereof with Lender in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iv) Except as provided above in clauses (ii) and (iii) of this Section 4, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Lender in its sole discretion, be applied to the payment of the Debt or applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Security Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Debt shall be without any prepayment consideration except that if an Event of Default, or an event with notice and/or the passage of time would constitute an Event of Default, has occurred, then

the Borrower shall pay to Lender an additional amount equal to the Yield Maintenance Premium (as defined in the Note) in accordance with Section 1.05 of the Note. Any such application to the Debt shall be applied to those payments of principal and interest last due under the Note but shall not postpone or reduce any payments otherwise required pursuant to the Note other than such last due payments.

(v) In the event Borrower is entitled to reimbursement out of insurance proceeds held by Lender, such proceeds shall be disbursed from time to time upon Lender being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (2) funds or, at Lender's option, assurances satisfactory to Lender that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other reasonable evidences of cost, payment and performance as Lender may reasonably require and approve. Lender may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Lender prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Lender after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to Borrower.

5. Payment of Taxes, Etc.

Borrower shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Security Property or any part thereof (the "**Taxes**") and all ground rents, maintenance charges, other impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Security Property or any part thereof (the "**Other Charges**") as the same become due and payable. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than thirty (30) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Security Property, and shall promptly pay for all utility services provided to the Security Property. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, that Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid for by Lender pursuant to Section 6 hereof).

6. **Tax and Insurance Impound Fund; other Reserves.**

(a) **Tax and Insurance Impound Fund.** Borrower shall pay to Lender on the “**Payment Date**” (as defined in the Note) in each calendar month one-twelfth of the amount of Taxes and Insurance Premiums that Lender estimates will be payable during the next ensuing twelve (12) months. Borrower shall also pay to Lender on demand, a sum of money which Lender reasonably estimates, together with such monthly deposits, will be sufficient to make each payment of Taxes and Insurance Premiums at least 30 days prior to the date the same becomes initially due. Funds paid to Lender pursuant to this provision, together with any additions thereto, may be hereinafter called the “**Tax and Insurance Impound Fund**”. Lender will apply the Tax and Insurance Impound Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3 and 5 hereof. In making any payment relating to the Tax and Insurance Impound Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Impound Fund shall exceed the amounts which Lender estimates shall be due for Taxes and Insurance Premiums in the following 12 months, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Impound Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Security Property. If at any time Lender determines that the Tax and Insurance Impound Fund is not or will not be sufficient to pay the Taxes and Insurance Premiums as required herein, Lender may notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Taxes and/or expiration of the Policies, as the case may be. No earnings or interest on the Tax and Insurance Impound Fund shall be payable to Borrower. If Lender so elects at any time, Borrower shall provide, at Borrower’s expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Lender. If Lender does not so elect, Borrower shall reimburse Lender for the cost of making annual tax searches throughout the Term.

(b) **Replacement Escrow Fund.** At Closing, Borrower shall reserve from the proceeds of the Loan an amount equal to \$700. Borrower shall also pay to Lender on the Payment Date in each calendar month an amount equal to \$700 which shall be deposited with and held by Lender for the purposes specified in this Subsection. Funds paid to Lender pursuant to this Subsection, together with any additions thereto, may be referred to herein as the “**Replacement Escrow Fund**”. Lender may in its reasonable discretion from time to time reassess its estimate of the amount necessary for the Replacement Escrow Fund, in which case the monthly amount payable by Borrower to Lender for deposit into the Replacement Escrow Fund shall change in accordance with such estimate on 30 days’ written notice to Borrower. Borrower’s obligation to pay the monthly amount for deposit into the Replacement Escrow Fund shall be suspended during any time when the balance in the Replacement Escrow Fund equals or exceeds \$25,000. At such time as the balance is less than \$25,000, then Borrower’s obligation to make such monthly payments shall resume, subject to subsequent suspension and resumption in accordance with the foregoing. Borrower shall utilize funds drawn from the Replacement Escrow Fund only for replacements and repairs required to be made to the Security Property and

for any other work approved by Lender, provided such costs and expenses (i) are not incurred for routine maintenance at the Security Property, (ii) are not for items as to which other Reserves are established hereunder, and (iii) are categorized under generally accepted accounting principles as capital costs and not as operating expense. By means of example and not as a limitation, the Replacement Escrow Fund may be used for the following replacements: roofing, HVAC systems, window systems, flooring, landscaping, paving and appliances. Upon written application of Borrower, Borrower shall be entitled to draw upon the Replacement Escrow Fund to pay for costs for which such Reserve has been established after such costs shall have been incurred by Borrower and invoiced, provided that the Disbursement Conditions shall have been satisfied.

(c) **Leasing Escrow Fund.** Borrower shall pay to Lender on the Payment Date in each calendar month an amount equal to \$700, which shall be deposited with and held by Lender for the purposes specified in this Subsection. Funds paid to Lender pursuant to this Subsection, together with any additions thereto, may be referred to herein as the “**Leasing Escrow Fund**”. Lender may in its reasonable discretion from time to time reassess its estimate of the amount necessary for the Leasing Escrow Fund, in which case the monthly amount payable by Borrower to Lender for deposit into the Leasing Escrow Fund shall change in accordance with such estimate on 30 days’ written notice to Borrower. In addition, Borrower shall pay to Lender for deposit in the Leasing Escrow Fund all funds received by Borrower from or on behalf of tenants or lease guarantors in connection with any default by any tenant or the termination of any Lease, including, but not limited to, any settlement amounts, cancellation fees, penalties, drawings under letters of credit, debits to security deposits, and funds for tenant improvements, leasing commissions or other charges (collectively, “**Lease Settlement Payments**”). Borrower’s obligation to pay the monthly amount for deposit into the Leasing Escrow Fund shall be suspended during any time when the balance in the Leasing Escrow Fund (exclusive of the amount of Lease Settlement Payments that have been deposited therein) equals or exceeds \$35,000. At such time as the balance (exclusive of Lease Settlement Payments) is less than \$35,000, then Borrower’s obligation to make such monthly payments shall resume, subject to subsequent suspension and resumption in accordance with the foregoing. Borrower shall utilize funds drawn from the Leasing Escrow Fund only for tenant improvement and leasing commission obligations incurred following the date hereof for new and renewal Leases entered into by Borrower in accordance with the provisions of Section 8 below. Upon written application of Borrower, Borrower shall be entitled to draw upon the Leasing Escrow Fund to pay for costs for which such Reserve has been established after such costs shall have been incurred by Borrower and invoiced, provided that all such costs shall have been approved by Lender in its sole discretion, and that the Disbursement Conditions shall have been satisfied. Notwithstanding the foregoing, Borrower’s obligation to pay the monthly amount for deposit into the Leasing Escrow Fund shall be suspended so long as the overall occupancy rate for the Security Property (as determined by Lender in its sole and absolute discretion) equals or exceeds ninety percent (90%) of the total square footage of the leasable space.

(d) **Repair and Remediation Fund.** At Closing, Borrower shall reserve from the proceeds of the Loan and shall deposit with Lender an amount equal to \$18,750 which shall be deposited with and held by Lender for the purposes specified in this Subsection. Funds paid to Lender pursuant to this Subsection, together with any additions thereto, may be referred to herein as the “**Repair and Remediation Fund**”. Borrower shall cause each of the items

described in Exhibit B attached hereto and made a part hereof (the “**Required Repairs**”) to be completed, performed, remediated and corrected to the satisfaction of Lender and as necessary to bring the Security Property into compliance with all applicable laws, ordinances, rules and regulations on or before the expiration of ninety (90) days after the effective date hereof. Borrower shall utilize funds drawn from the Repair and Remediation Fund only for the purposes specified in the preceding sentence. Upon written application of Borrower, Borrower shall be entitled to draw upon the Repair and Remediation Fund to pay for costs for which such Reserve has been established after such costs shall have been incurred by Borrower and invoiced, provided that the Disbursement Conditions shall have been satisfied. In no event may Borrower be entitled to reimbursement of any costs with respect to each item of Required Repairs in excess of the applicable amount set forth in Exhibit B. The Repair and Remediation Fund is solely for the protection of Lender and entails no responsibility on Lender’s part beyond the payment of the costs and expenses described in this Section in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the Repair and Remediation Fund are inadequate to pay the costs of the Required Repairs, Borrower shall pay the amount of such deficiency. Borrower hereby grants to Lender a power-of-attorney, coupled with an interest, to cause the Required Repairs to be completed, performed, remediated and corrected to the satisfaction of Lender upon Borrower’s failure to do so in accordance with the terms and conditions of this Security Instrument, and to apply the amounts on deposit in the Repair and Remediation Fund to the costs associated therewith, all as Lender may determine in its sole and absolute discretion but without obligation to do so. Upon the earlier to occur of full payment of the Debt in accordance with its terms, the completion of the Required Repairs to the reasonable satisfaction of the Lender or at such earlier time as Lender may elect, the balance of the Repair and Remediation Fund then in Lender’s possession shall be paid over to Borrower or to Borrower’s assignee.

(e) **Security Interest.** Borrower hereby pledges to Lender and grants to Lender a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Impound Fund, the Replacement Escrow Fund, the Leasing Escrow Fund and the Repair and Remediation Fund (each a “**Reserve**” and collectively “**Reserves**”) and all proceeds thereof as security for the payment of the Debt and performance of all obligations secured by this Security Instrument. Upon the occurrence of an Event of Default, (i) Lender shall have no obligation to disburse any amounts from any of the Reserves to the Borrower or otherwise, (ii) Lender is hereby authorized and shall be entitled to do any one or more of the following, at Lender’s election (1) continue to hold any moneys in any of the Reserves as security, (2) pay or apply any such moneys for the purposes of the applicable Reserve irrespective of the default, (3) pay or apply any such moneys against any obligation of Borrower (including full or partial payment of the Debt) in any order that Lender may determine in its sole discretion.

(f) **Disbursement Conditions.** Where this Security Instrument provides that the “**Disbursement Conditions**” shall be satisfied, the same are as follows: (i) no default or Event of Default shall have occurred and continue without cure, (ii) Borrower shall provide to Lender a draw request on Lender’s standard form, together with such documentation and certifications as Lender may reasonably request, (iii) Borrower shall provide Lender with all invoices, receipts, lien waivers and other documentation of lawful and workmanlike progress or completion and lien-free status, all as may be reasonably requested by Lender, (iv) Borrower shall provide Lender such evidence as may be reasonably satisfactory to Lender that, after

payment of the requested disbursement, the funds remaining in the applicable Reserve (together with deposits that are required to be made therein, if applicable) shall be sufficient to pay for the remainder of the work for which the Reserve was established, (v) Lender shall have completed such field inspections as it deems necessary, and Borrower shall pay any costs and expenses incurred by Lender in connection with the same, (vi) disbursements from each Reserve shall be requested no more frequently than once each month, (vii) disbursement shall not be requested in amounts less than \$1,000, (viii) Borrower shall pay all of Lender's out-of-pocket costs incurred by Lender in connection with each draw request, and (ix) all documents and information provided under this provision shall be in form and substance satisfactory to Lender in its reasonable discretion. Lien waivers may be conditioned on payment.

(g) **General Provisions Regarding Reserves.** Borrower's obligations to make deposits into each Reserve are separate from Borrower's obligations to make deposits into each other Reserve, and from its obligations to pay as and when due all principal, interest, and other amounts evidenced and secured by the Loan Documents. The Reserves shall be held in Lender's name at one or more financial institutions selected by Lender in its sole discretion. Interest earned on each of the Reserves other than the Tax and Insurance Impound Fund shall be added to the applicable Reserve, and may be held, disbursed and applied in the same manner as other moneys in such Reserve. Lender shall have no obligation to produce any specific rate of return on any of the Reserves. Provided that Lender shall hold (and invest if applicable) the Reserves in accordance with the customary standards used by holders of such funds in connection with rated debt or rated pools of debt, Lender shall not be responsible for any loss. The Reserves are not and shall not be trust funds. Lender is authorized to commingle moneys held in the Reserves among the Reserves and with other moneys held by Lender. Nothing in this Section 6 shall excuse Borrower's performance of any obligation set forth elsewhere in this Security Instrument or in the Loan Documents. Lender may (but need not) disburse payment from any Reserve directly to the applicable contractor, by joint check to Borrower and the applicable contractor, or to Borrower, in each case as determined by Lender in its sole discretion.

(h) **Right to Receive Authorization.** Lender shall have the right at any time to request from Borrower or from any Guarantor written authorization in form and substance satisfactory to Lender, separate and apart from the authorizations set forth in the Loan Documents, to make (or refrain from making) any payment from or with respect to any Reserve (including payments to Lender for credit against the obligations of Borrower hereunder), or to take (or refrain from taking) any action pertaining to any Reserve. Lender shall have no obligation to request any such written authorization ever, and Lender's not requesting any such written authorization shall not give rise to any rights in Borrower or any obligation, liability or detriment of Lender. Further, Lender's requesting such written authorization in any case or cases shall not give rise to any obligation to request such written authorization in any subsequent case. If such written authorization is given, then Lender shall have the right to rely on the same irrevocably. If Lender requests any such written authorization for any matter which the Loan Documents or applicable law permits or requires Lender to do under the circumstances then in effect or as contemplated in such request for written authorization, then until such time as Lender receives such written authorization (including any time following denial of such written authorization) Lender is hereby irrevocably authorized to do any one or more of the following, at Lender's option (i) hold all or any part of the applicable Reserve without making payment there from, (ii) make any payments from the Reserve that are then permitted or required under the

Loan Documents or applicable law, or (iii) exercise or refrain from exercising any other rights or remedies pertaining to the Reserves that are then permitted under the Loan Documents or under applicable law. Lender's rights under the foregoing sentence may be exercised simultaneously or seriatim in any combination or sequence. If Lender shall exercise any of such rights by reason of not having received any requested written authorization, and if the requested written authorization is subsequently given (or if a denial of written authorization is subsequently rescinded), Lender shall not then be required to undo the results of any such exercise of rights, and Lender shall not be bound by any obligation which Lender determines in its reasonable discretion is inconsistent with any of the rights that have been so exercised. The rights of Lender under this paragraph shall govern and prevail notwithstanding anything to the contrary in the Loan Documents or elsewhere. Without limitation, the rights of Lender under this Subsection shall govern and prevail over any provision of the Loan Documents which imposes on Lender any obligation whatsoever pertaining to any Reserve.

7. **Condemnation.**

Borrower shall promptly give Lender written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding (a "**Condemnation**") and shall deliver to Lender copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Borrower, regardless of whether an Award (hereinafter defined) is available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as immediately prior to such Condemnation, all to be effected in accordance with applicable law.

(a) Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment ("**Award**") for any taking accomplished through a Condemnation (a "**Taking**") and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Security Instrument. Notwithstanding any Taking by any public or quasi-public authority (including, without limitation, any transfer made in lieu of or in anticipation of such a Taking), Borrower shall continue to pay the Debt at the time and in the manner provided for in the Note, in this Security Instrument and the other Loan Documents and the Debt shall not be reduced unless and until any Award shall have been actually received and applied by Lender to expenses of collecting the Award and to discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. Borrower shall cause any Award that is payable to Borrower to be paid directly to Lender.

(b) In the event of any Condemnation where the Award is in an aggregate amount less than the lesser of (i) \$250,000.00 or (ii) twenty five percent (25%) of the then outstanding original principal balance of the Note, and if, in the reasonable judgment of Lender, the Security Property can be restored within six (6) months and no later than six (6) months prior to the Anticipated Repayment Date to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Condemnation) and not less useful than the same was prior to the Condemnation, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default shall have

occurred and be then continuing, the proceeds of the Award (after reimbursement of any expenses incurred by Lender) shall be applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Security Property or part thereof subject to Condemnation, in the manner set forth below. Borrower hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Borrower shall pay all costs (and if required by Lender, Borrower shall deposit the total thereof with Lender in advance) of such restoring, repairing, replacing or rebuilding in excess of the Award made available pursuant to the terms hereof.

(c) Except as provided above, the Award collected upon any Condemnation shall, at the option of Lender in its sole discretion, be applied to the payment of the Debt or applied towards the cost of restoring, repairing, replacing or rebuilding the Security Property or part thereof subject to the Condemnation, in the manner set forth below. Any such application to the Debt shall be without any prepayment consideration except that if an Event of Default, or an event with notice and/or the passage of time would constitute an Event of Default, has occurred then the Borrower shall pay to Lender an additional amount equal to the Yield Maintenance Premium in accordance with Section 1.05 of the Note. Any such application to the Debt shall be applied to those payments of principal and interest last due under the Note but shall not postpone or reduce any payments otherwise required pursuant to the Note other than such last due payments. If the Security Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of said Award sufficient to pay the Debt.

(d) In the event Borrower is entitled to payment of the Award received by Lender, such proceeds shall be disbursed from time to time upon Lender being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding resulting from such condemnation, (2) funds or, at Lender's option, assurances satisfactory to Lender that such funds are available, sufficient in addition to the proceeds of the Award to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of costs, payment and performance as Lender may reasonably require and approve; and Lender may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Lender prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the costs of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of the Award received by Lender after payment of such costs of restoration, repair, replacement or rebuilding shall, in the sole and absolute discretion of Lender, be retained by Lender and applied to payment of the Debt.

8. Leases and Rents.

(a) Borrower does hereby absolutely and unconditionally assign to Lender, all Borrower's right, title and interest in all current and future Leases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be requested by Lender to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section, Lender grants to Borrower a revocable license to operate and manage the Security Property and to collect the Rents. Borrower shall hold the Rents, or a portion thereof, sufficient to discharge all current sums due on the Debt, in trust for the benefit of Lender for use in the payment of such sums. Upon an Event of Default, without the need for notice or demand, the license granted to Borrower herein shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Security Property. Lender is hereby granted and assigned by Borrower the right, at its option, upon revocation of the license granted herein, to enter upon the Security Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper. Anything to the contrary set forth herein or elsewhere notwithstanding, if Lender shall have required and Borrower shall have executed a Cash Management Agreement in favor of Lender (the "**Cash Management Agreement**"), then, except to the extent that Lender in its sole discretion determines otherwise, (i) the provisions of the Cash Management Agreement shall control over any conflicting provisions of this Section, (ii) the provisions of the Cash Management Agreement which require that Rents shall be delivered or paid directly to a lockbox or similar cash control mechanism shall take priority over any conflicting provisions herein or elsewhere in the Loan Documents, and (iii) the provisions of the Cash Management Agreement which specify the order of application of Rents shall take priority over any conflicting provisions in this Section or elsewhere in the Loan Documents, other than provisions granting to Lender any rights following a default or an Event of Default.

