

Merrillville, IN

93084380

MORTGAGE AND SECURITY AGREEMENT

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SECURED LEASE FINANCE CORPORATION

**STOP**  
Dated as of November 15, 1993



PREPARED BY AND WHEN RECORDED RETURN TO:

Baker & Hostetler  
3200 National City Center  
1900 East Ninth Street  
Cleveland, Ohio 44114  
Attention: Phillip M. Callesen, Esq.

Dec 14 3 07 PM '93  
SAHOO  
RECORDER

STATE OF INDIANA/S.S.NO.  
LAKE COUNTY  
FILED FOR RECORD

H449-7276

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**MORTGAGE AND SECURITY AGREEMENT**

This Mortgage and Security Agreement (this "Indenture") is dated as of November 15, 1993, and is by CC ACQUISITIONS L.P., which is a limited partnership organized and existing under the laws of the State of New Jersey (together with its permitted successors and assigns, "Mortgagor"), and which has its office at c/o Richards & Robbins, 20 Community Place, Morristown, New Jersey 07960, to SECURED LEASE FINANCE CORPORATION, a corporation organized and existing under the laws of the State of Ohio, having an office at 800 Superior Avenue, Suite 2100, Cleveland, Ohio 44114 (the "Noteholder").

W I T N E S S E T H :

TO SECURE (a) the payment by Mortgagor of an indebtedness in the principal sum of \$4,136,170.21, together with interest and premium, if any (the "Debt"), which sums are to be paid in accordance with the terms of the Class A and Class B secured promissory notes of even date herewith, and any renewals or extensions of any thereof or substitution therefor, of Mortgagor (respectively, the "Class A Note," and the "Class B Note," and collectively, the "Notes"), which Class A Note shall (i) be in the principal amount of \$3,285,106.38, (ii) bear interest at the rates per annum set forth in the amortization schedule attached to the Class A Note, and (iii) mature on September 15, 2013; which Class B Note shall (i) be in the principal amount of \$851,063.83, (ii) bear interest at the rates per annum set forth in the amortization schedule attached to the Class B Note, and (iii) mature on March 15, 2016; (b) the payment of any and all other indebtedness which this Indenture by its terms secures; and (c) the performance of the covenants and agreements contained herein.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in consideration of the aforesaid indebtedness, Mortgagor hereby irrevocably grants, bargains and sells, conveys, transfers, assigns, mortgages, warrants and sets over and creates, with mortgage covenants, a security interest in favor of the Noteholder the following property and rights now owned or held or hereafter acquired by Mortgagor (collectively, the "Property"):

(i) the parcel of land more particularly described in Exhibit A (the "Land"),

(ii) all buildings, structures and other improvements presently situated, or hereafter constructed, on the Land (collectively, the "Improvements"),

(iii) all easements, rights and appurtenances relating to either the Land or the Improvements, and

(iv) all machinery, apparatus, equipment, fittings, appliances and fixtures of every kind and nature whatsoever, including, but not limited to, all electrical, anti-pollution, heating, lighting, laundry, incinerating, power, air-conditioning, plumbing, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, communication, garage and cooking systems, devices, machinery, apparatus, equipment fittings, appliances, engines, pipes, pumps, tanks, motors, conduits, ducts, compressors and switchboards, and all storm doors and windows, dishwashers, attached cabinets and partitions and all articles of personal property of every kind and nature whatsoever including, but not limited to, plumbing, gas, ventilating, lighting and other utility systems, ducts, hot water heaters, oil burners, domestic water systems, elevators, escalators, canopies, and all other building systems and fixtures to the extent that the foregoing items are now or hereafter affixed to, attached to, placed upon, used or usable in any way in connection with the use, enjoyment, occupancy or operation of the Property and improvements (collectively, the "Fixtures"), in which Mortgagor further, grants to the Noteholder, a security interest. The term "Fixtures" shall not include (nor shall any of the proceeds of the sale of the Notes be utilized to pay the cost therefor), however, the Tenant's trade fixtures, the Tenant's business machinery, equipment, motorized vehicles, tools, supplies and materials, security systems, inventory, furnishings and other personal property and materials placed by the Tenant in or upon the Property or necessary for the operation of its business (collectively, the "Trade Fixtures").

TO HAVE AND TO HOLD the Property, unto and to the proper use and benefit of the Noteholder and its successors and assigns, forever.

Notwithstanding any other provision of this Indenture to the contrary, this Indenture is (1) a mortgage of real property and (2) a security agreement covering the Fixtures under the Uniform Commercial Code as in effect in the State. Upon the occurrence of an Event of Default, the Noteholder shall, in addition to other rights and remedies granted to them, have all the rights granted to secured parties pursuant to the Uniform Commercial Code as in effect in the State.

Mortgagor, for itself and for its successors and assigns, covenants and agrees with the Noteholder as follows:



## ARTICLE I

1. Definitions. As used in this Indenture, the following capitalized terms have the respective meanings set after them:

Alterations - Any and all changes, additions, improvements, reconstructions or replacements of any of the Improvements or Fixtures, both interior or exterior, ordinary and extraordinary, structural or nonstructural.

Assignment - The assignment of the Lease, dated as of the date hereof, from Mortgagor to the Noteholder.

Default - Any condition or event which constitutes or which would constitute an Event of Default either with or without notice or lapse of time, or both.

Environmental Laws - Collectively, the Comprehensive Environmental Response, Compensation and Liability Act and any other federal, state or local laws, rules or regulations governing Hazardous Materials.

Environmental Reports - The "Phase I Environmental Assessment" dated September 14, 1992, prepared by STS Consultants Ltd., the Letter from STS Consultants Ltd. to Joe Jagdmann, re: Environmental Disclosure Documents dated October 12, 1992, the "Phase II Environmental Assessment" dated October 20, 1992, prepared by STS Consultants Ltd., the Letter from STS Consultants to Joe Jagdmann, re: FOIA Data Review for the proposed Circuit City store dated November 12, 1992, and the "Phase I Environmental Assessment Update" dated October 15, 1993, prepared by STS Consultants, Ltd., with respect to the Property.

Event of Default - As defined in Article VIII.

Fixtures - As defined in the granting clause.

Hazardous Materials - Collectively, any, each and all substances or materials regulated pursuant to or under any Environmental Laws, including, but not limited to, all chemicals, petroleum, crude oil or any fraction thereof, hydrocarbons, polychlorinated biphenyls (PCB's), asbestos, asbestos-containing materials and/or products, urea formaldehyde, or any substances which are classified as "hazardous" or "toxic" under the Act; hazardous waste as defined under the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, et seq.; air pollutants regulated under the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq.; pollutants as defined under the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq.; any pesticide as defined by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136, et seq.; any hazardous chemical substance or mixture or imminently hazardous substance or mixture regulated by the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, et seq.; any substance listed in the United States Department of

Transportation Table at 49 CFR 172.101; any chemicals included in regulations promulgated under the above listed statutes; any explosives, radioactive material, and any chemical regulated by state statutes similar to the federal statutes listed above and regulations promulgated under such state statutes.

Impositions - Collectively, all taxes of every kind and nature (including real, ad valorem and personal property, income, franchise, withholding, profits and gross receipts taxes), all charges and/or taxes for any easement or agreement maintained for the benefit of the Property or any part thereof, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and other utility charges, all ground rents, all other public charges and/or taxes whether of a like or different nature, even if unforeseen or extraordinary, imposed upon or assessed, prior to or during the term of the Lease, against Mortgagor, the Tenant or the Property or any part thereof as a result of or arising in respect of the occupancy, leasing, use or possession thereof, or any activity conducted on any property, or the Basic Rent or Additional Rent, as such terms are defined in this Deed, including the property information, any gross income tax, sales tax, occupancy tax or excise tax levied by any governmental body on or with respect to such Basic Rent or Additional Rent. "Impositions" shall exclude federal, state or local (i) franchise, capital stock or similar taxes, if any, of Mortgagor (ii) income, excess profits or other similar taxes, if any, of Mortgagor, determined on the basis of or measured by its net income, or (iii) any estate, inheritance, succession, gift, capital levy or similar taxes unless the taxes referred to in clauses (i) and (ii) above are in lieu of or a substitute for any other tax or assessment upon or with respect to the Property which, if such other tax or assessment were in effect at the commencement of the term of the Lease, would be payable by the Tenant.

Improvements - As defined in the granting clause.

Insurance Requirements - Collectively, all terms of any insurance policy required to be carried under the Lease and the requirements of the issuer of any such policy, and whenever Tenant shall be engaged in a Work, as that term is defined in the Lease, the term "Insurance Requirement" or "Insurance Requirements" shall be deemed to include a requirement that Tenant obtain or cause its contractor to obtain completed value builder's risk insurance when the estimated cost of the Work in any one instance exceeds the sum of One Hundred Thousand (\$100,000.00) Dollars and that Tenant or its contractor shall obtain worker's compensation insurance or other adequate insurance coverage covering all persons employed in connection with the Work, whether by Tenant, its contractors or subcontractors and with respect to whom death or bodily injury claims could be asserted against Mortgagor.

Land - As defined in the granting clause.

Lease - The lease of the Property, dated as of November 30, 1993, between Mortgagor, as landlord, and Circuit City Stores, Inc., a Virginia corporation, as tenant.

Legal Requirements - Any one or more of all present and future laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency (but excluding those which by their terms are not applicable to and do not impose any obligation on the Tenant, Mortgagor or the Property) and all covenants, restrictions and conditions now or hereafter of record which may be applicable to the Tenant, to Mortgagor or to the Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Property, even if compliance therewith (i) necessitates structural changes or improvements or results in interference with the use or enjoyment of the Property or (ii) requires Mortgagor to carry insurance other than as required by the provisions of this Indenture.

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Officer's Certificate - A certificate of Mortgagor signed by the President or a Vice President or another officer authorized to so sign by either the Board of Directors or the Bylaws or Code of Regulations of the General Partner of Mortgagor.

Permitted Encumbrances - Collectively, those present or future covenants, restrictions, reservations, conditions, encroachments, easements and other matters of title, excluding, however, any Mortgages and security agreements collateral thereto, that (i) affect the Property as of Mortgagor's acquisition thereof, excepting, however, any such matters arising from the acts of Mortgagor (such as liens arising as a result of judgments against Mortgagor) (ii) are consented to by, or entered into at the request of, Tenant, (iii) are involuntarily executed by Mortgagor to comply with Legal Requirements or other matters of record, (iv) are imposed upon Mortgagor without Mortgagor's consent other than to the extent arising out of the actions Mortgagor or those (except Tenant or those claiming by, through or under Tenant) claiming by, through or under Mortgagor and (v) Easements, as defined in Paragraph 3(e) of the Lease.

