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Prepared by and upon
recording return to:
Jacqueline A. Pueppke
BAIRD HOLM LLP
1700 Farnam St., Suite 1500
Omaha, NE 68102

For Reference Purposes Only: Tax Parcel No. 11-300-0002 ^{Space above for Recorder's use} 135

HARRISVILLE ROGERS II, L.C., a Utah limited liability company,
as grantor ("**Borrower**")

to

STEWART TITLE GUARANTY COMPANY, a Texas corporation,
as trustee ("**Trustee**"), for the benefit of

WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY
a Nebraska corporation, as beneficiary ("**Lender**")

DEED OF TRUST,
SECURITY AGREEMENT,
ABSOLUTE ASSIGNMENT OF LEASES AND RENTS
AND FIXTURE FILING

(COLLATERAL IS OR INCLUDES FIXTURES)

Dated: September 1, 2015
Property Commonly
Known As: Harrisville Rogers II
City: Harrisville
County: Weber
State: Utah

WOW/Harrisville Rogers
Security Instrument
DOCS/1462765.5

UTC 55805

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THIS DEED OF TRUST, SECURITY AGREEMENT, ABSOLUTE ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Security Instrument") is made as of September 1, 2015 by **HARRISVILLE ROGERS II, L.C.**, a Utah limited liability company, having its principal place of business at 101 South 200 East, Suite 200, Salt Lake City, Utah 84111 ("**Borrower**") to **STEWART TITLE GUARANTY COMPANY**, a Texas corporation ("**Trustee**"), as trustee, having its principal place of business at 1270 West 2320 South West Valley City, Utah 84119, for the benefit of **WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY**, a Nebraska corporation ("**Lender**"), as beneficiary, having an address at Woodmen Tower, 1700 Farnam Street, Omaha, Nebraska 68102 (Attn: Investment Division).

RECITALS:

Borrower is the fee owner of the real property described in **Exhibit "A"** attached hereto (the "**Land**").

Borrower by its promissory note of even date herewith given to Lender (the "**Note**") is indebted to Lender in the principal sum of **THREE MILLION DOLLARS (\$3,000,000.00)** (the "**Loan**"). The maturity date of the Note is September 1, 2025 (the "**Maturity Date**"), if not sooner paid or accelerated in accordance with the terms and conditions of the Note.

Borrower desires to secure the payment of the Debt (defined below) and the performance of all of its obligations under the Note and the Other Obligations.

All capitalized terms shall have the meanings ascribed in the Definitions Glossary in Section 20.2 or as otherwise defined in this Security Instrument.

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

ARTICLE 1 - GRANT

Section 1.1 - PROPERTY. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee, its successors and assigns, for the benefit of Lender **WITH POWER OF SALE**, and grant a security interest to Trustee and Lender in the Land;

TOGETHER WITH all right, title, interest and estate of Borrower now owned or hereafter acquired, in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (the **Land**, together with such property, rights, interests and estates are herein collectively referred to as the "**Property**");

(a) **Additional Land.** All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land that may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(b) **Improvements.** The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "**Improvements**");

(c) **Easements.** All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging,

relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(d) Fixtures and Personal Property. All goods, machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), goods that are to become fixtures and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon or relating to the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "**Personal Property**"), including the right, title and interest of Borrower in and to any of the Personal Property which 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 Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument, and all proceeds and products of all of the above;

(e) Leases and Rents. All leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into (and all extensions, amendments and modifications thereto), whether before or after the filing by or against Borrower of any petition for relief under Creditors Rights Laws (the "**Leases**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, all guarantees, letters of credit and any other credit support given by any guarantor, cash or securities deposited under the Lease to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Creditors Rights Laws (the "**Rents**") and 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;

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

(g) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(i) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(j) Actions or Proceedings. The right, in the name and on behalf of Borrower, upon notice to Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(k) Other Agreements. All agreements, contracts (including, without limitation, any and all interest rate cap agreements, swaps or other interest hedging agreements), certificates, investment property, letter-of-credit rights, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of an Event of Default, to receive and collect any sums payable to Borrower thereunder;

(l) Intangibles. All accounts, escrows, chattel paper, deposits, deposit accounts, trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles related to or used in connection with the operation of the Property;

(m) Causes of Action. All causes of action and claims against any Person (including without limitation, all causes of action or claims arising in tort, by contract or for fraud or concealment of material fact) for damages or injury to the Property or in connection with any transaction financed in whole or in part by the proceeds of the Loan ("Causes of Action"); and

(n) Other Rights. Any and all other rights of Borrower in and to the Property.

Section 1.2 - ASSIGNMENT OF LEASES AND RENTS. Borrower hereby absolutely and unconditionally assigns to Lender and Trustee Borrower's right, title and interest in and to 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. Nevertheless, subject to the terms of this **Section 1.2** and **Section 3.8**, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold the Rents, or a portion thereof, sufficient to discharge all current sums due on the Debt, and other expenses of the operation of the Property, for use in the payment of such sums. Upon payment of such sums and provided that no Event of Default has occurred and is continuing beyond any applicable cure period, Borrower shall be permitted to disburse any net Rents in its sole discretion.

Section 1.3 - SECURITY AGREEMENT.

(a) This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender and Trustee, as security for the Obligations, a security interest in the Property and other collateral given as security for the Obligations (whether denominated as part of the Property or otherwise) to the extent that under Applicable Laws the same would be governed by the Uniform Commercial Code (collectively, "UCC Collateral") to the full extent that the Personal Property and other UCC Collateral may be subject to the Uniform Commercial Code.

(b) From the date of its recording, this Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which

are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

(i) Name and address of Debtor:

HARRISVILLE ROGERS II, L.C.
101 South 200 East, Suite 200
Salt Lake City, Utah 84111

(ii) Name and Address of Secured Party:

WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY
Woodmen Tower
1700 Farnam Street
Omaha, Nebraska 68102
(Attention: Investment Division)

(iii) The UCC Collateral is or includes fixtures.

(iv) Description of Real Estate: See Exhibit "A".

(v) Owner of Record of Real Estate: Debtor.

(vi) This Financing Statement covers Proceeds.

(vii) Products of the Collateral are also covered.

Section 1.4 - PLEDGE OF MONIES HELD. Borrower hereby grants a security interest in and pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Escrow Fund, Net Proceeds and condemnation awards or payments described in **Section 3.6**, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

Section 1.5 - CONDITION TO GRANT. TO HAVE AND TO HOLD the above granted and described Property unto Trustee for and on behalf of Lender and to the use and benefit of Lender and Trustee, and the successors and assigns of Lender and Trustee, forever;

IN TRUST, WITH POWER OF SALE, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall perform the Other Obligations as set forth in this Security Instrument and shall comply with each and every covenant and condition set forth herein and in the Note, then except as expressly set forth herein, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE 2 - DEBT AND OBLIGATIONS SECURED/PAYMENT COVENANTS

Section 2.1 - DEBT. This Security Instrument and the grants, assignments and transfers made in **Article 1** are given for the purpose of securing the payment of the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"):

- (a) the indebtedness evidenced by the Note in lawful money of the United States of America;
- (b) interest, default interest, late charges and other sums, as provided in the Loan Documents;
- (c) the Prepayment Consideration, if any;
- (d) all other monies agreed or provided to be paid by Borrower in the Loan Documents;
- (e) all sums advanced pursuant to this Security Instrument or any other Loan Document, to protect and preserve the Property and the lien and the security interest created hereby; and
- (f) all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any renewal, extension, modification, replacement, restatement or increase of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender.

Section 2.2 - OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the "Other Obligations"):

- (a) each obligation of Borrower contained herein;
- (b) each obligation of Borrower contained in the other Loan Documents; and
- (c) each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Loan Documents.

Section 2.3 - PAYMENT OF DEBT. Borrower shall pay the Debt at the time and in the manner provided in the Note and in this Security Instrument. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively as the "Obligations."

Section 2.4 - 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 Property, or given by Borrower to Lender for the purpose of further securing an Obligation and any amendments, modifications or changes thereto.

Section 2.5 - PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks; provided, however, Lender shall not be required to accept payment for any Obligation in cash. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

Section 2.6 - INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note, the Other Obligations or are otherwise executed and delivered in connection with the Loan (collectively such documents together with the Note and 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.

Section 2.7 - CERTAIN OBLIGATIONS NOT SECURED. For the purposes of this Security Instrument, the term "Debt," "Other Obligations," or "Obligations" shall not include any sums payable or other obligations of Borrower or any other party (i) under the Environmental Indemnity; and (ii) under any other instrument or agreement expressly stating that it is not secured by this Security Instrument.

ARTICLE 3 - PROPERTY COVENANTS

Borrower covenants and agrees that:

Section 3.1 - PROPERTY USE. The Property shall be used only as a retail center, and for no other use without the prior written consent of Lender.

Section 3.2 - MANAGEMENT.

(a) The Property shall be managed by either: (i) Borrower or an entity affiliated with Borrower approved by Lender for so long as Borrower or said affiliated entity is managing the Property in a professional manner; or (ii) a professional property management company approved by Lender, which approval shall not be unreasonably withheld, delayed or conditioned. Unless otherwise agreed by Lender, management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Lender, which approval shall not be unreasonably withheld, delayed or conditioned. The Boyer Company, L.C., a Utah limited liability company is approved by the Lender as a manager of the Property.

(b) All Rents generated by or derived from the Property and received by or on behalf of Borrower, shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to the Loan Documents, and none of the Rents generated by or derived from the Property and received by or on behalf of Borrower shall be diverted by Borrower and utilized for any other purpose unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied.