(b) All non-residential Leases shall provide that they are subordinate to this Security Instrument and that the tenant agrees to attorn to Lender. None of the Leases shall contain any option to purchase, any right of first refusal to purchase or, except with respect to that certain Lease dated July 7, 1998, as amended, made by and between Borrower's predecessor-in-interest, as landlord, and Regis Corp., as tenant, any right to terminate the lease term (except in the event of the destruction or condemnation of all or substantially all of the Security Property). Leases executed after the date hereof shall not contain any provisions which adversely affect the Security Property or which might adversely affect the rights of any holder of the Loan without the prior written consent of Lender. Each tenant shall conduct business only in that portion of the Security Property covered by its lease. Upon request, Borrower shall furnish Lender with executed copies of all Leases.

(c) Borrower shall not, without the prior consent of Lender which consent shall not be unreasonably withheld (i) enter into any Lease of all or any part of the Security

Property in excess (inclusive of expansion options) of 4,800 rentable square feet or for a term of longer (inclusive of extension options) than five (5) years (a "**Major Lease**"), (ii) cancel, terminate, abridge or otherwise modify the terms of any Major Lease, or accept a surrender thereof, (iii) consent to any assignment of or subletting under any Major Lease not in accordance with its terms, (iv) cancel, terminate, abridge or otherwise modify any guaranty of any Major Lease or the terms thereof, (v) accept prepayments of installments of Rents for a period of more than one (1) month in advance or (vi) further assign the whole or any part of the Leases or the Rents. If Lender fails to respond to a request for consent hereunder within ten (10) business days of receipt thereof, such consent shall be deemed granted, provided that such request shall have been accompanied by all information requested by Lender or reasonably necessary for Lender to evaluate such request and shall have clearly stated, in 14 point type or greater, that if Lender fails to respond to such request within ten (10) business days, Lender's consent shall be deemed to have been granted. Notwithstanding the foregoing, Lender's consent shall not be required for renewal Leases containing economic terms which are no less favorable than the terms that are existing under the original Lease. In addition, Borrower shall not (A) lease all or any part of the Security Property, (B) cancel, terminate, abridge or otherwise modify the terms of any Lease, or accept a surrender thereof, (C) consent to any assignment of or subletting under any Lease not in accordance with its terms or (D) cancel, terminate, abridge or otherwise modify any guaranty of any Lease or the terms thereof, unless such actions are exercised for a commercially reasonable purpose in arms-length transactions for market rate terms. From and after the Anticipated Repayment Date, Borrower shall not enter into, amend, modify, accept the surrender of or terminate any Lease without the prior written consent of Lender, which consent may be granted or withheld by Lender in its sole and absolute discretion.

(d) Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) shall enforce all the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; (vi) shall deliver to Lender, upon request, tenant estoppel certificates from each commercial tenant at the Security Property in form and substance reasonably satisfactory to Lender, provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year; and (vii) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Security Property as Lender shall from time to time require.

(e) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Borrower, unless such commingling is not prohibited and is in compliance with all applicable laws pertaining to the holding of such funds, and, if cash, shall be deposited by Borrower at such commercial or savings bank or banks, or otherwise held in compliance with applicable law, as may be reasonably satisfactory to Lender. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Lender, shall, if permitted pursuant to any

legal requirements, name Lender as payee or Lender thereunder (or at Lender's option, be fully assignable to Lender) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Borrower shall, upon Lender's request, if permitted by any applicable legal requirements, turn over to Lender the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Security Property, to be held by Lender subject to the terms of the Leases.

9. Maintenance and Use of Security Property.

Borrower shall cause the Security Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Lender. Borrower shall promptly comply with all laws, orders and ordinances affecting the Security Property, or the use thereof. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Security Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Security Property is or shall become a nonconforming use, Borrower will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Lender. Borrower shall not (i) change the use of the Security Property, (ii) permit or suffer to occur any waste on or to the Security Property or to any portion thereof or (iii) take any steps whatsoever to convert the Security Property, or any portion thereof, to a condominium or cooperative form of management. Borrower will not install or permit to be installed on the Premises any underground storage tank. All alterations to the Security Property made on or after the Anticipated Repayment Date shall require the prior written consent of Lender, which consent may be granted or withheld by Lender in its sole and absolute discretion.

10. Transfer or Encumbrance of the Security Property and Ownership Interests.

(a) Borrower acknowledges that Lender has examined and relied on the creditworthiness and experience of Borrower in owning and operating properties such as the Security Property in agreeing to make the Loan, and that Lender will continue to rely on Borrower's ownership of the Security Property as a means of maintaining the value of the Security Property as security for repayment of the Debt. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Security Property so as to ensure that, should Borrower default in the repayment of the Debt, Lender can recover the Debt by a sale of the Security Property. Borrower shall not, without the prior written consent of Lender, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Security Property or any part thereof, or permit the Security Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred. During the six month period after Closing, any transfer for which Lender's consent is required under this Section 10 shall be conditioned upon, among other things requested by Lender, written confirmation from Lender that such transfer shall not affect or impair Lender's underwritten loan to value requirements. A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of

this Section 10 shall be deemed to include, without limitation, (i) an installment sales agreement wherein Borrower agrees to sell the Security Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Security Property for other than actual occupancy by a space tenant thereunder; or (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents. Borrower agrees to bear and shall pay a non-refundable application fee in the amount of \$5,000 and to reimburse Lender on demand for all reasonable expenses (including, without limitation, reasonable fees and expenses of attorneys and accountants, fees and expenses of any applicable rating agency, title search costs and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

(b) Notwithstanding anything to the contrary contained in Section 10(a), Lender's consent to the sale or transfer of the Security Property will not be unreasonably withheld after consideration of all relevant factors, provided that:

(i) no Event of Default or event which with the giving of notice or the passage of time would constitute an Event of Default shall have occurred and remain uncured;

(ii) the proposed transferee ("**Transferee**") shall be a reputable entity or person of good character, creditworthy, with sufficient financial worth considering the obligations assumed and undertaken, as evidenced by financial statements and other information reasonably requested by Lender with an organizational structure and documentation reasonably acceptable to Lender;

(iii) the Transferee and its property manager shall have sufficient experience in the ownership and management of properties similar to the Security Property, and Lender shall be provided with reasonable evidence thereof;

(iv) Lender, at its option, shall have recommendations in writing from the Rating Agencies to the effect that such transfer will not result in a requalification, reduction or withdrawal of any current securities rating assigned in a Securitization. The term "**Rating Agencies**" as used herein shall mean each of Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc. and Fitch, Inc., or any other nationally-recognized statistical rating agency which has been approved by Lender;

(v) the Transferee shall have executed and delivered to Lender an assumption agreement in form and substance acceptable to Lender, evidencing such Transferee's agreement to abide and be bound by the terms of the Note, this Security Instrument and the other Loan Documents, together with such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

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

(vii) Subject to the provisions of Section 2.04 of the Note, such sale or transfer is not construed so as to relieve Borrower of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such sale or transfer and Borrower executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of said personal liability. Borrower shall be released from and relieved of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising after the closing of such sale or transfer which are not caused by or arising out of any acts or events occurring or obligations arising prior to or simultaneously with the closing of such sale or transfer;

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

(ix) Lender shall have received an assumption fee equal to one-half of one percent (0.50%) of the Debt on the date of the first such assumption and one percent (1%) of the Debt on the date of each subsequent assumption thereafter, plus the payment of, or reimbursement for, all costs and expenses incurred by Lender in connection with such assumption (including, without limitation, reasonable attorneys' fees and costs); and

(x) Transferee reaffirms the warranties and representations under Section 11(kk) of this Security Instrument with respect to any Transferee, any indemnitor or guarantor approved pursuant to clause (vi) above, and any of their respective officers, directors, shareholders, partners, members or affiliates, and Transferee provides Lender with such searches and other documentation reasonably satisfactory to Lender confirming that any such Transferee, any such indemnitor or guarantor, and any of their respective officers, directors, shareholders, partners, members or affiliates do not violate the provisions of such Section 11(kk).

(c) Borrower shall not, without the prior written consent of Lender, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer any direct or indirect ownership interest in Borrower, or permit any direct or indirect ownership interest in Borrower to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred. Lender may condition any such consent upon, among other things, receipt in each case of recommendations in writing from the Rating Agencies to the effect that such sale, conveyance, alienation, mortgage, encumbrance, pledge or other transfer will not result in a requalification, reduction or withdrawal of any current securities rating assigned in a Securitization (a "**No Downgrade Letter**") and payment in each case of a transfer fee (the "**Transfer Fee**") equal to one-half of one percent (0.50%) of the Debt on the date of the first such sale, conveyance,

alienation, mortgage, encumbrance, pledge or other transfer and one percent (1%) of the Debt on the date of each subsequent sale, conveyance, alienation, mortgage, encumbrance, pledge or other transfer thereafter, plus the payment of, or reimbursement for, all costs and expenses incurred by Lender in connection therewith (including, without limitation, reasonable attorneys' fees and costs). Notwithstanding anything to the contrary contained herein, transfers, in the aggregate, of up to forty-nine percent (49%) of the direct or indirect ownership interests in Borrower shall be permitted upon notice to, but without the consent of (except as otherwise provided below), Lender and without the necessity for a No Downgrade Letter and without payment of a Transfer Fee, so long as (i) no Event of Default has occurred and is continuing; (ii) each of the persons or entities which owned (directly or indirectly) at least fifty-one percent (51%) or more of the direct or indirect ownership interests (as applicable) in Borrower as of the date hereof at all times continue to own, in the aggregate, not less than fifty-one percent (51%) of the direct or indirect ownership interest in Borrower, (iii) Lamar Western L.P. at all times continues to maintain control over the day-to-day operation and management of Borrower, (iv) Borrower at all times remains in compliance with the representations, warranties and covenants set forth in Section 12 hereof, (v) Borrower reaffirms the warranties and representations under Section 11(kk) of this Security Instrument with respect to any transferee and any of such transferee's officers, directors, shareholders, partners, members and affiliates, (vi) Borrower provides Lender with such searches and other documentation reasonably satisfactory to Lender confirming that neither such transferee nor any of its officers, directors, shareholders, partners, members or affiliates violates the provisions of such Section 11(kk), and (vi) Borrower pays all of Lender's costs and expenses in connection with any such transfer. In addition, transfers of direct or indirect ownership interests in Borrower by the existing holders of direct or indirect ownership interests in Borrower as of the date hereof to a family member or to a trust for the exclusive benefit of such current holders of direct or indirect ownership interests in Borrower or any such family members in connection with any bona fide, good faith estate planning of holders of direct or indirect ownership interests in Borrower shall be permitted without the consent of (except as otherwise provided below), Lender and without the necessity for a No Downgrade Letter and without payment of a Transfer Fee, so long as (i) no Event of Default has occurred and is continuing, (ii) such transfer does not result in a change in control over the day-to-day operation and management of Borrower, (iii) Borrower reaffirms the warranties and representations under Section 11(kk) of this Security Instrument with respect to any transferee and any of such transferee's officers, directors, shareholders, partners, members and affiliates, (iv) Borrower provides Lender with such searches and other documentation reasonably satisfactory to Lender confirming that neither such transferee nor any of its officers, directors, shareholders, partners, members or affiliates violates the provisions of such Section 11(kk), and (v) Borrower pays all of Lender's costs and expenses in connection with any such transfer. As used in this Subsection 10(c), (i) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a person, whether through ownership of voting securities, by contract or otherwise, and (ii) the term "family member" means the spouse, parents, siblings, children and grandchildren (natural or adopted) of the transferor and any trust established solely for the benefit of such transferor and/or his spouse, parents, siblings, children and grandchildren.

(d) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's sale, conveyance, alienation, mortgage, encumbrance, pledge or

transfer of the Security Property or any transfer of a direct or indirect ownership interest in Borrower made without Lender's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Security Property or direct or indirect ownership interest in Borrower regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Security Property or direct or indirect ownership interest in Borrower.

(e) Lender's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Security Property or direct or indirect ownership interest in Borrower shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Security Property or direct or indirect ownership interest in Borrower made in contravention of this Section shall be null and void and of no force and effect.

11. Representations and Covenants Concerning the Borrower and Security Property.

Borrower represents, warrants and covenants as follows:

- (a) Organization and Existence. Borrower is duly organized and validly existing as a limited liability company in good standing under the laws of Delaware and Alabama and in all other jurisdictions in which Borrower is transacting business. Borrower has the power and authority to execute, deliver and perform the obligations imposed on it under the Loan Documents and to consummate the transactions contemplated by the Loan Documents. Borrower and any general partner or managing member have delivered to Lender true and correct copies of their organizational documents and there are no other documents or agreements which supplement, amend or otherwise modify such organizational documents.
- (b) Authorization. Borrower has taken all necessary actions for the authorization of the borrowing on account of the Loan and for the execution and delivery of the Loan Documents, including, without limitation, that those partners or members of Borrower whose approval is required by the terms of Borrower's organizational documents have duly approved the transactions contemplated by the Loan Documents and have authorized execution and delivery thereof by the respective signatories. To the best of Borrower's knowledge, no other consent by any local, state or federal agency is required in connection with the execution and delivery of the Loan Documents.
- (c) Valid Execution and Delivery. All of the Loan Documents requiring execution by Borrower have been duly and validly executed and delivered by Borrower.
- (d) Enforceability. All of the Loan Documents constitute valid, legal and binding obligations of Borrower and are fully enforceable against

Borrower in accordance with their terms by Lender and its successors, transferees and assigns, subject only to bankruptcy laws and general principles of equity.

- (e) No Defenses. The Note, this Security Instrument and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, nor would the operation of any of the terms of the Note, this Security Instrument or any of the other Loan Documents, or the exercise of any right thereunder, render this Security Instrument unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury. None of Borrower, Guarantor, nor any constituent (irrespective of the number of tiers of ownership) partner, member, manager, shareholder, officer, director or other person related to Borrower (the “**Borrower Affiliates**”) has any claim or right whatsoever against Lender or any shareholder, director, officer, member, manager, partner, employee, agent or attorney of Lender, and their successors and assigns (the “**Lender Parties**”), except only for the express contractual obligations of Lender set forth in the Loan Documents which are executed and delivered to become first effective as of this date. Any rights or claims contrary to this provision, whether known or unknown, are hereby expressly waived, including without limitation any such rights or claims arising from any course of dealing, statement, agreement, assurance, or inducement, document or instrument to which Lender or any other Lender Party is a party or otherwise is bound. Borrower shall indemnify, defend and hold Lender and the other Lender Parties harmless from and against any such claim brought or such right asserted against Lender or any of the other Lender Parties by Borrower or any of the Borrower Affiliates or anyone claiming by, through or under any of them. Such indemnity shall include all costs of defense, including reasonable attorneys’ fees and expenses, and all damages.
- (f) Defense of Usury. Borrower knows of no facts that would support a claim of usury to defeat or avoid its obligation to repay the principal of, interest on, and other sums or amounts due and payable under, the Loan Documents.
- (g) No Conflict/Violation of Law. The execution, delivery and performance of the Loan Documents by the Borrower will not cause or constitute a default under or conflict with the organizational documents of Borrower, any Guarantor or any general partner or managing member of Borrower or any Guarantor. The execution, delivery and performance of the obligations imposed on Borrower under the Loan Documents will not cause Borrower to be in default, including after due notice or lapse of time or both, under the provisions of any agreement, judgment or order to which Borrower is a party or by which Borrower is bound.

- (h) Compliance with Applicable Laws and Regulations. To the best of Borrower's knowledge following due inquiry and investigation, all of the Improvements and the use of the Security Property comply with, and shall remain in compliance with, all applicable statutes, rules, regulations and private covenants now or hereafter relating to the ownership, construction, use or operation of the Security Property, including all applicable statutes, rules and regulations pertaining to requirements for equal opportunity, anti-discrimination, fair housing, environmental protection, zoning and land use. Except as otherwise specifically disclosed to Lender in that certain Zoning Assessment dated April 11, 2007 prepared by Carter Burgess in connection with the closing of the Loan, the Improvements comply with, and shall remain in compliance with, applicable health, fire and building codes. There is no evidence of any illegal activities relating to controlled substances on the Security Property. All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Security Property as a retail shopping center have been obtained and are in full force and effect. All of the Improvements comply with all material requirements of any applicable zoning and subdivision laws and ordinances.
- (i) Consents Obtained. All consents, approvals, authorizations, orders or filings with any court or governmental agency or body, if any, required for the execution, delivery and performance of the Loan Documents by Borrower have been obtained or made.
- (j) No Litigation. To the best of Borrower's knowledge, there are no pending actions, suits or proceedings, arbitrations or governmental investigations against the Security Property, an adverse outcome of which would materially affect the Borrower's performance under the Note, this Security Instrument or the other Loan Documents.
- (k) Title. Borrower has good and marketable fee simple title to the Security Property, and good title to the Equipment, subject to no liens, charges or encumbrances other than the Permitted Exceptions. The possession of the Security Property has been peaceful and undisturbed and title thereto has not been disputed or questioned to the best of Borrower's knowledge.
- (l) Permitted Exceptions. The Permitted Exceptions do not and will not materially and adversely affect (1) the ability of Borrower to pay in full the principal and interest on the Note in a timely manner or (2) the use of the Security Property for the use currently being made thereof, the operation of the Security Property as currently being operated or the value of the Security Property.
- (m) First Lien. Upon the execution by Borrower and the recording of this Security Instrument, and upon the execution and filing of UCC-1

financing statements or amendments thereto, Lender will have a valid first lien on the Security Property and a valid security interest in the Equipment subject to no liens, charges or encumbrances other than the Permitted Exceptions.