Property - As defined in the granting clause.

Requisition - Any temporary condemnation or confiscation of the use or occupancy of the Property by any governmental authority, civil or military, whether pursuant to an agreement with such governmental authority in settlement of or under threat of any such requisition or confiscation, or otherwise.

State - The state in which the Property is located.



Taking - Any taking of any of the Property in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceedings or by any other means. The date of any Taking shall be deemed the date that Tenant is deprived of possession or use of the Property subject to such Taking.

Tenant - The tenant under the Lease.

## ARTICLE II

### 2. The Notes.

2.1.1. Payment of the Notes. Mortgagor shall duly and punctually pay, or cause to be paid, the principal of, and the interest and premium, if any, on, each of the Notes in accordance with its respective terms in the lawful money of the United States of America. All payments shall be made without demand therefor or, except for a final payment in full, without presentation of the Notes and shall be delivered to the Noteholder, by wire transfer to the Noteholder's address set forth below (or to such other address as the Noteholder may designate by written notice to Mortgagor), with information setting forth (a) the full name, interest rate and maturity date of the Notes, and (b) Mortgagor's name.

2.1.2. Registered Owner. Mortgagor may deem and treat the Noteholder as the absolute owner of the Notes registered in its name for the purpose of receiving payment of the principal of, premium, if any, and interest on the Notes and for all purposes whatsoever, whether or not the Notes are overdue, and Mortgagor shall not be affected by any notice to the contrary.

2.2. Prepayment of the Notes. Each Note shall be subject to prepayment pursuant to the terms thereof, as stated therein.

## ARTICLE III

3.1. Encroachments, Restrictions, etc. If any of the Improvements on the Property shall at any time encroach upon any property, street or right-of-way adjoining or adjacent to the Property, or shall violate the agreements or conditions contained in any restrictive covenant or other agreement affecting the Property, any Legal Requirement or any Insurance Requirement, or any part of any of the foregoing, or shall impair the rights of others under any easement or right-of-way to which the Property is subject, other than, in each case, Permitted Encumbrances, then promptly upon the request of the Noteholder or any person affected by any such encroachment, violation, or impairment,

Mortgagor shall, at its expense, subject to its right in good faith to contest the existence of any encroachment, violation or impairment in accordance with Section 3.5 and in such case in the event of an adverse determination, either (i) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation, or impairment, or (ii) make such changes in the Improvements and take such other actions as shall be necessary to remove such encroachment, and to end such violations or impairments, including, if necessary, the alteration or removal of any of the Improvements on the Property. Any such alteration or removal shall be made in conformity with the requirements of Section 3.2.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Section, provided that (i) the Lease is in full force and effect and no Event of Default has occurred thereunder that has not been waived or cured and (ii) the Tenant is in full compliance with Paragraph 11(b) or, if applicable, Paragraph 18 of the Lease.

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3.2. **Alterations.** Mortgagor shall not make any Alterations which would impair the usefulness or structural integrity of the Property or diminish the value of the Property, without the Noteholder's written consent, which consent shall not be unreasonably withheld or delayed. Mortgagor may make any other Alterations without the prior written consent of the Noteholder, provided that (a) the fair market value of the Property shall not be reduced or its usefulness or structural integrity impaired; (b) the work shall not change the general character of the Property and the Alterations made shall not in the aggregate reduce the gross cubic foot volume of the Improvements by more than 5%; (c) the work shall be done in a good and workmanlike manner and shall be expeditiously completed in compliance with all legal requirements (including, without limitation, the obtaining of a new certificate of occupancy or its legal equivalent, if necessary); Insurance Requirements, and the Permitted Encumbrances; (d) all work done in connection with any such Alteration shall comply with all Insurance Requirements; (e) Mortgagor shall promptly pay all costs and expenses of any such Alteration, and shall discharge any liens filed against the Property arising out of the same; (f) Tenant shall procure and pay for all permits and licenses required in connection with any such Alteration, (g) all such Alterations shall be the property of Mortgagor and shall be subject to this Indenture, and (h) in the case of any Alteration whereby the estimated cost of which in any one instance exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), it shall be made under the supervision of an architect or engineer, reasonably satisfactory to the Noteholder, in accordance with detailed plans and specifications which shall be submitted to the Noteholder at least ten (10) days prior to the commencement of the Alterations.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Section, provided that (i) the Lease is in full force and effect and no



Event of Default has occurred thereunder that has not been waived or cured and (ii) the Tenant is in full compliance with Paragraph 12 of the Lease.

3.3. Salvage. All materials which are scrapped or removed in connection with the making of either Alterations permitted by Section 3.2 or repairs required by Section 5.1(b) shall be disposed of by Mortgagor as its own property free of the lien of this Indenture.

3.4. Liens. Mortgagor will not directly or indirectly create or allow to remain and will promptly discharge at its expense any lien, encumbrance or other charge upon the Property or any sums payable by the Tenant under the Lease and any attachment, levy, claim or encumbrance in respect of the payments of principal and/or interest due on the Notes, not including, however, (a) the Permitted Encumbrances and (b) an option held by a holder of an estate for years created in compliance with Section 34(b) to lease and/or purchase the Land, which leases or conveyances will be effective only after the estate for years has expired.

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Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Section to the extent that the Tenant is responsible for the foregoing under the Lease provided that (i) the Lease is in full force and effect and no Event of Default has occurred thereunder that has not been waived or cured and (ii) the Tenant is in full compliance with Paragraphs 8 and 9, or, if applicable, Paragraph 18 of the Lease.

3.5. Permitted Contests. Either Mortgagor or the Tenant, after prior written notice to the Noteholder, at its expense, may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or any Legal Requirement or Insurance Requirement or any lien, encumbrance, charge or claim not permitted by Section 3.1 or 3.4, provided that (a) in the case of an unpaid Imposition, lien, encumbrance, charge or claim, the commencement of such proceedings shall suspend the collection thereof from the Property, (b) neither the Property nor any proceeds therefrom nor any part thereof or interest therein, would be in any danger of being sold, forfeited or lost, (c) in the case of a Legal Requirement, neither Mortgagor nor the Tenant, as the case may be, would be in any danger of civil or criminal liability for failure to comply therewith pending the outcome of such proceedings, (d) either Mortgagor or the Tenant, as the case may be, shall deliver to the Noteholder either (i) an opinion of counsel to the effect set forth in clauses (a), (b) and (c) hereto, to the extent applicable, or (ii) written notice of such contest and an amount of cash or bond equal to 125% of the amount being contested or other security satisfactory in the sole but reasonable opinion of the Noteholder; provided, however, that no security shall be required if the amount involved in the contest does not exceed one-tenth (1/10) of 1% of the tangible net worth

of the Tenant or, if solely initiated and contested by Mortgagor (and not Tenant), one-tenth (1/10) of 1% of Mortgagor's net worth; (e) in the case of an Imposition, lien, encumbrance, charge or claim, Mortgagor shall have set aside on its books such reserves with respect thereto as may be required by sound accounting principles or shall have furnished such security, if any, as may be required in the proceedings; (f) in the case of an Insurance Requirement, the coverage required by Article VI shall be maintained, and (g) if such contest be finally resolved against Mortgagor or the Tenant, as the case may be, Mortgagor or the Tenant, as the case may be, shall promptly pay the amount required to be paid together with all interest and penalties accrued thereon, or comply with the applicable Legal Requirements or Insurance Requirements.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Section, provided that: (i) the Lease is in full force and effect and no Event of Default has occurred thereunder that has not been waived or cured, and (ii) the Tenant is in full compliance with Paragraph 18 of the Lease.

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#### ARTICLE IV

4. Representations and Warranties. Mortgagor represents and warrants that (a) it has full power, authority and legal right to execute and deliver this Indenture and to encumber the Property as provided herein, (b) it is an entity used exclusively on the date of the execution hereof and will be used exclusively during the term of this Indenture for the ownership of the Property, or a part thereof, and those properties, or a part thereof, listed on Schedule 1 and another property or a part thereof not leased to Circuit City Stores, Inc. as may be approved by the Noteholder in its sole discretion, and if mortgagor is a limited partnership, each corporate general partner thereof, if any, is used on the date of the execution hereof and will be used exclusively during the term hereof as a general partner of Mortgagor, (c) it holds good and marketable fee simple title to the Property, free and clear of all liens and encumbrances except this Indenture and the Permitted Encumbrances, (d) this Indenture constitutes a valid first lien and security agreement on the Property, subject to no other liens or encumbrances or restrictions except the Permitted Encumbrances, (e) the Lease is in full force and effect, and no Event of Default exists thereunder and there exists no offset, defense or claim with respect to any rents or other sums to be paid by the Tenant thereunder, and (f) Mortgagor has not used, generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, produced or processed any Hazardous Materials on or from the Property and that to Mortgagor's actual knowledge, except as may be disclosed in the Environmental Reports, (1) no other party has used, generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, produced or processed any Hazardous

Materials on or from the Property in violation of any Environmental Laws; (2) no enforcement, cleanup, removal or other governmental or regulatory actions have, at any time, been instituted, completed or threatened against the Property, or against any person with respect to the Property, pursuant to any Environmental Laws; (3) no violation or noncompliance with any such law, ordinance or regulations relating to any Hazardous Materials has occurred with respect to the Property at any time; (4) no claims have, at any time, been made or threatened by any third party against the Property or against any person with respect to the Property, relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials located on the Property; and (5) no activity has been conducted that would cause the Property to become a hazardous waste treatment storage or disposal facility within the meaning of any Environmental Laws. Mortgagor, at its expense, will warrant to the Noteholder and will defend its title to the Property and the lien thereon created by this Indenture against all claims and demands, and will maintain and preserve such lien so long as any indebtedness secured by this Indenture remains outstanding.

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ARTICLE V.

5.1. Affirmative Covenants: Merger, Consolidation, etc. Until this Indenture and the lien created hereby shall terminate in accordance with Article XXVI, Mortgagor shall:

(a) Recordation, Filing, etc. At all times cause this Indenture and the Assignment and each amendment or modification hereof or thereof or supplement hereto or thereto (and such financing statements covering the Property and the Assignment, and continuation statements in respect thereof, under the Uniform Commercial Code as in effect in the State) to be recorded, registered and filed and kept recorded, registered and filed in such manner and in such places as appropriate, and comply with all applicable statutes and regulations, in order to establish, preserve and protect the lien of this Indenture as a first lien on the Property (subject only to Permitted Encumbrances) and the rights of the Noteholder hereunder.