Section 3.3 - INSURANCE.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) **Property Insurance.** Insurance with respect to the Improvements and Personal Property insuring against any peril now or hereafter included within the classification "Cause of Loss -- Special Form" (sometimes referred to as "All Risk of Physical Loss"), together with an "Ordinance and Law" endorsement, in amounts at all times sufficient to prevent Lender from becoming a co-insurer within the terms of the Policies and under Applicable Law, but in any event such insurance shall be maintained in an amount which, after application of deductible, shall be equal to the full insurable value of the Improvements and Personal Property, the term

"full insurable value" to mean the actual replacement cost of the Improvements and Personal Property (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by, at the option of Borrower, an insurer, a recognized independent insurance broker or an independent appraiser selected and paid by Borrower and in no event less than the coverage required pursuant to the terms of any Lease (the "Replacement Cost");

(ii) Liability Insurance. Commercial general liability insurance on the so-called "occurrence" form, including bodily injury, death and property damage liability, insurance against any and all claims, including all legal liability to the extent insurable and imposed upon Lender and all court costs and legal fees, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Property in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property but in any event in an amount not less than five million dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage liability. This requirement may be satisfied by a layering of Commercial General Liability, Umbrella and Excess Liability Policies

(iii) Workers' Compensation Insurance. Statutory workers' compensation insurance with respect to any work on or about the Property;

(iv) Business Interruption. Business interruption and/or loss of "rental income" insurance in an amount sufficient to avoid any co-insurance penalty and to provide proceeds which will cover a period of not less than twelve (12) calendar months from the date of casualty or loss, containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income returns to the same level it was prior to the loss, or the expiration of ninety (90) days after restoration of said buildings, fixtures and improvements is completed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The term "rental income" means for purposes of this **Section** the sum of (A) the total then ascertainable Rents payable under the Leases and (B) the total ascertainable amount of all other amounts to be received by Borrower from third parties which are the legal obligation of the tenants, reduced to the extent such amounts would not be received because of operating expenses not incurred during a period of non-occupancy of that portion of the Property then not being occupied;

(v) Boiler and Machinery Insurance. Broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels and specialized machinery and equipment, if any, located in, on or about the Property (including "system breakdown coverage") to which such boiler and machinery insurance would apply, and insurance against loss of occupancy or use arising from any breakdown of such vessels and specialized machinery and equipment, if any, in such amounts as are generally required by institutional lenders for properties comparable to the Property;

(vi) Flood Insurance. If required by **Subsections 5.5 and 7.5**, flood insurance in an amount at least equal to the greater of (A) the Replacement Cost together with business interruption coverage and (B) the maximum limit of coverage available for the Property under the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994, as each may be amended (the "Flood Insurance Acts");

(vii) **Builder's Risk Insurance.** At all times during which construction, repairs or alterations are being made with respect to the Improvements (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in **Subsection 3.3(a)(i)** written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to **Subsection 3.3(a)(i)**, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions; and

(viii) **Other Insurance.** Such other insurance with respect to the Property or on any replacements or substitutions or additions or increased coverage limits as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated due regard being given to the height and type of buildings, their construction, location, use and occupancy.

(b) All insurance provided for in **Subsection 3.3(a)** shall be for a term of not less than one (1) year and obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), and shall be issued by one or more other domestic primary insurer(s) having A.M. Best Co. combinations of Best's Rating and Best Financial Size Category: A-, XIII; A, IX, A+, VII; or A++, V, or better (or if a rating of A.M. Best Company Inc. is no longer available, a similar rating from a similar or successor service). All insurers providing insurance required by this Security Instrument shall be authorized and admitted to issue insurance in the state in which the Property is located. The Policy referred to in **Subsection 3.3(a)(ii)** and **(vii)(A)** above shall name Lender as an additional insured and the Policies referred to in **Subsection 3.3(a)(i)**, **(iv)**, **(v)**, **(vi)** and **(vii)(B)**, and as applicable **(viii)**, above shall provide that all proceeds be payable to Lender as set forth in **Section 3.7** hereof. The Policies referred to in **Subsections 3.3(a)(i)**, **(v)**, **(vi)** and **(vii)(B)** shall also contain: (i) a standard "non-contributory mortgagee" endorsement or its equivalent relating, inter alia, to recovery by Lender notwithstanding the negligent or willful acts or omission of Borrower; (ii) to the extent available at commercially reasonable rates, a waiver of subrogation endorsement as to Lender; and (iii) an endorsement providing for a deductible in the amount of up to \$25,000 per loss. All Policies shall contain (i) a provision that such Policies shall not be denied renewal, materially changed (other than to increase the coverage provided), cancelled or terminated, nor shall they expire, without at least thirty (30) days' prior written notice to Lender in each instance; and (ii) include effective waivers by the insurer of all claims for applicable premiums ("Insurance Premiums") against any mortgagee, loss payees, additional insureds and named insureds (other than Borrower). Evidence of insurance with respect to all renewal and replacement Policies shall be delivered to Lender not less than twenty (20) days prior to the expiration date of any of the Policies required to be maintained hereunder which evidence shall bear notations evidencing payment of Insurance Premiums. Originals or evidence of such replacement Policies shall be delivered to Lender promptly after Borrower's receipt thereof but in any case within thirty (30) days after the effective date thereof. If Borrower fails to maintain and deliver to Lender the original Policies or evidence of insurance required by this Security Instrument, Lender may procure such insurance at Borrower's sole cost and expense.

(c) Borrower shall comply with all insurance requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to this **Section 3.3** and shall not purchase any additional amounts of insurance that would cause Lender to become a co-insurer within the terms of the Policies.

(d) The insurance coverage required may be effected under a blanket Policy or Policies covering the Property; provided that any such blanket Policy shall specify, except in the case of

commercial general liability insurance, the premises address of each building, the portion of the total coverage of such Policy that is allocated to the Property, and shall in any case provide the same protection as would a separate policy insuring only the Property and otherwise comply with all other respects with the requirements of this **Section 3.3**.

(e) Subject to **Section 3.7**, Lender may apply the Net Proceeds of any Policies carried under this **Section 3.3** as a result of damage or destruction to the Property to the reduction or discharge of the Debt whether or not then due and payable.

(f) In the event of a foreclosure of the Security Instrument or other transfer of title to the Property in extinguishment in whole or in part of the Debt, all right, title and interest of Borrower in and to the Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in Lender or the purchaser at such foreclosure or other transferee in the event of such other transfer of title.

Section 3.4 - PAYMENT OF TAXES, ETC

(a) Borrower shall promptly pay prior to delinquency all taxes, assessments, payments in lieu of taxes or assessments, water rates, sewer rents, governmental impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes") not paid from the Escrow Fund, all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property as same become due and payable. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. 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 Property. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing beyond any applicable cure period under any of the Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost and (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, or Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon, taking into consideration the amount in the Escrow Fund available for payment of Taxes.

Section 3.5 - ESCROW FUND. At the option of Lender, subject to the provisions of this Section, below, Borrower shall establish with Lender an Escrow Fund sufficient to discharge Borrower's obligations for the payment of Insurance Premiums, Taxes and Other Charges pursuant to **Sections 3.3**

and 3.4 hereof. Borrower shall pay to Lender on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the Taxes and Other Charges payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the initial deposits together with the amounts in (a) and (b) above shall be called the "**Escrow Fund**"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes, Other Charges and Insurance Premiums of which it has or obtains knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority or other obligee. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Provided there are sufficient amounts in the Escrow Fund and no Event of Default exists, Lender shall be obligated to pay the Taxes, Other Charges and Insurance Premiums as they become due on their respective due dates on behalf of Borrower by applying the Escrow Fund to the payment of such Taxes, Other Charges and Insurance Premiums required to be made by Borrower pursuant to **Sections 3.3 and 3.4**. If the amount of the Escrow Fund shall exceed the amounts due for Taxes, Other Charges and Insurance Premiums pursuant to **Sections 3.3 and 3.4**, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall reasonably estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. Unless otherwise required by Applicable Law, no earnings or interest on the Escrow Fund shall be payable to Borrower.

Notwithstanding any provision to the contrary in this **Section** above, so long as there has occurred no Event of Default, Borrower shall not be required to establish an Escrow Fund to discharge Borrower's obligations for the payment of Insurance Premiums and Taxes. In the event that there shall occur any Event of Default, then, upon demand by Lender, Borrower shall deposit into the Escrow Fund a sum equal to the amount otherwise required under the terms of this **Section 3.5**. Unless otherwise agreed by Lender, the provisions of this paragraph shall not benefit a transferee under a Prohibited Transfer approved by Lender pursuant to **Section 8.3**, below.

Section 3.6 - CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding after Borrower has received notice of such proceedings, and shall deliver to Lender copies of any and all notices and papers served in connection with such proceedings promptly after receipt by Borrower. Lender may participate in any such proceedings to the extent permitted by law. Borrower shall deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Borrower shall not make any agreement in lieu of condemnation of the Property or any portion thereof without the prior written consent of Lender in each instance. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), and whether or not any award or payment made in any condemnation or eminent domain proceeding (an "**Award**") is made available to Borrower for Restoration in accordance with **Section 3.7**, Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or 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 the Award made in any condemnation or eminent domain proceeding, which is

payable to Borrower, to be paid directly to Lender. Subject to **Section 3.7**, Lender may apply any Award to the reduction or discharge of the Debt whether or not then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 3.7 - RESTORATION AFTER CASUALTY/CONDEMNATION.

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, or if the Property or any portion thereof is taken in any condemnation or eminent domain proceeding, Borrower shall give prompt notice of such damage or taking to Lender. Subject to Lender's compliance with the provisions of this **Section 3.7**, below, Borrower shall promptly commence and diligently proceed to restore, repair, replace or rebuild the Property (the "**Restoration**") in a workmanlike manner to the extent practicable to be of at least equal value and condition and substantially the same character as the Property was immediately prior to such fire or other casualty or taking, with such alterations as may be approved by Lender.