- (n) ERISA. Borrower has made and shall continue to make all required contributions to all employee benefit plans, if any, and Borrower has no knowledge of any material liability which has been incurred by Borrower which remains unsatisfied for any taxes or penalties with respect to any employee benefit plan or any multi-employer plan, and each such plan has been administered in compliance with its terms and the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”) and any other federal or state law.
- (o) Contingent Liabilities. Borrower has no known material contingent liabilities.
- (p) No Other Obligations. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Security Property is otherwise bound, other than obligations incurred in the ordinary course of the operation of the Security Property and other than obligations under this Security Instrument and the other Loan Documents. No member or partner has pledged or otherwise conveyed their respective ownership interests in Borrower as security for any financial obligation of Borrower or such member or partner.
- (q) Fraudulent Conveyance. Borrower (1) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (2) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loan contemplated by the Loan Documents, the fair saleable value of Borrower’s assets exceed and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower’s total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower’s assets is and will, immediately following the execution and delivery of the Loan Documents, be greater than Borrower’s probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower’s assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Borrower).

- (r) Investment Company Act. Borrower is not (1) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (2) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (3) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.
- (s) Access/Utilities. The Security Property has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary to the continued use and enjoyment of the Security Property as presently used and enjoyed are located in the public right-of-way abutting the Security Property, and all such utilities are connected so as to serve the Security Property without passing over other property. All roads necessary for the full utilization of the Security Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subject of access easements for the benefit of the Security Property.
- (t) Taxes Paid. Borrower has filed all federal, state, county and municipal tax returns required to have been filed by Borrower, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment received by Borrower, and Borrower has no knowledge of any basis for additional assessment with respect to such taxes.
- (u) Single Tax Lot. The Premises consists of a single lot or multiple tax lots; no portion of said tax lot(s) covers property other than the Premises or a portion of the Premises and no portion of the Premises lies in any other tax lot.
- (v) Special Assessments. Except as disclosed in the title insurance policy, there are no pending or, to the knowledge of Borrower, proposed special or other assessments for public improvements or otherwise affecting the Security Property, nor, to the knowledge of the Borrower, are there any contemplated improvements to the Security Property that may result in such special or other assessments.
- (w) Flood Zone. The Security Property is not located in a flood hazard area as defined by the Federal Insurance Administration.
- (x) Misstatements of Fact. No statement of fact made in the Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to the Borrower which has not been disclosed which adversely affects, nor as far as the Borrower can

foresee, might adversely affect the business, operations or condition (financial or otherwise) of the representing party.

- (y) Condition of Improvements. The Security Property has not been damaged by fire, water, wind or other cause of loss or any previous damage to the Security Property has been fully restored.
- (z) No Insolvency or Judgment. Neither Borrower, nor any general partner or member of Borrower, nor any guarantor of the Loan is currently (a) the subject of or a party to any completed or pending bankruptcy, reorganization or insolvency proceeding; or (b) the subject of any judgment unsatisfied of record or docketed in any court of the state in which the Security Property is located or in any other court located in the United States. The Loan will not render the Borrower nor any general partner or member of Borrower insolvent. Borrower is and will remain solvent and Borrower will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due. As used herein, the term "insolvent" means that the sum total of all of an entity's liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all such entity's non-exempt assets, i.e., all of the assets of the entity that are available to satisfy claims of creditors.
- (aa) No Condemnation. No part of any property subject to this Security Instrument has been taken in condemnation or other like proceeding to an extent which would impair the value of the Security Property, this Security Instrument or the Loan or the usefulness of such property for the purposes contemplated by the loan application and/or the loan commitment relating to the Loan, nor is any proceeding pending, threatened or known to be contemplated for the partial or total condemnation or taking of the Security Property.
- (bb) No Labor or Materialmen Claims. All parties furnishing labor and materials have been paid in full by Borrower and to the best of Borrower's knowledge, except for such liens or claims insured against by the policy of title insurance to be issued in connection with the Loan, there are no mechanics', laborers' or materialmen's liens or claims outstanding for work, labor or materials affecting the Security Property, whether prior to, equal with or subordinate to the lien of this Security Instrument.
- (cc) No Purchase Options. No tenant, person, party, firm, corporation or other entity has an option to purchase the Security Property, any portion thereof or any interest therein.
- (dd) Leases. The Security Property is not subject to any Leases other than the Leases described in the rent roll delivered to Lender in connection with this Security Instrument. No person has any possessory interest in the

Security Property or right to occupy the same except under and pursuant to the provisions of the Leases. As of the date hereof, (i) the Borrower is the owner and holder of the landlord's interest under each Lease; (ii) there are no prior assignments of any Lease or any portion of Rents which are presently outstanding and have priority over the Assignment of Leases and Rents (the "**Assignment of Leases and Rents**"), dated the date hereof, given by Borrower to Lender and intended to be duly recorded; (iii) the Leases are on the standard form of lease approved by Lender and have not been modified or amended, except as disclosed to Lender in writing on the date hereof; (iv) each Lease is in full force and effect; (v) except as set forth on the rent roll delivered to Lender in connection with the closing of the Loan, neither Borrower nor any tenant under any Lease is in default under any of the terms, covenants or provisions of the Lease, and Borrower knows of no event which, but for the passage of time or the giving of notice or both, would constitute an event of default under any Lease; (vi) there are no offsets or defenses to the payment of any portion of the Rents; and (vii) except as set forth on the rent roll delivered to Lender in connection with the closing of the Loan, all Rents due and payable under each Lease have been paid in full and no said Rents have been paid more than one (1) month in advance of the due dates thereof.

- (ee) Boundary Lines. Except as otherwise specifically shown on the survey of the Security Property delivered to Lender in connection with the closing of the Loan, all of the Improvements which were included in determining the appraised value of the Security Property lie wholly within the boundaries and building restriction lines of the Security Property, and no improvements on adjoining properties encroach upon the Security Property, and no easements or other encumbrances upon the Premises encroach upon any of the Improvements, so as to affect the value or marketability of the Security Property except those which are insured against by title insurance.
- (ff) Survey. To the best of Borrower's knowledge, the survey of the Security Property delivered to Lender in connection with this Security Instrument, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Security Property is situated, is certified to the Lender, its successors and assigns, and the title insurance company, and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with the signature and seal of a licensed engineer or surveyor affixed thereto, and does not fail to reflect any material matter affecting the Security Property or the title thereto.
- (gg) Forfeiture. There has not been and shall never be committed by Borrower or any other person in occupancy of or involved with the operation or use of the Security Property any act or omission affording the federal government or any state or local government the right of forfeiture as

against the Security Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

- (hh) Adequate Capitalization. Borrower is adequately capitalized and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.
- (ii) Management Agreement. The Real Estate Management Agreement dated May 8, 2007 (the "**Management Agreement**") between Borrower and Lamar Asset Management and Realty, Inc. ("**Manager**") pursuant to which Manager operates the Security Property is in full force and effect and there is no default or violation by any party thereunder. The fee due under the Management Agreement, and the terms and provisions of the Management Agreement, are subordinate to this Security Instrument and Manager shall attorn to Lender. Borrower shall not terminate, cancel, materially modify, renew or extend the Management Agreement, or enter into any agreement relating to the management or operation of the Security Property with Manager or any other party without the express written consent of Lender, which consent shall not be unreasonably withheld. If at any time Lender consents to the appointment of a new Manager, such new Manager and Borrower shall, as a condition of Lender's consent, execute an Assignment and Subordination of Management Agreement in the form then used by Lender.
- (jj) No Broker. No financial advisors, brokers, underwriters, placement agents, agents or finders have been dealt with by the Borrower in connection with the Loan, except for Capmark Financial ("**Broker**"). Pursuant to a separate agreement between Borrower and Broker, a brokerage commission is due and payable on the date hereof. Borrower shall pay such commission in addition to any sums payable to Lender by Borrower hereunder or under any of the other Loan Documents. In no event shall Lender be responsible for the payment of any such commission. Broker is not a third party beneficiary hereunder and has no right to require that either Borrower or Lender amend this Security Instrument or any of the other Loan Documents in any manner.
- (kk) Patriot Act. None of Borrower, any Guarantor, any of their respective officers, directors, shareholders, partners, members or affiliates, or any other person directly or indirectly owning any equity interest in Borrower or any Guarantor, is or will be an entity or person: (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("**EO13224**"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("**OFAC**") most current list of "Specially Designated Nationals and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website,

<http://www.treas.gov/ofac/t11sdn.pdf>); (iii) who commits, threatens to commit or supports “terrorism”, as that term is defined in EO 13224; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i) through (iv) above are herein referred to as a “**Prohibited Person**”). Borrower covenants and agrees that none of Borrower, any Guarantor, any of their respective officers, directors, shareholders, partners, members or affiliates, or any other person directly or indirectly owning any equity interest in Borrower or any Guarantor will: (x) conduct any business, or engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person; or (y) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. On request by Lender from time to time, Borrower further covenants and agrees promptly to deliver to Lender any such certification or other evidence as may be requested by Lender in its sole and absolute discretion, confirming that no violation of this Section shall have occurred. To Borrower’s knowledge, no tenant at the Security Property currently is identified on the OFAC list referred to above or otherwise qualifies as a Prohibited Person.

- (II) Cash Management Agreement. Borrower and Lender hereby acknowledge and agree that they have negotiated the form of Cash Management Agreement attached hereto as Exhibit C (the “**Cash Management Agreement**”) and that they intend to immediately implement the cash management structure contemplated thereby upon the occurrence of a Cash Restriction Condition (as defined in the Cash Management Agreement). In furtherance thereof, Borrower shall execute within five (5) days following the occurrence of a Cash Restriction Condition, the form of Cash Management Agreement attached hereto. In addition, Borrower has deposited with Lender executed tenant payment direction letters (in the form contemplated by the Cash Management Agreement) for all Tenants at the Security Property as of the date hereof. Borrower hereby covenants and agrees that Borrower shall deliver to Lender replacement payment direction letters (in the form contemplated by the Cash Management Agreement) if requested by Lender and payment direction letters for all future Tenants at the Security Property as a condition to entering into new Leases with such Tenants. Lender shall hold Borrower’s executed signature page to the tenant payment directions letter in escrow so long as no Cash Restriction Condition has occurred. Upon such time, if any, as a Cash Restriction Condition has occurred, (a) Lender may send the tenant payment direction letters to the respective Tenants, (b) Borrower shall promptly execute the Cash Management Agreement, and (c) Borrower shall thereafter comply with all of the terms and provisions of the Cash Management Agreement.

12. **Single Purpose Entity/Separateness.**

Borrower represents, warrants and covenants as of the date of hereof and (except for items (f) and (m), which are representations made only as of the date hereof, and are not continuing covenants) until such time as the Debt is paid in full as follows:

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

(b) Borrower has not engaged in and will not engage in any business other than the ownership, management and operation of the Security Property.

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

(d) Borrower has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt, (ii) unsecured trade and operational debt incurred in the ordinary course of business not outstanding for more than sixty (60) days with trade creditors and in amounts as are normal and reasonable under the circumstances, but, in no event, to exceed \$96,500 in the aggregate, and (iii) debt incurred in the financing of equipment and other personal property used on the Premises, but, in no event, to exceed \$50,000.00. No indebtedness other than the Debt may be secured (subordinate or pari passu) by the Security Property.

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

(f) Borrower is solvent and reasonably expects to be able to pay its debts from its assets as the same shall become due.

(g) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will at all times have provisions in its organizational documents imposing on it substantially the same requirements as are specified in this Section 12, and will not, nor will any partner, member, shareholder, trustee, Lender, or principal amend, modify or otherwise change any provision of such party's organizational documents which pertains to the subject matter of this Section 12.

(h) Borrower shall continuously maintain its existence and right to do business in the state where the Security Property is located.

(i) Borrower will conduct and operate its business as presently conducted and operated.

(j) Borrower will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and Borrower will file its own tax returns unless required otherwise by applicable law. Borrower shall maintain its books, records, resolutions and agreements as official records.

(k) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower, any constituent party of Borrower, any Guarantor or any affiliate of any constituent party or Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

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

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

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

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

(p) Borrower does not and will not guarantee, become obligated for, or hold itself out to be responsible for the debts or obligations of any other person or entity or the decisions or actions respecting the daily business or affairs of any other person or entity.

(q) Borrower will not permit any affiliate or constituent party independent access to its bank accounts.

(r) Borrower shall pay the salaries of its own employees and maintain a sufficient number of employees in light of its contemplated business operations.

13. Estoppel Certificates and No Default Affidavits.

After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, (vi) that the Note, this Security Instrument and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification; and (vii) reaffirming all

representations and warranties of Borrower set forth herein and in the other Loan Documents as of the date requested by Lender or, to the extent of any changes to any such representations and warranties, so stating such changes.

14. Controlling Agreement.

It is expressly stipulated and agreed to be the intent of Borrower, and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section 14 (and the similar provision contained in the Note) shall control every other covenant and agreement in this Security Instrument and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Lender's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of the Note and all other Debt (or, if the Note and all other Debt have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

15. Changes in Laws Regarding Taxation.

If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Security Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Security Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable without any prepayment consideration except that if an Event of Default, or an event with notice and/or the passage of time would constitute an Event of Default, has occurred, then the Borrower shall pay to Lender an additional amount equal to the Yield Maintenance Premium in accordance with Section 1.05 of the Note.

16. No Credits on Account of the Debt.

Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Security Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Security Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. In the event such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable without any prepayment consideration except that if an Event of Default, or an event with notice and/or the passage of time would constitute an Event of Default, has occurred, then the Borrower shall pay to Lender an additional amount equal to the Yield Maintenance Premium in accordance with Section 1.05 of the Note.

17. Documentary Stamps.

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

18. Books and Records.

(a) The financial statements, rent rolls, operating statements and balance sheets heretofore furnished to Lender are, as of the dates specified therein, complete and correct and fairly present the financial condition of Borrower, any Guarantor and any other persons or entities that are the subject of such financial statements, and are prepared in accordance with generally accepted accounting principles or such other accounting principles or methods consistently applied and acceptable to Lender from time to time. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower, any Guarantor or any other persons or entities that are the subject of such financial statements from that set forth in such financial statements. Borrower hereby represents and warrants that no information material to the financial condition of Borrower, any Guarantor or Security Property has been withheld or otherwise not delivered to Borrower.

(b) Borrower will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Security Property and will furnish to Lender on or before forty-five (45) days after the end of each calendar quarter the following items, each certified by Borrower as being true and correct: (i) a written statement (rent roll) dated as of the last day of each such calendar quarter identifying each of the Leases by the term, space occupied, rental required to be paid, the expiration date of each lease, security deposit paid, any rental concessions, and identifying any defaults or payment delinquencies thereunder; (ii) monthly and year to date operating statements prepared for each calendar month during each such calendar quarter, noting income and expenses, and including an itemization of actual (not pro forma) capital and other information necessary and sufficient under generally accepted accounting practices or such other accounting practices consistently applied and acceptable to Lender from time to time to fairly represent the financial position and results of operation of the Security

Property during such calendar month, all in form satisfactory to Lender; (iii) a property balance sheet for each such calendar quarter. Until a Securitization has occurred, the Borrower shall furnish monthly each of the items listed in the immediately preceding sentence within twenty (20) days after the end of such month. Within one hundred twenty (120) days following the end of each calendar year, Borrower shall furnish statements of its financial affairs and condition including a balance sheet and a statement of profit and loss for the Borrower in such detail as Lender may request, and setting forth the financial condition and the income and expenses for the Security Property for the immediately preceding calendar year, which statements shall be prepared by Borrower. All information required to be provided herein shall be accompanied by a certificate executed by the chief financial officer of Borrower, the managing member or the general partner of Borrower, as applicable, stating that each such statement or item of information presents fairly the financial condition of the Security Property being reported upon. Each such annual financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied or such other accounting principles or methods consistently applied and acceptable to Lender from time to time. Borrower shall furnish Lender with copies of Guarantor's annual federal and state tax returns within thirty (30) days following the filing thereof, certified by Guarantor as being true and correct. At any time and from time to time Borrower shall deliver to Lender or its agents such other financial data as Lender or its agents shall reasonably request with respect to Borrower, any Guarantor and/or the ownership, maintenance, use and operation of the Security Property.

19. Performance of Other Agreements.

Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Security Property.

20. Further Acts, Etc.

Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby deeded, mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument or for facilitating the sale of the Loan and the Loan Documents as described herein below. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Security Property. Upon foreclosure, the appointment of a receiver or any other relevant action, Borrower will, at the cost of Borrower and without expense to Lender, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of or the Security

Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section.

21. Recording of Security Instrument, Etc.

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

22. Reporting Requirements.

Borrower agrees to give prompt notice to Lender of the insolvency or bankruptcy filing of Borrower or the death, insolvency or bankruptcy filing of any Guarantor.

