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LAWYERS TITLE INS. CORP.  
ONE PROFESSIONAL CENTER  
SUITE 215  
CROWN POINT, IN 46307

RECORDING REQUESTED BY,

THIS INSTRUMENT PREPARED BY

AND WHEN RECORDED MAIL TO:  
Cadwalader, Wickersham & Taft  
660 South Figueroa Street  
Los Angeles, California 90017  
Attention: G. Wilson Horde III, Esq.  
94023753

MAR 30 12 19 PM '94  
SABIN  
RECORDED

STATE OF INDIANA, S.S.M.U.  
LAKE COUNTY  
FILED FOR RECORD

MORTGAGE, ABSOLUTE ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING  
(INDIANA)

NOT OFFICIAL!

THIS DOCUMENT SECURES AN INDENTURE AND A COLLATERALIZED FLOATING RATE NOTE ISSUED PURSUANT THERETO. THE NOTE CONTAINS PROVISIONS FOR (i) ADJUSTMENTS IN THE INTEREST RATE BASED IN PART ON THE LONDON INTERBANK OFFERED RATE FOR ONE-MONTH U.S. DOLLAR DEPOSITS AND ADJUSTMENTS IN THE PAYMENT AMOUNTS; AND (ii) A BALLOON PAYMENT.

THIS MORTGAGE, ABSOLUTE ASSIGNMENT OF RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING (this "Instrument") dated as of March 1, 1994, from EXCEL MORTGAGE FUNDING CORPORATION, a Delaware corporation ("Debtor"), whose address is c/o Excel Realty Trust, Inc., 16955 Via Del Campo, San Diego, California 92127, Attention: Gary Sabin, President; to WILMINGTON TRUST COMPANY, a Delaware banking corporation ("Secured Party"), as "Trustee" under that certain Indenture, dated as of March 1, 1994 (such Indenture and any and all amendments, modifications, extensions, renewals, replacements and substitutions thereof are collectively referred to herein as the "Indenture"), by and among Debtor, as "Company," EQ Services, Inc., a Delaware corporation, as "Servicer" ("Servicer"), and Secured Party, as "Trustee" for the benefit of the Holder (as such term is defined in the Indenture) of the Collateralized Floating Rate Note or Notes issued pursuant to the Indenture (such Collateralized Floating Rate Notes and any and all amendments, modifications, extensions, renewals, replacements and substitutions thereof, whether issued to the original Holder or to any assignee of such Holder, are collectively referred to herein as the "Note"), in the face amount of One Hundred Million Dollars (\$100,000,000.00), executed and delivered by Debtor and authenticated by Secured Party pursuant to the Indenture, payable to Holder, or order, on or before February 27, 2001, with interest at the rate specified in the Indenture. Secured Party's address is set forth in Section 9.11 herein.

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PORTIONS OF THE COLLATERAL ARE GOODS WHICH ARE OR ARE TO BECOME AFFIXED TO OR FIXTURES ON THE LAND DESCRIBED IN OR REFERRED TO IN EXHIBIT A HERETO. THIS INSTRUMENT SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL FIXTURES INCLUDED IN THE COLLATERAL AND IS TO BE FILED FOR RECORD OR RECORDED, AMONG OTHER PLACES, IN THE REAL ESTATE RECORDS OF EACH COUNTY OR PARISH (OR, TO THE EXTENT SIMILAR RECORDS ARE MAINTAINED AT THE CITY OR TOWN LEVEL INSTEAD OF THE COUNTY OR PARISH LEVEL, EACH SUCH CITY OR TOWN) IN WHICH SAID LAND OR ANY PORTION THEREOF IS LOCATED. DEBTOR IS THE OWNER OF RECORD INTEREST IN THE REAL ESTATE CONCERNED. THE ADDRESS OF DEBTOR AND SECURED PARTY ARE SET FORTH OR REFERRED TO ABOVE. THIS INSTRUMENT IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS.

All of the property described under 1 through 12 below is herein collectively called the "Collateral":

1. That certain real property more particularly described in Exhibit A attached hereto and by this reference incorporated herein (the "Land");

2. All of Debtor's right, title and interest in and to any and all buildings, constructions and improvements now or hereafter erected in or on the Land, including, but not limited to, the fixtures, and those attachments, appliances, equipment, machinery, and other articles which are attached to said buildings, constructions and improvements (the "Improvements"; the Improvements and the Land are collectively referred to herein as the "Premises"), all of which shall be deemed and construed to be a part of the realty;

3. All right, title and interest of Debtor in and to all of the items incorporated as part of or attributed or affixed to any of the Premises or other real property included in the Collateral or any other interest of Debtor, whether now owned or hereafter acquired, in, to or relating to the Premises or such other real property, in such a manner that such items are no longer personal property under the law of the State where the property is situate;

4. All PP Collateral as defined in Article IV hereof;

5. All rents, issues, profits, receivables, accounts, revenues, deposits, credits, royalties, income, room rents and other benefits (collectively, the "Rents") derived from the Premises or the Improvements or any other portion of the Collateral or from any leases, subleases, occupancy agreements or licenses of, or any concessions, franchises or similar agreements with respect to, the Collateral (which together with any amendments, modifications, extensions, renewals or substitutions thereto or therefor are collectively referred to as the "Leases") subject to the rights, powers and authorities hereinafter given to Secured Party and Debtor as set forth in Article III hereof;

6. All interests, estates or other claims, both in law and in equity, which Debtor now has or may hereafter acquire in the Premises;

7. All easements, rights-of-way and rights now owned or hereafter acquired by Debtor used in connection with the foregoing described Collateral or as a means of access thereto, including, without limiting the generality of the foregoing, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto, and all water, water courses and water rights and shares of stock evidencing the same.

8. All leasehold estates, rights, titles and interests of Debtor in and to all Leases covering the Premises, or any portion thereof, now or hereafter existing or entered into, and all right, title and interest of Debtor thereunder, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature;

9. All right, title and interest now owned or hereafter acquired by Debtor in and to any greater estate in the Premises;

10. All right, title and interest now owned or hereafter acquired by Debtor in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

11. All rights and interests of Debtor in, to and under all plans, specifications, maps, surveys, studies, reports, permits, licenses, architectural, engineering and construction contracts, books of account, insurance policies (and proceeds paid or payable thereunder) and other documents, of whatever kind or character, relating to use, construction upon, occupancy, leasing, sale or operation of the Premises; and

12. All of the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Debtor now has or may hereafter acquire in the Premises or other portions of the Collateral, and other proceeds from sale or disposition of the Collateral which Debtor now has or may hereafter acquire and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Collateral, including, without limitation, any award resulting from a change of grade of streets and any award for severance damages.

IN CONSIDERATION of the sum of ten dollars (\$10.00) in hand paid by Secured Party to Debtor, and for other good and

valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby irrevocably:

A. grants, bargains, sells, assigns, transfers, mortgages and conveys those portions of the Collateral that constitute real property under the laws of the State wherein located (the "RP Collateral") to Secured Party and its successors and assigns forever, WITH POWER OF SALE, pursuant to this Instrument and applicable law, but subject to the rights of Secured Party under the assignment made in Paragraph C below, TO HAVE AND TO HOLD the RP Collateral, subject to all of the terms, conditions, covenants and agreements herein set forth, for the security and benefit of Secured Party, Holder and any holders of any other Obligations (as hereinafter defined), and their respective successors and assigns; and

B. grants a security interest to Secured Party and its successors and assigns for the security and benefit of Secured Party, Holder and any holders of any other Obligations and their respective successors and assigns in those portions of the Collateral that either are fixtures or are not RP Collateral including, without limitation, the PP Collateral, but subject to the rights of Secured Party under the assignment made in Paragraph C below; and

C. absolutely and unconditionally assigns and transfers to Secured Party and its successors and assigns for the benefit of Secured Party, Holder and any holders of any other Obligations and their respective successors and assigns all of the Rents and other benefits derived from any Leases or otherwise accruing to Debtor, whether now existing or hereafter created, all subject to the terms and conditions of the revocable license in favor of Debtor granted in Paragraph 3.01 below.

IN FURTHERANCE OF THE FOREGOING GRANTS (INCLUDING GRANTS OF SECURITY INTERESTS), BARGAINS, SALES, ASSIGNMENTS, TRANSFERS, MORTGAGES AND CONVEYANCES, AND TO PROTECT THE PREMISES AND THE SECURITY GRANTED BY THIS INSTRUMENT, DEBTOR HEREBY WARRANTS, REPRESENTS, COVENANTS AND AGREES AS FOLLOWS:

#### ARTICLE I OBLIGATIONS

Section 1.01. Obligations. This Instrument is executed, acknowledged and delivered by Debtor to secure and enforce the following obligations ("Obligations"):

(a) Payment and performance of all obligations of Debtor under the Indenture, including, without limitation, the obligation of Debtor under the Note, which Note has been executed by Debtor pursuant to the Indenture;

(b) Payment of all obligations of Debtor to Secured Party for fees, costs and expenses (including attorneys' fees) under the Indenture, the Note, the other Loan Documents (as hereinafter defined) and this Instrument;

(c) Payment of all sums advanced by Secured Party to protect the Collateral, with interest thereon at the default rate set forth in the Indenture (the "Agreed Rate");

(d) Payment of all sums advanced and costs and expenses incurred by Secured Party in connection with the Obligations or any part thereof, any renewal, extension or change of or substitution for the Obligations or any part thereof, or the acquisition or perfection of the security therefor, whether such advances, costs and expenses were made or incurred at the request of Debtor or Secured Party;

(e) Payment of all other sums, with interest thereon, which may hereafter be loaned to Debtor, or its successors or assigns, by Secured Party, or its successors or assigns, or by any Holder, when evidenced by an instrument or instruments reciting that said instrument or instruments are secured by this Instrument;

(f) Performance of every obligation, covenant and agreement of Debtor contained in any document, instrument, contract or agreement now or hereafter executed by Debtor (including, without limitation, the Indenture) which recites that the obligations thereunder are secured by this Instrument;

(g) Payment of all other indebtedness and liabilities and performance of all other obligations of Debtor to Secured Party or any Holder arising pursuant to, or in connection with, the Indenture or this Instrument other than environmental/hazardous waste obligations; and

(h) All renewals, extensions, amendments and changes of, or substitutions or replacements for, all or any part of the items described under (a) through (g) above.

Section 1.02. Loan Documents. This Instrument, the Indenture, the Note, and any other deed of trust, mortgage, security agreement, deed to secure debt, collateral mortgage, chattel mortgage, pledge, act of pledge, act of mortgage, act of collateral mortgage, agreement, guaranty, assignment of rents or leases, affidavit, certificate or other instrument given to evidence or further secure the payment and performance of any of the Obligations may hereinafter be collectively referred to as the "Loan Documents." The Note and the Indenture are hereby incorporated herein and made a part hereof. The term "Loan Documents" shall exclude that certain Environmental Indemnity Agreement of even date herewith executed by Debtor (the "Environmental Indemnity"), it being the intent of Debtor and Secured Party that the obligations of the "Indemnitor" under the

Environmental Indemnity shall be unsecured obligations of such Indemnitor and shall be independent of Debtor's obligations under the Loan Documents.

**ARTICLE II**  
**COVENANTS AND AGREEMENTS OF DEBTOR**

Section 2.01. Payment of Secured Obligations. Debtor shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Note; all charges, fees and other sums to be paid by Debtor as provided in the Loan Documents; the principal of and interest on any future advances secured by this Instrument; and the principal of and interest on any other indebtedness secured by this Instrument.