(b) The term "**Net Proceeds**" for purposes of this **Section 3.7** shall mean: (i) the net amount of all insurance proceeds under the Policies carried pursuant to **Subsections 3.3(a)(i), (iv), (v), (vi), (vii) and (viii)** of this Security Instrument as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to legal fees), if any, in collecting the same, or (ii) the net amount of all Awards after deduction of Lender's reasonable costs and expenses (including, but not limited to legal fees), if any, in collecting the same, whichever the case may be. The Net Proceeds will be disbursed directly to Borrower if: (i) the Net Proceeds do not exceed \$100,000 (the "**Availability Threshold**"); (ii) the costs of completing the Restoration as reasonably estimated by Borrower shall be less than or equal to the Net Proceeds; (iii) no Event of Default shall have occurred under any of the Loan Documents; (iv) the Property and the use thereof after the Restoration will be in compliance with, and permitted under, all Applicable Laws; (v) (A) if the Net Proceeds are insurance proceeds, less than ten percent (10%) of the total floor area of the Improvements has been damaged or destroyed, or rendered unusable as a result of such fire or other casualty; or (B) if the Net Proceeds are condemnation awards, less than five percent (5%) of the Land constituting the Property is taken, such Land that is taken is located along the perimeter or periphery of the Property, no portion of the Improvements is located in such Lands, and such taking does not materially impair access to the Property; and (vi) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower.

(c) If the Net Proceeds are greater than the Availability Threshold, or if any of the other conditions described in clauses (ii) through (vi) of **Section 3.7(b)**, above, are not satisfied, such Net Proceeds shall, subject to the provisions of the Leases that are superior to the lien of this Security Instrument or with respect to which subordination and non-disturbance agreements binding upon Lender have been entered into and such subordination and non-disturbance agreements apply to the deposits of Net Proceeds, be forthwith paid to Lender, to be held by Lender in a segregated account to be made available to Borrower for the Restoration in accordance with the provisions of this **Subsection 3.7(c)**.

The Net Proceeds held by Lender pursuant to this **Subsection 3.7(c)** other than the Net Proceeds paid under the Policy described in **Subsection 3.3(a)(iv)** (the "**Rental Loss Proceeds**") shall be made available to Borrower for payment or reimbursement of Borrower's expenses in connection with the Restoration, subject to the following conditions:

(i) no Event of Default shall have occurred and be continuing beyond any applicable cure period under any of the Loan Documents;

(ii) Lender shall, within a reasonable period of time prior to a request for an initial disbursement, be furnished with an estimate of the cost of the Restoration accompanied by an independent architect's opinion based on due professional investigation as to such costs and appropriate plans and specifications for the Restoration, such plans and specifications and cost estimates to be subject to Lender's approval, not to be unreasonably withheld or delayed;

(iii) the Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Lender, are sufficient to cover the cost of the Restoration as such costs are certified by the independent architect;

(iv) Net Proceeds are less than the then outstanding principal balance of the Note;

(v) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds (including Rental Loss Proceeds), or (2) other funds of Borrower;

(vi) Lender shall be satisfied that, upon the completion of the Restoration, the net cash flow of the Property will be restored to a level sufficient in Lender's sole judgement to cover all carrying costs and operating expenses of the Property, including, without limitation, debt service on the Note and all required replacement reserves, if any, and reserves for tenant improvements and leasing commissions;

(vii) the Restoration can reasonably be completed on or before the earliest to occur of (A) six (6) months prior to the Maturity Date, (B) the earliest date required for such completion under the terms of any Major Leases and (C) such time as may be required under Applicable Laws in order to repair and restore the Property to as nearly as possible the condition it was in immediately prior to such fire or other casualty or to such taking, as applicable;

(viii) the Property and its use after the Restoration will be in compliance with, and permitted under, all Applicable Laws;

(ix) each Major Lease in effect as of the date of the occurrence of such fire or other casualty shall remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration;

(x) Borrower and any guarantor of any portion of the Obligations shall execute and deliver to Lender a completion guaranty in form and substance satisfactory to Lender and its counsel pursuant to the provisions of which Borrower and such guarantor shall jointly and severally guaranty to Lender the lien-free completion by Borrower of the Restoration in accordance with the provisions of this **Subsection 3.7(c)**.

(d) The Net Proceeds held by Lender until disbursed in accordance with the provisions of this **Section 3.7** shall constitute additional security for the Obligations. The Net Proceeds other than the Rental Loss Proceeds shall be disbursed by Lender to, or as directed by, Borrower, in an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration less customary retainage from time to time during the course of the Restoration, not more frequently than

once per month, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file the same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company insuring the lien of this Security Instrument. The Rental Loss Proceeds shall be disbursed by Lender to pay for debt service under the loan evidenced by the Note, to pay other expenses incurred by Borrower in connection with the ownership and operation of the Property, and the remainder thereof, to, or as directed by, Borrower to pay for the cost of the Restoration in accordance with this **Section 3.7(d)**. Final payment shall be made after submission to Lender of all licenses, permits, certificates of occupancy and other required approvals of governmental authorization having jurisdiction and, if required by Lender, a certification of an independent consulting engineer selected by Lender (the "**Restoration Consultant**") that the Restoration has been fully completed.

(e) Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender and the Restoration Consultant, such acceptance not to be unreasonably withheld, conditioned or delayed. All reasonable costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, legal fees and the fees of the Restoration Consultant, shall be paid by Borrower.

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Restoration Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Restoration Deficiency**") in immediately available funds with Lender before any further disbursement of the Net Proceeds shall be made. The Restoration Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this **Section 3.7** shall constitute additional security for the Obligations.

(g) Unless an Event of Default has occurred and is continuing beyond any applicable cure period, Borrower shall settle any insurance claims with respect to the Net Proceeds which in the aggregate are less than the Availability Threshold. Lender shall have the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds which in the aggregate are greater than the Availability Threshold. If an Event of Default shall have occurred and is continuing beyond any applicable cure period, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim and to collect and to make receipt for any such payment. If the Net Proceeds are received by Borrower, such Net Proceeds shall, until the completion of the related work, be held in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof.

(h) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Restoration Deficiency deposited with Lender after (i) the Restoration Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this **Section 3.7**, and (ii) the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full and all required permits, licenses, certificates of occupancy and other required approvals of governmental authorities having jurisdiction have been issued, shall be remitted by

Lender to Borrower, provided no Event of Default shall have occurred and is continuing beyond any applicable cure period under any of the Loan Documents.

(i) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to **Subsection 3.7(h)** shall be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper or, at the discretion of Lender, the same shall be paid, either in whole or in part, to Borrower. If Lender shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Debt.

Section 3.8 - LEASES AND RENTS.

(a) Borrower may enter into a proposed Lease (including the renewal or extension of an existing Lease (a "**Renewal Lease**")) without the prior written consent of Lender, provided such proposed Lease or Renewal Lease (i) provides for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) as of the date such Lease is executed by Borrower (unless, in the case of a Renewal Lease, the rent payable during such renewal, or a formula or other method to compute such rent, is provided for in the original Lease), (ii) is an arm's-length transaction with a bona fide, independent third-party tenant, (iii) does not have a materially adverse effect on the value of the Property taken as a whole, (iv) is subject and subordinate to the Security Instrument and the lessee thereunder agrees to attorn to Lender, (v) is written on the standard form of lease approved by Lender, and (vi) is not a Major Lease. All proposed Leases which do not satisfy the requirements set forth in this **Subsection 3.8(a)** shall be subject to the prior approval of Lender. Borrower shall promptly deliver to Lender copies of all Leases which are entered into pursuant to this Subsection together with Borrower's certification that it has satisfied all of the conditions of this Subsection. For purposes of this **Section**, the term "**Major Lease**" shall mean and any other Lease under which the tenant occupies 15,000 or more square feet of the total floor area of the Improvements, which is for a term (including options to extend, if any) of 10 years or longer; or which represents fifteen percent (15%) or more of the sum total of the Rent under all Leases (including potential rents for unleased portions of the Improvements at existing local market rates and terms, taking into account the type and quality of the unleased portion of the Improvements), together with any instrument guaranteeing or providing credit support therefor.

(b) 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 any of the Leases as security for the Debt; (ii) upon request, shall promptly send copies to Lender of all notices of default which Borrower shall send or receive under a Major Lease; (iii) shall enforce in a commercially reasonable manner all of the material terms, covenants and conditions contained in the Leases upon the part of the tenant thereunder to be observed or performed; (iv) shall not collect any of the Rents more than one (1) month in advance (except security deposits shall not be deemed Rents collected in advance); (v) shall not execute any other assignment of the lessor's interest in any of the Leases or the Rents; and (vi) shall not consent to any assignment of or subletting under any Major Leases not in accordance with their terms, without the prior written consent of Lender.

(c) Except for Major Leases, Borrower may, without the consent of Lender, amend, modify or waive the provisions of any Lease or terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Lease provided that such action (taking into account, in the case of a termination, reduction in rent, surrender of space or shortening of term, the planned alternative use of the affected space) does not have a materially adverse effect on the value of the Property taken as a whole, and provided that such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this Security Instrument and any subordination agreement binding upon Lender with

respect to such Lease. A termination of a Lease other than a Major Lease with a tenant who is in default beyond applicable notice and grace periods, or which Borrower reasonably believes will likely be in default, shall not be considered an action which has a materially adverse effect on the value of the Property taken as a whole. Any amendment, modification, waiver, termination, rent reduction, space surrender or term shortening which does not satisfy the requirements set forth in this Subsection shall be subject to the prior approval of Lender and its counsel, at Borrower's expense. Borrower shall promptly deliver to Lender copies of amendments, modifications and waivers which are entered into pursuant to this Subsection together with Borrower's certification that it has satisfied all of the conditions of this Subsection.