(b) Maintenance and Repair. Keep and maintain, at its expense, or cause to be kept and maintained, the Property and all sidewalks and curbs appurtenant thereto in good order and repair (ordinary wear and tear excepted), and subject to the provisions of Section 7.1, with reasonable promptness, make all necessary and appropriate repairs of every kind and nature, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. All repairs shall, to the extent possible, be at least substantially equivalent in quality to the



original work. Mortgagor shall take all action to keep and maintain the Property in as good repair and appearance as the Property was originally, except for ordinary wear and tear.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Section provided that (i) the Lease is in full force and effect and no Event of Default has occurred thereunder that has not been waived or cured and (ii) the Tenant is in full compliance with Paragraph 11 of the Lease.

(c) Payment of Impositions. Subject to Section 3.5 hereof and Paragraph 18 of the Lease relating to contests, pay or cause to be paid all Impositions before any fine or penalty may be added for nonpayment, such payments to be made directly to the taxing authorities where feasible. Upon request in each instance, promptly furnish to the Noteholder, official receipts, as soon as same may be available, or other satisfactory proof evidencing such payments. If any Imposition may, at the option of the taxpayer, lawfully be paid in installments (whether or not interest shall accrue on the unpaid balance of such imposition), Mortgagor may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments during the term of this Indenture as the same respectively become due and before any fine, penalty, further interest or cost may be added thereto; provided that such option to pay in installments does not result in any enforcement action and/or penalty and interest other than penalty and interest which Mortgagor agrees to pay. Mortgagor shall not be entitled to any credit on the Notes or any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Imposition or utility charges or any part thereof.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Section to the extent that Tenant is responsible for the foregoing under the Lease provided that (i) the Lease is in full force and effect and no Event of Default has occurred thereunder that has not been waived or cured and (ii) the Tenant is in full compliance with Paragraph 8 or, if applicable, Paragraph 18, of the Lease.

(d) Utility Services. Pay or cause to be paid all charges for electricity, steam, oil, gas, water and other utilities used in connection with the Property.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this

Section provided that (i) the Lease is in full force and effect and no Event of Default has occurred thereunder that has not been waived or cured and (ii) the Tenant is in full compliance with Paragraph 8 of the Lease.

(e) Insurance Premiums. Pay or cause to be paid the premiums for the insurance coverage required to be maintained pursuant to Article VI.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Section provided that (i) the Lease is in full force and effect and no Event of Default has occurred thereunder that has not been waived or cured and (ii) the Tenant is in full compliance with Paragraph 14 of the Lease.

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(f) Compliance with Legal and Insurance Requirements, Instruments, etc. Subject to Section 3.5 of this Document, Mortgagor shall promptly (i) relate to contests, at its expense, promptly (i) comply with all Legal Requirements and Insurance Requirements in respect of the use, operation, maintenance, repair and restoration of the Property, whether or not compliance therewith shall require structural changes in any of the Improvements or interfere with the use and enjoyment of the Property, and (ii) procure, maintain and comply with all licenses and other authorizations required for any use of the Property then being made, and for the proper erection, installation, operation and maintenance of the Improvements or any part of any thereof.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Section to the extent that Tenant is responsible for the foregoing under the Lease (it being acknowledged by Noteholder that Mortgagor believes that Tenant is exclusively responsible for such matters pursuant to the Lease) provided that (i) the Lease is in full force and effect and no Event of Default has occurred thereunder that has not been waived or cured and (ii) the Tenant is in full compliance with (A) Paragraphs 4 and 14, and (B) (1) Paragraph 8 or (2) if applicable and only to the extent Paragraph 8 governs Legal Requirements, Paragraph 18 of the Lease.

(g) Annual Officer's Certificate and Financial Reports. Furnish the Noteholder with the following:

(i) Within 90 days after the end of Mortgagor's fiscal year, an Officer's Certificate, stating that to the best of the signer's knowledge, Mortgagor is not in

Default in the performance or observance of any of the terms of this Indenture, or if Mortgagor shall be in Default to its knowledge, specifying all such Defaults, and the nature thereof, and the steps being taken to remedy the same;

(ii) With reasonable promptness, such other information respecting the financial condition and affairs of Mortgagor or the Tenant as the Noteholder may from time to time reasonably request.

(h) Existence. Subject to the provisions of Section 5.2, preserve and keep in full force and effect its existence, rights and franchises and privileges and comply with all laws applicable to it, and do or cause to be done all things necessary to preserve and to keep in full force and effect its right to own property in the State.

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(i) Notification of Default, etc. Promptly after obtaining knowledge thereof, notify the Noteholder of an Event of Default hereunder or of any action or proceeding materially and adversely affecting the Property.

(j) Inspection. Permit the Noteholder or its authorized representatives, after reasonable notice, to inspect the Property during usual business hours; provided, however, that if the Lease shall be in full force and effect, the Noteholder or its authorized representatives may inspect the Property only at reasonable times during the Tenant's business hours and in accordance with the provisions of the Lease.

(k) Hazardous Materials. Not on, about, or under the Property, make, treat or dispose of any Hazardous Materials, and will at all times comply with all Environmental Laws.

To the extent required by Environmental Laws governing Hazardous Materials, Mortgagor shall cause Tenant to remove any hazardous substances (as defined under any Environmental Laws) and Hazardous Materials whether now or hereafter existing on the Property and whether or not arising out of or in any manner connected with Tenant's occupancy of the Property or Mortgagor's ownership thereof.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Section provided that (i) the Lease is in full force and effect and no Event of Default has occurred thereunder that has not been waived or cured and (ii)



the Tenant is in full compliance with Paragraph 26 of the Lease.

In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to any Hazardous Materials on, from or affecting the Property, Mortgagor shall immediately notify the Noteholder. At any time after the occurrence of an Event of Default that has not been waived or cured, the Noteholder may enter upon the Property and conduct an environmental study of the Property; provided that, such environmental study shall be permitted and conducted pursuant to the terms of the Lease.

(l) Asbestos. Use its reasonable efforts to cause the Tenant to ensure that, through normal wear and tear or otherwise, possible asbestos-containing materials ("ACM") have not become friable or otherwise been damaged in a manner that may allow fiber release. In the event it is discovered that possible ACM has become friable or the Improvements become subject to demolition or renovation, Mortgagor shall, or shall cause the Tenant to conduct an inspection, if Tenant is required to do so under the Lease, and, if necessary, abate any ACM in accordance with Environmental Laws. Mortgagor shall deliver to the Noteholder, within fourteen (14) days of completion of each ACM abatement, a report acceptable to the Noteholder which demonstrates the completion of the abatement and proper disposal of ACM removed.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Section provided that (i) the Lease is in full force and effect and no Event of Default has occurred thereunder that has not been waived or cured and (ii) the Tenant is in full compliance with Paragraph 26 of the Lease.

(m) Lease Amendments. Consent to any amendment to the Lease only after receiving the prior written consent of the Noteholder, which shall not to be unreasonably withheld or delayed.

(n) Lease Prepayment. Accept any advance prepayment or accelerated payment, including, but not limited to, payment pursuant to Paragraph 19(f) and (g) of the Lease, only after receiving the prior written consent of the Noteholder, which consent shall not be unreasonably withheld or delayed.

(o) Purchase by Tenant. Shall provide to Noteholder written notice within five (5) days of receipt thereof by Mortgagor of any offer to purchase

the Property by the Tenant. Such offer shall not be accepted without the written consent and direction of the Noteholder; provided, however Noteholder acknowledges that if it does not notify Mortgagor to reject Tenant's offer within the time required under the Lease, the offer will be deemed accepted and Mortgagor shall not be deemed in breach of this provision (o). If the Noteholder elects to reject the offer, it agrees to timely deliver to Mortgagor the letter required under Paragraph 13(b) of the Lease to be delivered by Mortgagor to Tenant.

5.2. Merger, Consolidation, etc. Nothing contained in this Indenture or in the Notes shall prevent any consolidation or merger of Mortgagor with or into any corporation or limited partnership, or successive consolidations or mergers in which Mortgagor or its successors shall be a party or parties, subject to compliance with Article XXXIV hereof. In case of any consolidation or merger, such successor entity shall succeed to and be substituted for Mortgagor, with the same effect as if it had been named herein as the property of

the Lake County Recorder!

#### ARTICLE VI

6.1. Insurance. Mortgagor agrees to maintain or cause to be maintained, the following insurance on the Property:

(i) Insurance against loss or damage to the Improvements, as defined in the Lease, under an all risk policy, which shall include flood insurance and earthquake insurance, in amounts not less than the actual replacement cost of the Improvements and Equipment, as these terms are defined in the Lease (excluding footings and foundations and other parts of the Improvements which are not insurable).

(ii) Contractual and comprehensive general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Property or the Adjoining Property, as defined in the Lease, which insurance shall be written on a so-called "Occurrence Basis," and shall provide minimum protection with a combined single limit in an amount not less than the greater of (x) \$5,000,000 or in such increased limits from time to time to reflect declines in the purchasing power of the dollar or (y) the aggregate amount of such insurance carried by Tenant, for bodily injury, death and property damage in any one occurrence.

(iii) Workers' compensation insurance covering all persons employed by Tenant on the Property in connection with any work done on or about the Property for which claims for death or bodily injury could be asserted against Mortgagor, Tenant or the Property.

(iv) During periods of war or national emergency, war risk insurance in an amount not less than the actual replacement cost of the Improvements and Equipment, as these terms are defined in the Lease (excluding footings and foundations and other parts of the Improvements which are not insurable), when and to the extent obtainable from the United States Government or an agency thereof.

(v) Insurance against loss or damage from explosion of any steam or pressure boilers or similar apparatus located in or about the Improvements in an amount not less than the actual replacement cost of the Improvements and Equipment (excluding footings and foundations and other parts of the Improvements which are not insurable).

(vi) During any period of construction, including but not limited to Alterations, as defined in the Lease, completed value builders risk covering all perils insured against under subsection (i) above, including building materials, in an amount not less than the cost of construction reasonably estimated by Tenant's contractor or architect.

(vii) Such additional and/or other insurance with respect to the Improvements, as defined in the Lease, and in such amounts as at the time is customarily carried by prudent owners or tenants with respect to improvements similar in character, location and use and occupancy to the Improvements then comprising the Property.