Section 2.02. Maintenance, Repair, Alterations. Debtor (a) shall keep the Collateral in good condition and repair; (b) shall not remove, demolish or structurally alter any of the Improvements (collectively, an "Alteration"), except (i) where the tenant under an Approved Lease (as hereinafter defined) is permitted or obligated, as the case may be, under such lease to make an Alteration to the Improvements, or (ii) where Debtor is obligated under an Approved Lease to make an Alteration to the Improvements, or (iii) with the prior written consent of Secured Party (which may be granted or denied in its sole discretion); (c) shall cause each tenant of the Premises to comply with the terms of this Instrument in making any Alteration to the Improvements; (d) shall complete promptly and in a good and workmanlike manner any Improvements which may be now or hereafter constructed on the Premises and promptly restore in like manner any portion of the Improvements which may be damaged or destroyed thereon from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefor; (e) shall comply with all laws, statutes, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Collateral or any part thereof or requiring any alterations or improvements; (f) shall not commit, or permit, any waste or deterioration of the Collateral; (g) shall comply with the provisions of all Leases; and (h) shall not commit, suffer or permit any act to be done in or upon the Collateral in violation of any law, ordinance or regulation. Notwithstanding the foregoing, if the obligations described in this Section 2.02 are that of a tenant (or tenants) under a Lease (or Leases) of the Land and/or the Improvements, Debtor shall cause such tenant(s) to comply with the terms hereof to the extent the obligations under this Section 2.02 are not inconsistent with such tenant's(s') Lease(s). If any of Debtor's obligations under this Section 2.02 are inconsistent with or greater than those contained in the Lease(s) of the Land or the Improvements, then Debtor shall take such acts as may be necessary or expedient to cause the Collateral and the Improvements to comply with this Section 2.02.

Section 2.03. Required Insurance. (a) Debtor, at its sole cost and expense, shall keep the Premises insured during the term of this Instrument for the mutual benefit of Debtor, Secured Party and Holder against loss or damage by fire and against loss or damage by other risks embraced by coverage of the type now known as "fire and extended coverage", including, but not limited to, riot and civil commotion, vandalism, malicious mischief, burglary, theft and mysterious disappearance, and against such other risks or hazards as Secured Party from time to time reasonably may designate, in an amount (i) equal to one hundred percent (100%) of the then "full replacement cost" of the Improvements, without deduction for physical depreciation, and (ii) such that the insurer would not deem Debtor a coinsurer under said policies. The policies of insurance carried in accordance with this Paragraph shall be prepaid and contain a "Replacement Cost Endorsement" with a waiver of depreciation.

(b) Debtor, at its sole cost and expense, for the mutual benefit of Debtor, Secured Party and Holder, will also maintain during the term of this Instrument:

(i) Flood insurance if the Premises are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount at least equal to the then "full replacement cost" of the Improvements, without deduction for physical depreciation, or the maximum limit of coverage available with respect to the Improvements under said Act, whichever is less.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages.

(iii) Rental loss insurance in an amount equal to or greater than one hundred percent of the aggregate annual amount of all rents and additional rents payable by all of the tenants under the Leases (whether or not such Leases are terminable in the event of a fire or casualty), such rental loss insurance to cover rental losses for a period of at least one year after the date of the fire or casualty in question. The amount of such rental loss insurance shall be increased from time to time during the term of this Instrument as and when new Leases and renewal Leases are entered into in accordance with the terms of this Instrument, to reflect all increased rent and increased additional rent payable by all of the tenants under such renewal Leases and all rent and additional rent payable by all of the tenants under such new Leases.

(iv) Insurance against loss or damage from explosion of steam boilers, air conditioning equipment, high

pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements.

(v) A supplemental, blanket policy in form and substance acceptable to Secured Party and the Rating Agencies (as defined in the Indenture) covering each of the risks enumerated in this Section 2.03, with liability limitations acceptable to Secured Party and the Rating Agencies and containing each of the endorsements required under this Instrument.

(vi) Such other insurance as may from time to time be reasonably required by Secured Party to protect its interests.

(c) All such policies of insurance required by the terms of this Instrument shall be issued by companies, associations or organizations satisfactory to Secured Party, shall contain policy limits satisfactory to Secured Party and shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Debtor or any party holding under Debtor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deduction against Debtor.

(d) Notwithstanding the foregoing (i) if the obligations described in this Section 2.03 are that of a tenant (or tenants) under a Lease (or Leases) of the Land and/or the Improvements, then Debtor shall cause such tenant(s) to comply with the terms hereof to the extent the obligations under this Section are not inconsistent with such tenant's(s') Lease(s); (ii) if any of Debtor's obligations under this Section 2.03 are inconsistent with or greater than those contained in the Lease(s) of the Land or the Improvements, then Debtor shall take such acts as may be necessary or expedient to cause such insurance policies to comply with this Section 2.03; and (iii) where an Approved Lease permits the tenant to self-insure for the risks enumerated in Section 2.03(a), Debtor shall have no obligation to cause the tenant to obtain such insurance from a company, association or organization approved by Secured Party.

Section 2.04. Delivery of Policies, Payment of Premiums.

(a) Each policy of insurance (other than public liability or workers' compensation insurance) shall have attached thereto a lender's loss payable endorsement for the benefit of Secured Party and Holder in form satisfactory to Secured Party and each policy of insurance (other than workers' compensation insurance) shall name Secured Party and Holder as additional insureds. Upon the request of Secured Party, Debtor shall furnish Secured Party with either, at the option of Secured Party, an original of all policies of insurance required under Section 2.03 above or a certificate of insurance for each



required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage. Other than the supplemental blanket policy referred to in Section 2.03(b)(v), Debtor may provide any of the required insurance through blanket policies carried by Debtor and covering more than one location, or by policies procured by a tenant or other party holding under Debtor; provided, however, all such policies shall be in form and substance and issued by companies satisfactory to Secured Party. At least thirty (30) days prior to the expiration of each required policy, Debtor shall deliver to Secured Party evidence reasonably satisfactory to Secured Party of the payment of premium and the renewal or replacement of such policy continuing insurance in the form required by this Instrument. All such policies shall contain a provision that, notwithstanding any contrary agreement between Debtor and insurance company, such policies will not be cancelled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Secured Party.

(b) If Debtor fails to provide, maintain, keep in force or deliver to Secured Party, or cause to be provided, maintained, kept in force or delivered to Secured Party, the policies of insurance required by this Instrument or by any other Loan Document, Secured Party may (but shall have no obligation to) procure such insurance or single interest insurance for such risks covering Secured Party's interest, and Debtor will pay (or cause to be paid) all premiums thereon promptly upon demand by Secured Party, and until such payment is made by Debtor to Secured Party, the amount of all such premiums shall bear interest at the Agreed Rate. If Debtor (i) fails on two (2) occasions to pay (or cause a tenant of the Premises to pay as required under its Lease) any premiums on any of the policies required to be maintained under this Instrument, or (ii) is in default under this Instrument, then upon the request of Secured Party, Debtor shall (i) deposit with Secured Party, in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Instrument, and (ii) cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Secured Party. Upon receipt of such bills, statements or other documents evidencing that a premium for a required policy is then payable, and providing Debtor has deposited sufficient funds with Secured Party pursuant to this Section 2.04, Secured Party shall timely pay such amounts as may be due thereunder out of the funds so deposited with Secured Party. If at any time and for any reason the funds deposited with Secured Party are or will be insufficient to pay such amount as may be then or subsequently due within the next twelve (12) months, Secured Party shall notify Debtor and Debtor shall immediately deposit with Secured Party an amount equal to such deficiency. Notwithstanding the foregoing, nothing contained herein shall cause Secured Party to

be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Secured Party pursuant to this Section 2.04, nor shall anything contained herein modify the obligation of Debtor set forth in Section 2.03 above to maintain and keep such insurance in force at all times. Secured Party may commingle said reserve with its own funds and Debtor shall be entitled to no interest thereon.

Section 2.05. Casualties; Insurance Proceeds. After the happening of any casualty to or in connection with the Collateral or any part thereof, whether or not such casualty is covered by insurance, Debtor shall give prompt written notice thereof to Secured Party. In the event of such a casualty, if Debtor is required by the terms of an Approved Lease to restore the Premises (or if Debtor is required to distribute to the tenant any insurance proceeds paid in respect of such casualty to restore the Collateral), then the gross proceeds of insurance, if any, shall be payable to Debtor (or to the tenant if required under such Approved Lease) for use in the restoration and/or repair of the Premises. To the extent any of the gross proceeds of insurance are not required to be used to repair or restore the Premises under the foregoing circumstances, Debtor shall pay over any such insurance proceeds it receives to Secured Party, and Debtor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Secured Party. Except as otherwise provided above, if Debtor receives any proceeds of insurance resulting from such casualty, Debtor shall promptly pay over such proceeds to Secured Party and Debtor covenants that, until paid over to Secured Party, Debtor shall hold such proceeds in trust for the benefit of Secured Party and shall not commingle such proceeds with any other funds or assets of Debtor or any other party. Secured Party is hereby authorized and empowered by Debtor to settle, adjust or compromise any and all claims for loss, damage or destruction under any policy or policies of insurance with or without the consent of Debtor. Subject to the terms set forth in the second sentence of this Section 2.05, and without waiving or curing any Event of Default, and without regard to the adequacy of its security, Secured Party may, in its absolute discretion: (a) apply the proceeds of such insurance to the payment of any Obligations secured by this Instrument upon a Due Date (as defined in the Indenture); and/or (b) in such order, in such manner and according to such terms and conditions as Secured Party may determine, release all or portions of such proceeds to Debtor for the repair, replacement, or restoration of the Improvements (it being expressly agreed that Secured Party may condition disbursement of such proceeds for restoration upon satisfaction of the conditions set forth in this Section 2.05 or in Section 2.09 hereof), and any balance of such proceeds shall be paid over to (or retained by) Secured Party and applied to the Obligations. If an Approved Lease requires that the Collateral be restored (as described in the second sentence of this Section 2.05 above), nothing herein contained shall be deemed to excuse Debtor from repairing or maintaining the Collateral as provided in Section 2.02 above or

restoring all damage or destruction to the Collateral, regardless of whether there are insurance proceeds available to Debtor or whether any such proceeds are sufficient in amount. The application or release by Secured Party of any insurance proceeds shall not cure or waive any default or notice of default under this Instrument or invalidate any act done pursuant to such notice.

If Secured Party elects or is required by the preceding paragraph or applicable law to disburse insurance proceeds to reimburse Debtor for the cost of restoration and repair of the Premises, Debtor shall use such proceeds to restore the Premises to the equivalent of its original condition or such other condition as Secured Party may approve in writing. Secured Party may, at Secured Party's sole option, condition disbursement of the proceeds on: Debtor's deposit with Secured Party of any amount by which the cost of repair and restoration, as estimated by Secured Party, exceeds the available insurance proceeds; Secured Party's approval of such plans and specification of an architect satisfactory to Secured Party; or contractor's cost estimates, architect's certificates, waivers of liens, payment and performance bonds, sworn statements of mechanics or materialmen or such other evidence of costs, percentage of completion of construction, application of payments, or satisfaction of liens as Secured Party may require. At Secured Party's sole option, disbursement of the insurance proceeds and Debtor's funds, if any, deposited with Secured Party may be made in the same manner and with the same safeguards and limitations as then generally employed by banking institutions in the State in which the Premises are located in disbursing construction loan proceeds, including, without limitation, retainages and holdbacks. Any restoration and repair shall be performed in a good and workmanlike manner in accordance with the plans and specifications approved by Secured Party and in compliance with applicable laws and ordinances, and shall be completed within a reasonable period of time, but in no event later than the maturity date of the Note. Secured Party may withhold disbursement of any or all of such proceeds if there has occurred an Event of Default under this Instrument, or if there has occurred any event which would, if uncured or uncorrected, constitute an Event of Default with the giving of notice, or passage of time, or both. Any excess insurance proceeds following such restoration and repair shall be returned to or retained by Secured Party and applied to the Obligations. Nothing set forth in this paragraph, and no authority given to Debtor to repair, rebuild or restore the Premises or any portion thereof, shall be deemed to constitute Debtor the agent of Secured Party for any purpose, or to create, either expressly or by implication, any liens or claims or rights on behalf of laborers, mechanics, materialmen or other lienholders which could in any way be superior to the lien or claim of Secured Party, or which could be construed as creating any third party rights of any kind or nature to any insurance proceeds in Secured Party's possession.