(d) Lender shall not unreasonably withhold or delay any consent or approval of Lender required by this **Section 3.8**, including without limitation, its approval of a Major Lease. With respect to any action that requires Lender's prior approval pursuant to this Section, Lender shall be deemed to have approved Borrower's written request for approval if Lender fails to respond, either by reasonably requesting additional information or by disapproving the request, within ten (10) Business Days after Lender's receipt of such request from Borrower, provided such request shall make specific reference to the provisions of this Section and shall include a statement similar to the following (in solid capital letters, or bold, or underline, or otherwise in a manner highlighting the statement) on the first page thereof: "YOU ARE HEREBY REMINDED THAT YOUR FAILURE TO PROVIDE NOTIFICATION OF APPROVAL OR DISAPPROVAL OR REASONABLY REQUEST ADDITIONAL INFORMATION NOT LATER THAN TEN (10) BUSINESS DAYS AFTER YOUR RECEIPT OF THIS REQUEST SHALL BE DEEMED, PURSUANT TO SECTION 3.8(D) OF THE DEED OF TRUST, TO CONSTITUTE YOUR APPROVAL THEREOF."

Section 3.9 - MAINTENANCE AND USE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property and except as required pursuant to Leases entered into by Borrower in accordance with the terms hereof) without the consent of Lender. Subject to Lender's compliance with the provisions of **Section 3.7**, above, Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in **Section 3.6** and shall complete and pay for any structure at any time in the process of construction or repair on the Land. 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 Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

Section 3.10 - WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.11 - COMPLIANCE WITH LAW.

(a) Borrower shall promptly comply with all Applicable Laws affecting the Property, or the use thereof.

(b) Borrower shall from time to time, upon Lender's request, provide Lender with evidence reasonably satisfactory to Lender that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws.

(c) Notwithstanding any provisions set forth herein or in any document regarding Lender's approval of alterations of the Property, Borrower shall not alter the Property in any manner which would (i) materially increase Borrower's responsibilities for compliance with Applicable Laws (ii) materially adversely affect (x) Borrower's financial condition, (y) the value of the Property or (z) the gross income derived from the Property without the prior written approval of Lender. Lender's approval of the plans, specifications, or working drawings for alterations of the Property shall create no responsibility or liability on behalf of Lender for their completeness, design, sufficiency or their compliance with Applicable Laws. 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 compliance with Applicable Laws from an independent architect, engineer, or other person acceptable to Lender.

(d) Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

(e) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Applicable Laws affecting the Property, provided that (i) no Event of Default has occurred and is continuing beyond any applicable cure period under any of the Loan Documents; (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and shall not constitute a default thereunder; (iv) neither the Property, any part thereof or interest therein, any of the tenants or occupants thereof, nor Borrower shall be affected in any material adverse way as a result of such proceeding; (v) non-compliance with the Applicable Laws shall not impose civil or criminal liability on Borrower or Lender; (vi) Borrower shall have furnished to Lender all other items reasonably requested by Lender.

Section 3.12 - BOOKS AND RECORDS.

(a) Borrower shall keep adequate books and records of account in accordance with accounting methods used by Borrower on the date hereof, consistently applied and furnish to Lender:

(i) annual certified rent rolls signed and dated by Borrower, detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease and the term of each Lease, including the expiration date, the extent to which any tenant is in default under any Lease, and any other information as is reasonably required by Lender, within one hundred twenty (120) days after the close of each fiscal year of Borrower, as applicable;

(ii) annual operating statements of the Property, prepared and certified by Borrower in the form required by Lender, detailing the revenues received, the expenses incurred and the net operating income before and after debt service (principal and interest) and major capital improvements and containing appropriate year-to-date information, within one hundred twenty (120) days after the close of each fiscal year of Borrower, as applicable;

(iii) annual balance sheet, profit and loss statements, statement of cash flows, and a statement of change in financial position of Borrower in the form delivered to Lender in connection with Lender's underwriting of the Loan, or another form approved by Lender, prepared and certified by Borrower to be true and correct to Borrower's knowledge, within one hundred twenty (120) days after the close of each fiscal year of Borrower; and

(iv) an annual operating budget presented on a monthly basis consistent with the annual operating statement described above for the Property, including cash flow projections for the upcoming year, and all proposed capital replacements and improvements at least thirty (30) days prior to the start of each fiscal year.

(b) Upon request from Lender, Borrower, any Guarantor and any Indemnitor shall furnish to Lender, within thirty (30) days after the request by Lender:

(i) a property management report for the Property, showing, if applicable, the number of inquiries made and/or rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender, in reasonable detail and certified by Borrower to be true and complete to Borrower's knowledge, but no more frequently than quarterly; and

(ii) an accounting of all security deposits held in connection with any Lease of any part of the Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the Person to contact at such financial institution, along with any authority or release necessary for Lender to obtain information regarding such accounts directly from such financial institutions.

(c) Borrower, any Guarantor, or Indemnitor shall furnish Lender with such other additional financial or management information (including State and Federal tax returns) as may, from time to time, be reasonably required by Lender in form and substance satisfactory to Lender, within thirty (30) days after the request by Lender.

(d) Borrower, any Guarantor, or Indemnitor shall upon prior reasonable notice and during normal business hours furnish to Lender and its agents convenient facilities for the examination and audit of any such books and records which, unless an Event of Default has occurred and is continuing beyond any applicable cure period, shall be at Lender's expenses.

(e) All items requiring the certification of Borrower shall, except where Borrower is an individual, require a certificate executed by the general partner, managing member or chief executive officer of Borrower, as applicable (and the same rules shall apply to any sole shareholder, general partner or managing member which is not an individual).

Section 3.13 - PAYMENT FOR LABOR AND MATERIALS.

(a) Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property (the "**Labor and Material Costs**") and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred under any of the Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Borrower and from the Property or Borrower shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost and (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Labor and Material Costs, together with all interest and penalties thereon, unless Borrower has paid all of the Labor and Material Costs under protest, or Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

ARTICLE 4 - BORROWING ENTITY COVENANTS

Borrower covenants and agrees that:

Section 4.1 - EXISTENCE. Borrower will continuously maintain (a) its existence and shall not dissolve or permit its dissolution, (b) its rights to do business in the state where the Property is located and (c) its franchises and trade names, if any.

Section 4.2 - ERISA.

(a) It shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

(b) Borrower further covenants and agrees to deliver to Lender such certifications (subject to **Section 7.4** hereof) or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

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

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

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e) or an investment company registered under the Investment Company Act of 1940.

Section 4.3 - SPECIAL PURPOSE ENTITY

- (a) Borrower has not and will not, without Lender's prior written consent:
- (i) engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto;
 - (ii) acquire or own any assets other than (A) the Property, and (B) such incidental Personal Property as may be necessary for the operation of the Property;
 - (iii) merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;
 - (iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the Applicable Laws of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;
 - (v) own any subsidiary, or make any investment in, any Person;
 - (vi) commingle its assets with the assets of any other Person;
 - (vii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt, (B) unsecured trade payables and unsecured equipment leases (both of which must be incurred in the ordinary course of business relating to the ownership and operation of the Property,) provided the same (x) do not exceed at any time in the aggregate a maximum amount of one percent (1%) of the original principal amount of the Note, and (y) are paid within sixty (60) days after the date incurred, and (C) unsecured member loans made to Borrower from its members pursuant to the terms of its operating agreement;
 - (viii) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person, except that Borrower's financial statements may be consolidated with its owner's financial statements so long as such consolidated financial statements include a footnote indicating Borrower is a separate entity;
 - (ix) enter into any contract or agreement with any general partner, member, shareholder, principal or affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;
 - (x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
 - (xi) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;
 - (xii) make any loans or advances to any Person;

(xiii) fail to file its own tax returns (unless prohibited by Applicable Laws from doing so);

(xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

(xv) fail to maintain from the income derive from the property adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xvi) fail to allocate shared expenses (including, without limitation, shared office space) and to use separate stationery, invoices and checks;

(xvii) fail to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds; and

(xviii) acquire obligations or securities issued by its partners, members, shareholders or other affiliates, as applicable.

Section 4.4 - CHANGE OF PRINCIPAL PLACE OF BUSINESS/CHIEF EXECUTIVE OFFICE. Borrower shall not change the principal place of business or chief executive office set forth in **Subsection 5.18** below without notifying Lender at least ten (10) days in advance. Borrower shall, upon request of Lender, execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business.

Section 4.5 - CHANGE OF NAME, IDENTITY OR STRUCTURE. Except as may be expressly permitted under Article 8, Borrower will not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure, or state of organization, without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure or state of organization, without first obtaining the prior written consent of Lender.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1 - WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same; that it possesses an unencumbered fee simple absolute estate in the Land and the Improvements; and that it owns the 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**"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender and/or Trustee against the claims of all persons whomsoever, except those claiming under Permitted Exceptions.

Section 5.2 - LEGAL STATUS AND AUTHORITY. If Borrower is not an individual, Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the state where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and

authority to own, operate and lease the Property. Borrower has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to, and to keep and observe all of, the terms of this Security Instrument.

Section 5.3 - VALIDITY OF DOCUMENTS.

(a) The execution, delivery and performance of the Loan Documents and the borrowing evidenced by the Note (i) are within the power and authority of Borrower; (ii) if Borrower is not an individual, have been authorized by all requisite organizational action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or governmental authority, any license, certificate, or other approval required to operate the Property, the articles of incorporation, by-laws, partnership or trust agreement, articles of organization, operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this Security Instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby),

(b) the Loan Documents have been duly executed and delivered by Borrower individually, or, if Borrower is not an individual, through the undersigned authorized representative of Borrower and

(c) the Loan Documents constitute the legal, valid and binding obligations of Borrower, subject to bankruptcy laws, general principles of equity and other laws generally applicable to creditors.