23. Events of Default.

The Debt shall become immediately due and payable at the option of Lender upon the happening of any one or more of the following events of default (each an “**Event of Default**”):

(a) failure of Borrower to pay (i) any scheduled payment (whether such amount is interest, principal, Reserves, or otherwise) owing to Lender as and when the same is due under the Note, this Security Instrument or any of the other Loan Documents, or (ii) any other amount from time to time owing to Lender under the Note, this Security Instrument or any of the other Loan Documents within five days following written notice that the same is due;

(b) subject to Borrower’s right to contest as provided herein, if any of the Taxes or Other Charges are not paid when the same are due and payable (unless sums equaling the amount of Taxes and Other Charges then due and payable have been delivered to Lender in accordance with Section 6 hereof);

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within five (5) business days following Lender's request;

(d) if Borrower transfers or encumbers any portion of the Security Property without Lender's prior written consent, except as may be otherwise permitted under Section 10;

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

(f) if Borrower, any principal, managing member or general partner in Borrower or any Guarantor shall make an assignment for the benefit of creditors or if Borrower shall generally not be paying its debts as they become due;

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

(h) if Borrower shall be in default under any other deed of trust, mortgage or security agreement covering any part of the Security Property whether it be superior or junior in lien to this Security Instrument;

(i) subject to Borrower's right to contest as provided herein, if the Security Property becomes subject to any mechanic's, materialman's or other lien and such lien is not removed of record within thirty (30) days of the filing or recording of such lien (except a lien for local real estate taxes and assessments not then due and payable);

(j) if Borrower fails to cure properly any violations of laws or ordinances affecting or which may be interpreted to affect the Security Property within forty-five (45) days after Borrower first receives notice of any such violations;

(k) except as permitted in this Security Instrument, the alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Lender;

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

(m) if without Lender's prior written consent, (i) the Management Agreement is terminated, (ii) the ownership, management or control of Manager is transferred, (iii) there is a material change in the Management Agreement, or (iv) if there shall be a material default by Borrower under the Management Agreement;

(n) if Borrower ceases to continuously operate the Security Property or any material portion thereof as a retail shopping center for any reason whatsoever (other than temporary cessation in connection with any repair or renovation thereof undertaken with the consent of Lender); or

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

24. Late Payment Charge.

If any scheduled payment on the Debt is not paid on or before the date on which such payment is due, or if any other payment secured hereby is not paid within five days following written notice that the same is due, then Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such overdue payment or the maximum amount permitted by applicable law in order to defray a portion of the expenses incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Security Instrument. Such late charge shall be immediately due and payable without notice or demand by Lender. Borrower recognizes that its default in making, when due, any payment under this Note or the occurrence of any other Event of Default will require Lender to incur additional expense in servicing and administering the Loan and in loss to Lender of the use of the money due and in frustration to Lender in meeting its other financial and loan commitments. Borrower additionally acknowledges that the damages caused thereby would be extremely difficult and impractical to ascertain. Borrower agrees (a) that an amount equal to the late charge plus the accrual of interest at the Default Rate (as defined in the Note) is a reasonable estimate of the damage to Lender in the event of a late payment, and (b) that the accrual of interest at the Default Rate following any other Event of Default is a reasonable estimate of the damage to Lender in the event of such other Event of Default, regardless of whether there has been an acceleration of the Loan.

25. Right To Cure Defaults.

Upon the occurrence of any Event of Default or if Borrower fails to make any payment (including, without limitation, any required payments for taxes, insurance or to discharge any liens with respect to the Property) or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Security Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Security Property or to foreclose this Security Instrument

or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest at the Default Rate (as defined in the Note) for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender, shall constitute a portion of the Debt, shall be secured by this Security Instrument and the other Loan Documents and shall be due and payable to Lender upon demand.

26. Additional Remedies.

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

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute a proceeding or proceedings, judicial or nonjudicial, by advertisement or otherwise, for the complete foreclosure of this Security Instrument in which case the Security Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien of this Security Instrument for the balance of the Debt not then due;
- (iv) sell for cash or upon credit the Security Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to the power of sale contained herein or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, or in any of the other Loan Documents;
- (vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument;
- (vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Security Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Borrower, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;
- (viii) enforce Lender's interest in the Leases and Rents and enter into or upon the Security Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, and thereupon Lender may (A) use,

operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Security Property and conduct the business thereat; (B) complete any construction on the Security Property in such manner and form as Lender deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Security Property; (D) exercise all rights and powers of Borrower with respect to the Security Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; and (E) apply the receipts from the Security Property to the payment of Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Security Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(ix) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Security Property occupied by Borrower and require Borrower to vacate and surrender possession to Lender of the Security Property or to such receiver and, in default thereof, evict Borrower by summary proceedings or otherwise; or

(x) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code including without limitation the right to receive and/or establish a lock box for all Rents proceeds from the Intangibles and any other receivables or rights to payments of Borrower relating to the Security Property.

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

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

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

(d) Upon the completion of any sale or sales pursuant hereto, Lender, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Lender is hereby irrevocably appointed the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Security Property and rights so sold and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power,

Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

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

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

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

(h) Lender may resort to any remedies and the security given by the Note, this Security Instrument or the Loan Documents in whole or in part, and in such portions and in such order as determined by Lender's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, this Security Instrument or any of the other Loan Documents. The failure of Lender to exercise any right, remedy or option provided in the Note, this Security Instrument or any of the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, this Security Instrument or the other Loan Documents. No acceptance by Lender of any payment after the occurrence of any Event of Default and no payment by Lender of any obligation for which Borrower is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Borrower, or Borrower's liability to pay such obligation. No sale of all or any portion of the Security Property, no forbearance on the part of Lender, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Lender to Borrower, shall operate to release or in any manner affect the interest of Lender in the remaining Security Property or the liability of Borrower to pay the Debt. No waiver by Lender shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Lender in exercising the rights and remedies under this Section 26 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Borrower immediately upon notice from Lender, with interest at the

Default Rate for the period after notice from Lender and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Security Instrument.

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

(j) Upon the occurrence and during the continuance of any breach, default, or Event of Default, Lender shall not be obligated to render any performance to Borrower under the Loan Documents.

(k) Anything to the contrary herein or elsewhere notwithstanding, except as specifically provided otherwise by law, without the prior written consent of Lender, which may be withheld or conditioned in Lender's sole and absolute discretion, Borrower shall have no right to cure any Event of Default (and no right to cure shall be implied) and Lender shall have no obligation to accept the cure of, or to waive, any Event of Default, regardless of tender of delinquent payments or other performance by Borrower, or any other event or condition whatsoever. Borrower hereby (i) acknowledges that Lender may refuse (in its sole and absolute discretion for any reason whatsoever) any cure of any Event of Default, and notwithstanding any purported cure of such Event of Default, Lender may exercise any and/or all rights and remedies available to it; and (ii) waives any and all rights to cure any Event of Default.

Without limiting the foregoing, after the occurrence of any Event of Default (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter; provided, however, that such Event of Default shall cease to continue only if Lender shall execute and deliver a written agreement in which Lender expressly states that such Event of Default has ceased to continue. Lender shall not be obligated under any circumstances whatsoever to execute and deliver any such writing.

Without limitation, this Section shall govern in any case where reference is made in this Security Instrument or elsewhere in the Loan Documents to (i) any "cure" (whether by use of such word or otherwise) of any Event of Default, (ii) "during an Event of Default," "the continuance of an Event of Default" or "after an Event of Default has ceased" (in each case, whether by use of such words or otherwise), or (iii) any condition or event which continues beyond the time when the same becomes an Event of Default.

27. Right of Entry.

In addition to any other rights or remedies granted under this Security Instrument, Lender and its agents, during the Term, shall have the right to enter and inspect the Security Property during normal business hours upon reasonable prior notice. The cost of such inspections or audits shall be borne by Borrower should Lender determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Lender. The cost of such inspections, if not paid for by Borrower

following demand, may be added to the principal balance of the sums due under the Note and this Security Instrument and shall bear interest thereafter until paid at the Default Rate.

28. Security Agreement.

(a) This Security Instrument is both a real property lien instrument and a “security agreement” within the meaning of the Uniform Commercial Code. The Security Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Security Property. Borrower by executing and delivering this Security Instrument has granted and hereby grants to Lender, as security for the Debt, a security interest in the Security Property to the full extent that the Security Property may be subject to the Uniform Commercial Code (said portion of the Security Property so subject to the Uniform Commercial Code being called in this Section the “Collateral”). This Security Instrument covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Security Instrument.

(b) If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including attorneys’ fees and disbursements, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper. In the event of any change in name, identity or structure of any Borrower, such Borrower shall notify Lender thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Lender’s lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Borrower shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Lender shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Borrower’s obligations under the Note, this Security Instrument and any of the other Loan Documents. Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Lender, as secured party, in connection with the Collateral covered by this Security Instrument.

29. Actions and Proceedings.

Lender has the right to appear in and defend any action or proceeding brought with respect to the Security 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 interest in the Security Property. Lender shall, at its option, be subrogated to the lien of any deed of trust, mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

30. Waiver of Setoff and Counterclaim.

All amounts due under this Security Instrument, the Note and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Borrower hereby waives the right to assert a setoff, counterclaim (other than a mandatory or compulsory counterclaim) or deduction in any action or proceeding in which Lender is a participant, or arising out of or in any way connected with this Security Instrument, the Note, any of the other Loan Documents, or the Debt.

31. Contest of Certain Claims.

Notwithstanding the provisions of Sections 5 and 23 hereof, Borrower shall not be in default for failure to pay or discharge Taxes, Other Charges or mechanic's or materialman's lien asserted against the Security Property if, and so long as, (a) Borrower shall have notified Lender of same within five (5) days of obtaining knowledge thereof; (b) Borrower shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Security Property or any part thereof, to satisfy the same; (c) Borrower shall have furnished to Lender a cash deposit, or an indemnity bond satisfactory to Lender with a surety reasonably satisfactory to Lender, in an amount equal to 125% of the amount of the Taxes, Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Security Property or any part thereof; (d) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Security Property; and (f) notwithstanding the foregoing, Borrower shall immediately upon request of Lender pay (and if Borrower shall fail so to do, Lender may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Lender, the Security Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, cancelled or lost. Lender may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

32. Recovery of Sums Required to be Paid.

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

33. Marshalling and Other Matters.

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

34. Hazardous Substances.

Borrower hereby represents and warrants to Lender that, to the best of Borrower's knowledge, after due inquiry and investigation except as disclosed in the environmental report delivered to Lender in connection with the Loan (the "**Phase I Report**"): (a) the Security Property is not in direct or indirect violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("**CERCLA**"), the Resource Conservation and Recovery Act, as amended ("**RCRA**"), the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substance Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, any state super-lien and environmental clean-up statutes and all rules and regulations adopted in respect to the foregoing laws whether presently in force or coming into being and/or effectiveness hereafter (collectively, "**Environmental Laws**"); (b) the Security Property is not subject to any private or governmental lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, raw materials which include hazardous constituents, pollutants or contaminants including without limitation, petroleum, tremolite, anthophyllite, actinolite or polychlorinated biphenyls and any other substances or materials which are included under or regulated by Environmental Laws or which are considered by scientific opinion to be otherwise dangerous in terms of the health, safety and welfare of humans (collectively, "**Hazardous Substances**"); (c) no Hazardous Substances are or have been (including the period prior to Borrower's acquisition of the Security Property) discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Security Property other than in compliance with all Environmental Laws;

(d) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Security Property; and (e) no underground storage tanks exist on any of the Security Property. So long as Borrower owns or is in possession of the Security Property, Borrower (i) shall keep or cause the Security Property to be kept free from Hazardous Substances and in compliance with all Environmental Laws, (ii) shall promptly notify Lender if Borrower shall become aware of any Hazardous Substances on or near the Security Property and/or if Borrower shall become aware that the Security Property is in direct or indirect violation of any Environmental Laws and/or if Borrower shall become aware of any condition on or near the Security Property which shall pose a threat to the health, safety or welfare of humans, and (iii) Borrower shall remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law (or as shall be required by Lender in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified consultant engaged by Lender ("**Lender's Consultant**")), within a commercially reasonable time frame after Borrower becomes aware of same, at Borrower's sole expense. Notwithstanding anything to the contrary in this Section, the Borrower and/or tenants on the Security Property may use and store immaterial amounts of Hazardous Substances at the Security Property if such use or storage is in connection with the ordinary cleaning and maintenance of the Security Property so long as such use and storage (A) does not violate any applicable Environmental Laws and (B) is not the subject of any specific recommendations in the Phase I Report. Nothing herein shall prevent Borrower from recovering such expenses from any other party that may be liable for such removal or cure. The obligations and liabilities of Borrower under this Section 34 shall survive any termination, satisfaction, or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Security Property by foreclosure or a conveyance in lieu of foreclosure.

35. Asbestos.

Borrower represents and warrants that, to the best of Borrower's knowledge, after due inquiry and investigation, no asbestos or any substance or material containing asbestos ("**Asbestos**") is located on the Security Property except as may have been disclosed in the Phase I Report delivered to Lender in connection with the Loan. Borrower shall not install in the Security Property, nor permit to be installed in the Security Property, Asbestos and shall remove any Asbestos within a commercially reasonable time frame upon discovery to the satisfaction of Lender, at Borrower's sole expense. Borrower shall in all instances comply with, and ensure compliance by all occupants of the Security Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Security Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Borrower receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Security Property, Borrower shall immediately notify Lender. The obligations and liabilities of Borrower under this Section 35 shall survive any termination, satisfaction, or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Security Property by foreclosure or a conveyance in lieu of foreclosure.

36. **Environmental Monitoring.**

Borrower shall give prompt written notices to Lender of: (a) any proceeding or inquiry by any party with respect to the presence of any Hazardous Substance or Asbestos on, under, from or about the Security Property, (b) all claims made or threatened by any third party against Borrower or the Security Property relating to any loss or injury resulting from any Hazardous Substance or Asbestos, and (c) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Security Property that could cause the Security Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Borrower shall permit Lender to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Security Property in connection with any Environmental Law or Hazardous Substance, and Borrower shall pay all reasonable attorneys' fees and disbursements incurred by Lender in connection therewith. Upon Lender's request, at any time after the occurrence of an Event of Default or at such other time Lender has determined (in the exercise of its good faith judgment) that reasonable cause exists for the performance of an environmental inspection or audit of the Security Property, Borrower shall provide at Borrower's sole expense, (i) an inspection or audit of the Security Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Lender indicating the presence or absence of Hazardous Substances on, in or near the Security Property, and (ii) an inspection or audit of the Security Property prepared by a duly qualified engineering or consulting firm approved by Lender, indicating the presence or absence of Asbestos on the Security Property. If Borrower fails to provide such inspection or audit within thirty (30) days after such request Lender may order same, and Borrower hereby grants to Lender and its employees and agents access to the Security Property and a license to undertake such inspection or audit. The cost of such inspection or audit may be added to the Debt and shall bear interest thereafter until paid at the Default Rate. In the event that any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for Asbestos or any Hazardous Substance, Borrower shall cause such operations and maintenance plan to be prepared and implemented at Borrower's expense upon request of Lender. In the event that any investigation, site monitoring, containment cleanup, removal, restoration, or other work of any kind is reasonably necessary or desirable under an applicable Environmental Law (the "**Remedial Work**"), Borrower shall commence and thereafter diligently prosecute to completion all such Remedial Work within ninety (90) days after written demand by Lender for performance thereof (or any such shorter period of time as may be required under applicable law.) All Remedial Work shall be performed by contractors approved in advance by Lender, and under the supervision of a consulting engineer approved by Lender. All costs and expenses of such Remedial Work shall be paid by Borrower including, without limitation, Lender's reasonable attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lender may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Debt and shall bear interest thereafter until paid at the Default Rate.

37. Handicapped Access.

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

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

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

38. Indemnification.

In addition to any other indemnifications provided herein or in the other Loan Documents, Borrower shall protect, defend, indemnify and save harmless Lender 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 disbursements), imposed upon or incurred by or asserted against Lender by reason of (a) ownership of this Security Instrument, the Security Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Security Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Security Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Security Instrument; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Security Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Security Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any Remedial Work, attorney and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses; (j) any failure of the Security Property to comply with any Access Laws; (k) any representation or warranty made in the Note, this Security Instrument or any of the other Loan

Documents being false or misleading in any material respect as of the date such representation or warranty was made; (l) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with the Loan, any Lease or other transaction involving the Security Property or any part thereof under any legal requirement or any liability asserted against Lender with respect thereto; and (m) the claims of any lessee of any or any portion of the Security Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease. Any amounts payable to Lender by reason of the application of this Section shall be secured by this Security Instrument and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender or until paid. The obligations and liabilities of Borrower under this Section 38 shall survive and termination, satisfaction, or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Security Property by foreclosure or a conveyance in lieu of foreclosure.

39. Notices.

Any notice, report, demand or other instrument authorized or required to be given or furnished ("Notices") shall be in writing and shall be given as follows: (a) by hand delivery; (b) by deposit in the United States mail as first class certified mail, return receipt requested, postage paid; (c) by overnight nationwide commercial courier service; or (d) by telecopy transmission (other than for notices of default) with a confirmation copy to be delivered by duplicate notice in accordance with any of clauses (a)- (c) above, in each case, addressed to the party intended to receive the same at the following address(es):

Lender: CWCapital LLC
One Charles River Place
63 Kendrick Street
Needham, Massachusetts 02494
Attention: Legal Division
Re: **Helena Market Place**
Telecopier: (781) 707-9397

with copies to: CWCapital LLC
One Charles River Place
63 Kendrick Street
Needham, Massachusetts 02494
Attention: Loan Administration
Re: **Helena Market Place**
Telecopier: (781) 707-9498

Borrower: At the address set forth in the introductory paragraph of this Security Instrument.

with copies to: Joseph J. Plunkett, Esq.
2030 Tilghman Street
Suite 202
Allentown, Pennsylvania 18104

Telecopier: (610) 432-3239

Any party may change the address to which any such Notice is to be delivered, by furnishing ten (10) days written notice of such change to the other parties in accordance with the provisions of this Section 39. Notices shall be deemed to have been given on the date they are actually received; provided, that the inability to deliver Notices because of a changed address of which no Notice was given, or rejection or refusal to accept any Notice offered for delivery shall be deemed to be receipt of the Notice as of the date of such inability to deliver or rejection or refusal to accept delivery. Notice for either party may be given by its respective counsel. Additionally, notice from Lender may also be given by the Servicer. Borrower hereby requests that a copy of any Notice of Default or Notice of Sale be mailed to Borrower at the address provided herein.

40. Authority.

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

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

41. Waiver of Notice.

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

42. Remedies of Borrower.

In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Security Instrument or any of the other Loan Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.