Section 2.06. Assignment of Policies Upon Foreclosure.

In the event of foreclosure of this Instrument or other transfer of title or assignment of the Collateral in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Debtor in and to all policies of insurance required in Section 2.03 above shall inure to the benefit of and pass to the successor in interest to Debtor or the purchaser or grantee of the Collateral.

Section 2.07. Taxes and Impositions.

(a) Debtor shall pay, or cause to be paid, and Secured Party shall have received from Debtor written evidence of such payment satisfactory to Secured Party at least ten (10) days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments, of any kind or nature whatsoever, including, without limitation, nongovernmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Collateral, which are assessed or imposed upon the Collateral, or become due and payable, and which create, may create or appear to create a lien upon the Collateral, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of the above hereinafter referred to, collectively, as "Impositions"); provided, however, that if by law any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Debtor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Collateral in lieu of or in addition to the Impositions otherwise payable by Debtor pursuant to Section 2.07(a), or (ii) a license fee, tax or assessment imposed on Secured Party and measured by or based in whole (or in part) upon the amount of the outstanding Obligations secured hereby, or (iii) a license fee, tax or assessment imposed on Secured Party or because of Secured Party's interest in the Collateral, then all (or said part of) such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in Section 2.07(a), and Debtor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Debtor fails to provide Secured Party with satisfactory written evidence of Debtor's payment of such Impositions at least ten (10) days prior to delinquency or if Debtor is prohibited by law from paying such Impositions, Secured Party may at its option declare all Obligations, together with all accrued interest thereon, immediately due and payable. Anything to the contrary herein notwithstanding, Debtor shall

have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Secured Party.

(c) Debtor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Debtor's covenant to pay any such Imposition at the time and in the manner provided herein unless Debtor has given prior written notice to Secured Party of Debtor's intent to so contest or object to an Imposition, and unless, at Secured Party's sole option, (i) Debtor shall demonstrate to Secured Party's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Collateral, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (ii) Debtor shall demonstrate to Secured Party's satisfaction that Debtor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale; or (iii) Debtor shall furnish a good and sufficient bond or surety as requested by, and in form and amount satisfactory to, Secured Party.

(d) Upon request by Secured Party following an Event of Default under this Instrument or failure to pay any Imposition as and when required under Section 2.07(a), Debtor shall deposit with Secured Party, in monthly installments, an amount equal to one-twelfth (1/12) of the sum of the annual Impositions reasonably estimated by Secured Party, for the purpose of paying the installment of Impositions next due on the Collateral (funds deposited for this purpose shall hereinafter be referred to as "Impounds"). In such event, Debtor further agrees to cause all bills, statements or other documents relating to such Impositions to be sent or mailed directly to Secured Party. Upon receipt of such bills, statements or other documents, and providing Debtor has deposited sufficient Impounds with Secured Party pursuant to this Section 2.07(d), Secured Party shall timely pay such amounts as may be due thereunder out of the Impounds so deposited with Secured Party. If at any time and for any reason the Impounds deposited with Secured Party are or will be insufficient to pay such amounts as may then or subsequently be due within the next twelve (12) months, Secured Party may notify Debtor and upon such notice Debtor shall deposit immediately with Secured Party an amount equal to such deficiency. Notwithstanding the foregoing, nothing contained herein shall cause Secured Party to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Secured Party pursuant to this Section 2.07(d). Secured Party may commingle Impounds with its own funds and shall not be obligated to pay or allow any interest on any Impounds held by Secured Party pending disbursement or application hereunder and is hereby granted a security interest in any Impounds. Secured Party may reserve for future payment of Impositions such portion of the Impounds as Secured Party may in its absolute discretion deem proper. Should

Debtor fail to deposit with Secured Party (exclusive of that portion of said payments which has been applied by Secured Party upon any Obligation) sums sufficient to fully pay such Impositions at least ten (10) days before delinquency thereof, Secured Party may, at Secured Party's election, but without any Obligation so to do, advance any amount required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Secured Party as herein elsewhere provided, or at the option of Secured Party the latter may, without making any advances whatever, apply any Impounds held by it upon any Obligation in such order as Secured Party may determine, notwithstanding that said indebtedness or the performance of said obligation may not yet be due according to the terms thereof. Should any default or Event of Default occur or exist on the part of Debtor in the payment or performance of any of Debtor's or any guarantor's obligations under the terms of the Loan Documents, Secured Party may, at any time and at Secured Party's option, apply any sums or amounts in its hands received pursuant to Sections 2.04(b) and 2.07(d) hereof, or as rents or income of the Collateral or otherwise, to any of the Obligations in such manner and order as Secured Party may elect, notwithstanding such Obligations may not yet be due according to the terms thereof. The receipt, use or application of any such Impounds paid by Debtor to Secured Party hereunder shall not be construed to affect the maturity of any Obligations or any of the rights or powers of Secured Party under the terms of the Loan Documents or any of the obligations of Debtor or any guarantor under the Loan Documents.

(e) If requested by Secured Party following Debtor's failure to provide Secured Party with evidence of the payment of any Imposition as required by Section 2.07(a), Debtor shall cause to be furnished to Secured Party a tax reporting service, covering the Collateral, or any portion thereof, of a type and duration, and with a company, satisfactory to Secured Party.

Section 2.08. Eminent Domain. In the event that any proceeding or action be commenced for the taking of the Collateral, or any part thereof or interest therein, for public or quasipublic use under the power of eminent domain, condemnation or otherwise, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Debtor receive any notice or other information regarding such proceeding, action, taking or damage (including, without limitation, a proposal to purchase the Collateral or some portion thereof in lieu of condemnation), Debtor shall give prompt written notice thereof to Secured Party. Secured Party shall be entitled, at Secured Party's option, without regard to the adequacy of its security, to investigate and negotiate with the condemnor concerning the proposed taking, and to commence, appear in and prosecute in its own name any such action or proceeding. Following the occurrence of an Event of Default hereunder, Secured Party shall also be entitled to make any compromise or settlement in connection with such taking or

damage with or without the consent of Debtor. All compensation, awards, damages, rights of action and proceeds awarded to Debtor by reason of any such taking or damage (the "Condemnation Proceeds") are hereby assigned to Secured Party, and Debtor agrees to execute such further assignments of the Condemnation Proceeds as Secured Party may require. Except as provided below, such Condemnation Proceeds (after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees, incurred by Secured Party in connection with any such action or proceeding) shall be paid directly to Secured Party or its designees or assignees, to be used, held, paid, applied or released in the absolute discretion of Secured Party and without regard to the adequacy of its security, in the same manner and with the same effect as provided herein for the disposition of insurance proceeds. In this regard, Debtor hereby waives the benefit of any statute, rule or law which may be contrary thereto to the extent permitted by applicable law.

Section 2.09. Conditions to Disbursement of Loss Proceeds. Debtor hereby agrees that Secured Party may condition disbursement of proceeds under Sections 2.05 and 2.08 hereof upon satisfaction of the following:

(a) receipt and approval by Secured Party of final plans and specifications for the subject restoration, a budget of all costs therefor, a construction schedule therefor and a construction contract or its equivalent (depending on the nature of the restoration); and

(b) proof that an amount equal to the sum which Secured Party is requested to disburse has theretofore been paid by Debtor, or is then due and payable, for materials theretofore installed or work theretofore performed upon the subject property and properly includable in the cost of restoration thereof.

Section 2.10. Liens. Other than Permitted Encumbrances (as described below), Debtor shall pay and discharge promptly, or cause to be paid and discharged promptly, at Debtor's cost and expense, all liens, encumbrances and charges upon the Collateral, or any part thereof or interest therein; provided that Debtor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided that Debtor shall first deposit with Secured Party a good and sufficient bond, surety or other security, in such amounts as Secured Party shall reasonably require (but not more than one hundred fifty percent (150%) of the amount of such lien, encumbrance or charge), and provided further that Debtor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Debtor shall fail to remove and discharge, or cause to be removed or discharged, any such lien, encumbrance or charge, then in addition to any other right or remedy of Secured Party, Secured Party may, but shall not be obligated to, discharge the same, either by paying the

amount claimed to be due or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Debtor shall, immediately upon demand therefor by Secured Party, pay to Secured Party an amount equal to all costs and expenses incurred by Secured Party in connection with the exercise by Secured Party of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure at the Agreed Rate and until so paid, such amount together with such interest shall be secured hereby. As used herein the terms "Permitted Encumbrance" and "Permitted Encumbrances" shall mean the rights of others provided in documents and instruments approved by Secured Party in writing (in its sole and absolute discretion).

Section 2.11. Title. Debtor represents and warrants that (i) it holds good, absolute, marketable and indefeasible title to the Collateral, (ii) it has authority to grant this Instrument on the same, (iii) except for Permitted Encumbrances, the Collateral is free and clear of all liens and encumbrances whatsoever, except as heretofore disclosed in writing to Secured Party, and (iv) it will forever warrant and defend title to the Collateral against the lawful claims of all persons.

Section 2.12. Other Instruments. Debtor shall punctually pay, or cause to be paid, all amounts due and payable under, and shall promptly and faithfully perform or observe, or cause to be performed or observed, each and every other obligation or condition to be performed or observed under, each deed of trust, deed to secure debt, mortgage, security agreement or other lien or security interest, or encumbrance, lease, sublease, declaration, covenant, condition, restriction, license, order or other instrument or agreement which affects or may affect the Collateral, in law or in equity.

Section 2.13. Leasehold. Secured Party shall have the right to approve or disapprove all Leases and all tenants and guarantors under said Leases. Debtor shall, within ten (10) calendar days after written request therefor by Secured Party, deliver to Secured Party complete copies of all Leases (including all exhibits thereto), together with such financial information on the tenant and each guarantor thereunder (if any) as Secured Party shall reasonably request, for Secured Party's approval. All Leases which have been approved by Secured Party (or deemed approved in accordance with the provisions of this Section 2.13 hereinbelow) are referred to herein as "Approved Leases"; Secured Party shall be deemed to have approved those Leases (and tenants and guarantors thereunder) that satisfy all of the following conditions: (a) the net rentable square feet covered by said Lease is less than ten percent (10%) of the aggregate net rentable square feet in the Improvements; (b) the Lease term is equal to or less than five (5) years (including any options to extend the term); (c) the Debt Service Test (as defined below)



following the execution and effectiveness of the proposed new Lease will be satisfied; and (d) the Lease is on a lease form which has been provided to and approved by Secured Party prior to execution of such Lease. Debtor agrees not to amend, change, terminate or modify, in a material or adverse manner, any Lease or any interest therein without the prior written consent of Secured Party, unless, after giving effect to the proposed amendment or termination, the Debt Service Coverage Ratio (as defined in the Indenture) for the Premises will continue to satisfy subsections (i) and (ii) of Section 1102 of the Indenture for the release of the Premises from the lien of this Instrument ("Debt Service Test"). Consent to one amendment, change, agreement or modification shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, changes, agreements or modifications. Debtor agrees to perform all obligations and agreements as lessor under each Lease and shall not take any action or omit to take any action which would effect or permit the termination of any Lease. Debtor agrees to promptly notify Secured Party in writing with respect to any default or alleged default by any party thereto and to deliver to Secured Party copies of all notices, demands, complaints or other communications received or given by Debtor with respect to any such default or alleged default. Secured Party shall have the option to cure any such default of Debtor and to perform any or all of Debtor's obligations thereunder. All sums expended by Secured Party in curing any such default shall be secured hereby and shall be immediately due and payable without demand or notice and shall bear interest from date of expenditure at the Agreed Rate.