Section 5.4 - LITIGATION. There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to Borrower's knowledge, threatened or contemplated against Borrower, any Guarantor or Indemnitor, if any or against or affecting the Property that has not been disclosed to Lender by Borrower in writing, which if adversely determined would have a material adverse effect on the Borrower's, or any Guarantor's or Indemnitor's ability to perform their respective obligations under the Loan Documents.

Section 5.5 - STATUS OF PROPERTY.

(a) If and to the extent that Borrower is operating the Property and conducting business thereupon, Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, and all required zoning, building code, land use, environmental and other similar permits or approvals necessary for such operations and business, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(b) The Property and the present and contemplated use and occupancy thereof are in full compliance with all Applicable Laws.

(c) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

- (d) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.
- (e) The Property is served by public water and sewer systems.
- (f) The Property is free from damage caused by fire or other casualty.
- (g) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.
- (h) Borrower has paid in full for, and is the owner of, all Personal Property (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.
- (i) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.
- (j) All security deposits relating to the Leases reflected in the certified rent roll, if any, delivered to Lender have been collected by Borrower except as noted on the certified rent roll.
- (k) Borrower has received no notice of any actual or threatened condemnation or eminent domain proceedings by any public or quasi-public authority.
- (l) No portion of the Improvements is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Improvements is located within such area, Borrower has obtained and will maintain the insurance prescribed in **Subsection 3.3(a)**.
- (m) Except as shown on the survey of the Land delivered to Lender, all the Improvements lie within the boundaries of the Land.

Section 5.6 - NO FOREIGN PERSON. 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.

Section 5.7 - SEPARATE TAX LOT. The Land and Improvements are assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.8 - LEASES. Except as disclosed in the rent roll for the Property delivered to and approved by Lender, (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable and in full force and effect; (c) all of the Leases are arm's-length agreements with bona fide, independent third parties; (d) to Borrower's knowledge, no party under any Lease is in material default; (e) all Rents due have been paid in full; (f) the terms of all alterations, modifications and amendments to the Leases are reflected in the rent roll for the Property delivered to and approved by Lender; (g) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated except pursuant to prior loans which have been paid in full prior to the date hereof; (h) none of the Rents have been collected for more than one (1) month in advance (except a security deposit shall not be deemed rent collected in advance); (i) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken

possession of the same on a rent-paying basis; (j) to Borrower's knowledge there exist no offsets or defenses to the payment of any portion of the Rents and, except for payment of tenant improvements set forth in the Leases, Borrower has no monetary obligation to any tenant under any Lease; (k) Borrower has received no notice from any tenant challenging the validity or enforceability of any Lease; (l) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease; (m) the Leases are valid and enforceable against Borrower and to Borrower's knowledge the tenants set forth therein; (n) no Lease contains an option to purchase, right of first refusal to purchase, right of first refusal to relet, or any other similar provision; (o) no Person has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (p) each Lease is subordinate to this Security Instrument, either pursuant to its terms or a recordable subordination agreement; (q) all security deposits relating to the Leases reflected on the certified rent roll delivered to Lender have been collected by Borrower; and (r) no brokerage commissions or finders fees are due and payable regarding any Lease.

Section 5.9 - FINANCIAL CONDITION.

(a) (i) Borrower is solvent, and no proceeding under Creditors Rights Laws with respect to Borrower has been initiated, and (ii) Borrower has received reasonably equivalent value for the granting of this Security Instrument.

(b) No petition in bankruptcy has been filed by or against Borrower, any Guarantor, any Indemnitor or any related entity, or any principal, general partner or member thereof, in the last seven (7) years, and neither Borrower, any Guarantor, any Indemnitor nor any related entity, or any principal, general partner or member thereof, in the last seven (7) years has ever made any assignment for the benefit of creditors or taken advantage of any Creditors Rights Laws.

Section 5.10 - BUSINESS PURPOSES. The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.11 - TAXES. Borrower, any Guarantor and any Indemnitor have filed, or have filed appropriate extensions for, all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower, any Guarantor nor any Indemnitor knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.12 - MAILING ADDRESS. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.13 - NO CHANGE IN FACTS OR CIRCUMSTANCES. All information in the application for the Loan submitted to Lender and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the application or in satisfaction of the terms thereof, are, to Borrower's knowledge, accurate, complete and correct in all material respects. To Borrower's knowledge, there has been no material adverse change in any condition, fact, circumstance or event that would make any such information materially inaccurate, incomplete or otherwise misleading.

Section 5.14 - DISCLOSURE. Borrower has disclosed to Lender all material facts known to Borrower and, to the best of Borrower's knowledge, has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.15 - THIRD PARTY REPRESENTATIONS. To Borrower's knowledge, each of the representations and the warranties made by each Guarantor and Indemnitor in the other Loan Documents is true and correct in all material respects.

Section 5.16 - ILLEGAL ACTIVITY. No portion of the Property has been or will be purchased, improved, equipped, fixtured, or furnished with proceeds of any criminal or other illegal activity and to Borrower's knowledge, there are no illegal activities or activities relating to controlled substances at the Property.

Section 5.17 - PERMITTED EXCEPTIONS. To Borrower's knowledge, none of the Permitted Exceptions, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Loan Documents, materially and adversely affects the value of the Property, impairs the use or the operation of the Property or impairs Borrower's ability to pay its obligations in a timely manner.

Section 5.18 - PRINCIPAL PLACE OF BUSINESS/ CHIEF EXECUTIVE OFFICE. Borrower's principal place of business and its chief executive office as of the date hereof is the address set forth in the opening paragraph herein.

Section 5.19 CHANGE IN NAME, LOCATION OF PROPERTY, ETC. Without giving at least thirty (30) days' prior written notice to Lender, the Borrower shall not: (a) change its name, identity structure, or jurisdiction of organization; (b) change the location of its place of business (or chief executive office if more than one place of business); or (c) add to or change any location at which any of the Property is stored, held or located, without first notifying Lender of Borrower's intention to do so and shall execute and deliver to Lender modifications or supplements of this Security Instrument (and to any financing statement which may be filed in connection herewith) as Lender may require.

Section 5.20 - ERISA.

(a) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; and

(b) As of the date hereof and throughout the term of this Security Instrument (i) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

ARTICLE 6 - OBLIGATIONS AND RELIANCE

Section 6.1 - RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2 - NO RELIANCE ON LENDER. The members, general partners, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3 - NO LENDER OBLIGATIONS. Notwithstanding any provision of the Loan Documents, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks,

licenses and other documents. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 6.4 - RELIANCE. Borrower recognizes and acknowledges that in accepting the Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in **Article 5** and **Article 12** without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Loan Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in **Article 5** and **Article 12**.

ARTICLE 7 - FURTHER ASSURANCES

Section 7.1 - 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 of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the 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 and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of any of the Loan Documents, any note or deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, 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 deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 7.2 - 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, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming to Lender and Trustee the Property and rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred 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 other Loan Documents, or for filing, registering or recording this Security Instrument, or for complying with Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender, following ten (10) days' notice to Borrower, to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more chattel mortgages or other instruments, to evidence or perfect more effectively the security interest of Lender in the 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 pursuant to this **Section 7.2**.

Section 7.3 - CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) 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 Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option, exercisable by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(b) 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 Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) 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 any of the Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with all interest and penalties thereon.

Section 7.4 - ESTOPPEL CERTIFICATES.

(a) After request by Lender, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, to Borrower's knowledge, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under any of the Loan Documents that is continuing beyond any applicable cure period, (vii) that the Loan Documents are valid, legal and binding obligations of Borrower and have not been modified or if modified, giving particulars of such modification, (viii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if modified, setting forth all modifications), (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the knowledge of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

(b) Borrower shall use its commercially reasonable efforts to deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding a Lease as Lender may require, including, but not limited to attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, except as security, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Upon any transfer or proposed transfer contemplated by **Section 18.1**, at Lender's request, Borrower, and any Guarantor and Indemnitor shall provide an estoppel certificate to the Investor or any prospective Investor confirming to its knowledge, the facts set forth in any statement made by Borrower pursuant to **Subsection 7.4(a)**, above.

(d) After written request by Borrower not more than twice annually, Lender shall furnish Borrower a statement 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 balance of the sums in the Escrow Fund, if any, and (v) a statement regarding whether Lender has delivered to Borrower notice of an Event of Default.

Section 7.5 - FLOOD INSURANCE. After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area" under the Flood Insurance Acts or, if it is, that Borrower has obtained insurance meeting the requirements of **Section 3.3(a)(vi)**.

Section 7.6 - REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any of the Loan Documents which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Loan Document, Borrower will issue, in lieu thereof, a replacement Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor.

Section 7.7 - AMENDED FINANCING STATEMENTS. The Borrower agrees that Lender may, to the extent permitted by Applicable Law, prepare and file financing statements, amendments thereto, and continuation statements without the signature of the Borrower and file any financing statement, amendment thereto or continuation statement electronically. At the request of the Lender, Borrower shall execute a certificate in form satisfactory to the Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

ARTICLE 8 - DUE ON SALE/ENCUMBRANCE

Section 8.1 - NO SALE/ENCUMBRANCE.

(a) Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (collectively, a "**Prohibited Transfer**"), other than pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of **Section 3.8**, without the prior written consent of Lender.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new general or limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing

member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a member or any profits or proceeds relating to such membership interest, or the Sale or Pledge of membership interests or the creation or issuance of new membership interests; or (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests.