6.2 Policy Provisions. The insurance required by Section 6.1 shall be written by companies having a Best's rating of B+ during such time as Tenant shall have such tangible net worth of not less than \$250,000,000 and at all other times written by companies having a Best's rating of A and all such companies shall be authorized to do an insurance business in the State. Sums due in lieu of insurance proceeds because of self-insurance programs shall be treated as insurance proceeds for all purposes. All insurance with respect to the Property maintained by Mortgagor (i) shall be for a term of not less than one year, (ii) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof, and (iii) shall (except for the workers' compensation insurance referred to in Section 6.1(iii) hereof) name Mortgagor, Tenant and Noteholder as additional insured parties, as their respective interests may appear. The insurance must also meet the requirements of Paragraph 14(d) of the Lease.

6.3 Premiums and Certificates. Mortgagor shall cause all premiums for the insurance required by this Article to be paid, shall renew or replace, or cause to be renewed or replaced, each policy, and shall deliver to Noteholder, a certificate or other evidence of the existing policy and such renewal or replacement policy and evidence of the payment of the full premium therefor at least thirty days prior to the expiration date of each policy.



6.4. Blanket Policy. Anything in this Article to the contrary notwithstanding, any insurance which Mortgagor is required to obtain or cause to be maintained pursuant to Section 6.1 may be carried under a "blanket" policy or policies, provided that such "blanket" policy or policies otherwise comply with the provisions of this Article. In the event any such insurance is carried under a blanket policy, Mortgagor shall deliver to Noteholder a certified copy of those provisions of the blanket policy that pertain to the Property, if any, to evidence the issuance and effectiveness of the policy, the amount and character of the coverage with respect to the Property and the presence in the policy of provisions of the character required in this Article.

Notwithstanding the foregoing, Mortgagor shall be deemed to be in compliance with the provisions of this Article provided that (i) the Lease is in full force and effect and no Event of Default has occurred or is continuing thereunder and (ii) the Tenant is in full compliance with Paragraph 14 of the Lease.

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ARTICLE VII

7.1. Damage, Destruction or Taking; Condemnation, Awards. In case of any damage to or destruction of the Property or any part thereof exceeding \$100,000, or in case of any Taking or Requisition, Mortgagor shall forthwith give notice thereof to the Noteholder. In case of any such Taking or Requisition, except as set forth in the next succeeding sentence, the Noteholder shall be entitled to all awards or payments on account thereof, and Mortgagor hereby irrevocably assigns to the Noteholder all rights of Mortgagor to any such award or payment and irrevocably authorizes and empowers the Noteholder in the name of Mortgagor or otherwise, to file and prosecute what would otherwise be Mortgagor's claim for any such award or payment, and to collect, receipt for and retain the same, except as hereinafter provided. Unless an Event of Default shall have occurred that has not been cured or waived, all sums so received by the Noteholder, including, without limitation, the insurance proceeds payable to the Noteholder in accordance with the provisions of Section 6.2, the Tenant Insurance Payment as defined under the Lease, and shall be made available to Tenant in accordance with the provisions of Paragraphs 13, 14 and 15 of the Lease for reconstruction or restoration, with the balance, if any, to Noteholder as partial prepayment, without premium, in accordance with the provision of the Notes. If an Event of Default shall have occurred and has not been cured or waived at the time of the Noteholder's receipt of any insurance proceeds or awards or other payment for a Taking or Requisition pursuant to this Section 7.1, the same shall be applied in the manner specified in Article XVIII. Mortgagor shall not agree to any condemnation settlement without the prior written consent of the Noteholder, which shall not be unreasonably withheld or delayed,

and, without limiting the foregoing, may not and shall not make an election of rent abatement pursuant to Paragraph 13(c) of the Lease, without Noteholder's prior written consent, which shall not be unreasonably withheld or delayed. For the purpose of this Indenture, all amounts paid pursuant to any agreement with any condemning authority in settlement of any condemnation or other eminent domain proceeding affecting the Property shall be deemed to constitute an award made in such proceeding.

7.2. Termination Events. If Tenant shall have the right under Paragraph 13(b) of the Lease (relating to condemnation) or Paragraph 14(h) of the Lease (relating to casualty) to terminate the Lease, and make payment to Mortgagor, Mortgagor, without limiting any other term of this Indenture, hereby irrevocably assigns to Noteholder all such sums payable by Tenant in prepayment of the Notes without premium. The Noteholder agrees to remit to Mortgagor all sums so received that are not required to prepay the Notes in full, including unpaid interest to the date of prepayment as provided in the Notes.

7.3. Excluded Property. The Noteholder shall have no claim to or interest in the proceeds of any business interruption insurance maintained by Mortgagor or any insurance proceeds which relate solely to a loss affecting any of the Trade Fixtures.

7.4. Condemnation Notice. Mortgagor has not received actual or constructive notice of any Taking affecting the Property or any proceedings relating to any such Taking.

#### ARTICLE VIII

8. Events of Default. Of any one or more of the following events (individually, an "Event of Default") shall occur:

(a) if any payment of principal or interest on either of the Notes is not paid within five (5) days of receipt of written notice to Mortgagor of nonpayment of any amount due thereunder;

(b) if Mortgagor fails to comply with the provisions of Section 5.1(c) of this Indenture and such failure shall continue for more than 30 days after receipt of written notice to Mortgagor of such failure;

(c) if Mortgagor fails to comply with the provisions of Article VI hereof and such failure shall continue for more than thirty (30) days after receipt of written notice to Mortgagor of such failure, or if evidence of such policies as required pursuant to Article VI hereof is not delivered to the Noteholder within 30 days of written request;

(d) if Mortgagor violates or does not comply with any of the provisions of Sections 5.1(m), 5.1(n) or 5.1(o) of this Indenture;

(e) if Mortgagor fails to comply with any of the provisions of Sections 3.4, 5.1(k) or 5.1(l) of this Indenture and such failure shall continue for more than 30 days after receipt of written notice to Mortgagor of such failure;

(f) if any representation or warranty of Mortgagor made herein or in any certificate, report, financial statement or other instrument or document furnished to the Noteholder by Mortgagor shall have been false or misleading and the false or misleading nature of such representation or warranty (i) has a material adverse effect on the value of the Property, (ii) in any way impairs the lien of this Indenture or (iii) in any way materially adversely affects the interests of the Noteholder;

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(g) if Mortgagor shall grant any other mortgage or security agreement covering any part of the Property or any interest therein whether it be superior or junior in lien to this Indenture; provided that Mortgagor shall be entitled to pledge ownership interests in Mortgagor to secure obligations. Any exercise of the remedies under the pledge permitted above shall be permitted only upon compliance with Article XXXIV hereof;

(h) if there shall be an Event of Default as defined and set forth in Paragraph 19 of the Lease or if at any time the Lease shall cease to be in full force and effect;

(i) if for more than thirty (30) days after notice from the Noteholder, Mortgagor shall continue to be in default under any other term, covenant or condition of either of the Notes, the Assignment or this Indenture, provided that if such default cannot reasonably be cured within such thirty (30) day period and Mortgagor 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 Mortgagor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days;

(j) if Mortgagor or a general partner thereof shall make a general assignment for the benefit of its creditors, or shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or





Property and to have all or any part of the Property sold, in any manner permitted by law, under the judgment or decree of a court or courts of competent jurisdiction, or otherwise. If the Noteholder proceeds to foreclose the lien of this Indenture, the Noteholder shall have the **STATUTORY POWER OF SALE** if permitted by applicable law. All rights of action under this Indenture or in respect of the Notes may, if permitted by applicable law, be enforced by the Noteholder without the possession of the Notes and without the production of the Notes or this Indenture at any trial or other proceeding relative thereto. In the event of any such suit or proceeding, the Noteholder shall comply with any local laws applicable to any such suits or proceedings. All reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Noteholder in connection with any such suit or proceeding, shall constitute additional indebtedness secured by this Indenture and shall be paid by Mortgagor to the Noteholder on demand.

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10. Authority to Execute Instruments, etc.  
Mortgagor irrevocably appoints the Noteholder as its true and lawful attorney, which appointment is coupled with an interest and is irrevocable, in Mortgagor's name and stead and on its behalf, for the purpose of (a) executing on behalf of Mortgagor and filing continuation statements and any necessary amendments to all financing statements naming the Noteholder as the secured party filed under any applicable Uniform Commercial Code, and (b) at Mortgagor's sole expense effectuating any sale, assignment, transfer or delivery of the Property or any part thereof or any interest therein for the enforcement of this Indenture whether pursuant to foreclosure, power of sale or otherwise, to execute and deliver all such deeds, bills of sale, assignments, releases and other instruments in connection with such enforcement as the Noteholder may consider necessary or appropriate, with full power of substitution, and Mortgagor hereby ratifies and confirms all that such attorney or any substitute shall lawfully do by virtue hereof; provided, however, that the Noteholder shall exercise its powers under this clause (b) until after the expiration of ten (10) days following written notice from the Noteholder of its intention to so exercise its powers hereunder. If so requested by the Noteholder, or any other purchaser, Mortgagor shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to the Noteholder, or other purchaser, all proper deeds, bills of sale, assignments, releases and other instruments as may be designated in any such request.

## ARTICLE XI

11. Title Upon Sale; Receipt a Sufficient Discharge to Purchaser. After the occurrence of an Event of Default hereunder, and upon the sale of the Property or any part thereof or any interest therein by the Noteholder, whether pursuant to foreclosure or otherwise, the purchaser shall acquire good title

thereto, free of the lien of this Indenture and free of all rights of redemption, whether statutory, equitable or otherwise, in Mortgage to the extent permitted by applicable law. The receipt of the officer making the sale under judicial proceedings or of the Noteholder shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obligated to see to the application thereof. Except for the Tenant or as permitted under the Lease, all occupants of the Property sold or any part thereof shall become tenants at sufferance of the purchaser, and shall deliver possession thereof immediately to such purchaser on demand to the extent permitted by law. It shall not be necessary for the purchaser at any such sale to bring any action for possession of the Property purchased other than statutory action of forcible detainer in any justice court having jurisdiction to the extent permitted by law.

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**ARTICLE XII**

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12. Purchase of the Property by Noteholder. The Noteholder may be the purchaser of the Property or any part thereof or any interest therein at any sale thereof, whether pursuant to foreclosure, power of sale or otherwise, and may apply to the purchase price the full amount of the unpaid indebtedness and all delinquent interest and any other additional charges and costs provided for herein or in the Notes and secured hereby.

**ARTICLE XIII**

13. Sale a Bar Against Mortgage. The sale of the Property or any part thereof or any interest therein, whether pursuant to foreclosure, power of sale or otherwise under this Indenture, shall forever bar any claim with respect thereto by Mortgage to the extent permitted by applicable law.