Section 2.14. Utilities. Debtor shall pay, or cause to be paid, when due all utility charges which are incurred for the benefit of the Collateral or which may become a charge or lien against the Collateral for gas, electricity, water or sewer services furnished to the Collateral and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Collateral or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon.

Section 2.15. Inspection. Secured Party or its agents, representatives or workers are authorized to enter, at any reasonable time and upon reasonable prior notice to Debtor, upon or in any part of the Collateral for the purpose of inspecting the same and for the purpose of performing any of the acts they are authorized to perform hereunder or under the terms of the Loan Documents. Secured Party shall repair (or cause to be repaired) any damage to the Premises caused by Secured Party, its agents, representatives or workers due to such entry and inspection.

Section 2.16. Actions by Secured Party To Preserve Collateral. If Debtor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents,

Secured Party, without obligation so to do, without releasing Debtor from any obligation, and without notice to or demand upon Debtor, may make or do the same in such manner and to such extent as Secured Party may deem necessary to protect the security hereof. In connection therewith (without limiting its general and other powers, whether conferred herein, in another Loan Document or by law), Secured Party (and any party it shall designate on its behalf) shall have and is hereby given the right, but not the obligation: (i) to enter upon and take possession of the Collateral; (ii) to make additions, alterations, repairs and improvements to the Collateral which Secured Party may consider necessary or proper to keep the Collateral in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Secured Party; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Secured Party may affect or appears to affect the security of this Instrument or to be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Debtor shall, immediately upon demand therefor by Secured Party, pay to Secured Party, an amount equal to all respective costs and expenses incurred by Secured Party in connection with the exercise by Secured Party of the foregoing rights including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees, together with interest thereon from the date of such expenditures at the Agreed Rate.

Section 2.17. Indemnification; Subrogation; Waiver of Offset.

(a) If the title, interest, lien or encumbrance, as the case may be, of Debtor or Secured Party in and to the Collateral or any part thereof, or the security of this Instrument, or the rights or powers of Secured Party or Debtor hereunder, shall be attacked, either directly or indirectly, or if any legal proceedings are commenced involving Debtor or the Collateral, Debtor shall promptly give written notice thereof to Secured Party and at Debtor's own expense shall take all reasonable steps diligently to defend against any such attack or proceedings, employing attorneys reasonably agreeable to Secured Party; and Secured Party may take such independent action in connection therewith as it may in its discretion deem advisable, and all costs and expenses, including, without limitation, reasonable attorneys' fees and legal expenses, incurred by Secured Party in connection therewith shall be a demand obligation owing by Debtor to Secured Party and shall bear interest at the Agreed Rate. Debtor agrees that, if Debtor fails to perform any act which Debtor is required to perform hereunder, Secured Party may, but shall not be obligated to, perform or cause to be performed such act, and any expense incurred by Secured Party in connection therewith shall be a demand

obligation owing by Debtor to Secured Party and shall bear interest at the Agreed Rate and Secured Party shall be subrogated to all of the rights of the party receiving such payment. The liabilities of Debtor as set forth in this Section 2.17 shall survive the termination of this Instrument.

(b) Debtor waives any and all right to claim or recover against Secured Party, its officers, employees, agents and representatives, for loss of or damage to Debtor, the Collateral, Debtor's other property or the property of others under Debtor's control from any cause insured against or required to be insured against by the provisions of this Instrument.

(c) All sums payable by Debtor pursuant to this Instrument shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Debtor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Collateral or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Collateral or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Secured Party or any action taken with respect to this Instrument by any trustee or receiver of Secured Party, or by any court, in any such proceeding; (v) any claim which Debtor has or might have against Secured Party; (vi) any default or failure on the part of Secured Party to perform or comply with any of the terms hereof or of any other agreement with Debtor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Debtor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Debtor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Debtor.

Section 2.18. Financial and Other Information. Debtor shall deliver to Secured Party (i) quarterly operating statements for the Premises, which shall include a detailed statement of receipts and sources thereof, including, but not limited to, a schedule of tenants, rents paid, area occupied, percentage of occupancy, and a detailed statement of expenses showing, among other things, taxes, insurance, cost of all maintenance and replacement, and other costs of operation; (ii) within sixty (60) days after the end of each calendar year, annual operating statements together with a current rent roll (if the Premises are occupied by multiple tenants), which statements shall, if the Premises are improved for multi-tenant occupancy, be certified by an independent certified public accountant satisfactory to

Secured Party or, if so approved by Secured Party, Debtor's chief financial officer, and prepared in accordance with generally accepted accounting principles, consistently applied, or otherwise prepared to the satisfaction of Secured Party; and (iii) such other financial or operating reports in form and content satisfactory to Secured Party as Secured Party shall reasonably require.

In addition to the foregoing operating statements, Debtor shall promptly furnish to Secured Party such information concerning Debtor, the Collateral and Debtor's business affairs and financial condition, as provided in the Indenture.

Section 2.19. Continued Existence; Trade Names. Debtor is and shall continue to be: (a) a duly organized, validly existing corporation in good standing under the laws of the State of Delaware; (b) vested with all power and authority necessary to own its property and assets and to transact the business in which it is engaged; (c) duly qualified to do business and in good standing in every state in which Debtor owns or leases property that serves as security for the Obligations or in which failure to be duly qualified and in good standing would have an adverse effect on Debtor's business, operations, property or financial condition; and (d) duly authorized to execute, acknowledge and deliver the written instruments comprising the Obligations and this Instrument and to observe and perform Debtor's duties thereunder and hereunder.

Section 2.20. Transfer of Collateral by Debtor. The financial stability and managerial and operational ability of Debtor are substantial and material considerations to Secured Party in its agreement to make the loan to Debtor upon the terms set forth in, and to accept from Debtor, the Loan Documents. Debtor understands and acknowledges that a transfer of the Collateral may significantly and materially alter and reduce Secured Party's security for the indebtedness evidenced by the Note and the other Loan Documents. Therefore, to induce Secured Party to make the loan secured hereby, Debtor agrees that, except as expressly permitted under Article VIII below, Debtor will not transfer the Collateral, or any portion thereof, without the prior written consent of Secured Party, which consent may be granted or denied in the sole and absolute discretion of Secured Party. In the event of any transfer of the Collateral, or any portion thereof, that is not expressly permitted hereunder and is without the prior written consent of Secured Party, Secured Party shall have the absolute right at its option, without prior demand or notice, to declare all of the Obligations immediately due and payable. Consent to one such transfer shall not be deemed to be a waiver of the right to require consent to future or successive transfers. Secured Party may grant or deny such consent in its sole and absolute discretion. If consent should be given to a transfer and if this Instrument is not released to the extent of the transferred portion of the Collateral by a writing signed by Secured Party and recorded in the proper city, town, county or

parish records, then any such transfer shall be subject to this Instrument and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Any such assumption shall not, however, release Debtor or any other maker or guarantor of the Note from any liability thereunder without the prior written consent of Secured Party. As used herein, "transfer" shall include (i) the sale, encumbrance (except Permitted Encumbrances), agreement to sell, transfer or conveyance of the Collateral or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise; (ii) the execution of any installment land sale contract or similar instrument affecting all or a portion of the Collateral; (iii) notwithstanding any reservation thereof or right thereto created previously on title to the Land, the use of any part of the surface, or subsurface to a depth of 500 feet below the surface of the Premises for the prospecting or drilling for, or the production (including injection and other production or withdrawal operations), mining, extraction, storing or removal of, any oil, gas or other minerals whether from the Premises or elsewhere; (iv) except for a Permitted Encumbrance, any transfer by way of security, including the placing or the permitting of the placing, subsequent to the date hereof, of any mortgage, deed of trust, deed to secure debt, assignment of rents or other security device on the Premises or any part thereof; or (v) any extension, renewal, replacement, material modification or extension of the term or increase in the principal amount of any existing mortgage or deed of trust. The term "transfer" shall also include the transfer of more than 25% of the ownership interest of any beneficial, partnership, stock or other ownership interest in Debtor. This covenant shall run with the land of the Premises and remain in full force and effect until all of the Obligations are paid and fully performed, and Secured Party may, without notice to Debtor, deal with any transferees with reference to the Obligations in the same manner as Debtor, without in any way altering or discharging Debtor's liability or the liability of any guarantor of Debtor with respect thereto.

Section 2.21. Hazardous Waste and Environmental Regulations.

With respect to Hazardous Products (as hereinafter defined):

(a) For purposes of this Instrument, "Hazardous Products" means and includes any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.; the Hazardous Products Transportation Act, 49 U.S.C. 1801, et seq.; the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; the Toxic Substance Control Act; the Clean Air Act; the Federal Water Pollution Control Act; the Hazardous Substance Control Act; the Hazardous Substance Act; the Occupational Health and Safety Act; the Porter-Cologne Water

Control Act; the Waste Management Act of 1980; the Toxic Pit Cleanup Act; the Underground Tank Act of 1984; any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as of now or at any time hereafter in effect (collectively "Environmental Laws"). The term "Hazardous Products" shall include, without limitation, (i) any chemical, material or substance defined as or included in the definition of "hazardous wastes," "hazardous materials," "hazardous substance," "extremely hazardous substance," "pollutants," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable environmental laws, (ii) any oil, petroleum or petroleum derived substance, any drilling fluids, produced waters and other wastes or products associated with the exploration, development or production of crude oil, any wastes or products associated with mining or extraction of any material, any flammable substances or explosives, any radioactive materials, or any other materials which cause any Premises to be in violation of any applicable environmental laws and (iii) asbestos in any form which is friable, urea formaldehyde foam insulation, electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

(b) Except as disclosed in the Environmental Reports (as defined in the Indenture), Debtor represents and warrants that there exist no Hazardous Products on, under, about or within any portion of the Premises or any part thereof, and the Premises are not in violation of any Environmental Laws.

(c) Debtor shall be solely responsible for, and hereby agrees to indemnify and defend, Secured Party (in its individual and trustee capacities) and each and every Holder and hold Secured Party (in its individual and trustee capacities) and each Holder, and their respective directors, officers, employees, agents, attorneys, successors and assigns harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever incurred or suffered by, or asserted against, or paid by (including, without limitation, attorneys' fees, costs and expenses, including on appeal) Secured Party (in its individual and trustee capacities) or such Holder for, or with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release (collectively "Release") on, in, under, around or from the Premises of any Hazardous Products (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws), regardless of whether or not caused by, or within the control of, Debtor. This indemnity shall include, without limitation: (A) all foreseeable and unforeseeable consequential damages including third-party claims; (B) the costs

of any required or necessary repair, cleanup or detoxification of the Premises, including the soil and ground water thereof, and the preparation and implementation of any closure, remedial or other required plans; (C) damage to any natural resources; and (D) all reasonable costs and expenses incurred by Secured Party or Holder in connection with the foregoing, including, but not limited to, reasonable attorneys' and consultants' fees. Any costs, expenses or liability incurred by Secured Party or Holder for which Debtor is responsible or for which Debtor has indemnified Secured Party (in its individual and trustee capacities) and Holder under this Instrument shall be added to the indebtedness secured by this Instrument and earn interest at the Agreed Rate until paid in full.