43. Sole Discretion of Lender.

Wherever pursuant to this Security Instrument, Lender exercises any right given to it to consent or not consent or approve or disapprove, or any arrangement or term is to be

satisfactory to Lender, the decision of Lender to consent or not consent, to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

44. Non-Waiver.

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

45. No Oral Change.

This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

46. Liability.

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

47. Inapplicable Provisions.

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

48. Headings, Etc.

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

49. Duplicate Originals.

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

50. Definitions.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "each Borrower and any subsequent owner or owners of the Security Property or any part thereof or any interest therein," the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "**person**" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "**Security Property**" shall include any portion of the Security Property and any interest therein and the words "**attorneys' fees**" shall include any and all attorneys' fees, paralegal and law clerk fees, including, without limitation, fees at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Security Property and Collateral and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

51. Homestead.

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

52. Assignments.

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

53. Waiver of Jury Trial.

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER

ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

54. Recourse Provisions.

Notwithstanding anything to the contrary contained in this Security Instrument, the liability of Borrower and its officers, directors, general partners, managers, members and principals for the indebtedness secured hereby and for the performance of the other agreements, covenants and obligations contained herein and in the other Loan Documents shall be limited as set forth in Section 2.04 of the Note.

55. Acceleration in Case of Insolvency.

If Borrower shall voluntarily file a petition under Title 11 of the U.S. Code (the "Act"), as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in any involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower or any Guarantor shall collude with any person or entity to file an involuntary petition under the Act as to which Borrower or any Guarantor is the debtor or as to which any property of any of them is property of the estate therein, or if in the absence of such collusion Borrower shall fail to obtain vacation of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower within 60 days of the filing of such involuntary proceeding, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Security Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of creditors, or if there is an attachment, execution or other judicial seizure of any portion of the assets of Borrower and such seizure is not discharged within 10 days, then Lender may, at Lender's option, declare all of the sums secured by this Security Instrument to be immediately due and payable without prior notice, and Lender may invoke any remedies permitted or provided for herein or in any of the Loan Documents or pursuant to applicable law. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's or any Guarantor's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Security Instrument.

56. Reserved.

57. Power of Sale.

(a) Upon the occurrence of an Event of Default, Lender, or the agent or successor of Lender, shall sell or offer for sale the Security Property in such portions, order and parcels as Lender may determine with or without having first taken possession of same, to the highest bidder for cash at one or more public auctions in accordance with the terms and

provisions of the law of the State in which the Security Property is located. Such sale shall be made at the area within the courthouse of the county in which the Security Property (or any portion thereof to be sold) is situated (whether the parts or parcels thereof, if any, in different counties are contiguous or not, and without the necessity of having any personal property hereby secured present at such sale) which is designated by the applicable court of such County as the area in which public sales are to take place, or, if no such area is designated, at the area at the courthouse designated in the notice of sale as the area in which the sale will take place, on such day and at such times as permitted under applicable law of the State where the Security Property is located, after advertising the time, place and terms of sale and that portion of the Security Property in accordance with such law, and after having served written or printed notice of the proposed sale by certified mail on each Borrower obligated to pay the Note and other secured indebtedness secured by this Security Instrument according to the records of Lender in accordance with applicable law. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

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

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

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

58. Miscellaneous.

(a) Any consent or approval by Lender in any single instance shall not be deemed or construed to be Lender's consent or approval in any like matter arising at a subsequent date, and the failure of Lender to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Lender be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Lender pursuant hereto shall be narrowly construed to be applicable only to Borrower and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Lender a venturer or partner with Borrower nor shall privity of contract be presumed to have been established with any such third party. If Lender deems it to be in its best interest to retain assistance of persons, firms or corporations (including, without limitation, attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Borrower shall reimburse Lender for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

(b) Borrower covenants and agrees that during the Term, unless Lender shall have previously consented in writing, (a) Borrower will take no action that would cause it to become an "**employee benefit plan**" as defined in 29 C.F.R. Section 2510.3-101, or "**assets of a governmental plan**" subject to regulation under the state statutes, and (b) Borrower will not sell, assign or transfer the Security 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 Security Instrument 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.

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

(d) Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Borrower hereby indemnifies Lender and agrees to defend and hold Lender harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this Section. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Borrower or all or any part of the Security Property under any federal or state law for which forfeiture of the Security Property or any part thereof or of any monies paid in performance of Borrower's

obligations under the Loan Documents is a potential result, shall, at the election of Lender, constitute an Event of Default hereunder without notice or opportunity to cure.

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

(f) Borrower covenants and agrees to pay Lender upon receipt of written notice from Lender, all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Security Instrument and the other Loan Documents; (ii) Borrower's performance of and compliance with Borrower's respective agreements and covenants contained in this Security Instrument and the other Loan Documents on its part to be performed or complied with after the date hereof; (iii) Lender's performance and compliance with all agreements and conditions contained in this Security Instrument and the other Loan Documents on its part to be performed or complied with after the date hereof; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Security Instrument and the other Loan Documents; and (v) the filing and recording fees and expenses, title insurance fees and expenses, and other similar expenses incurred in creating and perfecting the lien in favor of Lender pursuant to this Security Instrument and the other Loan Documents.

(g) This Security Instrument shall be governed by and construed in accordance with the laws of the State in which the Premises are located and the applicable laws of the United States of America.

59. Management of the Security Property.

Borrower shall maintain the Management Agreement for the operation of the Security Property in full force and effect and timely perform all of Borrower's obligations thereunder and enforce performance of all obligations of the Manager thereunder, and not permit the termination or amendment of such Management Agreement unless the prior written consent of Lender is first obtained, which consent, in the case of an amendment, shall not be unreasonably withheld. Borrower will enter into and cause the Manager to enter into an assignment and subordination of such Management Agreement in form satisfactory to Lender, assigning and subordinating the Manager's interest in the Security Property and all fees and other rights of the manager pursuant to such Management Agreement to the rights of Lender. Upon an Event of Default under any of the Loan Documents, an event of default under the Management Agreement and/or the occurrence of the Anticipated Repayment Date, Borrower at Lender's request made at any time while any of such events continues, shall terminate the Management Agreement and replace the Manager with a Manager approved by Lender.

60. Sale of Notes and Securitization.

(a) Borrower acknowledges that Lender and its successors and assigns shall have the right to do any and all of the following: (i) sell this Security Instrument, the Note and other Loan Documents to one or more investors as a whole loan, (ii) participate the Loan secured by this Security Instrument to one or more investors, (iii) deposit this Security Instrument, the Note and other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets, (iv) otherwise sell the Loan or interest therein to investors, or (v) cause the Note, this Security Instrument and the other Loan Documents to be split into two or more notes, parts or interests, in whatever proportion Lender deems appropriate, which may be in the form of pari passu interests, senior and junior interests, or other interests, and thereafter to sell, assign, participate, syndicate or securitize all or any part of either or both of such severed or split obligations and documents (the transactions referred to in clauses (i) through (v) are hereinafter each referred to as “**Secondary Market Transaction**” or “**Securitization**”). Borrower shall cooperate with Lender in effecting any such Secondary Market Transaction and shall cooperate to implement all requirements imposed by any Rating Agency involved in any Secondary Market Transaction. Borrower shall not be required to modify any documents evidencing or securing the Loan so as to modify (A) the interest rate payable under the Note, (B) the stated maturity of the Note, (C) the amortization of principal of the Note, (D) the non-recourse provisions of the Loan or (E) any other material economic term of the Loan. However, in the case of split notes, the interest rate and principal amortization may be changed, provided that for the combined obligations taken as an aggregate, the over-all interest rate and amortization of principal shall remain the same. Borrower shall provide such information, legal opinions and documents relating to Borrower, Guarantor, if any, the Security Property and any tenants of the Improvements as Lender may reasonably request in connection with such Secondary Market Transaction. In addition, Borrower shall make available to Lender all information concerning its business and operations that Lender may reasonably request. Lender shall be permitted to share all such information with the investment banking firms, Rating Agencies, accounting firms, law firms and other third-party advisory firms involved with the Loan and the Loan Documents or the applicable Secondary Market Transaction. It is understood that the information provided by Borrower to Lender may ultimately be incorporated into the offering documents for the Secondary Market Transaction and thus various investors may also see some or all of the information. Lender and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Borrower and Borrower indemnifies Lender as to any losses, claims, damages or liabilities that arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such information or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, or in light of the circumstances under which they were made, not misleading. Lender may publicize the existence of the Loan in connection with its marketing for a Secondary Market Transaction or otherwise as part of its business development.

(b) In the event that the provisions of this Security Instrument or any Loan Documents require the receipt of written confirmation from each Rating Agency with respect to the ratings on the rated single or multi-class securities, or, in accordance with the terms of the transaction documents relating to a Secondary Market Transaction, such a rating confirmation is

required in order for the consent of the Lender to be given, the Borrower shall pay all of the costs and expenses of the Lender, Servicer and each Rating Agency in connection therewith, and, if applicable, shall pay any fees imposed by any Rating Agency as a condition to the delivery of such confirmation.

61. **Reserved.**

62. **Servicer.**

At the option of Lender, the Loan may be serviced by a servicer/trustee (the “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Security Instrument and the other Loan Documents to the Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer.

63. **Letter of Credit.**

(a) In the event (i) Winn-Dixie Montgomery, Inc. (“**Winn-Dixie**”) “goes dark” under that certain Lease dated November 10, 1997, as amended, made by and between Borrower’s predecessor-in-interest, as landlord, and Winn-Dixie, as tenant, (ii) Winn-Dixie vacates the leased premises or provides notice of its intent to vacate the leased premises, (iii) any voluntary or involuntary bankruptcy or insolvency proceedings or filings are made by or with respect to Winn-Dixie, under the U.S. Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or (iv) Borrower fails to refinance the Loan on or before the Anticipated Repayment Date, Borrower shall cause a Letter of Credit in the face amount equal to Six Hundred Thousand and 00/100 Dollars (\$600,000.00) (the “**Winn-Dixie Letter of Credit**”) to be deposited with Lender immediately following the occurrence of any of the events described in clauses (i) through (iv) above. The Winn-Dixie Letter of Credit shall be returned to Borrower upon such time, if any, as (a) no Event of Default has occurred and is continuing, (b) the Anticipated Repayment Date has not occurred, (c) the debt service coverage ratio with respect to the Loan equals or exceeds 1.10 to 1.00 for a period of three (3) or more consecutive months (as determined by Lender in its sole and absolute discretion), (d) Borrower shall have replaced the Winn-Dixie Lease with a new lease or leases of such space in form and substance acceptable to Lender in its reasonable discretion with a tenant or tenants acceptable to Lender in its reasonable discretion (a “**Replacement Tenant(s)**”) and such Replacement Tenant(s) shall be in occupancy, open for business and paying full contractual rent for a period of three (3) consecutive months as evidenced by estoppel certificate(s) in form and substance acceptable to Lender and (e) Guarantor shall have satisfied the Net Worth Test (as defined in that certain Guaranty of even date herewith made by Lamar Western L.P. in favor of Lender) for a period of six (6) consecutive months. The term “**Letter of Credit**” as used herein shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit acceptable to Lender and the Rating Agencies (either an evergreen letter of credit or one which does not expire until at least thirty (30) business days after the Anticipated Repayment Date) in favor of Lender and entitling Lender to draw thereon in New York, New York, issued by a domestic Eligible Institution or the U.S. agency or branch of a foreign Eligible Institution. Such Letter of Credit must be obtained by a person or entity, on behalf of Borrower, and Borrower shall not have or be permitted to have any liability or other obligations under any reimbursement agreement with respect to such Letter of Credit or otherwise in connection with reimbursement to the Letter of Credit bank for draws

on such Letter of Credit. Any Letter of Credit must provide by its terms that upon presentation for payment made on such Letter of Credit before 1:00 p.m. the Letter of Credit will be paid in immediately available funds by 3:00 p.m. on such date, or if presented after 1:00 p.m., such letter of credit will be paid at the opening of business on the next succeeding business day. The term **"Eligible Institution"** as used herein shall mean a depository institution or trust company insured by the Federal Deposit Insurance Corporation the long term unsecured debt obligations of which are rated at least "AA" by Fitch, Inc. and Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, and "Aa2" by Moody's Investors Service, Inc.

(b) Security for Debt. Any Letter of Credit delivered under this Security Instrument shall be additional security for the payment of the Debt. Upon the occurrence of an Event of Default, Lender shall have the right, at its option, to draw on such Letter of Credit and to apply each such Letter of Credit to payment of the Debt in such order, proportion or priority as Lender may determine. Any such application to the Debt shall be subject to the payment of the Yield Maintenance Premium (as defined in the Note). On the Anticipated Repayment Date, any such Letter of Credit may be applied to reduce the Debt.

(c) Additional Rights of Lender. In addition to any other right Lender may have to draw upon a Letter of Credit pursuant to the terms and conditions of this Security Instrument, Lender shall have the additional rights to draw in full any Letter of Credit and to apply all or any part thereof to the payment of the Debt in such order, proportion or priority as Lender may determine: (i) with respect to any evergreen Letter of Credit, if Lender has received a notice from the issuing bank that the Letter of Credit will not be renewed and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (ii) with respect to any Letter of Credit with a stated expiration date, if Lender has not received a notice from the issuing bank that it has renewed the Letter of Credit at least thirty (30) days prior to the date on which such Letter of Credit is scheduled to expire and a substitute Letter of Credit is not provided at least fifteen (15) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (iii) upon receipt of notice from the issuing bank that the Letter of Credit will be terminated (except if a substitute Letter of Credit is provided at least fifteen (15) days prior to the date on which the outstanding Letter of Credit is scheduled to terminate); or (iv) if Lender has received notice that the bank issuing the Letter of Credit shall cease to be an Eligible Institution. Notwithstanding anything to the contrary contained in the above, Lender is not obligated to draw any Letter of Credit upon the happening of an event specified in (i), (ii), (iii) or (iv) above and shall not be liable for any losses sustained by Borrower due to the insolvency of the bank issuing the Letter of Credit if Lender has not drawn the Letter of Credit.

64. State-Specific Provisions.

(a) Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Loan shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence of this Security Instrument, and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

(b) Right to Enter and Take Possession. (i) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Security Property and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Security Property without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Borrower;

(ii) If Borrower shall for any reason fail to surrender or deliver the Security Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Security Property to Lender. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Loan and shall be secured by this Security Instrument;

(iii) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Security Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Security Property insured; (iii) manage and operate the Security Property and exercise all of the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Security Property, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Security Property (including compensation for the services of all persons employed by such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Security Property or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits required under this Security Instrument and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Notwithstanding anything to the contrary in this Section 64(b), Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Security Instrument, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender;

(iv) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Security Instrument shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Security Property to Borrower, its successors and assigns. The same

right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

(c) Performance by Lender. Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Security Instrument, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Default Rate (as defined in the Note) or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Security Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holder under Borrower. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

(d) Receiver. If any Event of Default shall have occurred and be continuing, 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 Loan or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Security Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Security Property is situated. Borrower will pay unto Lender upon demand all expenses, including reasonable receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 64(d), and upon any Borrower's failure to pay the same, any such amounts shall be added to the Loan and shall be secured by this Security Instrument.

(e) Lender's Power of Enforcement and Power of Sale.

(i) In an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (b) to foreclose this Security Instrument and to sell the Security Property, as an entirety or in separate lots or parcels, as provided by applicable law, and (c) to pursue any other remedy available to it, all as Lender shall deem most effectual for such purposes. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine.

(ii) If an Event of Default shall have occurred, Lender may sell the Security Property at public outcry to the highest bidder for cash in front of the Court House door in the county where the Security Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is

authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Security Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

(f) Purchase by Lender. Upon any foreclosure sale or sale of all or any portion of the Security Property under the power herein granted, Lender may bid for and purchase the Security Property and shall be entitled to apply all or any part of the Loan as a credit to the purchase price.

(g) Application of Proceeds of Sale. In the event of a foreclosure or other sale of all or any portion of the Security Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' fees (attorneys' fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Lender hereunder, and interest thereon; then to payment of the Loan and accrued interest thereon, in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.

(h) Borrower as Tenant Holding Over. In the event of any such foreclosure sale or sale under the powers herein granted, Borrower (if Borrower shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily disposed according to provisions of law applicable to tenants holding over.

(i) Waiver of Appraisalment, Valuation, Etc. Borrower agrees, to the full extent permitted by law, that in case of a default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, or the absolute sale of the Security Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Security Instrument marshaled upon any foreclosure or sale under the power herein granted.

(j) Waiver of Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution of the laws of the United States and of any state, in and to the Security Property and against the collection of the Loan, or any part thereof.

(k) Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Security Instrument by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case, Borrower and Lender

shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

(l) Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of the Loan and to exercise all rights and powers under this Security Instrument or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Loan may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Security Instrument nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner effect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Security Instrument and any other security now or hereafter held by Lender in such order and manner as it or either of them may in their absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and either of them may pursue inconsistent remedies.

(m) Waivers. After consulting with and considering the advice of independent legal counsel selected by Borrower, Borrower makes the following arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan.

(i) No delay or omission by Lender or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Security Instrument to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Borrower in the performance of the obligations of Borrower hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(ii) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note or this Security Instrument or any other obligation of Borrower or any subsequent purchaser of the Security Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Security Instrument, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an

extension of time for payment of all or any portion of the Loan; (ii) take other or additional security for the payment of any of the Loan; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) release any part of the Security Property from the security interest or lien of this Security Instrument or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Security Instrument; (v) consent to the filing of any map, plat or replat affecting the Security Property; (vi) consent to the granting of any easement or other right affecting the Security Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Security Instrument, the Security Property or any document or instrument evidencing, securing or in any way related to the Loan, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Security Instrument. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Security Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Security Property or the Loan, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

(iii) Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular State or other jurisdiction. To the fullest extent that Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and Borrower, for Borrower, Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Security Property, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, marshaling, stay of execution, and extension. Borrower further agrees that if any law referred to in this paragraph and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Borrower expressly waives and relinquishes any and all rights and remedies that Borrower may have or be able to assert by reason of the laws of the state of jurisdiction pertaining to the rights and remedies of sureties.