Section 8.2 - PERMITTED TRANSFERS. Notwithstanding the provisions of **Sections 8.1**, any transfer described in **clauses (a) through (g)**, inclusive, of this Section below shall be deemed to not be a Prohibited Transfer: (a) transfers of the stock, limited partnership interests or membership interests (as the case may be) in a Restricted Party among shareholders, limited partners or members of a Restricted Party, provided, that as a condition to each such transfer, Lender shall receive not less than ten (10) days prior written notice of such proposed transfer; (b) transfers of the direct or indirect stock, limited partnership interests or membership interests (as the case may be) in a Restricted Party for estate planning purposes, provided that as a condition to each such transfer, Lender shall receive not less than ten (10) days prior written notice of such proposed transfer; (c) a transfer of the direct or indirect stock, limited partnership interests or membership interests (as the case may be) in a Restricted Party by devise or descent or by operation of law upon the death or disability of a shareholder, partner or member of a Restricted Party; (d) the Sale or Pledge, in one or a series of transactions, of the direct or indirect stock, limited partnership interests or membership interests (as the case may be) in a Restricted Party; provided, however, (X) no such transfers shall result in (i) H. Roger Boyer, (ii) Kem C. Gardner, (iii) any entity (or entities) Controlled by H. Roger Boyer, Kem C. Gardner, any spouse or lineal descendant of H. Roger Boyer, or any spouse or lineal descendant of Kem C. Gardner, or (iv) any combination of the foregoing owning less than 51% of the equity interests and voting interests in Borrower and (Y) as a condition to each such transfer, Lender shall receive not less than ten (10) days prior written notice of such proposed transfer; (e) the sale, transfer or issuance of stock in a Publicly Traded Parent of Borrower or general or limited partner or member thereof provided such stock is listed on the New York Stock Exchange or such other nationally recognized stock exchange; (f) a transfer in compliance with the terms and conditions of **Section 8.3**, below; or (g) a transfer otherwise approved in writing by Lender, in Lender's sole discretion.

Section 8.3 - TRANSFER. Borrower may transfer the Property, subject to the following conditions:

(a) There shall have occurred no Event of Default which is continuing beyond any applicable cure period or no event exists which, with the passage of time or the giving of notice would become an Event of Default.

(b) Lender has approved the transferee, in Lender's sole discretion. Lender's decision to approve any proposed transferee may be based upon, without limitation, the net worth and other financial characteristics, business background, and other facts regarding the proposed transferee and any sponsoring parties.

(c) If Borrower is requesting any guarantor or indemnitor of the Debt or other Obligations be released, Borrower shall propose a party to be substituted for such guarantor or indemnitor, and such substitute party shall be approved by Lender, in Lender's reasonable discretion. Lender's decision to approve any proposed party as a replacement guarantor or indemnitor may be based upon, without limitation, the net worth and other financial characteristics, business background, and other facts regarding the proposed party. Lender shall not unreasonably withhold its consent to provide any such guarantors or indemnitors of the Debt or other Obligations with a written release upon the assumption of such Debt or Obligations by a substitute party approved by Lender pursuant to the provisions of this subsection.

(d) The transferee shall unconditionally assume all of Borrower's Obligations under the Note, this Security Instrument, and any and all of the other Loan Documents; subject,

however, to provisions, if any, in the Loan Documents providing for the exculpation of Borrower's personal liability. The assumption shall be evidenced by a written assumption agreement and such other agreements and instruments and in such form as reasonably required by Lender.

(e) Any substitute guarantor or indemnitor shall execute a substitute guaranty or indemnity in such form as reasonably required by Lender.

(f) Lender shall receive an endorsement to Lender's policy of title insurance issued in connection with the Loan, extending the effective date of the policy to a time no earlier than the date and time of the recording of the deed of transfer and the assumption of Borrower's Obligations, and confirming that, upon the transfer, this Security Instrument will be a first lien upon the Property with no material exceptions in addition to those already contained in such policy.

(g) Lender shall receive an opinion of the transferee's independent legal counsel licensed in the state in which the Property is located (and any additional state in which the transferee has been organized) in form and substance reasonably satisfactory to Lender. The scope of the opinion shall include, the existence, due authorization and execution of the assumption of the Loan Documents by the transferee, the enforceability of the document pursuant to which the transferee assumes Loan Documents; and that the Loan as assumed by the transferee, is not usurious.

(h) Lender shall receive payment of a cash transfer fee of ONE AND NO HUNDREDTHS PERCENT (1.00%) of the then unpaid principal balance of the Loan (the "**Cash Transfer Fee**").

(i) Whether or not a proposed transfer under the terms of this **Section** is actually consummated (and whether or not any failure to consummate such transfer is due to Lender's rejection of the proposed transferee, or due to any other factor), Borrower shall reimburse Lender for all of Lender's legal fees and other out-of-pocket costs and expenses in connection with the proposed transfer. The sum of \$10,000.00 (the "**Expense Deposit**") shall be deposited with Lender prior to Lender's consideration of a proposed transfer. That portion of the Expense Deposit remaining after payment of Lender's legal fees and out-of-pocket costs and expenses, shall be refunded to or at the direction of Borrower promptly after the completion of the transfer or Lender's disapproval of the proposed transfer, as the case may be.

(j) All covenants contained in this Security Instrument and the other Loan Documents, and the limitations on the sale, transfer or conveyance of the Property set forth in this Article shall likewise apply to the transferee.

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 a Prohibited Transfer without Lender's consent. The provisions of this Article shall apply to every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

Section 8.4 - TRANSFER DEFINITIONS. For purposes of this **Article 8**, an "**Affiliated Manager**" shall mean any managing agent in which Borrower, or any Guarantor or Indemnitor has, directly or indirectly, any legal, beneficial or economic interest; "**Control**" shall mean the power to direct the management and policies of a Restricted Party, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise; "**Restricted Party**" shall mean Borrower; and a "**Sale or Pledge**" shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other

transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

ARTICLE 9 - PREPAYMENT

Section 9.1 - PREPAYMENT BEFORE EVENT OF DEFAULT. The Debt may not be prepaid in whole or in part except in strict accordance with the Note.

Section 9.2 - PREPAYMENT ON CASUALTY/CONDEMNATION AND CHANGE IN TAX AND DEBIT CREDIT LAWS. Provided no Event of Default exists under any of the Loan Documents, in the event of any prepayment of the Debt pursuant to the terms of **Sections 3.7 or 7.3**, no Prepayment Consideration shall be due in connection therewith, but Borrower shall be responsible for all other amounts due under any of the Loan Documents.

Section 9.3 - PREPAYMENT AFTER EVENT OF DEFAULT. If a Default Prepayment occurs, Borrower shall pay to Lender the entire Debt, including without limitation, the Default Prepayment Consideration.

ARTICLE 10 - DEFAULT

Section 10.1 - EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) if any portion of the Debt is not paid on or prior to the tenth (10th) day after the date the same is due or if the entire Debt is not paid on or before the Maturity Date; provided, however, that so long as Borrower shall have paid the Regular Payment Amount (as defined in the Note) on each Payment Date (as defined in the Note) when due for the previous one (1) calendar year period, then there shall be no Event of Default on the basis of the failure to pay the Regular Payment Amount on a Payment Date unless and until Borrower shall fail to pay such amount within five (5) days after notice from Lender to Borrower;

(b) if any of the Taxes or Other Charges is not paid when the same is due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender as provided in **Section 3.3(b)**;

(d) if Borrower violates or does not comply with any of the provisions of **Section 4.3** and such violation results in Borrower's assets being consolidated with the assets of another party or Borrower violates or does not comply with any of the provisions of **Article 8**;

(e) if any representation or warranty of, or with respect to, Borrower, any Indemnitor or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (a "**Guarantor**"), or any member, general partner, principal or beneficial owner of any of the foregoing, made herein or in the Environmental Indemnity or in any guaranty, 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 (i) Borrower or any managing member or general partner of Borrower, or any Guarantor or Indemnitor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief

with respect to its debts or debtors ("**Creditors Rights Laws**"), seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower or any managing member or general partner of Borrower, or any Guarantor or Indemnitor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any managing member or general partner of Borrower, or against any Guarantor or Indemnitor, any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Borrower or any managing member or general partner of Borrower, or against any Guarantor or Indemnitor, any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Borrower or any managing member or general partner of Borrower or any Guarantor or Indemnitor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower or any managing member or general partner of Borrower, or any Guarantor or Indemnitor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(g) if Borrower shall be in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property, whether it be superior or junior in lien to this Security Instrument;

(h) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for any Taxes or Other Charges not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(i) if any federal tax lien is filed against Borrower, any member or general partner of Borrower, or against any Guarantor or Indemnitor or the Property and same is not discharged of record within thirty (30) days after same is filed;

(j) if any default occurs under any other Loan Document (including the Environmental Indemnity, defined below) and such default continues after the expiration of applicable grace periods, if any;

(k) if for more than ten (10) days after notice from Lender, Borrower shall continue to be in default under any term, covenant or condition of this Security Instrument not previously described in this Section 10.1, set forth above, which can be cured by the payment of a sum of money; or

(l) if for thirty (30) days after notice from Lender, Borrower shall continue to be in default under any term, covenant or condition of this Security Instrument not previously described in this Section 10.1, set forth above; provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default.