**ARTICLE XIV**

14. Waiver of Appraisal, Valuation, etc. Mortgage hereby waives, to the full extent it may lawfully do so, the benefit of all appraisal, valuation, stay, moratorium, statute of limitations, exemption from execution, extension and redemption laws now or hereafter in force and all rights of marshalling in the event of the sale of the Property or any part thereof or any interest therein. Mortgage also hereby waives all errors, defects and imperfections in any proceeding instituted by the Noteholder under this Indenture, to the extent permitted by law, except from any defects in notices required to be given by the terms of this Indenture or for any defects in service of process.



ARTICLE XV

15. Appointment of Receiver. If an Event of Default shall have occurred, the Noteholder shall, as a matter of right, be entitled, ex parte and without notice, subject to the requirements and limitations of State law, to the appointment of a receiver or receivers of the Property or any part thereof, whether such receivership be incidental to a proposed sale thereof or otherwise, and Mortgagor hereby consents to the appointment of such a receiver or receivers.

ARTICLE XVI

16. Possession, Management and Income. If an Event of Default shall have occurred under this Indenture, the Noteholder, subject to any prior right of the Tenant under the Lease, without further notice, but through a court-appointed receiver, may enter upon and take possession of the Property or any part thereof, in any manner permitted by law, and may remove Mortgagor and all other persons and may and all property therefrom and the Noteholder may hold, operate and manage the same, make all necessary or proper repairs, renewals, and replacements, and useful alterations, additions, betterments and improvements thereto and thereon as may seem advisable to it, and insure and reinsure the Property as may seem advisable to Noteholder, and may receive all earnings, income, rents, issues and proceeds accruing with respect thereto. The Noteholder shall be under any liability for or by reason of any such taking of possession, entry, removal or holding, operation or management. Any amounts so received by the Noteholder shall be applied, (a) to pay (i) the reasonable expenses of operating the Property and of all reasonable maintenance, repairs, renewals, replacements, alterations, additions, betterments, improvements, taxes, assessments, insurance premiums, reasonable compensation for the services of all attorneys, advisors, brokers, receivers, agents and other employees engaged or employed by it or the Noteholder and all other costs and expenses of entering a bond and taking possession of and holding the Property, and (ii) any lien prior to the lien of this Indenture which the Noteholder may consider it necessary or desirable to discharge and then (b) in the manner provided in Article XVIII.

ARTICLE XVII

17. Intentionally Deleted.

ARTICLE XVIII

18. Application of Proceeds. The proceeds of (a) the operation and management of the Property pursuant to Article XVI, (b) any sale of the Property or any interest therein, whether pursuant to foreclosure, power of sale or otherwise, and (c) any

insurance policies or condemnation awards or any other sums retained by the Noteholder upon the occurrence of an Event of Default, shall be used to pay:

First: The reasonable costs and expenses of the sale, reasonable attorneys' fees and expenses, court costs, and any other reasonable expenses or advances made or incurred in the protection of the rights of the Noteholder or in the pursuance of any remedies hereunder;

Second: Any lien prior to the lien of this Indenture which the Noteholder may consider it necessary or desirable to discharge;

Third: Any indebtedness secured by this Indenture and at the time due and payable (whether by acceleration or otherwise), including all amounts of principal, premium, if any, and interest at the time due and payable on the Notes;

Fourth: Any other valid claims against the Property as determined by the Noteholder in its sole discretion; and

Fifth: The balance, if any, to Mortgagee.

Any payments received hereunder which are applied under paragraph Third above shall be applied on the date determined under the Notes. If the proceeds available for application pursuant to paragraph Third are insufficient to pay the Notes in full, the amount available shall be allocated in partial prepayment of the Notes, pro rata and without preference or priority.

#### ARTICLE XIX

19. Remedies, etc., Cumulative. Subject to Article XXXIII, each legal, equitable or contractual right, power or remedy of the Noteholder now or hereafter provided herein or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy, and the exercise or beginning of the exercise by the Noteholder of any one or more of such rights, powers and remedies shall not preclude the simultaneous or later exercise of any or all such other rights, powers and remedies.

#### ARTICLE XX

20. No Waiver, etc. No failure by the Noteholder to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach hereof shall constitute a waiver of any such term or of any such breach. No acceptance of the payment of any sums due on the Notes during the continuance of any Default shall constitute a waiver thereof. No waiver of any breach shall affect or alter

this Indenture which shall continue in full force and effect with respect to any other then existing or subsequent breach.

#### ARTICLE XXI

##### 21. Intentionally Deleted.

#### ARTICLE XXII

22. Change in Method of Taxation. In the event of the passage, after the date of this Indenture, of any law changing in any way the laws now in force for the taxation of mortgages or debts secured thereby, for state or local purposes, within the state or the operation of any such state or local taxes within the state so as to adversely affect the interest of the Noteholder in the Property, this Indenture or the Notes, Mortgagor shall bear and pay the full amount (or any partial amount) requested by the Noteholder of taxes resulting from such changes hereunder. This Document is on credit against any other sums due on the Notes, provided, however, that if for any reason payment by Mortgagor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the indebtedness of Mortgagor to the Noteholder wholly or partially usurious under any of the terms or provisions of this Indenture or of the Notes, then the Noteholder shall have the option, by written notice of not less than one hundred eighty (180) days, to accelerate the maturity of the Notes, to the extent permitted by law. After prior written notice to the Noteholder, Mortgagor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount of such taxes or the validity or application of such law provided that (i) no Event of Default exists under this Indenture, (ii) such contest does not in any material way adversely affect the lien of this Indenture or the enforceability of the Notes or this Indenture, (iii) such proceeding shall suspend the collection of such taxes from the Property, (iv) neither the Property nor any part thereof or interest therein shall be in danger of being sold, forfeited, terminated, cancelled or lost, (v) Mortgagor shall have set aside adequate reserves for the payment of such taxes, together with all interest and penalties thereon, and (vi) Mortgagor shall have furnished such security as may be required in the proceeding, or as may be reasonably requested by the Noteholder, to ensure the payment of any taxes being contested, together with all interest and penalties thereon.

#### ARTICLE XXIII

23. Right of Noteholder to Perform Covenants, etc. If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder and such failure shall not be cured within the applicable grace period, if any, the



Noteholder, without notice to or demand upon Mortgagor and without waiving or releasing any obligation or Default, may (but shall be under no obligation to) at any time thereafter make such payment (including payment of Impositions, utility charges and insurance premiums) or perform such act for the account and at the expense of Mortgagor and may enter upon the Property or any part thereof for such purpose and take all such action thereon as, in the Noteholder's opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Mortgagor. All sums so paid by the Noteholder and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, shall constitute additional indebtedness secured by this Indenture and shall be paid by Mortgagor to the Noteholder on demand.

### ARTICLE XXIV

#### 24. Certificate as to No Default, etc.; Information.

At any time and from time to time, Mortgagor will deliver to the Noteholder, promptly upon request, an Officer's Certificate, stating that to the best of the Officer's knowledge after making due inquiry, (i) there is no Event of Default as defined in and under the Lease, or if such default exists to his knowledge, specifying the nature and period of existence thereof and what action Mortgagor is taking or proposes to take with respect thereto, and (ii) there is no Event of Default hereunder, or if any such Event of Default exists to his knowledge, specifying the nature and period of existence thereof and what action Mortgagor is taking or proposes to take with respect thereto. Mortgagor will also furnish, promptly to the Noteholder, such information with respect to the Property or this Indenture as may from time to time be requested.



25. Additional Instruments. Mortgagor, at its expense, will execute, acknowledge, secure and deliver all such instruments and take all such action as the Noteholder from time to time may reasonably request for the better assuring of the properties and rights now or hereafter subjected to the security of this Indenture or intended so to be.

### ARTICLE XXVI

26. Defeasance. This Indenture and the lien created hereby shall terminate after the payment in full of (a) the principal of, and interest and premium, if any, on the Notes, and (b) all other sums secured hereby. Upon such termination, and upon surrender of this Indenture and the Notes for cancellation and retention, the Noteholder shall release, without warranty, the Property then subject to the lien hereof to the persons entitled thereto. The recitals in any reconveyance executed

under this Indenture of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such release may be described as "the person or persons legally entitled thereto." The Noteholder, at Mortgagor's expense, shall execute and deliver such instruments of release, satisfaction and termination in proper form for recording or filing, as may be appropriate to evidence the release of (i) the Property from the lien created hereby, and (ii) any other security held by the Noteholder and such satisfaction, and termination, and such instruments, when duly executed, recorded and filed, shall conclusively evidence the release, satisfaction and termination of this Indenture and the Assignment.

#### ARTICLE XXVII

##### 27. Terms Subject to Applicable Law; Separability.

All rights, powers and remedies provided herein 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 Indenture invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term or provision of this Indenture shall be held to be invalid, illegal or unenforceable, the validity of the other terms and provisions hereof shall in no way be affected thereby.

#### ARTICLE XXVIII

28. Notices. All notices and other communications hereunder shall be in writing, and delivered, telegraphed or mailed (by registered or certified mail, postage prepaid), addressed:

(a) if to Mortgagor:

CC Acquisitions L.P.  
c/o Richards & Robbins  
20 Community Place  
Morristown, New Jersey 07960

with a copy to: Linett, Schechter, Reicher & Altman  
888 Seventh Ave.  
New York, NY 10106

Attention: Alison Altman, Esq.

(b) if to the Noteholder:

Secured Lease Finance Corporation  
800 Superior Avenue, Suite 2100  
Cleveland, Ohio 44114

Attention: Gary A. Zdol'shek

or at such other address as Mortgagor or the Noteholder may hereafter designate, and shall be effective upon receipt, if hand delivered, as evidenced by a receipt signed by a person at such address or upon expiration of five days after the day of mailing.

#### ARTICLE XXIX

29. Lease and Rents. The Noteholder is hereby granted and assigned by Mortgagor the right to enter the Property for the purpose of enforcing its interest in the Lease and the rentals accruing thereunder, this Indenture constituting a present, absolute assignment of the Lease and the rentals accruing thereunder. Mortgagor (a) shall observe and perform all the obligations imposed upon the landlord under the Lease and shall not do or permit to be done anything to impair the value of the Lease as security for the Notes; (b) shall (i) promptly send copies to the Noteholder of all documents executed by Mortgagor as required under the Lease; (ii) promptly comply with mandatory obligations under the Lease; (iii) obtain Noteholder consent not to be unreasonably withheld or delayed to any proposed discretionary or permissive actions it seeks to take under the Lease; and (iv) promptly send copies to the Noteholder of all notices of default which Mortgagor shall receive thereunder; (c) shall enforce all of the terms, covenants and conditions contained in the Lease upon the part of the Tenant thereunder, as the case may be, to be observed or performed, short of termination thereof; (d) shall not collect any of the rentals accruing under the Lease, which have been presently assigned to Noteholder hereunder; (e) shall not execute any other assignment of Landlord's interest in the Lease or the rentals accruing thereunder other than the Assignment except in connection with the sale or conveyance of the Property in accordance with Article XXXIV hereof; (f) shall not alter, modify or change the terms of the Lease without the prior written consent of the Noteholder not to be unreasonably withheld or delayed or cancel or terminate the Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, the Tenant under the Lease; (g) shall not make an election in violation of Section 7.1. hereof; (h) shall not consent to any assignment of or subletting under the Lease not in accordance with its terms for which landlord's consent is required, without the prior written consent of the Noteholder not to be unreasonably withheld or delayed; and (i) shall execute and deliver at the request of the Noteholder all such further assurances, confirmations and assignments in connection with the Property and the Lease as the Noteholder shall from time to time reasonably require. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until the



indebtedness secured hereby shall have been satisfied and discharged in full.