(d) Debtor shall, and Debtor shall cause all tenants, employees, agents, contractors and subcontractors of Debtor and any other persons present on or occupying the Premises to, keep and maintain the Premises, including the soil and ground water thereof, in compliance with, and not cause or permit the Premises, including the soil and ground water thereon, to be in violation of, any Environmental Laws or any other federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions thereon. Neither Debtor nor tenants, employees, agents, contractors and subcontractors of Debtor nor any other persons occupying or present on the Premises shall use, generate, manufacture, store or dispose of on, under or about the Premises or transport to or from the Premises any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, or any other Hazardous Products except in non-reportable, limited quantities used and stored in strict compliance with Environmental Laws (i) in the normal occupancy, retail or office use (as the case may be), operation or maintenance of the Premises, or (ii) sold at the Premises in the ordinary course of business of a tenant whose activities, including such tenant's use and storage of such Hazardous Products, are in all respects in compliance with applicable Environmental Laws.

(e) Debtor shall immediately advise Secured Party in writing of: (A) all notices from whatever source (whether such notices are received from the Environmental Protection Agency, the Occupational Safety and Health Agency, the Department of Health Services, the Water Quality Control Board, the Department of Sanitation, the Department of Public Works or any other federal, state or local governmental agency or regional office thereof) received by Debtor of any violation or potential violation of any Environmental Laws; (B) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Laws; (C) all claims made or threatened by any third party against Debtor or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Products (the matters set forth in clauses (A), (B) and

(C) above are hereinafter referred to as "Environmental Complaint"); and (D) Debtor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Environmental Laws. Secured Party shall have the right, but shall not be obligated, to join and participate as a party in any legal proceedings or actions initiated in connection with any Environmental Complaint and to have its reasonable attorneys' and consultants' fees in connection therewith paid by Debtor upon demand.

(f) Without Secured Party's prior written consent, which shall not be unreasonably withheld, Debtor shall not take any remedial action in response to the presence of any Hazardous Products on, under or about the Premises, or enter into any settlement agreement, consent decree or other compromise in respect to any Environmental Complaint, which remedial action, settlement, consent or compromise might, in Secured Party's reasonable judgment, impair the value of Secured Party's security hereunder; provided, however, that Secured Party's prior consent shall not be necessary in the event that the presence of Hazardous Products on, under or about the Premises either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary, and it is not possible to obtain Secured Party's consent before taking such action, provided that in such event, Debtor shall notify Secured Party as soon as practicable of any action so taken. Secured Party agrees not to withhold its consent, where such consent is required hereunder, if either (A) a particular remedial action is ordered by a court of competent jurisdiction, or (B) Debtor establishes to the reasonable satisfaction of Secured Party that there is no reasonable alternative to such remedial action which would result in less impairment of Secured Party's security hereunder.

(g) From and after the date hereof, if Secured Party has knowledge of any pending or threatened Release or Environmental Claim or has reason to believe the Premises are in violation of any Environmental Law, then immediately upon Secured Party's request, Debtor shall retain, at Debtor's sole cost and expense, a licensed geologist, industrial hygienist or an environmental consultant (referred to hereinafter as the "Consultant") acceptable to Secured Party to conduct a baseline investigation of the Premises for the presence of Hazardous Products ("Environmental Audit"). The Environmental Audit shall be performed in a manner reasonably calculated to discover the presence of Hazardous Products contamination. The Consultant shall concurrently deliver the results of its investigation in writing directly to Debtor and Secured Party without prior consultation with any party unless conducted in the presence of all other parties. Such results shall be kept confidential by Debtor and Secured Party unless legally compelled or required to



disclose such results or disclosure is reasonably required in order to pursue rights or remedies provided herein or at law. If Debtor fails to pay for or obtain an Environmental Audit as provided for herein, Secured Party may, but shall not be obligated to, obtain the Environmental Audit, and either demand reimbursement from Debtor or add the cost thereof to the indebtedness secured by this Instrument, in which case, interest shall accrue on such sum at the Agreed Rate. Furthermore, Debtor hereby grants Secured Party and its employees and agents the right, exercisable at any time, to enter upon the Premises and the Improvements thereon for the purpose of conducting an inspection, sampling and testing to determine whether there have been any violations of the covenants contained in this paragraph.

(h) From and after the date hereof, without limitation of Secured Party's or Holder's rights under this Instrument, Secured Party shall have the right, but not the obligation, to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Products, Environmental Complaint or Release upon its receipt of any notice from any person or entity asserting the existence of any Hazardous Products or an Environmental Complaint on or pertaining to the Premises which, if true, could result in an order, suit or other action against Debtor affecting the Premises or any part of the Premises by any governmental agency or otherwise which, in the sole opinion of Secured Party, could jeopardize the security provided under this Instrument. All costs and expenses incurred by Secured Party in the exercise of any such rights, including the fees of consultants and attorneys, shall be secured by this Instrument and shall be payable by Debtor upon demand, together with interest thereon at a rate equal to the Agreed Rate. No rights or remedies granted to Secured Party and Holder under this Instrument with respect to Hazardous Products or Environmental Complaints or Releases, or any action or inaction of Secured Party or Holder in connection therewith, shall be deemed, construed or interpreted as, or imply, participation by Secured Party or Holder in the management or operation of Debtor or of the Premises. Such rights and remedies are granted in the ordinary course of business merely to protect Secured Party's rights as a mortgagee in the Premises and the rights of Holder as the holder of the Note.

Section 2.22. Full Performance Required; Survival of Warranties. All representations, warranties and covenants of Debtor contained in any loan application or made to Secured Party in connection with the financing secured hereby or contained in this Instrument or the other Loan Documents or incorporated by reference therein shall survive the execution and delivery of this Instrument and shall remain continuing covenants, warranties and representations of Debtor so long as any portion of the Obligations remains outstanding, and Debtor shall fully and faithfully satisfy and perform all such representations, warranties and covenants.

Section 2.23. Additional Security. No other security now existing, or hereafter taken, to secure the Obligations shall be impaired or affected by the execution of this Instrument; and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of the time of payment of the Obligations shall not diminish the force, effect or lien of this Instrument and shall not affect or impair the liability of any maker, surety, guarantor or endorser for the payment of said Obligations. Neither the acceptance of this Instrument nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained shall prejudice or in any manner affect Secured Party's rights to realize upon or enforce any other security now or hereafter held by Secured Party, it being agreed that Secured Party shall be entitled to enforce this Instrument and any other security now or hereafter held by Secured Party in such order and manner as it may in its absolute discretion determine.

Section 2.24. Further Acts. Debtor shall do and perform all acts necessary to keep valid and effective the charges and lien hereof and to carry into effect its objective and purposes, in order to protect the Holder of the Note. Promptly upon request, from time to time, of Secured Party and at Debtor's expense, Debtor shall execute, acknowledge and deliver to Secured Party such other and further instruments and do such other acts as in the reasonable opinion of Secured Party may be necessary or desirable to (a) grant to Secured Party the highest available perfected lien on all of the Collateral to secure all of the Obligations, (b) grant to Secured Party, to the fullest extent permitted by applicable law, the right to foreclose on the Collateral nonjudicially, (c) correct any defect, error or omission which may be discovered in the contents of this Instrument (including, without limitation, all exhibits and/or schedules hereto) or any other Loan Document, (d) identify more fully and subject to the liens, encumbrances and security interests and assignments created hereby any property intended by the terms hereof to be covered hereby (including without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Collateral), (e) assure the first priority of this Instrument and of such liens, encumbrances, security interests and assignments, and (f) otherwise effect the intent of this Instrument; without limiting the generality of the foregoing, Debtor shall promptly and, insofar as not contrary to applicable law, at Debtor's own expense, record, rerecord, file and refile in such offices, at such times and as often as may be necessary, this Instrument, additional mortgages and deeds of trust, and every other instrument in addition or supplemental hereto, including applicable financing statements, as may be necessary to create, perfect, maintain and preserve the liens, encumbrances and security interests (and priority thereof) intended to be created hereby and the rights and remedies of Secured Party hereunder. Upon request by Secured Party, Debtor shall supply evidence of fulfillment of each of the covenants

herein contained concerning which a request for such evidence has been made.

Section 2.25. Zoning Changes and Compliance. Without the prior written consent of Secured Party (which consent shall not be unreasonably withheld), Debtor will not seek, make or consent to any change in the zoning, subdivision, mapping or conditions of use of the Premises. Debtor will comply with all existing and future requirements of all governmental authorities having jurisdiction over the Premises and shall not commit, suffer or permit any act upon the Premises in violation of any easements, agreements, covenants, conditions and restrictions affecting the Premises or use of the Premises.

### ARTICLE III

#### ABSOLUTE ASSIGNMENT OF RENTS, ISSUES AND PROFITS

Section 3.01. Absolute Assignment of Rents, Issues and Profits. Pursuant to the assignment made by Debtor in Paragraph C of the granting clause of this Instrument, Secured Party is entitled to receive the Rents. In furtherance thereof, but subject to that certain Assignment of Rents and Leases of even date herewith (the "Assignment of Rents"), Debtor hereby gives to and confers upon Secured Party the right, power and authority to collect the Rents, and Debtor irrevocably appoints Secured Party its true and lawful attorney-in-fact, at the option of Secured Party, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Debtor, for all Rents accrued but unpaid and in arrears at the date of an Event of Default hereunder as well as the Rents thereafter accruing and becoming payable during the continuance of such Event of Default and apply the same to the Obligations; provided, however, that so long as an Event of Default shall not have occurred hereunder, Debtor shall have a revocable license to collect the Rents (but not in advance unless the written approval of Secured Party has first been obtained) and shall thereafter deposit such Rents into the Operating Account (as defined in the Indenture) as more particularly provided in Article Eleven of the Indenture. Upon request of Secured Party, Debtor shall execute and deliver to Secured Party (a) a specific assignment, in recordable form, of any lease, sublease, license, concession or other agreement now or hereafter affecting the Collateral or any portion thereof to further evidence the assignment hereby made, and (b) such other instruments as Secured Party may deem necessary, convenient or appropriate in connection with the payment and delivery directly to Secured Party of all of the Rents. Debtor acknowledges that in order to facilitate the performance of the Obligations, the assignment of the Rents in this Article III is intended to be an absolute assignment from Debtor to Secured Party and not merely the granting of a security interest.

Section 3.02. Collection Upon Default.

(a) Upon the occurrence of an Event of Default hereunder, Secured Party may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Collateral, or any part thereof, and, with or without taking possession of the Collateral or any part thereof, in its own name sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, upon any of the Obligations, and in such order as Secured Party may determine, notwithstanding that such Obligations may not be due according to the terms thereof. Debtor also hereby authorizes Secured Party upon such entry, at its option, to take over and assume the management, operation and maintenance of the Collateral and to perform all acts Secured Party in its sole discretion deems necessary and proper and to expend such sums out of income of the Collateral as may be needed in connection therewith, in the same manner and to the same extent as Debtor theretofore might do, including the right to effect new leases, subleases, licenses, concession, franchises, or similar agreements, including, without limitation, the Leases, to cancel, surrender, alter or amend the terms of, and/or renew then-existing Leases, and/or to make concessions to tenants or other parties to such agreements. The collection of the Rents, or the entering upon and taking possession of the Collateral, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Secured Party is hereby released and absolved from all liability for failure to enforce collection of any Rents, and from all other responsibility in connection therewith, except the responsibility to account to Debtor for Rents actually received.