(iv) Borrower, and by acceptance hereof, Lender, hereby mutually waive any right to a trial by jury on any claim, counterclaim, setoff, demand, action or cause of action (a) arising out of or in any way pertaining or relating to this Security Instrument, any other Loan Document, or any other instrument, document or agreement executed or delivered in connection herewith or therewith, or (b) in any way connected with or pertaining or relating to or incidental to any dealings of the parties hereto with respect to this Security Instrument, any other Loan Document, or any other instrument, document or agreement executed or delivered in connection herewith or therewith or in connection with any transactions related thereto or contemplated thereby or the exercise or either party's rights and remedies thereunder, in all of the foregoing cases whether now existing or hereafter arising, and whether sounding in contract,

tort or otherwise. Borrower and Lender agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive trial by jury, and that any dispute or controversy whatsoever between them shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury. Borrower hereby certifies that no representative or agent of Lender, including Lender's counsel, has represented, expressly or otherwise, that Lender would not, in the event of such dispute or controversy, seek to enforce the provisions of this paragraph, and Borrower acknowledges that Lender has, in part, been induced to make the Loan to Borrower in reliance on the provisions of this paragraph.

(n) Suits to Protect the Security Property. Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Security Property by any acts which may be unlawful or constitute a default under this Security Instrument; (b) to preserve or protect its interest in the Security Property and in the rents, issues, profits and revenues arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Lender.

(o) Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Security Instrument at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

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Shelby Cnty Judge of Probate, AL
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IN WITNESS WHEREOF, Borrower has executed this Security Instrument the day and year first above written.

BORROWER:

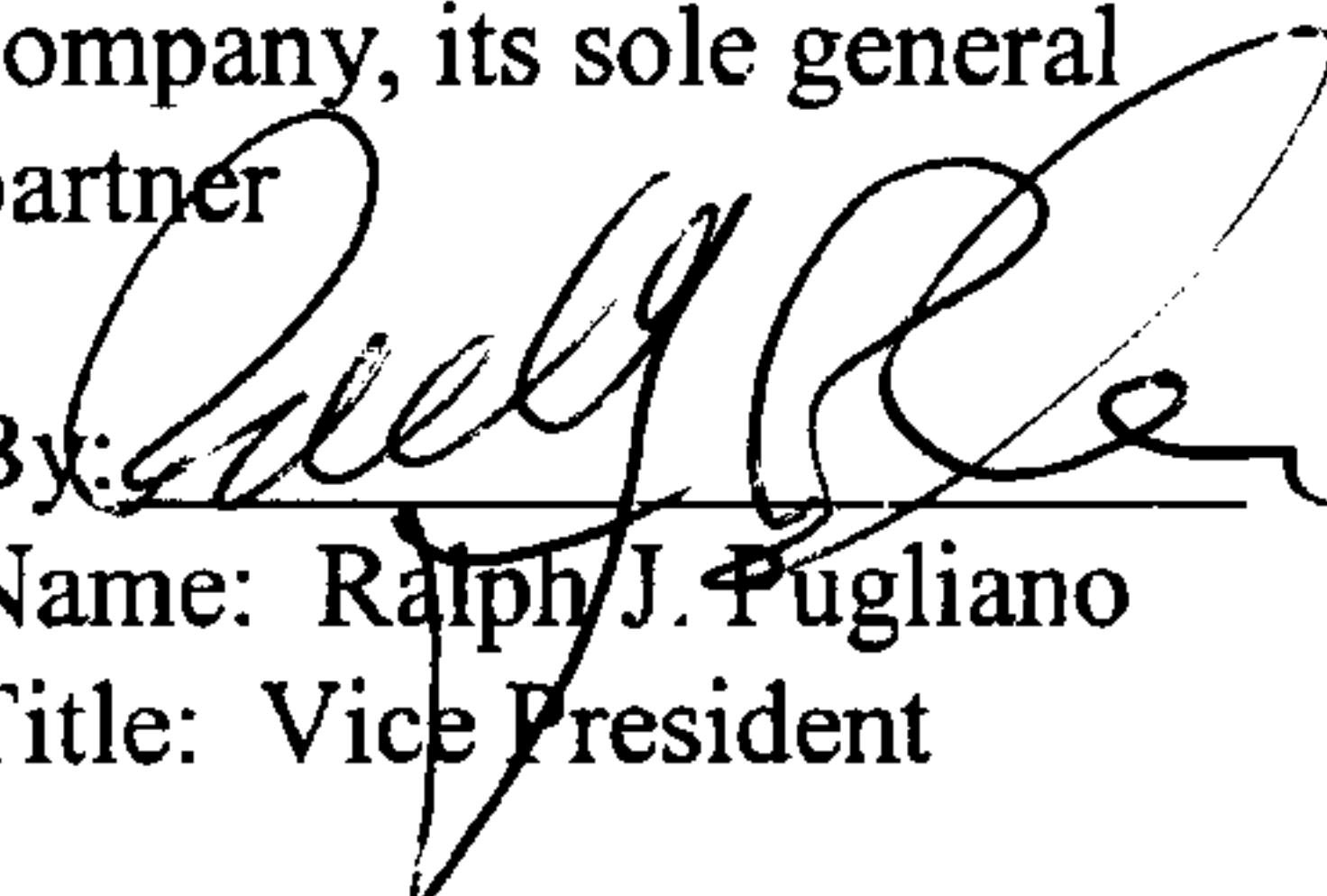
HELENA I, LLC,
a Delaware limited liability company

By: Mason Plaza, L.P.,
a Texas limited partnership,
its sole member

By: Houston-Mason, LLC,
a Texas limited liability company,
its sole general partner

By: Felicita Associates LP,
a California limited partnership,
its sole member

By: Felicita Retail LLC,
a California limited liability
company, its sole general
partner

By: 
Name: Ralph J. Pugliano
Title: Vice President

STATE OF NEW JERSEY

)

) SS:

COUNTY OF MORRIS

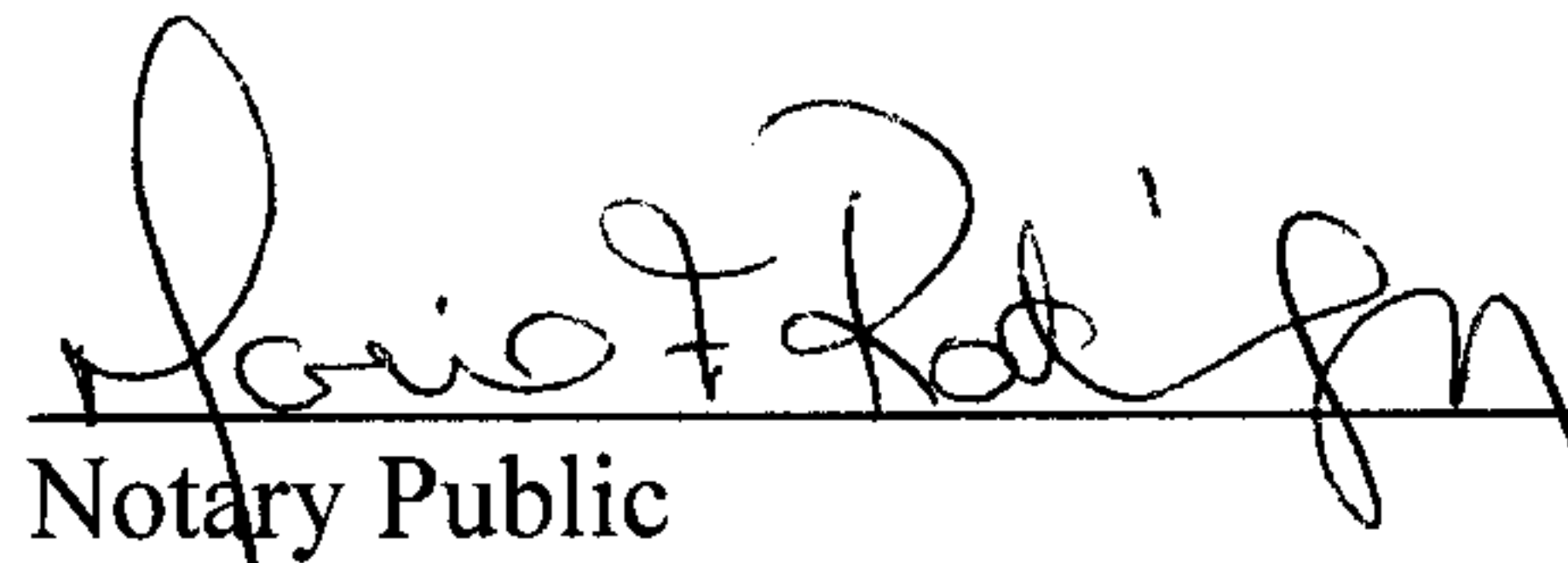
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Shelby Cnty Judge of Probate, AL
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On this, the 8th day of May, 2007, before me, the undersigned Notary Public, in and for said County and State, hereby certify that Ralph J. Pugliano, whose name as Vice President of Felicita Retail LLC, a California limited liability company, the sole general partner of Felicita Associates LP, a California limited partnership, the sole member of Houston-Mason, LLC, a Texas limited liability company, the sole general partner of Mason Plaza, L.P., a Texas limited partnership, the sole member of Helena I, LLC, a Delaware limited liability company, is signed to the foregoing document, and who is known to me, acknowledged before me on this date that being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily, for and as the act of said limited liability company, in its capacity as general partner of said limited partnership.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires:

9/13/2010

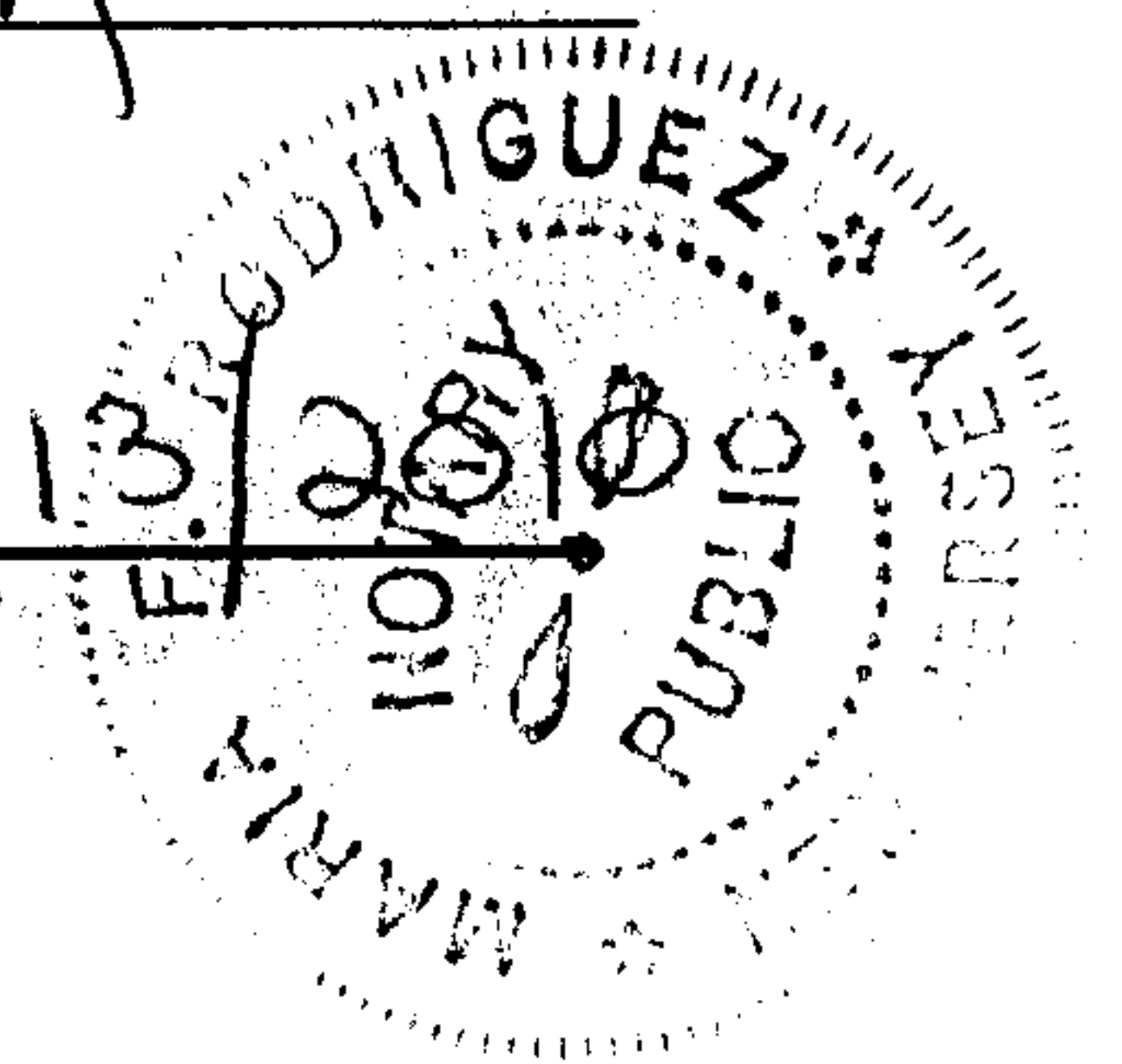


EXHIBIT A


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LEGAL DESCRIPTION

Lot 1, Helena Marketplace, as recorded in Map Book 24, Page 141, in the Probate Office of Shelby County, Alabama.

Together with any beneficial rights that constitute an interest in real estate obtained under that certain Declaration of Covenants and Easements recorded in Instrument #19971113000371510, amended in Instrument #20010403000123310 and Declaration of Easements in Instrument #1998121500049933.

EXHIBIT B
REQUIRED REPAIRS



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Repaint exterior CMU walls including as needed re-caulking and minor tuckpointing/masonry repairs.

EXHIBIT C

CASH MANAGEMENT AGREEMENT



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05/10/2007 12:48:57PM FILED/CERT

SPRINGING CASH MANAGEMENT AGREEMENT

THIS SPRINGING CASH MANAGEMENT AGREEMENT (this “**Agreement**”) is made as of May [____], 2007, by **HELENA I, LLC**, a Delaware limited liability company (“**Borrower**”), having an address at 365 South Street, Morristown, New Jersey 07960, to [____], a [____] (together with its successors and assigns, “**Lender**”), having an address at One Charles River Place, 63 Kendrick Street, Needham, Massachusetts 02494.

RECITALS

This Agreement is being executed in connection with Lender’s making a mortgage loan to Borrower in the original principal amount of \$4,825,000.00 (the “**Loan**”). The Loan is evidenced by a certain Promissory Note (the “**Note**”) dated as of the date of this Agreement, executed by Borrower in favor of Lender, and is secured by, among other things, a Mortgage, Assignment of Leases and Rents and Security Agreement (the “**Security Instrument**”), dated as of the date of this Agreement, in favor of the Lender. The Note, the Security Instrument, this Agreement and all other documents or instruments given by Borrower or any guarantor and accepted by Lender for purposes of evidencing, securing, perfecting, or guaranteeing the indebtedness evidenced by the Note may be referred to as the “**Loan Documents**.” The real property and improvements encumbered by the Security Instrument may be referred to as the “**Property**.”

NOW THEREFORE, as a material inducement to Lender to make the Loan to Borrower, Borrower covenants and agrees with and warrants to Lender that:

ARTICLE I DEFINITIONS

Section 1.01 Certain Definitions. The following terms have the meanings indicated:

“**Anticipated Repayment Date**” shall mean June 1, 2017.

“**Business Day**” means any day excluding (i) Saturday, (ii) Sunday, and (iii) any day on which banking institutions located in the states where the Property and the Accounts are located are generally not open for the conduct of regular business.

“**Event of Default**” shall have the meaning set forth in the Security Instrument.

“**Excess Cash Flow**” shall mean, on any Payment Date, the amount remaining after the deposits required pursuant to Sections 4.03(i) through Section 4.03(vii) have been made.

“**Guarantor**” means Lamar Western L.P.

“**Guaranty**” means that certain Guaranty of even date herewith made by Guarantor in favor of Lender.

“Interest Period” shall mean the period of time during which interest accrues under the Note for which payment is due on the immediately following Payment Date.

“Lease” shall mean any agreement pursuant to which any Person has, has had, or may have any right of use or occupancy of any portion of the Property.

“Payment Date” shall mean the date each month on which the regularly scheduled payment of interest (or principal and interest) is due under the Note.

“Person” shall mean any natural person or any entity.

“Rating Agency” shall mean any nationally recognized statistical agency selected by Lender including, without limitation, Fitch Inc., Moody’s Investors Services, Inc., and/or Standard & Poor’s Ratings Services, a division of the McGraw Hill Companies, Inc., collectively, and any successor to any of them; provided, however, that at any time during which the Loan is an asset of a securitization or is otherwise an asset of any rated transaction, **“Rating Agency”** shall mean the rating agency or rating agencies that from time to time rate the securities, certificates or other instruments issued in connection with such securitization or other transaction.

“Receipts” shall mean all revenue of any nature whatsoever received by or on behalf of Borrower pertaining to the Property. Without limitation, Receipts includes Rents and proceeds of insurance and condemnation.

“Rent” or **“Rents”** shall mean all consideration paid under any Lease by or on behalf of any tenant in favor of the landlord, and all other revenue derived from operation of the Property.