ARTICLE XXX

[Intentionally deleted]

ARTICLE XXXI

31. Indemnification Against Brokers' Fees. It is understood and agreed that the Noteholder shall not be under any obligation for payment of any brokerage commission or fee of any kind imposed upon or incurred by or asserted against the Noteholder by any broker, finder or person claiming a fee or commission in connection with this Indenture unless such fee or commission is claimed to result from the acts of Noteholder. Mortgagor shall indemnify, save harmless and defend the Noteholder from and against any and all claims or brokers' or finders' fees and commissions and legal fees in connection with Mortgagor's own acts or omissions in the negotiation, execution and consummation of the loan evidenced by the Notes and secured by this Indenture.

ARTICLE XXXII

32. Assignment of Claims. So long as this Indenture is in effect, Mortgagor hereby unconditionally assigns, transfers and sets over to the Noteholder all of Mortgagor's claims and rights to the payment of damages arising from the rejection of the Lease by the Tenant or by a trustee for the Tenant, pursuant to the Federal Bankruptcy Code. The Noteholder shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Lease, including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, if on the behalf of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in respect of the Tenant under the Federal Bankruptcy Code or similar federal or state laws. Any amounts received as damages arising out of the rejection of the Lease as aforesaid shall be applied first to all costs and expenses incurred in obtaining such amounts, including, without limitation, attorneys' fees, incurred in connection with the exercise of its rights or remedies under this Section 32 and then to the indebtedness secured hereby with the balance, if any, to Mortgagor.

### ARTICLE XXXIII

33. Exculpation. Notwithstanding anything to the contrary contained in this Indenture, the Notes, the Assignment or any other documents delivered in connection therewith, the Noteholder may not enforce the liability and obligation of Mortgagor to perform and observe the obligations contained in the Notes or this Indenture by any action or proceeding wherein a money judgment shall be sought against Mortgagor, its partners, directors, officers, employees or shareholders or their respective partners, directors, employees, officers or shareholders, except that the Noteholder may bring a foreclosure action or other appropriate action or proceeding to enable the Noteholder to realize upon this Indenture and the interest in the Property and any other collateral given to the Noteholder; provided, however, that any judgment in any such action or proceeding shall be enforceable against Mortgagor only to the extent of Mortgagor's interest in the Property and in any other collateral given to the Noteholder to secure the indebtedness evidenced by the Notes. The Noteholder, by accepting the Notes and this Indenture, agrees that it shall not sue for, seek or demand any deficiency judgment against Mortgagor, its partners, directors, officers, employees or shareholders or their respective partners, directors, employees, officers or shareholders in any such action or proceeding, under or by reason of or in connection with the Notes or this Indenture. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by the Notes or this Indenture (provided, however, such obligation shall not create liability in Mortgagor in a manner inconsistent with this Section 33); (b) impair the right of the Noteholder to name Mortgagor as a party defendant in any action or suit for judicial foreclosure and sale under this Indenture; (c) impair the right of the Noteholder to obtain the appointment of a receiver in accordance with Section 15 hereof; (d) impair the right of the Noteholder to exercise any of its rights against the Tenant under the Lease pursuant to the Assignment; or (e) impair the right of the Noteholder to obtain insurance proceeds or condemnation awards due to the Noteholder under and in accordance with this Indenture, the Lease or the Assignment.

### ARTICLE XXXIV

34. Transfer of a Property. (a) Notwithstanding anything in this Indenture to the contrary, the Noteholder acknowledges that Mortgagor may transfer the legal title to the Property or any part thereof or all or any part of the direct or indirect equity or beneficial interest in Mortgagor provided that it obtains and delivers to the Noteholder at the time of such transfer (except for the items listed in (d), below, which may be delivered after the occurrence of such transfer but as soon as practicable), (a) an assumption from the transferee of the

Property of all of the duties and obligations of Mortgagor under the Notes, this Indenture and the Assignment, in proper form for recordation in the land records in the county in which the Property is located which shall be substantially in the form attached hereto as Exhibit B (with such changes as shall be reasonably agreed to by the Noteholder or as required by the laws of the state in which the Property is located (the "Assumption")); (b) an opinion letter from counsel to the transferee acceptable to the Noteholder, which shall be deemed acceptable if it is in substance substantially in the form attached hereto as Exhibit C (with such changes as shall be agreed to by the Noteholder); (c) either (i) a substantive nonconsolidation opinion with respect to the transferee and any general partners thereof from counsel which shall conclude in substance that a federal bankruptcy court would not order substantive consolidation of the assets and liabilities of the transferee with those of the general partner, if any, of the transferee and the other owner or owners of such transferee as if their assets were held by and their obligations incurred by a single entity and otherwise in form reasonably satisfactory to Noteholder, which opinion shall be prepared in accordance with the special report by the Fair Debt Practices Committee, Opinions in the Bankruptcy Context: Rating Agency Structured Financing and Chapter 11 Transactions, 46 Bus. Law 717 (1991), or (ii) the governing documents of the transferee shall expressly limit the activities of the transferee to the ownership, leasing and mortgaging of the Property and the governing documents of the general partner or partners of the transferee, if any, shall expressly limit the activities of such general partner to acting as general partner of the transferee, and all such documents shall state they will not be amended without the prior written consent of the Noteholder, and (d) UCC Statements of Amendment (or similar instruments) which shall modify the financing statements filed in (i) the Office of the Secretary of State of the State and (ii) the records in the county in which the Property is located, which shall name the transferee of the Property as the debtor. If requested to do so by Mortgagor, the Noteholder shall deliver to or at the direction of the transferring owner a written statement to the effect that, to the best of the Noteholder's knowledge, the transferring owner is not in default of its obligations to the Noteholder under this Indenture or the Notes or specifying defaults, if any, and setting forth the principal amount then outstanding on the Notes, and such other information as is reasonably requested. The transferee (and if transferee is a partnership, any corporate general partner thereof), shall be an entity that complies with Section 4(b) of this Indenture. The transferring owner shall be responsible for paying, not later than the date of execution of the Assumption by the Noteholder, the reasonable fees and disbursements of the Noteholder and its counsel incurred in connection with the review of the opinion referred to in (c) above and the filing of the UCC statements referred to in (d)



above. Mortgagor shall have no obligation to record or to pay for the cost to record the Assumption referred to in (a) above.

(b) Notwithstanding the foregoing and without complying with (a) above, the fee interest in the Property may be transferred to an entity that complies with Section 4(b) of this Indenture while reserving unto Mortgagor an estate for years, provided that (i) the estate for years shall continue for a period of time at least equal to the primary term of the Lease; and (ii) the documents conveying the fee interest shall specifically state that the conveyance is made subject to this Indenture and the Lease and shall otherwise be substantially in the form attached hereto as Exhibit D. At or prior to conducting such a transfer, a certificate addressed to Noteholder shall be delivered stating that the transferee under this subsection complies with Section 4(b) of this Indenture.

Any estate or interest created as described above shall be foreclosed upon and discharged if Noteholder shall exercise its remedies under this Indenture.

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**ARTICLE XXXV**

35. Sole Discretion of Noteholder. Except as expressly stated to the contrary herein, wherever pursuant to this Indenture, the Noteholder exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to the Noteholder, the decision of the Noteholder to approve or disapprove or to decide that arrangements or terms are satisfactory shall be in the sole discretion of the Noteholder and shall be final and conclusive.

**ARTICLE XXXVI**

36. Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from the Noteholder except with respect to matters for which this Indenture specifically and expressly provides for the giving of notice by the Noteholder to Mortgagor and except with respect to matters for which the Noteholder is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from the Noteholder with respect to any matter for which this Indenture does not specifically and expressly provide for the giving of notice by the Noteholder to Mortgagor, except as required by applicable law.

#### ARTICLE XXXVII

37. Remedies of Mortgagor. In the event that a claim or adjudication is made that the Noteholder has acted unreasonably or unreasonably delayed acting in any case where by law or under the Notes or this Indenture, it has an obligation to act reasonably or promptly, Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment, and the Noteholder shall not be liable for any monetary damages, unless it is also adjudicated that Noteholder acted arbitrarily or with gross negligence.

#### ARTICLE XXXVIII

38. Offsets, Counterclaims and Defenses. Any assignee of this Indenture and the Notes shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to the Notes or this Indenture which Mortgagor may otherwise have against any assignor of this Indenture and the Notes and no such unrelated counterclaim or defense shall be interposed or asserted by Mortgagor in any action or proceeding brought by any such assignee upon this Indenture or the Notes and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Mortgagor.

#### ARTICLE XXXXI

39. Miscellaneous. This Indenture (a) may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought, and (b) shall be binding upon Mortgagor, its successors and assigns and all persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by the Noteholder and its successors and assigns. The headings in this Indenture are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. All agreements between Mortgagor and the Noteholder, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand or acceleration of the maturity of any payments hereunder or under the Notes or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to the Noteholder exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest could otherwise be payable to the Noteholder in excess of the maximum lawful amount, and if from any circumstance the Noteholder shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal of

the Notes and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal, such excess shall be refunded to Mortgagor. All interest paid or agreed to be paid to the Noteholder shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal so that the interest hereon for such full period shall not exceed the maximum amount permitted by applicable law. The preceding two sentences shall control all agreements between Mortgagor and the Noteholder. This Indenture shall be governed by and construed in accordance with the laws of the State. This Indenture may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Portions of the Property consist of goods which are, or are to become, fixtures relating to the Land and Mortgagor expressly covenants and agrees that the filing of this Indenture in the real estate records of the county where the Property is located shall also operate from the time of filing therein as a financing statement filed as a fixture filing in accordance with the laws of the State.