(b) Upon such entry, Secured Party shall, after payment of all proper charges and expenses, including reasonable compensation to such managing agent as it may select and employ, and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the income received by it from the Collateral by virtue of the assignment contained in this Article III to the Obligations, notwithstanding that such Obligations may not then be due, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Secured Party. Secured Party shall not be accountable for more monies than it actually receives from the Collateral; nor shall it be liable for failure to collect Rents. Upon such entry, Secured Party shall make reasonable efforts to collect Rents, reserving, however, within its own sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted, and Secured Party's judgment shall be deemed conclusive and reasonable.

(c) Debtor hereby authorizes and directs that all other parties now or hereafter owing or paying Rents, in, to or relating to the Premises or to any of the other interests included in the Collateral, or any part thereof, or now or hereafter having in their possession or control any Rents from or allocated to the Collateral, or any part thereof, or the proceeds therefrom, shall, upon the request of Secured Party and until Secured Party directs otherwise, pay and deliver such Rents directly to Secured Party at Secured Party's address set forth in the introduction to this Instrument, or in such other manner as Secured Party may direct such parties in writing, and this authorization shall continue until this Instrument is released. Debtor agrees that all instruments that Secured Party may from time to time execute and deliver for the purpose of collecting and receipting for Rents shall be binding upon Debtor and its successors and assigns. No payor making payments to Secured Party at its request under the assignment contained herein shall have any responsibility to see to the application of any of such funds, and any party paying or delivering Rents to Secured Party under such assignment shall be released thereby from any and all liability to Debtor to the full extent and amount of all Rents so delivered. Debtor agrees to indemnify and hold harmless any and all parties making payments to Secured Party, at Secured Party's request under the assignment contained herein, against any and all liabilities, actions, claims, judgments, costs, charges and attorneys' fees resulting from the delivery of such payments to Secured Party. The indemnity agreement contained in the previous sentence is made for the direct benefit of and shall be enforceable by all such persons. Should Secured Party bring suit against any third party for collection of any amounts or sum included within this assignment (and Secured Party shall have the right to bring any such suit), it may sue either in its own name or in the name of Debtor, or both.

(d) It is not the intention of the parties hereto that an entry by Secured Party upon the Premises under the terms of this instrument shall make Secured Party a party in possession in contemplation of the law, except at the option of Secured Party.

(e) Nothing contained herein shall operate or be construed to obligate Secured Party to perform any of the terms, covenants and conditions contained in any Lease of or relating to the Premises or any portion thereof or otherwise to impose any obligation upon Secured Party with respect to any Lease of or relating to the Premises or any portion thereof, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee or other party under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee or other party shall have been thereby terminated. Prior to actual entry into and taking possession of the Premises by Secured Party, the assignment contained in this Article III shall not operate to place upon Secured Party any responsibility for the operation, control, care, management or repair of the

Collateral or any portion thereof, and the execution of this Instrument by Debtor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Premises is and shall be that of Debtor, prior to such actual entry and taking of possession.

(f) The assignment of the Rents herein made shall not be construed to limit in any way Secured Party's other rights hereunder, including, without limitation, its right to accelerate the indebtedness evidenced by the Obligations upon an Event of Default. Monies received under the assignments herein made shall not be deemed to have been applied in payment of Obligations unless and until such monies are actually applied thereto by Secured Party.

Section 3.03. Sale of Collateral. Upon any sale of any of the Collateral by or for the benefit of Secured Party pursuant to Article VI hereof, the Rents attributable to the part of the Collateral so sold and accruing after the closing of the sale shall be included in such sale and shall pass to the purchaser free and clear of (a) the assignment made by Debtor in paragraph C of the granting clause of this Instrument and (b) the provisions of this Article III and (c) the Assignment of Rents.

#### ARTICLE IV SECURITY AGREEMENT

As additional security for the Obligations secured by this Instrument, Debtor hereby grants to Secured Party for the benefit of Secured Party, Holder and any holders of any other Obligations, and their successors and assigns, a security interest in and to the following items (collectively, the "PP Collateral"), whether now owned or in existence or hereafter arising, acquired or constructed:

(a) All equipment, machinery, fixtures, inventory, appliances, furniture, furnishings, building materials, apparatus, supplies and all other goods and personal property of every kind and character now or hereafter located in, or upon, or attached or appurtenant to, or affixed to, or used or intended to be used in connection with, the ownership, use, occupancy, enjoyment, operation, management, development or improvement of the Premises, or any structures, building or improvements thereon, whether now owned or in existence or hereafter arising, acquired, or constructed, including, without limitation, all heating, lighting, laundry, incinerating, gas, electric and power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, water heaters, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, and communications apparatus, air cooling and air conditioning apparatus, elevators and escalators and related machinery and equipment, shades, awnings, blinds, curtains, drapes, floor coverings, including, without limitation, rugs and carpeting; all

works of art, pictures, paintings, tables, chairs, lamps, and decorative lighting fixtures; all televisions, radios, phonographs, tape players, speakers, intercoms, music and telephone and other communication equipment, including, without limitation, cable antennae and related systems; all screens, storm doors and windows; all kitchen and restaurant equipment, including, without limitation, tables, stoves, refrigerators, dishwashers, microwave equipment, ovens, timers and installed appliances; all chaise lounges, hot tubs, swimming pool heaters and equipment and other recreational equipment and supplies (computerized and otherwise); all visual and electric surveillance equipment; all beds, dressers, mirrors, sofas, desks, wall coverings, clocks, albums, tapes, arcade games and computers; all office equipment; all operating supplies, paint supplies, janitor's equipment and supplies, and laundry supplies; all cabinets, partitions, ducts and compressors; all trees, plants and other items of landscaping; and all tools, dies, blueprints, catalogues, computer hardware and software, vehicles, furniture, and other furnishings and fixtures;

(b) All accounts, accounts receivable and all other rights of Debtor to the payment of money, all income, rents, issues, profits and revenues, room rentals, concession and license revenues, instruments, notes, drafts, chattel paper, acceptances, letters of credit, proceeds of letters of credit, general intangibles, contract rights, documents, negotiable documents or instruments, all sales contracts, sales agreements and deposits, warehouse receipts, policies and certificates of insurance, guaranties, leases, subleases, leasehold interests, concession, license and like agreements, chattels real, rental agreements, security or subscription agreements and debts secured thereby or relating thereto, money, certificates of deposit, deposits, deposit accounts, reserves, deferred payments, refunds, all refunds and deposits returned by utility companies and governmental agencies, cost savings, water stock, insurance proceeds, premium refunds, condemnation or eminent domain proceeds and awards, licenses, choses and things in action, all governmental, utility and other permits, approvals, bonds and agreements relating to construction on or use of the Premises, all licenses, all certificates of occupancy and operating permits, all franchises, all subdivision maps and applications therefor, all subdivision public reports and applications therefor, all architectural and engineering drawings, plans and specifications, blueprints, soil tests, feasibility studies, engineering and environmental reports, all environmental, building, foundation, grading and other permits, all construction, management, franchise, development and other contracts and agreements, all names under or by which the Premises, or any present or future improvements on the Premises may at any time be operated or known, and all rights to carry on business under any such names, or any variant thereof, all trademarks, trade names, patents and applications therefor and goodwill in any way relating to the Premises, and all other personal property of every nature whatsoever, whether now owned

or in existence or hereafter arising or acquired, arising from, used or held in connection with, or otherwise relating to the Premises or the ownership, use, occupancy, enjoyment, operation, management, development or improvement thereof;

(c) All of the right, title and interest of Debtor now owned or hereafter acquired in and to all buildings, structures and improvements now or hereafter erected on the Premises; all now owned or existing or hereafter arising or acquired easements, rights, privileges, tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining to the Premises, and all of the estate, right, title, interest, claim, demand, reversion or remainder whatsoever of Debtor therein or thereto, either at law or in equity, in possession or expectancy, now owned or hereafter acquired, including, without limitation, all and singular, the ways, waters, water courses, water rights and powers, liberties, privileges, sewers, pipes, conduits, wires and other facilities furnishing utility or other services to the Premises; and all of the right, title and interest of Debtor now owned or hereafter arising or acquired in and to the land lying in the bed of any street, road, highway or avenue in front of or adjoining the Premises;

(d) All books, records, lists, trade secrets, computer printouts and tapes, ledgers, documents and all other evidences of Debtor's business records, whether now owned or in existence or hereafter arising or acquired, arising from, used or held in connection with, or otherwise relating to the Premises;

(e) Any and all personal property constituting part of the Collateral, whether now owned or hereafter acquired; and

(f) All attachments, accessories, accessions, replacements, substitutions, additions, improvements, proceeds and products of any and all of the foregoing. Proceeds include but are not limited to inventory, accounts, chattel paper, general intangibles, insurance and condemnation proceeds, documents, notes, drafts, money, goods, equipment and any other tangible or intangible property arising from the sale, lease or other disposition of the foregoing.

Except as expressly provided herein, Debtor has no right to sell or otherwise dispose of any of the foregoing PP Collateral without the prior written consent of Secured Party which may be granted or denied in its sole and absolute discretion.

In the event of an Event of Default hereunder, Secured Party is and shall be entitled to all the rights, powers and remedies (a) set forth in the Loan Documents, and (b) otherwise granted to a secured party under the Indiana Uniform Commercial Code and other applicable law, including, but not limited to, the right to take possession of all such PP Collateral. Secured Party or its representatives may enter upon the Premises (without



Secured Party being deemed to be taking possession of the Property or being deemed a mortgagee-in-possession) at any time to inspect, repair, assemble, have appraised or to remove the PP Collateral and may advertise and conduct public auctions and private sales thereon. Secured Party may require Debtor, and Debtor agrees upon request from Secured Party, to assemble the PP Collateral and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties. In addition to the expenses of retaking, holding, preparing for sale, selling and otherwise exercising its remedies hereunder, Secured Party shall be entitled to recover reasonable attorneys' fees and legal expenses before applying the balance of the proceeds from the sale or other disposition of the PP Collateral towards satisfaction of the obligations secured hereby. Debtor shall remain liable for any deficiency remaining after such sale or other disposition.

Secured Party may proceed against the items of real property and any items of PP Collateral separately or together in any order whatsoever, without in any way affecting or waiving Secured Party's rights and remedies under the Indiana Uniform Commercial Code, this Instrument or the Note. Debtor acknowledges and agrees that Secured Party's rights and remedies under this Instrument, the Note and the other Loan Documents shall be cumulative and shall be in addition to every other right and remedy now or hereafter existing at law, in equity, by statute or by agreement of the parties.

The security agreement contained in this Article IV shall survive, and is enforceable following, Secured Party's exercise of its rights and remedies under this Instrument, including, without limitation, foreclosure of this Instrument.

RECORDER'S OFFICE  
ARTICLE V  
TERMINATION

If all of the Obligations shall be paid in full pursuant to the terms and conditions of this Instrument and the instruments evidencing the Obligations, and Secured Party shall have no obligation to advance more funds to be secured hereby, then Secured Party shall, promptly after the request of Debtor, execute, acknowledge and deliver to Debtor proper instruments evidencing the termination and release of this Instrument. Debtor shall pay all reasonable legal fees and other expenses incurred by Secured Party for preparing and reviewing such instruments and the execution and delivery thereof, and Secured Party may require payment of the same prior to delivery of such instruments. Upon the receipt by Debtor of terminations or releases signed by Secured Party, and in recordable form and evidencing the termination of this Instrument, Debtor, upon the instruction of Secured Party, shall promptly and at its own expense record or file such terminations or releases in each of the cities, towns, counties and parishes, as appropriate, in

which portions of the Collateral may be located, in such a manner so as to effect a release of all of the Collateral of record. Upon the request of Secured Party, Debtor shall promptly deliver to Secured Party evidence reasonably satisfactory to Secured Party of such recordation or filing. Otherwise, this Instrument shall remain and continue in full force and effect. The obligations of Debtor under this Article V shall survive the termination of this Instrument.