Section 1.02 Index of Other Defined Terms. The following terms are defined in the Sections indicated:

Accounts – Section 6.02
Approved Additional Operating Expense – Section 4.04
Approved Capital Expenditure Budget – Section 5.01
Approved Operating Budget – Section 5.01
Budgeted Operating Expense – Section 4.04
Cash Restriction Condition – Section 3.01
Central Account – Section 4.01
Central Account Bank – Section 4.01
Debt Service Sub-Account – Section 4.02
Eligible Account – Section 6.06
Excess Cash Sub-Account – Section 4.02
Investor – Section 8.05
Lender – Opening paragraph
Loan – Recitals
Loan Documents – Recitals
Manager – Section 2.01
Note – Recitals

Operating Expense Sub-Account – Section 4.02
Operating Expenses – Section 4.04
Property – Recitals
Qualified Emergency Expense – Section 4.04
Rent Payment Direction Letter – Section 2.02
Reserve – Section 4.02
Reserve Agreement – Section 4.02
Scheduled Reserve – Section 4.02
Scheduled Reserve Sub-Account – Section 4.02
Security Deposit Account – Section 2.04
Security Deposit Account Agreement – Section 2.04
Security Instrument – Recitals
Servicer – Section 8.05
Sub-Accounts – Section 4.02
Tax and Insurance Reserve – Section 4.02
Tax and Insurance Reserve Sub-Account – Section 4.02
Trigger Event- Section 3.01
Variable Reserve – Section 4.02
Variable Reserve Sub-Account – Section 4.02


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ARTICLE II CENTRAL ACCOUNT

Section 2.01 Deposits Into Central Account. Borrower shall cause (i) all tenants under all Leases to pay all Rents directly to Lender for deposit into the Central Account, and (ii) all other Rents and Receipts that are not paid directly to Lender in accordance with the foregoing to be deposited into the Central Account promptly and in no event later than one (1) Business Day after the same are paid to or for the benefit of Borrower. To the extent that Borrower or any Person on Borrower's behalf receives or holds any such Rents or Receipts, whether in accordance with this Agreement or otherwise, then Borrower shall be deemed to hold the same in trust for Lender for the protection of the interests of Lender hereunder and under the Loan Documents until such Rents and Receipts are delivered to Lender. Without limitation, Borrower represents that it has delivered to Lender for each tenant under each existing Lease a letter in form and substance satisfactory to Lender directing such tenant to pay all Rents under its Lease to Lender for deposit into the Central Account, which letter is substantially in the form of **Exhibit A** attached hereto (a "**Rent Payment Direction Letter**"). Further, Borrower shall deliver to Lender a Rent Payment Direction Letter for each new tenant contemporaneously with the execution and delivery of its Lease after the date hereof. Also, if the Central Account is changed, or otherwise if Lender shall request, then Borrower shall execute and deliver to Lender new Rent Payment Direction Letters for all tenants. Lender is authorized to deliver the Rent Payment Direction Letters to the tenants.

Section 2.02 No Borrower Access to Central Account. Borrower shall have no right of access to or control over the Central Account. Without limitation, Borrower shall have no right to write checks or issue drafts on such account, or to issue directions for payment from or

investment of such account. Borrower covenants not to issue any check or draft on the Central Account, nor to issue any other directions to Lender pertaining to the Central Account.

Section 2.03 Insurance Proceeds, Condemnation Proceeds, Lease Termination Payments. Except only to the extent that the Instrument expressly permits otherwise, Borrower shall immediately deliver to Lender for deposit into the Central Account all proceeds of insurance, proceeds of awards in condemnation and similar proceedings, and payments in consideration of condemnation or takings or in settlement in lieu thereof, and all payments received from or on behalf of tenants or guarantors of leases on account of termination or breach of such leases. Lender may hold such funds separately in accordance with the Security Instrument, or Lender may establish a Scheduled Reserve in the Scheduled Reserve Sub-Account for such funds. In such event, such funds shall be paid into the Scheduled Reserve Sub-Account without regard to the priorities set forth in Section 4.03.

ARTICLE III

CASH RESTRICTION CONDITION

Section 3.01 Cash Restriction Condition. A “Cash Restriction Condition” shall be in effect from and after the occurrence of any of the following (each a “Trigger Event”):

- (i) at all times during and following an Event of Default;
- (ii) from and after the date that is thirty (30) days prior to the Anticipated Repayment Date;
- (iii) commencing at the time the underwritten debt service coverage ratio, as determined by Lender, is less than 1.10 to 1.00;
- (iv) commencing at the time the Guarantor fails to satisfy the Net Worth Test (as defined in the Guaranty);
- (v) commencing upon Winn-Dixie (as defined in the Security Instrument) “going dark” or otherwise not opening for business on Business Days;
- (vi) commencing upon the date Winn-Dixie vacates the leased premises or provides notice of its intent to vacate the leased premises; and
- (vii) commencing upon Winn-Dixie or any affiliate or parent company of Winn-Dixie filing for bankruptcy or having filed against it an involuntary petition for bankruptcy.

A Cash Restriction Condition shall cease to exist as follows:

- (1) in the case of a Trigger Event described in clause (i) above, when such Trigger Event ceases to exist and no other Event of Default exists;
- (2) in the case of a Trigger Event described in clause (iii) above, when the underwritten debt service coverage ratio, as determined by Lender, is

greater than a 1.10 to 1.00 for a period of six (6) consecutive months after such Trigger Event described in clause (iii) above has occurred (together with (1) above, the “**Primary Cure Criteria**”);

- (3) in the case of a Trigger Event described in clause (iv) above, upon satisfaction of the Primary Cure Criteria and upon Lender’s determination that the Guarantor has satisfied the Net Worth Test for six (6) consecutive months; or
- (4) in the case of a Trigger Event described in clause (v), (vi) or (vii) above, upon satisfaction of the Primary Cure Criteria and upon the entirety of the Winn-Dixie space being re-let to one or more tenant(s) acceptable to Lender pursuant to a lease(s) in form and substance acceptable to Lender, and Lender’s receipt of an estoppel certificate(s) in form and substance acceptable to Lender stating that such tenant(s) is/are in occupancy of the entirety of the Winn-Dixie space, open for business and paying full contractual rent for a minimum of three (3) consecutive months.

ARTICLE IV CENTRAL ACCOUNT


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Section 4.01 Central Account. Lender has established an Eligible Account for the purposes described in this Article (said account, and any account replacing the same in accordance with this Agreement, may be referred to as the “**Central Account**,” and the depository institution in which any Central Account hereunder is maintained may be referred to as the “**Central Account Bank**”). The Central Account shall be under the sole dominion and control of Lender, and Borrower shall have no rights to control or direct the investment or payment of funds therein. Lender may elect to change the financial institution in which the Central Account shall be maintained, and Lender shall give Borrower written notice of any such change. Any amounts that Lender may hold in reserve pursuant to the Security Instrument or other Loan Documents (including without limitation, to the extent applicable, reserves such as holdbacks, escrows for taxes, insurance premiums, leasing commissions, tenant improvements, repairs, or abatement of physical conditions, or proceeds of insurance or condemnation) may be held by Lender in the Central Account (including in a Sub-Account thereof) or may be held in another account or manner as specified in the applicable Loan Document.

Section 4.02 Sub-Accounts of the Central Account. The Central Account shall be deemed to contain such sub-accounts (which may be maintained as separate ledger accounts) as Lender may designate (“**Sub-Accounts**”), including the following:

A. “**Tax and Insurance Reserve Sub-Account**” shall mean the Sub-Account of the Central Account established for the purpose of holding the Tax and Insurance Reserve. “**Tax and Insurance Reserve**” shall mean the Reserve which is designated as the Tax and Insurance Impound Fund in the Security Instrument.

B. **"Debt Service Sub-Account"** shall mean the Sub-Account of the Central Account established for the purposes of reserving for payments of principal, interest (including at the regular rate or the default rate, as applicable), late charges, and other amounts due under the Loan Documents.

C. **"Scheduled Reserve Sub-Account"** shall mean the Sub-Account of the Central Account established for the purpose of holding Scheduled Reserves pursuant to any Reserve Agreement. If more than one Reserve is required or permitted to be maintained pursuant to the applicable Reserve Agreement, then Lender may establish multiple Sub-Accounts for such Reserves. Notwithstanding the foregoing, the Scheduled Reserve Sub-Account shall not be deemed to hold funds which are allocated to the Tax and Insurance Reserve. **"Reserve Agreement"** shall mean any agreement (including without limitation, this Agreement and the Security Instrument) pursuant to which Borrower is obligated to deposit or maintain funds with Lender. **"Reserve"** shall refer to each separate escrow or fund established and maintained by Lender pursuant to a Reserve Agreement. **"Scheduled Reserve"** shall mean any Reserve other than the Tax and Insurance Reserve and the Variable Reserves. Scheduled Reserves shall not include any funds held in the Operating Expense Sub-Account.

D. **"Operating Expense Sub-Account"** shall mean the Sub-Account established for the purpose of holding funds available for Operating Expenses in accordance herewith.

E. **"Variable Reserve Sub-Account"** shall mean the Sub-Account of the Central Account established for the purpose of holding Variable Reserves pursuant to any Reserve Agreement. If more than one Reserve is required or permitted to be maintained pursuant to the applicable Reserve Agreement, then Lender may establish multiple Sub-Accounts for such Reserves. **"Variable Reserve"** shall mean a Reserve as to which provision is made in the Loan Documents that expressly excuses Borrower's obligation to fund the Reserve in any month in which available cash flow is insufficient. Variable Reserves shall not include any funds held in the Operating Expense Sub-Account.

F. **"Excess Cash Sub-Account"** shall mean the Sub-Account established for the purpose of holding all remaining funds in the Central Account.

Section 4.03 Allocation of Funds to Sub-Accounts. Absent an Event of Default (in which case Lender may hold or apply any or all funds in the Central Account in any order that Lender determines in its sole and absolute discretion), then funds newly received in the Central Account during any Interest Period shall be allocated in the following order of priority, with each higher level of priority being fully funded prior to any funds being available for the next lower level of priority. Any such allocation which occurs during or after an Event of Default shall not prejudice Lender's right at any time to (a) cease making any or all such allocations, and (b) to exercise any and all rights and remedies, including with respect to any funds which shall have been so allocated.

(i) **First**, to the Tax and Insurance Reserve Sub-Account, until such Sub-Account (together with any other account or fund held by Lender pursuant to the Security Instrument for the same purposes) contains the amount that Borrower is required to pay into the Tax and

Insurance Reserve on the next Payment Date and also contains the amount required to be on deposit in such Reserve, in each case in accordance with the Security Instrument;

(ii) **Second**, to the Debt Service Sub-Account, until such Sub-Account contains the amount required to pay all interest, principal, and other amounts due to Lender on the next Payment Date pursuant to the Note and the other Loan Documents, together with any default interest, late payment charges and other fees, expenses and amounts due and payable to Lender;

(iii) **Third**, to the Scheduled Reserve Sub-Account, until such Sub-Account (together with any other account or fund held by Lender pursuant to any Reserve Agreement for the same purposes) contains the deposit payments to the applicable Scheduled Reserves that are due on the next Payment Date and also contains the amounts required to be on deposit in the subject Scheduled Reserves, in each case in accordance with the applicable Reserve Agreement; and in the absence of sufficient amounts to fully fund all required payments into Scheduled Reserves, Lender may allocate funds among Scheduled Reserves as Lender may determine;

(iv) **Fourth**, during a Cash Restriction Condition, to the Operating Expense Sub-Account, until during such Interest Period there shall have been deposited into such Sub-Account an amount equal to (i) the amount of Approved Operating Expenses for the subject month set forth in the Approved Operating Budget, plus (ii) any approved Additional Operating Expenses and Qualified Emergency Expenses for such month as to which Lender shall have received written notice from Borrower, plus or minus (iii) any other amount which Lender in its reasonable discretion may allocate to or from such Sub-Account (and Lender shall have no obligation to so allocate any such funds), taking into consideration (a) any difference between budget months and Interest Periods, (b) deficiencies and excesses, whether anticipated or having occurred, in the Operating Expense Sub-Account, and (c) such other factors as Lender may determine in its reasonable discretion;

(v) **Fifth**, to the Variable Reserve Sub-Account, until such Sub-Account (together with any other account or fund held by Lender pursuant to any Reserve Agreement for the same purposes) contains the deposit payments to the applicable Variable Reserves that are due on the next Payment Date and also contains the amounts required to be on deposit in the subject Variable Reserves, in each case in accordance with the applicable Reserve Agreement; and in the absence of sufficient amounts to fully fund all required payments into Variable Reserves, Lender may allocate funds among the Variable Reserves as Lender may determine;

(vi) **Sixth**, during any Interest Period following the Anticipated Repayment Date, all Excess Cash Flow up to the remaining principal balance of the Note, to the Debt Service Sub-Account, to be applied against the outstanding principal due under the Note until such principal amount is paid in full;

(vii) **Seventh**, during any Interest Period following the Anticipated Repayment Date, all Excess Cash Flow up to the amount of any Accrued Interest (as defined in the Note) due under the Note, to the Debt Service Sub-Account, to be applied against the outstanding amount of any Accrued Interest until all such Accrued Interest has been repaid; and

(viii) **Eighth**, to the Excess Cash Sub-Account.

Section 4.04 Payment of Funds from Sub-Accounts. After an Event of Default, Lender may hold or apply any or all funds in the Central Account and/or the Sub-Accounts in any order that Lender determines in its sole and absolute discretion, and Lender may exercise any rights and remedies available under this Agreement, under any of the Loan Documents and under applicable law. Before an Event of Default, funds in the Central Account shall be paid as provided in this Section. Any payment as provided below which occurs during or after an Event of Default shall not prejudice Lender's right at any time to (i) cease making any or all such payments and (ii) to exercise any and all rights and remedies.

A. **Tax and Insurance Reserve Sub-Account.** Lender shall have the same rights and obligations pertaining to the retention, payment, and application of the funds in the Tax and Insurance Reserve Sub-Account as Lender has with respect to all other funds held by Lender pursuant to the provisions of the Security Instrument pertaining to the same Section 6(a) of the Security Instrument, together with all rights of Lender under this Agreement. At any time, Lender may transfer any funds in the Tax and Insurance Reserve Sub-Account to any other account or fund established or maintained pursuant to said Section of the Security Instrument.

B. **Debt Service Sub-Account.** On each day that a payment of principal, interest, or other amounts is due under the Note or any other Loan Document, or at any time thereafter, Lender may pay such obligation from the Debt Service Sub-Account.

C. **Scheduled Reserve Sub-Account and Variable Reserve Sub-Account.** As to funds for each Reserve held in the Scheduled Reserve Sub-Account or Variable Reserve Sub-Account, Lender shall have the same rights and obligations pertaining to the retention, payment, and application of such funds as may be specified in the applicable Reserve Agreement, together with all rights of Lender under this Agreement. At any time, Lender may transfer any funds applicable to any Reserve to any other account or fund established or maintained pursuant to any applicable Reserve Agreement for the same purpose. To the extent that the Loan Documents do not otherwise require that payments from such Reserves be in accordance with an Approved Capital Expenditure Budget or Approved Operating Budget, then during any Cash Restriction Condition, Lender may require such budgets and may require that any such payments be in accordance with the same or otherwise be approved by Lender in its reasonable discretion.

D. **Operating Expense Sub-Account.** Subject to satisfaction of the conditions specified below, Borrower shall be entitled to receive reimbursement from the Operating Expense Sub-Account for the payment of Budgeted Operating Expenses, Approved Additional Operating Expenses, and Qualified Emergency Expenses. "Operating Expenses" shall mean the usual and customary actual expenses of operating and maintaining the Property, excluding non-cash items and capital expenditures. "Budgeted Operating Expense" shall mean an expense incurred in operating the Property which is provided for in an Approved Operating Budget, and which occurs in an amount which, when added to the then year-to-date actual expenses for the applicable line item in the Approved Operating Budget, does not exceed the then year-to-date budgeted amount for such line item. "Approved Additional Operating Expense" shall mean any expense of operating the Property other than a Budgeted Operating Expense, if such additional expense is approved in writing by Lender expressly for purposes of this Agreement, in advance of its being incurred. "Qualified Emergency Expense" shall mean an expense incurred

in operation of the Property (i) for a bona fide emergency which was not foreseen, (ii) in an amount, which together with all other Qualified Emergency Expenses ever incurred does not exceed \$25,000, (iii) is reasonable in amount, taking the emergency condition into account, and (iv) is for a commercially reasonable purpose.

Lender shall distribute funds monthly from the Operating Expense Sub-Account in accordance with the Approved Operating Budget. Lender also shall distribute funds from the Operating Expense Sub-Account for Approved Additional Expenses and Qualified Emergency Expenses as to which Lender receives written request and reasonable documentation. In addition, Lender may distribute funds for such other Operating Expenses as Lender may approve in its sole discretion.

Lender may require compliance with reasonable conditions prior to any payment from the Operating Expense Sub-Account, including, without limitation, the following:

- (i) An Approved Operating Budget shall then be in effect;
- (ii) Borrower shall submit a request for payment not more frequently than once per calendar month, which request shall include invoices, receipts, and other evidence and information reasonably required by Lender;
- (iii) Such request for payment shall be signed by Borrower, certifying that the expenses are for the Property and for no other property or purpose, and that all information in such request is true and complete;
- (iv) Such request shall include a line-item accounting comparing expenses incurred in the subject month and on a year-to-date basis with the Approved Operating Budget;
- (v) There shall be sufficient funds for such disbursement in the Operating Expense Sub-Account;
- (vi) Such request shall include evidence of payment (including lien releases) of expenses for which prior disbursements from the Operating Expense Sub-Account were made;
- (vii) At Lender's option, Lender may issue payment directly to Borrower, directly to the vendor, or jointly to Borrower and the vendor;
- (viii) Lender shall have received such evidence as Lender may reasonably request regarding Borrower's entitlement to such disbursement, and all of the foregoing submissions shall be in form and substance satisfactory to Lender, in its reasonable discretion.

Notwithstanding anything to the contrary contained herein, (a) Lender shall not be obligated to make any disbursement from the Operating Expense Sub-Account to fund other Sub-Accounts or to pay the costs and expenses that would be payable from such Sub-Accounts, and (b) Lender shall not be obligated to approve or pay any expense which is payable to or for the benefit of any affiliate of Borrower (except to the extent in an Approved Operating Budget as expressly

provided herein) or which is incurred in connection with any dispute or defense of Borrower under any of the Loan Documents.

E. **Excess Cash Sub-Account.** Funds remaining in the Excess Cash Sub-Account shall be held by Lender as additional collateral for Borrower's obligations under the Loan Documents and may be periodically applied against the Loan or any other obligations of Borrower under the Loan Documents.