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The term "Mortgagor" as used in this Indenture so far as covenants, representations or obligations on the part of Mortgagor are concerned, shall be limited to mean and include only the owner or owners of the Property or holder of this Indenture in possession at the time in question of the Property and in the event of any transfer or transfers of all of the right, title and interest of the Property, Mortgagor herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer and conveyance of all liability as respects the performance of any covenants, representations or obligations on the part of Mortgagor contained in this Indenture thereafter to be performed, and the new owner shall be liable only for the covenants, representations and obligations relating to it from and after the date of such transfer and conveyance. In the event that Mortgagor is more than one entity all covenants, representations and obligations of Mortgagor under this Mortgage shall be joint and several, and all rights and benefits of Mortgagor shall inure jointly and severally to the entities comprising Mortgagor.



This Indenture may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Mortgagor has caused this Indenture to be executed as of the day and year first above written; the Noteholder has executed the same in order that this Indenture may qualify as a financing statement under the State Uniform Commercial Code as to such of the Property, if any, as constitutes personalty.

WITNESSES:

CC ACQUISITIONS L.P., a New Jersey limited partnership

*[Handwritten signature]*

By: C-P Acquisitions, Inc., a New Jersey corporation, sole general partner

Print Name: *Pamela A. Spamey*

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This Document is the property of the Lake County Recorder *[Signature]*  
Authorized Officer

Print Name: *Carmella Litcher*

Executed for the purpose of qualifying this Indenture as a financing statement under the State Uniform Commercial Code:

SECURED-LEASE FINANCE CORPORATION



*[Signature]*  
Authorized Officer

JJB1948;04514;93001;JJB-61E.AGR  
scs11/29/93

STATE OF Ohio )  
COUNTY OF Cuyahoga ) SS

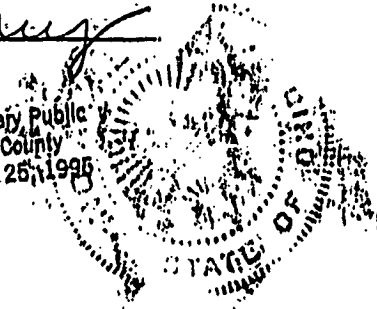
BEFORE ME, a Notary Public in and for said County and State, personally appeared Alison Altman, who acknowledged that he did sign the foregoing instrument as an authorized officer of G-P Acquisitions, Inc., sole general partner of CC Acquisitions L.P., a New Jersey limited partnership, and that the same is the free act and deed of said general partner and the limited partnership and his free act and deed personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland Ohio, this 30th day of November, 1993.

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the Lake County Recorder!

Patricia A. Spatney  
Notary Public

PATRICIA A. SPATNEY, Notary Public  
State of Ohio - Cuyahoga County  
My commission expires Dec. 25, 1995



My Commission Expires:  
12/25/95

My County of Residence:  
Cuyahoga

**STOP**



This Instrument Prepared By:  
Baker & Hostetler  
3200 National City Center  
1900 East Ninth Street  
Cleveland, Ohio 44114  
Attention: Phillip M. Callesen, Esq.

**SCHEDULE 1**

1. Elmwood Park, Illinois
2. Joliet, Illinois
3. Colonial Heights, Virginia
4. Burlington, Massachusetts





EXHIBIT A

PARCEL 1: (Part of Part A, Lot 4)

That part of Part A of Lot 4 lying South of a line drawn 70.0 feet South and parallel with the North line of Lot 4 in Southlake Plaza as shown in Plat Book 73 Page 30, as corrected by: Plat of Correction as shown in Plat Book 73 Page 37, and Certificate of Clarification recorded November 6, 1992, as document number 92070667, in the Office of the Recorder of Lake County, Indiana, containing 3.04 acres, more or less.

Also described as:

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Part of Part A of Lot 4 in Southlake Plaza as recorded in Plat Book 73 Page 37 in the Office of the Recorder of Lake County, Indiana, more particularly described as follows: Commencing at the southeast corner of the north half of the Southeast Quarter of Section 23, Township 35 North, Range 8 West of the 2nd Principal Meridian; thence North  $90^{\circ} 00' 00''$  West 1,286.40 feet along the south line of said north half also being the south line of said Southlake Plaza to the southwest corner of Lot 2 in said Southlake Plaza; thence North  $0^{\circ} 43' 24''$  East 421.68 feet to the south line of said Lot 4, and the point of beginning; thence North  $89^{\circ} 16' 36''$  West 250.69 feet along the south line of said Lot 4 to the southwest corner of said Lot 4; thence northerly along the westerly line of said Lot 4 the following five courses: 1, North  $0^{\circ} 43' 24''$  East 73.83 feet; 2, North  $89^{\circ} 16' 36''$  West 10.0 feet; 3, North  $0^{\circ} 43' 24''$  East 254.17 feet; 4, South  $89^{\circ} 16' 36''$  East 6.10 feet; 5, North  $0^{\circ} 43' 24''$  East 176.30 feet to the southwest corner of the north 70 feet of said Lot 4; thence South  $89^{\circ} 16' 36''$  East 67.28 feet along the south line of said north 70 feet to a point on the southerly line of Part B of said Lot 4; thence South  $60^{\circ} 35' 04''$  East 193.14 feet along the southerly line of said Part B to the east line of said Lot 4 being a point on a nontangent curve; thence southerly 83.04 feet along aforesaid east line along the arc of a curve concave easterly with a radius of 520.52 feet and a chord bearing South  $17^{\circ} 01' 45''$  East 82.95 feet, to a point of reverse curve; thence continuing southerly 205.59 feet along aforesaid east line along the arc of a curve concave westerly with a radius of 520.52 feet and a chord bearing South  $10^{\circ} 17' 03''$  East 204.26 feet to the beginning of a nontangent line; thence continuing along aforesaid east line South  $0^{\circ} 43' 24''$  West 131.77 feet to the southeast corner of said Lot 4; thence North  $89^{\circ} 16' 36''$  West 46.31 feet along the south line of said Lot 4 to the point of beginning, containing 3.04 acres more or less all in Lake County, Indiana.

PARCEL 2: (Part of Part B, Lot 4)

Together with an easement for parking, utility crossovers and driveways created by the Easement Agreement dated November 25, 1992 by and between Northern Indiana Public Service Company, an Indiana corporation, and Focus Partnership I, an Indiana partnership, recorded December 8, 1992 as document number 92077518, upon the terms, covenants, conditions, restrictions and obligations therein provided over the following described real estate, to-wit:

That part of Part B of Lot 4 lying South of a line drawn 70.0 feet South and parallel with the North line of Lot 4 in Southlake Plaza as shown in Plat Book 73 Page 30 as corrected by: Plat of Correction as shown in Plat Book 73 Page 37; and Certificate of Clarification recorded November 6, 1992 as document number 92070667, in the Office of the Recorder of Marion County, Indiana, containing 0.17 acres more or less.

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Part of Part B of Lot 4 in Southlake Plaza as recorded in Plat Book 73 Page 37 in the Office of the Recorder of Lake County, Indiana, more particularly described as follows: Commencing at the southeast corner of the north half of the Southeast Quarter of Section 23, Township 35 North, Range 8 West of the 2nd Principal Meridian; thence North  $90^{\circ} 00' 00''$  West 1,286.40 feet along the south line of said north half also being the south line of said Southlake Plaza to the southwest corner of Lot 2 in said Southlake Plaza; thence North  $0^{\circ} 43' 24''$  East 421.68 feet to the south line of said Lot 4; thence North  $89^{\circ} 16' 36''$  West 250.69 feet along the south line of said Lot 4 to the southwest corner of said Lot 4; thence northerly along the westerly line of said Lot 4 the following five courses: 1, North  $0^{\circ} 43' 24''$  East 73.83 feet; 2, North  $89^{\circ} 16' 36''$  West 10.0 feet; 3, North  $0^{\circ} 43' 24''$  East 254.17 feet; 4, South  $89^{\circ} 16' 36''$  East 61.0 feet; 5, North  $0^{\circ} 43' 24''$  East 176.0 feet to the southwest corner of the north 70 feet of said Lot 4; thence South  $89^{\circ} 16' 36''$  East 67.28 feet along the south line of said north 70 feet to a point on the southerly line of Part B of said Lot 4 and the point of beginning; thence South  $60^{\circ} 35' 04''$  East 193.14 feet along the southerly line of said Part B to the east line of said Lot 4 being a point on a nontangent curve; thence northerly 93.77 feet along aforesaid east line along the arc of a curve concave easterly with a radius of 520.52 feet and a chord bearing North  $07^{\circ} 18' 03''$  West 93.65 feet, to the southeast corner of said North 70 feet; thence North  $89^{\circ} 16' 36''$  West 156.36 along the south line of said north 70 feet to the point of beginning, containing 0.17 acres more or less all in Lake County, Indiana.

**PARCEL-3: (Easement Rights under Operation and Easement Agreement)**

Together with the rights and the easements created by the Operation and Easement Agreement dated as of December 8, 1992, recorded December 17, 1992 as document number 92080433, as amended by First Amendment to Operation and Easement Agreement dated April 1, 1993 and recorded May 19, 1993 as document number 93033098.





EXHIBIT B

[The Then Owner]

("Obligor")

and

("Purchaser")

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and  
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MANUFACTURERS AND TRADERS TRUST COMPANY  
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the Lake County Recorder!

STOP

AGREEMENT OF ASSUMPTION OF  
MORTGAGE AND NOTE

Dated: as of \_\_\_\_\_

Location: \_\_\_\_\_

County: \_\_\_\_\_

PREPARED BY AND UPON RECORDATION  
PLEASE RETURN TO:

Attention: \_\_\_\_\_

THIS AGREEMENT OF ASSUMPTION OF MORTGAGE AND NOTE ("Agreement"): made as of the \_\_\_\_\_ day of \_\_\_\_\_, by and among \_\_\_\_\_ having an address c/o \_\_\_\_\_ ("Obligor"), \_\_\_\_\_, a \_\_\_\_\_ ("Purchaser"), and MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation, having an address c/o One M & T Plaza, 8th Floor, Buffalo, New York 14203, as trustee ("Beneficiary").