## ARTICLE VI DEFAULT

Section 6.01. Events of Default. The occurrence of any of the following events (individually, an "Event of Default"; collectively, "Events of Default") shall, automatically (as to any Event of Default described in (a), (b), (e), (f) and (g) below, or at the option of Secured Party (as to any other Event of Default), make all amounts then remaining unpaid on the Obligations immediately due and payable, all without further demand, presentment, notice or other requirements of any kind, all of which are hereby expressly waived by Debtor, and the lien, encumbrance and security interest evidenced or created hereby shall be subject to foreclosure in any manner provided for herein or provided for by law:

(a) Any "Event of Default" as defined in the Indenture, including, without limitation, any such event caused by a failure to pay when due any amount due under the Indenture or any other Loan Document or any installment or payment of principal of or interest on the Obligations;

(b) Debtor shall default in the performance or observance of any of its obligations under Section 2.20 hereof;

(c) Debtor shall default in the performance or observance of any term, covenant or condition required to be observed by Debtor under this Instrument or any document, instrument or agreement (other than the Indenture) executed by Debtor in connection with or relating to this Instrument, the Collateral, the Obligations or any part thereof (excluding, however, the Indenture as referred to in subparagraph (a) above), and such default shall not have been remedied or waived within thirty (30) business days after receipt of notice from Secured Party of such default; provided, however, if such default is not reasonably curable within such thirty (30) business days and if Debtor promptly notifies Secured Party of its intention to cure such default and if Debtor promptly begins and diligently pursues efforts to cure such default, then the period within which such default may be cured shall be extended for such further period as shall be reasonably necessary for the curing thereof with diligence, provided that such extended period shall not exceed thirty (30) calendar days unless, in the case that to cure said default construction or other remedial work is required, cure

cannot reasonably be achieved in thirty (30) days, in which case such period shall be extended an additional period of thirty (30) calendar days;

(d) Any representations or warranties of Debtor made heretofore in any document or agreement executed by Debtor in connection with or relating to this Instrument, the Collateral, the Obligations or any part thereof, or in any statement or certificate at any time given by Debtor in writing pursuant hereto or in connection herewith shall be false in any material respect on the date as of which made;

(e) Debtor shall have an order for relief entered with respect to it or commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; shall make any assignment for the benefit of creditors or Debtor shall be unable or fail, or shall admit in writing its inability, to pay its debts as such debts become due;

(f) Any order, judgment or decree shall be entered against Debtor decreeing the dissolution or split up of Debtor and such order shall remain undischarged or unstayed for a period in excess of sixty (60) calendar days; or

(g) A court having jurisdiction of the Premises shall enter a decree or order for relief in respect of Debtor in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or any other similar relief shall be granted under any applicable federal or state law; or a decree or order of a court having jurisdiction of the Premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Debtor or over all or a substantial part of its property, shall have been entered; or the involuntary appointment of an interim receiver, trustee or other custodian of Debtor for all or a substantial part of its property shall occur; or a warrant of attachment, execution or similar process shall be issued against any substantial part of the property of Debtor and such warrant shall remain in effect for sixty (60) days without being bonded or discharged.

Section 6.02. Fixtures. Upon the occurrence of any of the Events of Default, or at any time thereafter, Secured Party may, to the extent permitted under applicable law, elect to treat the fixtures included in the Collateral either as real property or as personal property, or both, and proceed to exercise such rights and remedies applicable to the categorization thereof as apply thereto. With respect to any sale of real property included in the Collateral made under the powers of sale herein granted and conferred, Secured Party may, to the extent permitted

by applicable law, include in such sale any personal property and fixtures included in the Collateral and relating to such real property.

Section 6.03. Remedies.

(a) Upon the occurrence of any of the Events of Default, and at all times thereafter, in addition to all other powers, rights and remedies herein granted or by law or at equity conferred,

(i) Secured Party shall have all of the rights and remedies of a mortgagee (the power of sale permitted and provided by applicable statute being hereby expressly granted by Debtor to Secured Party) with respect to any or all of the Collateral; Secured Party shall, to the extent permitted by applicable law, have the right and power, but not the obligation, to enter upon and take immediate possession of the Collateral or any part thereof, to exclude Debtor therefrom, to hold, use, operate, manage and control such real property, to make all such repairs, replacements, alterations, additions and improvements to the same as Secured Party may deem proper, and to demand, collect and retain the Rents as provided in Article III hereof.

(ii) Secured Party with respect to any or all of the Collateral, in lieu of or in addition to exercising any other power, right or remedy herein granted or by law or equity conferred, may, without notice, demand or declaration of default, which are hereby waived by Debtor to the extent permitted by law, proceed by an action or actions in equity or at law for the seizure and sale of the Collateral or any part thereof, for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power, right or remedy herein granted or by law or equity conferred, for the foreclosure or sale of such real property or any part thereof under the judgment or decree of any court of competent jurisdiction, for the appointment of a receiver pending any foreclosure hereunder or the sale of such real property or any part thereof or for the enforcement of any other appropriate equitable or legal remedy.

(iii) Secured Party shall have all of the rights and remedies of an assignee and secured party granted by applicable law, including the Indiana Uniform Commercial Code, as more particularly provided in Article IV.

(1) If notice is required by applicable law, five (5) calendar days' prior written notice of the time and place of any public sale or of the time after which any private sale or any other intended disposition thereof is to be made shall be reasonable notice to Debtor. No such notice is necessary if such property is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(2) Without in any way limiting the right and authority of Secured Party to sell or otherwise dispose of the Collateral in a commercially reasonable manner, the following, or any of them, shall be considered commercially reasonable: (A) Secured Party may hold a public sale of the Collateral in the jurisdiction in which the Collateral is located on the date hereof after having provided Debtor with five (5) calendar days' notice of such sale and after having published notice of such sale by an advertisement not less than three inches in height and one column in width in a newspaper of general circulation in the jurisdiction where the sale is to take place, as Secured Party determines to be appropriate (which advertisement may be placed in the "classified" section), for a period of not less than five (5) consecutive issues commencing not more than ten (10) calendar days prior to the sale; (B) the Collateral may be sold for cash; and (C) Secured Party or any other person owning, directly or indirectly, any interest in any of the Obligations may be a purchaser at such sale.

(3) If Secured Party in good faith believes that the Securities Act of 1933 or any other state or federal law prohibits or restricts the customary manner of sale or distribution of any of such property, Secured Party may sell such property privately or in any other manner deemed advisable by Secured Party at such price or prices as Secured Party determines in the sole discretion of Secured Party. Debtor recognizes that such prohibition or restriction may cause such property to have less value than it otherwise would have and that, consequently, such sale or disposition by Secured Party may result in a lower sales price than if the sale were otherwise held.

(iv) Secured Party may, subject to any mandatory requirements of applicable law, sell or have sold the RP Collateral or interests therein or any part thereof at one or more sales, as an entirety or in parcels, at such place or places and otherwise in such manner and upon such notice as may be required by law or by this Instrument, or, in the absence of any such requirement, as Secured Party may deem appropriate. Secured Party shall make a conveyance to the purchaser or purchasers thereof without, to the extent permitted by applicable law, any warranties express or implied, and Debtor shall warrant title thereto to such purchaser or purchasers. Secured Party may postpone the sale of such RP Collateral or interests therein or any part thereof by public announcement at the time and place of such sale, and from time to time thereafter may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement. Sale of a part of the RP Collateral or interests therein or any defective or irregular sale hereunder will not exhaust the power of sale, and sales may be made from time to time until all such property is sold without defect or irregularity or the Obligations are paid in full. Secured Party shall have the right to appoint one or more attorneys-in-fact to act in conducting the foreclosure sale and executing a deed to the purchaser. It shall not be necessary for

any of the Collateral at any such sale to be physically present or constructively in the possession of Secured Party and Debtor shall deliver all of the Collateral to the purchaser at such sale. If it should be impossible or impracticable to take actual delivery of the Collateral, then the title and right of possession to the Collateral shall pass to the purchaser at such sale as completely as if the same had been actually present and delivered.

(b) Secured Party (or any other person owning, directly or indirectly, any interest in any of the Obligations) shall have the right to become the purchaser at any sale made pursuant to the provisions of this Article VI and shall have the right to credit upon the amount of the bid made therefor the amount payable to it out of the net proceeds of such sale. All other sales shall be, to the extent permitted by applicable law, on a cash basis. Recitals contained in any conveyance to any purchaser at any sale made hereunder will conclusively establish the truth and accuracy of the matters therein stated, including without limitation nonpayment of the Obligations and advertisement and conduct of such sale in the manner provided herein or provided by law. Debtor does hereby ratify and confirm all legal acts that Secured Party may do in carrying out the provisions of this Instrument.

(c) Any sale of the Collateral or any part thereof pursuant to the provisions of this Article VI will operate to divest all right, title, interest, claim and demand of Debtor in and to the property sold and will be a perpetual bar against Debtor. Nevertheless, if requested by Secured Party so to do, Debtor shall join in the execution, acknowledgement and delivery of all proper conveyances, assignments and transfers of the property so sold. Any purchaser at a foreclosure sale will receive immediate possession of the property purchased, and Debtor agrees that if Debtor retains possession of the property or any part thereof subsequent to such sale, Debtor will be considered a tenant at sufferance of the purchaser, and will, if Debtor remains in possession after demand to remove, be guilty of forcible detainer and will be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages to Debtor by reason thereof are hereby expressly waived by Debtor.

(d) Debtor acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights, under applicable law, with respect to this Instrument, the Obligations and the Collateral. Nevertheless, Debtor hereby waives and relinquishes to the maximum extent permitted by law any right under any law relating to, and subject to any mandatory requirements of applicable law Debtor hereby agrees that Debtor shall not at any time hereafter have or assert, and hereby waives, any right under any law pertaining to: marshalling, whether of assets or liens, the sale of property in the inverse order of alienation, the exemption of homesteads, the

administration of estates of decedents, appraisement, valuation, stay, extension, reinstatement, redemption, the maturing or declaring due of the whole or any part of the Obligations, notice of intention of such maturing or declaring due, other notice (whether of defaults, advances, the creation, existence, extension or renewal of any of the Obligations or otherwise), subrogation, or abatement, suspension, deferment, diminution or reduction of any of the Obligations (including, without limitation, setoff), now or hereafter in force.

(e) Secured Party, at its option, is authorized to foreclose this Instrument subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Debtor, a defense at any proceedings instituted by Secured Party to collect the Obligations.

(f) Secured Party shall, to the extent permitted by applicable law, have the option to proceed with foreclosure or the exercise of the power of sale in satisfaction of any part of the Obligations without declaring the whole of the Obligations as immediately mature, and such foreclosure or sale may be made subject to the unmatured part of the Obligations, and it is agreed that such foreclosure, if so made, shall not in any manner affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations, this Instrument and the Indenture shall remain in full force and effect just as though no foreclosure or sale had been made. Several foreclosures or sales may be made without exhausting the right of foreclosure or the power of sale for any unmatured part of the Obligations, it being the purpose to provide for a foreclosure and sale of the security for any matured portion of the Obligations without exhausting the power of foreclosure and the power to sell the Collateral for any other part of the Obligations.