Section 4.05 Reallocation Among Sub-Accounts, Obligations Not Excused. At Lender's option, funds in any Sub-Account may be reallocated to any other Sub-Account of a higher level of priority under Section 4.03. Borrower's obligations hereunder and under the other Loan Documents shall not be excused by reason of (i) any such reallocation, or (ii) any failure of sufficient funds to be available for any reason from Rents, Receipts or otherwise. Lender shall have no responsibility to make additional funds available in the event that the funds on deposit are insufficient.

ARTICLE V BUDGETS

Section 5.01 Where Loan Documents Provide for Budgets. If the Loan Documents elsewhere require Borrower to submit to Lender and obtain Lender's approval of annual budgets for operating income and expenses and for capital expenditures, then Borrower shall comply with such provisions, and the budgets so approved shall be the "**Approved Operating Budget**" and the "**Approved Capital Expenditure Budget**" for purposes of this Agreement, to the extent that such budgets are in effect during a Cash Restriction Condition.

Section 5.02 Budgets Otherwise Required. Except where the foregoing provision applies, not later than thirty (30) days prior to the end of each calendar year which occurs following the Anticipated Repayment Date or during any Cash Restriction Condition, and otherwise within fifteen (15) days following request by Lender following the Anticipated Repayment Date or during any Cash Restriction Condition, Borrower shall deliver to Lender a proposed budget for operating income and expenses and a proposed budget for capital expenditures for the Property for the following calendar year (and also for the then-current year if requested by Lender), in each case presented on a monthly and annual basis. If any of said budgets is not in form and substance satisfactory to Lender in its reasonable discretion, then Lender may disapprove the same and specify the reasons therefor, and Borrower shall promptly amend and resubmit revised budgets, making such changes as are necessary to comply with the reasonable requirements of Lender. The budgets so submitted and approved by Lender shall be deemed to be the "**Approved Operating Budget**" and the "**Approved Capital Expenditure Budget**" for purposes of this Agreement for the subject periods of time.

Section 5.03 Revision of Budgets. Lender may require revision of the Approved Operating Budget and the Approved Capital Expenditure Budget following any material change in tenancy at any Property or at any other time when Lender reasonably determines that such revision is warranted. Borrower shall promptly comply with such request.

ARTICLE VI

GENERAL PROVISIONS REGARDING ACCOUNTS

Section 6.01 Right to Receive Additional Authorization. Anything to the contrary herein or in any other Loan Document notwithstanding, Lender may decline to make any disbursement from the Central Account or from any other funds under its control unless and until Lender shall have received a separate written authorization for such disbursement from Borrower, in form and substance satisfactory to Lender. Lender shall have no liability as a result of making any disbursement authorized hereunder with or without such separate written authorization, and Lender shall have no liability for failure to fund any disbursement in the absence of such separate written authorization.

Section 6.02 Grant of Security Interest in Accounts. As additional security for the payment of all sums due under the Loan and the performance by Borrower of its obligations under this Agreement and the other Loan Documents, Borrower hereby pledges, assigns and grants to Lender a continuing perfected security interest in and to and a first lien upon: (a) all Rents and Receipts, including all cash, accounts, documents, instruments and general intangibles evidencing or constituting the same or the right to receive the same or any proceeds of any of the foregoing, (b) the Lockbox Agreement, the Rent Account Agreement, and the Security Deposit Account Agreement, and any funds in any form coming into the possession and control of the applicable banks pursuant thereto, (c) the Central Account (including each Sub-Account), the Rent Account and the Security Deposit Account (said accounts may be referred to as “**Accounts**”) and all of the Borrower’s right, title and interest in and to all cash, property or rights transferred to or deposited into the Accounts from time to time by or on behalf of Borrower, (d) all earnings, investments and securities held in the Central Account and the Rent Account, and (e) any and all proceeds of any and all of the foregoing. Borrower further agrees to execute, acknowledge, deliver, file or do, at its sole cost and expense, all other acts, assignments, notices, agreements and other instruments as Lender may reasonably require in order to perfect, effectuate, assure, convey, secure, assign and transfer unto Lender any of the rights granted hereunder. Borrower shall not further pledge, assign or grant a security interest in any Account or permit any other lien to attach thereto or any levy to be made thereon, or any UCC-1 Financing Statement (except those naming Lender as secured party) to be filed with respect thereto.

Section 6.03 Interest on Accounts. Except as otherwise provided herein, interest paid or other earnings on the Scheduled Reserve Sub-Account, the Variable Reserve Sub-Account, and the Excess Cash Sub-Account shall be credited to the applicable Account and, if in the Central Account, may be allocated to the Sub-Account which contained the funds with respect to which such interest was paid or other earnings earned. All such interest and earnings, once so allocated, shall be treated in the same manner as rents and other revenues of the Property. Borrower shall include all such interest and earnings as income of Borrower (and, if Borrower is a partnership or other pass-through entity, the partners, members or beneficiaries of Borrower, as the case may be) for federal and applicable state and local tax purposes. Borrower shall provide to Lender or the applicable depository, at any time on request by Lender or such depository, a Form W-8 or W-9 and any other documents or instruments reasonably requested pertaining to the attribution of such interest to Borrower. Anything to the contrary herein or elsewhere

notwithstanding, Borrower shall not be entitled to any interest or income earned on the Tax and Insurance Reserve Sub-Account, the Operating Expense Sub-Account, or the Debt Service Sub-Account, and any such earnings need not be redeposited in any Account, nor on any other funds after an Event of Default.

Section 6.04 Additional Provisions. Lender is authorized to commingle any of the Reserves with each other, and to commingle funds in the Central Account with any other funds held by Lender. Lender shall have no liability for any failure to invest any funds or for any loss in investments of funds that are held as obligations of the Central Account Bank, or which are held in investments designated as "Eligible Investments" in the then-most recent edition of *U.S. CMBS Legal and Structured Finance Criteria* published by Standard & Poor's. Any funds from the Central Account which are held in such Eligible Investments or obligations of the Central Account Bank shall be deemed held in the Central Account for purposes of this Agreement. No such loss or failure to invest shall affect Borrower's obligations to make all payments and deposits required to be made by Borrower under the Loan Documents. Lender shall not be responsible for obtaining any specific level or percentage of earnings on any funds. Lender's receipt of any such earnings shall not in any manner be deemed on account of any monies owed to Lender under the Note or any other Obligations.

Section 6.05 Costs and Expenses. All fees and charges of the bank(s) in which the Accounts are shall be paid by Borrower, and may be debited from the Accounts by the applicable banks or paid from such accounts in any order as directed by Lender.

Section 6.06 Eligible Accounts. Borrower shall at all times comply with any request by Lender that the Rent Account and the Security Deposit Account shall be Eligible Accounts. "Eligible Account" shall mean a segregated account that is either: (a) maintained with a depository institution or trust company the long-term unsecured debt obligations of which (or, in the case of a depository institution or trust company that is the principal subsidiary of a holding company, the long-term unsecured debt obligations of such holding company) have been rated by the Rating Agencies in one of their two highest rating categories or the short-term commercial paper of which is rated by the Rating Agencies in their highest rating category at the time of any deposit therein; (b) maintained with a federal or state chartered depository institution or trust company having aggregate deposits in an amount not less than \$100,000,000 and otherwise acceptable to Lender. The title of each Eligible Account shall indicate that funds held therein are held in trust for the uses and purposes set forth herein; or (c) otherwise satisfactory to Lender in its sole discretion.

Section 6.07 Cooperation. Borrower shall at all times cooperate with Lender and comply with requests by Lender (including without limitation, execution and delivery of such documents and instruments as may be requested by Lender) to facilitate Lender's administration of the Central Account and the Sub-Accounts, and otherwise to assist Lender to receive the benefits contemplated hereunder.

ARTICLE VII DEFAULTS, REMEDIES

Section 7.01 Defaults, Remedies Generally. Upon the occurrence of any Event of Default, Lender may exercise any rights and remedies under this Agreement, under any of the Loan Documents, or under applicable law, including without limitation the following:

(i) Lender shall have the right, in its sole and absolute discretion, to hold any funds in any of the Accounts as additional security, or to apply any such funds to the obligations of Borrower under the Loan Documents in such order as Lender shall determine; and

(ii) Lender may exercise any rights and remedies under the Uniform Commercial Code of the states where the Property, the Borrower, or any Account are located.

Section 7.02 Suspension of Performance. Upon the occurrence of any breach or default hereunder or under any of the Loan Documents, irrespective of whether the same may constitute an Event of Default, Lender may suspend all payments and performance hereunder.

Section 7.03 Certain Provisions Regarding UCC.

A. Lender is authorized to provide a copy of this Agreement to any depository institution at which any Account is deposited. Borrower hereby irrevocably authorizes such depositories to follow Lender's instructions with regard to the Accounts, including without limitation instructions pertaining to investment, retention, and disbursement thereof.

B. Lender shall have the option to sell or otherwise dispose of the Accounts at any one or more public or private sales as permitted by applicable law. Borrower has been advised by and has relied upon counsel in connection with the execution and delivery of this Agreement and of all Loan Documents. Borrower agrees that if such notice is mailed, postage prepaid, to the Borrower not less than ten (10) days before the time of the sale or other disposition contemplated therein, such notice shall conclusively be deemed commercially reasonable and shall fully satisfy any requirement for giving of said notice. Lender shall not be obligated to make any sale of any Account regardless of notice of sale having been given. Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Any person, including both the Borrower and Lender, shall be eligible to purchase any part or all of such Account at any such sale or disposition. Borrower agrees that the funds in the Accounts constitute a type of collateral customarily sold on a recognized market, and sales for cash or on credit or at public or private auction, are all agreed to be commercially reasonable.

Section 7.04 No Obligation to Apply in any Order. Nothing in this Agreement or the Security Instrument shall obligate Lender to apply all or any portion of any Account on account of any default by Borrower or to repayment of the indebtedness secured by the Security Instrument or in any specific order of priority.

Section 7.05 Remedies Cumulative. None of the rights and remedies herein conferred upon or reserved to Lender under this Agreement or under any of the other Loan Documents shall be exclusive of any other rights, and each and every right shall be cumulative and concurrent, and may be enforced separately, successively or together, and may be exercised from time to time as determined by Lender. No act of Lender shall be construed as an election to

proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies provided for herein or elsewhere in the Loan Documents, but shall be entitled to every right and remedy now or hereafter afforded by law or in equity.

ARTICLE VIII MISCELLANEOUS


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Section 8.01 Attorney-In-Fact. Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Lender may, without the obligation to do so, in Lender's name or in the name of Borrower, execute and deliver any and all documents and instruments and perform any and all acts that are required of Borrower hereunder or that otherwise serve the purpose of providing to Lender the full benefit of this Agreement. Without limitation, Lender is hereby authorized to (i) prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to the Accounts, (ii) give any notice of this Agreement and the security interest granted herein to any depository institution, (iii) exercise any rights of Borrower pertaining to any Account or any funds therein or any rents or other moneys for deposit therein, including the rights to endorse and deposit checks and drafts, to execute checks and drafts in the name of Borrower, and otherwise to direct the investment and payment all funds on deposit in any Account, and (iv) give notices to tenants.

Section 8.02 Determinations by Lender. In any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender (or its designated representative), including without limitation, the Servicer, at its sole and exclusive option and in its sole and absolute discretion.

Section 8.03 Borrower's Records. Borrower shall furnish such financial statements, invoices, records, papers and documents relating to the Property as Lender may reasonably require from time to time to make the determinations permitted or required to be made by Lender under this Agreement.

Section 8.04 Fees and Expenses. Borrower shall reimburse Lender within ten days after demand all reasonable actual third-party fees, charges, costs and expenses (including attorneys' fees and expenses) incurred by Lender in connection with collecting, holding and disbursing the funds in the Accounts pursuant to this Agreement and in connection with all inspections made by Lender or Lender's representatives in carrying out Lender's responsibility to make certain determinations under this Agreement. Further, Borrower shall reimburse Lender on demand for all costs and expenses (including attorneys' fees and expenses) incurred by Lender in the enforcement of this Agreement.

Section 8.05 Secondary Market Transaction; Assignment of Accounts and this Agreement. Lender intends to sell, transfer and deliver the Note and assign the Security

Instrument and the other Loan Documents to one or more investors in the secondary mortgage market (each an “**Investor**”), and Lender or such Investors may retain one or more servicers (each a “**Servicer**”) to administer all or any portion of the rights and obligations of Lender or any Investor under the Loan Documents. Accordingly, any and all rights of Lender hereunder may be exercised by any such Investor or Servicer. In the event that Lender shall sell the Note to an Investor, then Lender shall be released from all (and shall have no liability for any) obligations hereunder and under the Loan Documents.

Section 8.06 Successors and Assigns Bound. This Agreement shall be binding upon Borrower and Lender and their respective successors and assigns, and shall inure to the benefit of and may be enforced by the Lender and its successors, transferees and assigns. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Lender. Lender may assign some or all of its rights and obligations under this Agreement at any time without notice to or consent of Borrower.

Section 8.07 No Agency, Partnership, Mortgagee in Possession. Nothing contained in this Agreement shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower. Lender shall have no obligations whatsoever concerning the Property as a consequence of this Agreement or any rights exercised hereunder. Without limitation of the foregoing, nothing herein and no exercise of any rights hereunder shall cause Lender to be a mortgagee in possession of the Property.

Section 8.08 Notices. All notices hereunder shall be given in accordance with the Security Instrument.

Section 8.09 Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement pursuant to judicial decree shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

Section 8.10 Headings, etc. The table of contents, headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 8.11 Time of the Essence. Time shall be of the essence in the performance of all obligations of Borrower hereunder.

Section 8.12 No Oral Change. This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any 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.

Section 8.13 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents, and waives trial by jury in any action or proceeding brought by either

party hereto against the other or in any counterclaim Borrower may be permitted to assert hereunder or which may be asserted by Lender or its agents, against Borrower, or in any matters whatsoever arising out of or in any way connected with this Agreement or the secured indebtedness.

Section 8.14 Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the state where the Property is located (except to the extent expressly provided herein otherwise), provided that to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling; and provided further that the laws of the state in which the property that is subject to this Agreement is located shall govern as to the creation, priority and enforcement of liens and security interest in property of that kind located in such state.

Section 8.15 Remedies of Borrower. In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement, the Note, the Security Instrument or the other Loan Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.

Section 8.16 Borrower's Obligations Absolute. Except as expressly set forth to the contrary in the Loan Documents, all sums payable by Borrower hereunder shall be paid without notice or demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any taking of the Property or any portion thereof; (b) any restriction or prevention of or interference with any use of the Property or any portion thereof; (c) any title defect or encumbrance or any eviction from the Property or any portion thereof by title paramount or otherwise; (d) any bankruptcy proceeding relating to Borrower, any general partner, member, or shareholder, or any guarantor or indemnitor, or any action taken with respect to this Agreement or any other Loan Document by any trustee or receiver of Borrower or any such general partner, member, shareholder, guarantor or indemnitor, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Lender; (f) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing.

Section 8.17 Continuing Obligations of Borrower and Others under Loan Documents. Nothing in this Agreement and no exercise of any rights hereunder shall relieve Borrower or any indemnitor or guarantor of any obligation under the Loan Documents.

Section 8.18 Offsets, Counterclaims and Defenses. Any assignee of the Security Instrument, this Agreement, the Note or any other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to this Agreement, the Note, the Security Instrument and such other Loan Documents which Borrower may otherwise have against any assignor of the Security Instrument, this Agreement, the Note and such other Loan

Documents and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon the Security Instrument, this Agreement, the Note or any other Loan Documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 8.19 Contact with Tenants. Lender is irrevocably authorized to communicate in any manner regarding any subject with any tenant. Without limitation, Lender is irrevocably authorized to deliver copies of Loan Documents to any tenant, and to issue instructions and demands to tenants regarding payment of Rent in accordance with the rights of Lender under the Loan Documents and applicable law.

Section 8.20 No Release. No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Property or any part thereof or upon any other property of Borrower shall release any liens, rights, powers or remedies of Lender hereunder, but such liens, rights, powers and remedies of Lender shall continue unimpaired until all amounts due under the Note, the Security Instrument and the other Loan Documents are paid in full.

[Signature Page Follows]


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IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Agreement as of the day and year first above written.

BORROWER:

HELENA I, LLC,
a Delaware limited liability company

By: Mason Plaza, L.P.,
a Texas limited partnership,
its sole member

By: Houston-Mason, LLC,
a Texas limited liability company,
its sole general partner

By: Felicita Associates LP,
a California limited partnership,
its sole member

By: Felicita Retail LLC,
a California limited liability
company, its sole general
partner

By: _____
Name: Ralph J. Pugliano
Title: Vice President



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EXHIBIT A

Form of Rent Payment Direction Letter

[Letterhead of Landlord]

Attn:

RE: [Name of Property/[lease agreement] (the "Lease") between _____
("Landlord") and _____ ("Tenant")

Gentlemen:

This letter shall constitute notice to you that Landlord has granted a security interest in the Lease and all rents, additional rent and all other monetary obligations at any time owing by Tenant to Landlord thereunder (collectively, "Rent") in favor of [_____] a [_____] as lender (collectively with its successors and assigns, "Lender"), to secure certain of Landlord's obligations to Lender. Landlord hereby irrevocably instructs and authorizes you to disregard any and all previous notices sent to you in connection with where to pay Rent and hereafter to deliver all Rent payable as follows:

Payable to: _____

Address: _____



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Please take particular care in making all payments payable only to the above-mentioned name and in remitting all payments to the appropriate address exactly as written above. Only payments made in accordance with the foregoing instructions will be credited against sums due to Landlord by Tenant.

The instructions set forth herein are irrevocable and are not subject to modification in any manner, except that Lender, or any successor lender so identified by Lender, may by written notice to you rescind the instructions contained herein.

Thank you in advance for your cooperation with this change in payment procedures.

Very truly yours,

[BORROWER]


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ACKNOWLEDGMENT AND AGREEMENT

The undersigned acknowledges notice of the security interest of Lender and hereby confirms that the undersigned has received no notice of any other pledge or assignment of the Rent and will honor the above instructions.

[Tenant]

By: _____

Name:

Its:

Dated as of: _____, 200__