W I T N E S S E T H :

WHEREAS, Beneficiary owns the interest of "Noteholder" under that certain Mortgage and Security Agreement ("Mortgage") in the original principal sum of \$\_\_\_\_\_ dated as of November 15, 1993 given by CC Acquisitions L.P. to Secured Lease Finance Corporation, an Ohio corporation ("Secured Lease Corporation"), which Mortgage was recorded on \_\_\_\_\_ in the Office of the Recorder of Deeds of \_\_\_\_\_ (the "Office") in Volume \_\_\_\_\_ Page \_\_\_\_\_ and encumbers the real property described in the attached hereto and the improvements thereon which Mortgage was thereafter assigned to Beneficiary by that certain Note and Mortgage Assignment made by Secured Lease Finance Corporation to Beneficiary dated as of November 15, 1993 and recorded on \_\_\_\_\_ in Volume \_\_\_\_\_ Page \_\_\_\_\_ in the Office. Said Mortgage was given in connection with that certain first fee mortgage loan in the amount of \$\_\_\_\_\_ made by Secured Lease Finance Corporation to CC Acquisitions L.P.;

WHEREAS, Beneficiary is the owner and holder of those two certain notes dated as of November 15, 1993 given by CC Acquisitions L.P. to Beneficiary in the aggregate original principal sum of \$\_\_\_\_\_ (collectively the "Notes"), which Notes are secured by: (i) the Mortgage, (ii) that certain Assignment of Lease, Rents, Issues and Profits dated as of November 15, 1993, given by CC Acquisitions L.P. as assignor, to Secured Lease Finance Corporation, as assignee, which was recorded on \_\_\_\_\_ in Volume \_\_\_\_\_ Page \_\_\_\_\_ in the Office (the "Assignment") and (iii) UCC-1 Financing Statements (the "UCCs") (the Notes, the Mortgage, the Assignment, and the UCCs are hereinafter collectively referred to as the "Loan Documents");

WHEREAS, as of \_\_\_\_\_ (the "Effective Date"), there is owing in the aggregate on the Notes and the Mortgage the unpaid principal sum of \$\_\_\_\_\_, together with interest (said principal sum, interest and all other sums which may or shall become due under the Notes, and/or the Mortgage, being hereinafter collectively referred to as the "Debt");

WHEREAS, Obligor and Purchaser desire to comply with the provisions of Section 34(a) of the Mortgage in connection

with the transfer of all of Obligor's interest in the Property (as defined in the Mortgage), from Obligor to Purchaser which will result in the release of Obligor from all liability for the payment of the Debt and the performance of the terms and conditions of the Loan Documents; and

WHEREAS, in order to comply with the provisions of said Section 34(a), Obligor and Purchaser shall agree in the manner set forth herein that, (a) Purchaser shall assume the obligations of Obligor to pay the Debt due under the Notes, (b) Purchaser shall assume the liability and obligation for the performance of all terms and conditions of the Loan Documents to the extent provided therein.

NOW THEREFORE, in pursuance of said agreement and in consideration of Ten Dollars (\$10), the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereto agree as follows:

1. Purchaser hereby assumes and agrees to pay the principal balance owed under the Notes and the Mortgage as of the Effective Date hereof, to wit:

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interest due thereunder, in lawful money of the United States of America pursuant to the terms of each of the respective Notes, and Purchaser hereby assumes and covenants to perform all the terms and conditions of the Loan Documents from and after the date hereof, and agrees to be bound for such performance, to the same extent as if said instruments had originally been executed by Purchaser notwithstanding any failure of Obligor to perform on warranties or covenants running from Obligor to Purchaser, it being understood and agreed, however, that Purchaser shall be granted the benefit of, and assumes the above obligation, subject to the terms of Article XXXIII of the Mortgage entitled "Exculpation."

2. Obligor is hereby released from all liability for the performance of the covenants, representations, obligations, terms and conditions of the Loan Documents, including any liability of personal judgment.

3. Purchaser represents, warrants and covenants that Purchaser has no offsets, counterclaims or defenses against the Debt, this Agreement, or the Loan Documents, that Purchaser (and the undersigned representative of Purchaser, if any) has full power, authority and legal right to execute this Agreement and to keep and observe all of the terms of this Agreement on Purchaser's part to be observed or performed, and that the Loan Documents and this Agreement constitute valid and binding obligations of Purchaser. All of the covenants, representations and warranties set forth in the Loan Documents are hereby restated, ratified and confirmed in all respects by Purchaser with respect to Purchaser as of the date hereof and are and shall remain in full force and effect. Beneficiary has full power, authority and legal right to execute this Agreement and to keep



and observe all of the terms of this Agreement on Beneficiary's part to be observed and performed, and this Agreement constitutes the valid and binding obligations of Beneficiary.

4. This Agreement, and any provision 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 Purchaser, Obligor or Beneficiary, except by an agreement in writing, signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

5. If any term, covenant or condition of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

6. This Agreement shall be governed by and construed in accordance with the governing law provisions set forth in the Notes and the Mortgage and the applicable laws of the United States of America.

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7. All capitalized words and phrases, not otherwise defined herein, shall have the meanings ascribed to them in the Notes, the Assignment and/or the Mortgage.

8. This Agreement shall bind, and inure to the benefit of, jointly and severally, the heirs, executors, administrators, successors and assigns of Beneficiary, Obligor and Purchaser.

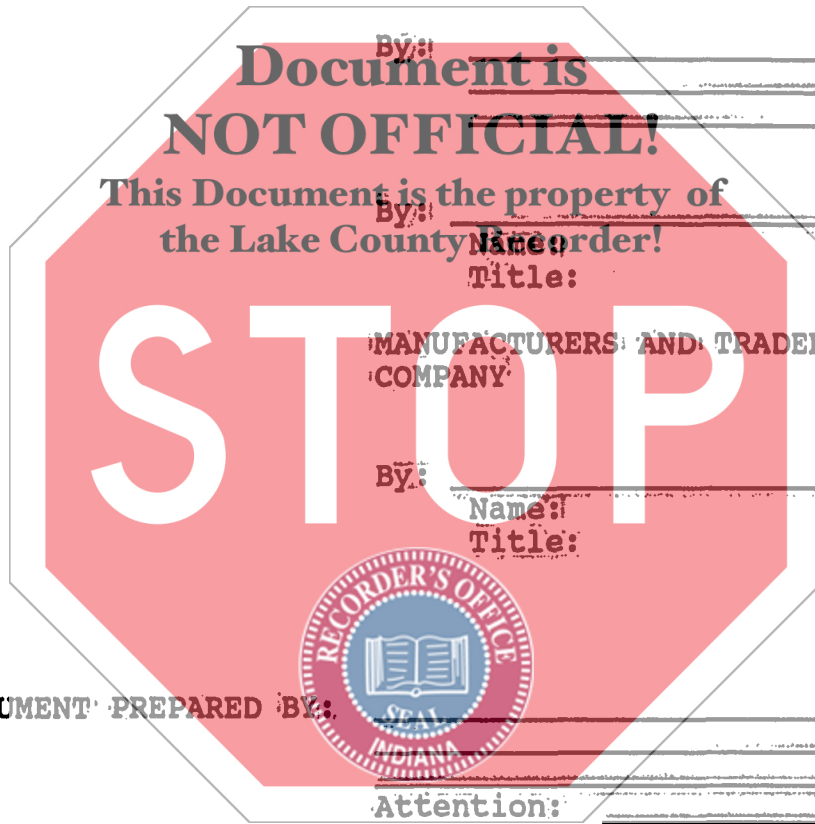
9. This Agreement may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.



IN WITNESS WHEREOF, Obligor, Purchaser and Beneficiary have duly executed this Agreement the date and year first above written.

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



By: \_\_\_\_\_  
Name:  
Title:  
By: \_\_\_\_\_  
Name:  
Title:

MANUFACTURERS AND TRADERS TRUST COMPANY

By: \_\_\_\_\_  
Name:  
Title:

THIS INSTRUMENT PREPARED BY:

Attention: \_\_\_\_\_, Esq.













EXHIBIT D

[Estate for Years Transfer]

Record and Return To:

SPECIAL WARRANTY DEED  
(Remainder Interest)

at \_\_\_\_\_, having its offices  
consideration of Ten and No/100 Dollars (\$10.00) and other good  
and valuable consideration, the receipt of which is hereby  
acknowledged, has and by these presents does grant, bargain, sell  
and convey to \_\_\_\_\_ ("Grantee"),  
in fee, all that certain parcel or parcels of land in the county  
of \_\_\_\_\_, State of \_\_\_\_\_, more particularly described  
in Exhibit A attached hereto and made a part hereof together with  
Grantor's right, title and interest, if any, in and to all  
streets and roads abutting the said parcel or parcels (the  
"Land"); EXCEPTING, HOWEVER, that the conveyance and made herein  
does not include the interests described in (i) and (ii) below:

- (i) an estate for years ("Land Estate") in the Land  
through and including [insert date not earlier  
than the expiration of the initial term of the  
Circuit City lease] which Land Estate is hereby  
reserved unto [insert name of original Grantor],  
its successors and assigns; and
- (ii) all buildings and improvements now located on the  
Land and hereafter located or erected thereon in  
replacement of existing buildings and  
improvements, whether below or above grade level  
(all such buildings, improvements and fixtures  
being collectively referred to as the  
"Improvements"), which are intended to be and  
remain real property and to be and remain the sole  
and exclusive property of the [insert name of  
original Grantor] or its successors in title  
until the expiration of the Land Estate, unless  
[insert name of original Grantor], or its  
successors in title and [insert name of original  
Grantee] or its successors in title, enter into a  
lease of the Land, in which event the ownership of  
the Improvements shall remain the exclusive  
property of the [insert name of original Grantor],  
or its successors in title until the expiration of  
such lease.

The Premises conveyed hereby, excepting the interests described in (i) and (ii) above, is hereinafter defined as the "Remainder Interest" and is subject to all encumbrances, covenants, restrictions, agreements, and other matters of record as of the date hereof, including, -without-limitation, the Indenture date as of \_\_\_\_\_ between \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_ Mortgagor.

Grantee by its acceptance of this deed, for itself and its successors in title to the Remainder Interest, agrees to the foregoing exception and reservation, and acknowledges that it is acquiring a remainder interest in the Land and further acknowledges that it is acquiring no right, title or interest whatsoever in the Improvements except as provided in (ii) above.

TO HAVE AND TO HOLD the Remainder Interest, and all privileges and appurtenances thereto belonging unto Grantee and its successors and assigns forever.

Grantor hereby binds itself and its successors to warrant and defend title to the remainder interest as against all acts of the Grantor herein and no other, subject to all encumbrances, covenants, easements, restrictions, agreements and other matters of record, and Indenture date as of \_\_\_\_\_ between \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_ Mortgagor.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

IN WITNESS WHEREOF, the Grantor has caused this deed to be executed as of \_\_\_\_\_, 199\_.



BY: \_\_\_\_\_ Title: \_\_\_\_\_

ACKNOWLEDGEMENT