ARTICLE 11 - RIGHTS AND REMEDIES

Section 11.1 - REMEDIES. If any Event of Default occurs and is continuing beyond any applicable cure period, Borrower agrees that Lender may or acting by or through Trustee 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 Property, including, but not limited to the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender or Trustee:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any Applicable Law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) 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 and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by Applicable Law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained in the Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor, Indemnitor or of any Person liable for the payment of the Debt;
- (h) subject to any Applicable Law, the license granted to Borrower under **Section 1.2** shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records, accounts, rent rolls, leases (including the form lease) subleases (including the form sublease) and rental and license agreements with the tenants, subtenants and licensees in possession of the Property or any part or parts thereof; tenants', subtenants' and licensees' money deposits or other property (including, without limitation, any letter of credit) given to secure tenants', subtenants' and licensees' obligations under leases, subleases or licenses, together with a list of the foregoing; all lists pertaining to current rent and license fee arrears; any and all architects' plans and specifications, licenses and permits, documents, books, records, accounts, surveys and property which relate to the management, leasing, operation, occupancy, ownership, insurance, maintenance, or service of or construction upon the Property and Borrower agrees to surrender possession of the foregoing and of the Property to Lender upon demand, and thereupon Lender may (i)

use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the 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 of the Property and every part thereof; (v) either require Borrower (A) 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 such part of the Property as may be occupied by Borrower, or (B) to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vi) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all reasonable expenses (including legal fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property;

(i) exercise 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: (i) the right to take possession of the Personal Property and other UCC Collateral or any part thereof, and to take such other measures as Lender or Trustee may deem necessary for the care, protection and preservation of the Personal Property and other UCC Collateral, and (ii) request Borrower at its expense to assemble the Personal Property and other UCC Collateral and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Personal Property and other UCC Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) exercise any and all rights and remedies available upon default to Lender at law or in equity as pledgee under **Section 1.4** to apply any sums then deposited in the Escrow Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of any of the Loan Documents to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; and (v) all other sums payable pursuant to any of the Loan Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument;

(k) to the extent not covered by a blanket policy of insurance, surrender the Policies maintained pursuant to Article 3, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect any unearned Insurance Premiums;

(l) apply the undisbursed balance of any Net Proceeds or Restoration Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion;

(m) prohibit Borrower and anyone claiming for or through Borrower from making use of or withdrawing any sums from any lockbox, escrow or similar account;

(n) exercise all rights and remedies under any Causes of Action, whether before or after any sale of the Property by foreclosure, power of sale, or otherwise and apply the proceeds of any

recovery to the Debt in accordance with **Section 11.2** or to any deficiency under this Security Instrument;
or

(o) pursue such other remedies as Lender may have under applicable state or federal law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this **Section 11.1** to the contrary, if any Event of Default as described in clause (i) or (ii) of **Subsection 10.1(f)** shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 11.2 - APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 11.3 - RIGHT TO CURE DEFAULTS. If an Event of Default occurs and is continuing beyond any applicable cure period, 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 or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt. The cost and expense of any cure hereunder (including legal fees to the extent permitted by law), with interest as provided in this **Section 11.3**, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender or Trustee in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear 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. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 11.4 - ACTIONS AND PROCEEDINGS. Lender or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Property, and after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5 - 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 or Trustee 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.

Section 11.6 - EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right upon prior written notice (unless an Event of Default exists, in which case no notice shall be necessary), to examine and audit, during reasonable business hours and upon prior reasonable notice, the records, books, management and other papers of Borrower and its affiliates or of any Guarantor or Indemnitor which pertain to their financial condition or the income, expenses and

operation of the Property, at the Property or at any office regularly maintained by Borrower, its affiliates or any Guarantor or Indemnitor where the books and records are located. Lender and its agents shall have the right upon notice to make copies and extracts from the foregoing records and other papers.

Section 11.7 - OTHER RIGHTS, ETC.

(a) The failure of Lender or Trustee 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 (i) the failure of Lender or Trustee to comply with any request of Borrower, any Guarantor or any Indemnitor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions of the Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment, changing the rate of interest, or otherwise modifying or supplementing the terms of the Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) 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 discretion, may elect. Lender or Trustee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights of Lender or Trustee 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 or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Lender nor Trustee shall 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.

Section 11.8 - RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9 - VIOLATIONS OF LAW. If the Property is not in compliance with Applicable Laws, Lender may impose reasonable additional requirements upon Borrower in connection therewith including, without limitation, monetary reserves or financial equivalents reasonably required to protect Lender's interest in the Property as security for the payment of the Debt.

Section 11.10 - RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times upon prior written notice (unless an Event of Default exists, in which case no notice shall be necessary).

Section 11.11 - SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests

existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations under the Loan Documents and the performance and discharge of the Other Obligations.

ARTICLE 12 - ENVIRONMENTAL HAZARDS

Section 12.1 - ENVIRONMENTAL INDEMNITY. Simultaneously with this Security Instrument, Borrower and other persons or entities defined therein (collectively, the "Indemnitors") have executed and delivered to Lender that certain environmental indemnity agreement to Lender dated the date hereof (the "Environmental Indemnity"). The Environmental Indemnity is not secured by this Security Instrument.

Section 12.2 - ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES. The representations and warranties of Borrower in the Environmental Indemnity are hereby incorporated by this reference as if fully set forth herein.

Section 12.3 - ENVIRONMENTAL COVENANTS. Borrower's covenants in the Environmental Indemnity are hereby incorporated by this reference as if fully set forth herein.

Section 12.4 - LENDER'S RIGHTS. Lender and any other Person designated by Lender, including but not limited to any representative of a governmental entity, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, is hereby granted the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender. If Lender shall reasonably believe that there is a material likelihood that there is a violation of any Hazardous Substance Laws (as defined in the Environmental Indemnity) or other breach of any representation, warranty or covenant under the Environmental Indemnity, Borrower shall pay all costs and expenses incurred to perform the preceding actions. Otherwise, all such actions shall be at Lender's sole expense.

ARTICLE 13 - INDEMNIFICATION

Section 13.1 - GENERAL INDEMNIFICATION. BORROWER SHALL, AT ITS SOLE COST AND EXPENSE, PROTECT, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL LOSSES IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST ANY INDEMNIFIED PARTIES AND DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY RELATING TO ANY ONE OR MORE OF THE FOLLOWING, BUT ONLY TO THE EXTENT NOT CAUSED BY THE INDEMNIFIED PARTIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT: (A) ANY ACCIDENT, INJURY TO OR DEATH OF PERSONS OR LOSS OF OR DAMAGE TO PROPERTY OCCURRING IN, ON OR ABOUT THE PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (B) ANY USE, NONUSE OR CONDITION IN, ON OR ABOUT THE PROPERTY OR ANY PART THEREOF OR ON THE ADJOINING SIDEWALKS, CURBS, ADJACENT PROPERTY OR ADJACENT PARKING AREAS, STREETS OR WAYS; (C) PERFORMANCE OF ANY LABOR OR SERVICES OR THE FURNISHING OF ANY MATERIALS OR OTHER PROPERTY IN RESPECT OF THE PROPERTY OR ANY PART THEREOF; (D) ANY FAILURE OF THE PROPERTY TO BE IN COMPLIANCE WITH ANY APPLICABLE LAWS; (E) ANY AND ALL

CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY LEASE; OR (F) THE PAYMENT OF ANY COMMISSION, CHARGE OR BROKERAGE FEE TO ANYONE WHICH MAY BE PAYABLE IN CONNECTION WITH THE FUNDING OF THE LOAN EVIDENCED BY THE NOTE AND SECURED BY THIS SECURITY INSTRUMENT, WHETHER SUCH CLAIMS ARE BASED ON THEORIES OF DERIVATIVE LIABILITY, COMPARATIVE NEGLIGENCE OR OTHERWISE. ANY AMOUNTS PAYABLE TO LENDER BY REASON OF THE APPLICATION OF THIS SECTION 13.1 SHALL BECOME DUE AND PAYABLE AND SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF DEMAND BY LENDER UNTIL PAID. THE TERM "LOSSES" SHALL MEAN ANY AND ALL CLAIMS, SUITS, LIABILITIES (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITIES), ACTIONS, PROCEEDINGS, OBLIGATIONS, DEBTS, DAMAGES, LOSSES, COSTS, EXPENSES, FINES, PENALTIES, CHARGES, FEES, JUDGMENTS, AWARDS, AMOUNTS PAID IN SETTLEMENT OF WHATEVER KIND OR NATURE (INCLUDING BUT NOT LIMITED TO LEGAL FEES). THE TERM "INDEMNIFIED PARTIES" SHALL MEAN (A) LENDER, (B) ANY PRIOR OWNER OR HOLDER OF THE NOTE, (C) ANY SERVICER OR PRIOR SERVICER OF THE LOAN, (D) ANY INVESTOR OR ANY PRIOR INVESTOR IN ANY PARTICIPATIONS OR SECURITIES, (E) ANY TRUSTEES, CUSTODIANS OR OTHER FIDUCIARIES WHO HOLD OR WHO HAVE HELD A FULL OR PARTIAL INTEREST IN THE LOAN FOR THE BENEFIT OF ANY INVESTOR OR OTHER THIRD PARTY, (F) ANY RECEIVER OR OTHER FIDUCIARY APPOINTED IN A FORECLOSURE OR OTHER CREDITORS RIGHTS LAWS PROCEEDING, (G) ANY OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS, SERVANTS, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, AFFILIATES OR SUBSIDIARIES OF ANY AND ALL OF THE FOREGOING, AND (H) THE HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS OF ANY AND ALL OF THE FOREGOING (INCLUDING, WITHOUT LIMITATION, ANY SUCCESSORS BY MERGER, CONSOLIDATION OR ACQUISITION OF ALL OR A SUBSTANTIAL PORTION OF THE INDEMNIFIED PARTIES' ASSETS AND BUSINESS), IN ALL CASES WHETHER DURING THE TERM OF THE LOAN OR AS PART OF OR FOLLOWING A FORECLOSURE OF THE LOAN.

Section 13.2 - MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall pay any tax on the making and/or recording of any of the Loan Documents. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of any of the Loan Documents.

Section 13.3 - DUTY TO DEFEND; LEGAL FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of legal fees and all reasonable fees and disbursements of engineers, environmental consultants, laboratories and other professionals incurred by the Indemnified Parties in connection therewith.

ARTICLE 14 - WAIVERS

Section 14.1 - WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with any of the Loan Documents, or the Obligations.

Section 14.2 - MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all Applicable Laws now or hereafter in force regarding appraisal, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the 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 Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Law.

Section 14.3 - WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender or Trustee except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender or Trustee to Borrower and except with respect to matters for which Lender or Trustee is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender or Trustee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender or Trustee to Borrower.

Section 14.4 - WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 14.5 - SOLE DISCRETION OF LENDER. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision to approve or disapprove all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in the sole discretion of Lender, except as may be otherwise expressly and specifically provided herein.

Section 14.6 - WAIVER OF TRIAL BY JURY. BORROWER AND LENDER, BY ACCEPTANCE OF THIS SECURITY INSTRUMENT, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THE LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER OR BORROWER.

Section 14.7 - WAIVER OF FORECLOSURE DEFENSE. Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

ARTICLE 15 - EXCULPATION

Section 15.1 - EXCULPATION. The provisions of Article 13 of the Note are hereby incorporated by reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

ARTICLE 16 - NOTICES

Section 16.1 - NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower or Lender, as the case may be, at the addresses set forth on the first page of this Security Instrument or addressed as such party may from time to time designate by written notice to the other parties.

Either party by written notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Security Instrument, "**Business Day**" shall mean a day other than Saturday or Sunday and on which commercial banks are not authorized or required by law to close in the state where the Property is located.

ARTICLE 17 - CHOICE OF LAW

Section 17.1 - CHOICE OF LAW. This Security Instrument and any determination of deficiency judgments shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located and applicable laws of the United States of America.

Section 17.2 - PROVISIONS SUBJECT TO LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any Applicable Law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under any Applicable Law.

ARTICLE 18 - SECONDARY MARKET

Section 18.1 - TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Loan Documents, or grant participations therein (the "**Participations**") or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "**Securities**").

Section 18.2 - SALE OR DELEGATION OF SERVICING. Lender may, at any time, transfer any and all of the servicing rights with respect to the Loan, or delegate any or all of its responsibilities as Lender under the Loan Documents.

Section 18.3 - DISSEMINATION OF INFORMATION. Lender may forward to each purchaser, transferee, assignee, or servicer of, and each participant, or investor in, the Loan, or any Participations and/or Securities or any of their respective successors (collectively, the "**Investor**") or any Rating Agency rating the Loan, or any Participations and/or Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, any Guarantor, any Indemnitor(s) and the Property, including financial statements, whether furnished by Borrower, any Guarantor, any Indemnitor(s) or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under Applicable Laws to prohibit such disclosure, including but not limited to any right of privacy.

Section 18.4 - COOPERATION. Borrower, any Guarantor and any Indemnitor agree to cooperate, at no out of pocket expense to Borrower or Guarantor, with Lender in connection with any transfer made

or any Participation and/or Securities created pursuant to this **Section**, including, without limitation, the delivery of an estoppel certificate required in accordance with **Subsection 7.4(c)** and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower, any Guarantor and any Indemnitor consent to Lender furnishing to such Investors or such prospective Investors or such Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower, any Guarantor and any Indemnitor as may be requested by Lender, any Investor, any prospective Investor or any Rating Agency in connection with any sale or transfer of the Loan or any Participations or Securities.

ARTICLE 19 - COSTS

Section 19.1 - PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender shall impose certain reasonable administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement (the occurrence of any of the above shall be called an "Event"). Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be reasonably imposed by Lender from time to time, upon the occurrence of any Event of Default or otherwise. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all legal fees.

Section 19.2 - LEGAL FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with (i) the preparation of the Loan Documents; and (ii) the items set forth in **Section 19.1** above, and (b) Borrower shall pay to Lender on demand any and all expenses, including legal fees, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable under the Loan Documents, or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

ARTICLE 20 - DEFINITIONS

Section 20.1 - GENERAL USAGE. 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 words "**Applicable Laws**" shall mean "all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations and court orders and is expressly deemed to include all Environmental Laws;" the word "**Borrower**" shall mean "Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein;" the words "**Lease**" and "**Renewal Lease**" shall include any guaranty, letter of credit or other credit support with respect thereto; the word "**Lender**" shall mean "Lender and any subsequent holder of the Note;" the word "**Trustee**" shall mean "Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument;" the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument together with all extensions, renewals, modifications, substitutions and amendments thereof;" the word "**Loan**" shall mean "the Debt evidenced by the Note and secured by the Loan Documents;" the word "**Person**" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity; the word "**Property**" shall include any portion of the Property and any interest therein; the phrase "**legal fees**" shall include any and all reasonable counsel, attorney, paralegal and law clerk fees and disbursements, including, but not limited to fees and disbursements at the pre-trial, trial and appellate levels incurred or

paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise; and the words "Loan Documents" shall include any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements of any of the Loan Documents.

Section 20.2 - DEFINITIONS GLOSSARY.

Affiliated Manager (8.4)	Major Lease (3.8(a))
Applicable Laws (20.1)	Maturity Date (Note)
Availability Threshold (3.7(b))	Net Proceeds (3.7(b))
Award (3.6)	Note (Caption) (20.1)
Borrower (Caption) (20.1)	Obligations (2.3)
Business Day (16.1)	Other Obligations(2.2)
Cash Transfer Fee (8.3(h))	Other Charges (3.4(a))
Causes of Action (1.1(m))	Participations (18.1)
Control (8.4)	Permitted Exceptions (5.1)
Creditors Rights Laws (10.1(f))	Person (20.1)
Debt (2.1)	Personal Property (1.1(d))
Default Prepayment (Note)	Policy (3.3(b))
Default Prepayment Consideration (Note)	Prepayment Consideration (Note)
Environmental Indemnity (12.1)	Prohibited Transfer (8.1(a))
ERISA (4.2) (a)	Property (1.1) (20.1)
Escrow Fund (3.5)	Renewal Lease (3.8(a)) (20.1)
Event (19.1)	rental income (3.3(A)(iv))
Event of Default (10.1)	Rental Loss Proceeds (3.7(c))
Expense Deposit (8.3(i))	Rents (1.1(e))
Flood Insurance Acts (3.3(a)(vi))	Replacement Cost (3.3(a)(i))
full insurable value (3.3(a)(i))	Restoration (3.7(a))
Guarantor (10.1(e))	Restoration Consultant (3.7(d))
Improvements (1.1(b))	Restoration Deficiency (3.7(f))
Indemnified Parties (13.1)	Restricted Party (8.4)
Indemnitors (12.1)	Sale or Pledge (8.4)
Insurance Premiums (3.3(b))	Securities (18.1)
Investor (18.3)	Security Instrument (Caption)
Land (1.1(a))	special flood hazard area (7.5)
Leases (1.1(f)) (20.1)	Special Purpose Entity (4.3(b))
legal fees (20.1)	Taxes (3.4(a))
Lender (Caption) (20.1)	Trustee (Caption) (20.1)
Loan (Recitals) (20.1)	UCC Collateral (1.3)
Loan Documents (2.6) (20.1)	Uniform Commercial Code (1.1(e))
Losses (13.1)	

ARTICLE 21 - MISCELLANEOUS PROVISIONS

Section 21.1 - 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.

Section 21.2 - LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 21.3 - 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.

Section 21.4 - DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 21.5 - HEADINGS, ETC. The headings and captions of various Articles and Sections 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.

Section 21.6 - NUMBER AND GENDER. 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.

ARTICLE 22 - DEED OF TRUST PROVISIONS

Section 22.1 - CONCERNING THE TRUSTEE. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 22.2 - TRUSTEE'S FEES. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 22.3 - CERTAIN RIGHTS. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and

interpretation of the Note, this Security Instrument or the Other Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 22.4 - RETENTION OF MONEY. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 22.5 - PERFECTION OF APPOINTMENT. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

Section 22.6 - SUCCESSION INSTRUMENTS. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

Section 22.7 - REQUEST FOR NOTICE. Borrower hereby requests that, unless otherwise prescribed by law, a copy of any notice of default or notice of sale pursuant to the nonjudicial foreclosure of this Security Instrument be mailed to Borrower at the mailing address set forth in the preamble above.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower effective as of the day and year first above written.

BORROWER:

HARRISVILLE ROGERS II, L.C., a Utah limited liability company

By: The Boyer Company, L.C., a Utah limited liability company

By: 
Jacob L. Boyer, Manager

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me on August 5, 2015 by Jacob L. Boyer, the manager of The Boyer Company, L.C., a Utah limited liability company, in its capacity as the manger of Harrisville Rogers II, L.C., a Utah limited liability company, on behalf of the company.



(Notary's official signature)

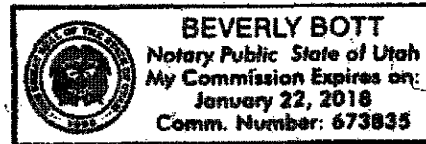


EXHIBIT A

(DESCRIPTION OF LAND)

Parcel 1:

All of Lot 2, Harrisville Retail Subdivision, according to the official plat thereof, filed on April 6, 2000, as Entry No. 1698965, in Book 51 of Plats, at Page 89 of the Official Records of the County Recorder of Weber County, Utah.

Parcel 2:

A nonexclusive easement, appurtenant to Parcel 1 described herein, for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, as defined in and created by that certain Easements with Covenants and Restrictions Affecting Land ("ECR") recorded September 22, 1999 as Entry No. 1663781, in Book 2035, at page 280 of the Official Records of the County Recorder of Weber County, Utah.