Section 6.04. Costs and Expenses. All costs and expenses (including reasonable attorneys' fees, legal expenses, title premiums, title report and work charges, filing fees, and mortgage, mortgage registration, transfer, stamp and other excise taxes) incurred by Secured Party in perfecting, protecting or enforcing its rights hereunder, whether or not an Event of Default shall have occurred, shall be a demand obligation of Debtor to Secured Party, as applicable, and shall bear interest at the Agreed Rate, all of which shall be part of the Obligations.

Section 6.05. Application of Proceeds.

(a) The proceeds of any sale of the Collateral or any part thereof made pursuant to this Article VI shall be applied as set forth in Section 506 of the Indenture; provided, however, that if applicable law requires such proceeds to be paid or applied in a manner other than as set forth above in this Section

6.05(a), then such proceeds shall be paid or applied in accordance with such applicable law.

(b) Upon any sale made under the powers of sale herein granted and conferred, the receipt of Secured Party will be sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers and the heirs, devisees, personal representatives, successors and assigns thereof will not, after paying such purchase money and receiving such receipt of Secured Party, be obligated to see to the application thereof or be in any way answerable for any loss, misapplication or nonapplication thereof.

Section 6.06. Request for Notice. Debtor hereby requests that a copy of any notice of default and a copy of any notice of sale hereunder be mailed to Debtor at the address set forth in Section 9.11 of this Instrument.

**NOT OFFICIAL!**

This Document is the property of  
the Lake County Recorder!

ARTICLE VII  
RIGHTS OF HOLDER

Section 7.01. Holder's Exercise of Rights. Where actions are to be taken by Secured Party under this Instrument, including, without limitation, the giving of any consent or approval or the exercise of any right or remedy granted Secured Party hereunder (including, without limitation, the foreclosure of this Instrument), Holder (or its authorized representative), acting alone or, if necessary, with the "Trustee" under the Indenture, shall be the party who shall have the exclusive right to take any such action and Secured Party shall not be liable for the failure of Holder to perform such action.

Section 7.02. Servicer As Holder's Authorized Representative. Pursuant to the Trust and Servicing Agreement (as defined in the Indenture), Servicer has been designated as the authorized representative of Holder and shall have the exclusive right on behalf of Holder to take any action, exercise any right or remedy or receive any benefit as Secured Party under this Instrument (including, without limitation, the receipt and disbursement or application of insurance proceeds), until such time as Holder shall appoint another person or entity to act as its representative hereunder. Notice of such an appointment shall promptly be given by Secured Party to Debtor.

Section 7.03. Post-Foreclosure Title Held by Holder. Notwithstanding any other provision of this instrument to the contrary, if Secured Party is the purchaser at any sale made pursuant to the provisions of Article VI, Secured Party may designate anyone including Holder as the person to whom title to the Collateral shall be transferred, and in the event of such foreclosure of this Instrument, title to the Collateral shall vest directly in Holder (not Secured Party or Servicer), without the necessity of executing a separate assignment or other



document transferring Secured Party's interest under this Instrument or in the Collateral to Holder.

**ARTICLE VIII**  
**RELEASE OF PREMISES**

Debtor may obtain the release of the Premises (the "Premises Release") from the lien or charge of this Instrument upon not less than thirty (30) calendar days' prior written notice to Secured Party (and such other persons as may be required under the Indenture) and upon satisfaction of the following conditions:

(a) At the time of such notice and at the time of the release, there shall be no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default;

(b) Secured Party shall have received satisfactory evidence that Debtor is authorized to enter into the transaction, if any, which is directly or indirectly the source of proceeds used to pay the Release Amount (as defined in the Indenture);

(c) Debtor shall have paid to Secured Party, in cash, an amount equal to the Release Amount for the Premises as set forth in the Indenture; and

(d) All other conditions to the release of the Premises set forth in the Indenture or any other Loan Document (including, without limitation, satisfaction of the Debt Service Coverage Ratio requirements under Section 1102 of the Indenture) shall have been satisfied.

All costs associated with the Premises Release (including, without limitation, Secured Party's attorneys' fees, the costs of the survey and all recording and title insurance costs) shall be paid by Debtor.

**ARTICLE IX**  
**MISCELLANEOUS COVENANTS AND AGREEMENTS**

**Section 9.01. Cumulative Rights; Waiver; Modifications.**  
Each and every right, power and remedy hereby granted to Secured Party shall be cumulative and not exclusive, and each and every right, power and remedy whether specifically hereby granted or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Secured Party and the exercise of any such right, power or remedy will not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. No delay or omission by Secured Party in the exercise of any right, power or remedy will impair any such right, power or remedy or operate as

a waiver thereof or of any other right, power or remedy then or thereafter existing. Any and all covenants of Debtor in this Instrument may from time to time, by instrument in writing signed by Secured Party, be waived to such extent and in such manner as Secured Party may desire, but no such waiver will ever affect or impair the rights of Secured Party hereunder, except to the extent specifically stated in such written instrument. All changes to and modifications of this Instrument must be in writing and signed by Debtor and Secured Party.

Section 9.02. Partial Release. No release from the lien or encumbrance of this Instrument of any part of the Collateral by Secured Party shall in any way alter, vary or diminish the force or effect of this Instrument on the balance of the Collateral or the priority of the lien of this Instrument on the balance of the Collateral.

Section 9.03. Severability. If any provision hereof or of any of the other documents constituting, evidencing or creating all or any part of the Obligations is invalid or unenforceable in any jurisdiction, the other provisions hereof or of said documents shall remain in full force and effect in such jurisdiction and the remaining provisions hereof will be liberally construed in favor of Secured Party in order to carry out the provisions hereof and of such other documents. The invalidity of any provision of this Instrument in any jurisdiction will not affect the validity or enforceability of any such provision in any other jurisdiction. If any lien, encumbrance or security interest evidenced or created by this Instrument is invalid or unenforceable, in whole or in part, as to any part of the Obligations, or is invalid or unenforceable, in whole or in part, as to any part of the Collateral, such portion, if any, of the Obligations as is not secured by all of the Collateral hereunder shall be paid prior to the payment of the portion of the Obligations secured by all of the Collateral, and all payments made on the Obligations (including, without limitation, cash and/or property received in connection with sales of Collateral pursuant to Article IV hereof) shall, unless prohibited by applicable law or unless Secured Party, in its sole and absolute discretion, otherwise elects, be deemed and considered to have been first paid on and applied to payment in full of the unsecured or partially secured portion of the Obligations, and the remainder to the secured portion of the Obligations.

Section 9.04. Subrogation. This Instrument is made with full substitution and subrogation of Secured Party in and to all covenants and warranties by others heretofore given or made in respect of the Collateral or any part thereof. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Collateral, such proceeds have been or will be advanced by Secured Party at Debtor's request and Secured Party shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding

liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

Section 9.05. Secured Party's Powers. Without affecting the liability of any other person liable for the payment of any Obligation herein mentioned, and without affecting the lien or charge of this Instrument upon any portion of the Premises not then or theretofore released as security for the full amount of all unpaid Obligations, Secured Party may, from time to time and without notice, (a) release any persons liable, (b) extend the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Secured Party's option any parcel, portion or all of the Collateral, (e) take or release any other or additional security for any obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

Section 9.06. Enforceability of Instrument. This Instrument is deemed to be and may be enforced from time to time as an assignment, chattel mortgage, contract, deed of trust, deed to secure debt, financing statement, fixture filing, real estate mortgage, or security agreement, and from time to time as any one or more thereof, as is appropriate under applicable state law. A carbon, photographic or other reproduction of this Instrument or any financing statement in connection herewith shall be sufficient as a financing statement for any and all purposes.

Section 9.07. Interest. All interest required hereunder shall be calculated on the basis of a year of 360 days consisting of twelve (12) thirty (30) day months. Notwithstanding anything to the contrary contained herein, no rate of interest required hereunder shall exceed the maximum legal rate under applicable law, and, in the event any such rate is found to exceed such maximum legal rate, Debtor shall be required to pay only such maximum legal rate. All agreements between Debtor and Secured Party are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Secured Party for the use, forbearance, or detention of the money due under the Note secured hereby exceed the maximum amount permissible under applicable law. If, due to any circumstances whatsoever, fulfillment of any provision hereof or the other Loan Documents, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstances Secured Party should ever receive as interest an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Note and not to the payment of interest. Under the terms and provisions of the Obligations which this Instrument secures and under the terms and provisions of any future or further advances secured hereby, the interest rate payable thereunder may be variable.

ONE OF THE PURPOSES OF THIS PARAGRAPH IS TO PROVIDE RECORD NOTICE OF THE RIGHT OF SECURED PARTY TO INCREASE OR DECREASE THE INTEREST RATE ON ANY OF THE OBLIGATIONS WHERE THE TERMS AND PROVISIONS OF SUCH OBLIGATIONS PROVIDE FOR A VARIABLE INTEREST RATE.

Section 9.08. Choice of Law. The Indenture provides that it is governed by, and construed and enforced in accordance with, the laws of the State of New York. This Instrument shall also be construed under and governed by the laws of the State of New York, without regard to New York's principles governing the conflicts of law. To the extent required by the laws of the State of Indiana (i) the terms and provisions of this Instrument pertaining to the perfection of the liens and security interests herein granted and the enforcement or realization by Secured Party of its respective rights and remedies under this Instrument with respect to the Collateral shall be governed by and construed and enforced in accordance with the internal law of the State of Indiana without giving effect to the conflicts-of-law rules and principles of such State; (ii) Debtor agrees that to the extent deficiency judgments are available under the laws of the State of New York after a foreclosure (judicial or nonjudicial) of the Collateral, or any portion thereof, or any other realization thereon by Secured Party, Secured Party shall have the right to seek such a deficiency judgment against Debtor in the State of New York; (iii) Debtor agrees that if Secured Party obtains a deficiency judgment in another state, then such party shall have the right to enforce such judgment in the State of Indiana, as well as in other states including, without limitation, the State of California; (iv) without limiting the generality of the foregoing, if the parties' choice of New York law is not followed and, contrary to the parties' intentions, California law is deemed to govern the transactions herein contemplated, then Debtor hereby waives, to the maximum extent permitted by law, any rights it may have under the California Code of Civil Procedure Sections 580b, 580d and 726 with respect to the Collateral and the enforcement or realization by Secured Party of their respective rights and remedies under this Instrument or with respect to the Collateral; and (v) Debtor hereby agrees that no action, proceeding or judgment initiated, pursued or obtained by Secured Party in any state with respect to the Collateral or this Instrument shall be considered a "judgment" for the purposes of such Sections 580b or 580d or an "action" for the purposes of such Section 726.

Section 9.09. Counterparts. This Instrument may be executed in several original counterparts. To facilitate filing and recording, there may be omitted from certain counterparts the parts of Exhibit A hereto containing specific descriptions of certain Collateral which relate to land under the jurisdiction of offices or located in cities, towns, counties or parishes other than the office or city, town, county or parish in which the particular counterpart is to be filed or recorded. Each counterpart shall be deemed to be an original for all purposes,

and all counterparts shall together constitute but one and the same instrument; provided, however, Secured Party shall also have the option to exercise all rights and remedies available to Secured Party hereunder and under applicable law as though each counterpart hereof were a separate mortgage, deed of trust, deed to secure debt, chattel mortgage or other security instrument covering only the portions of the Collateral located in the city, town, county or parish wherein such counterpart is recorded.

Section 9.10. Recording References. Unless otherwise specified in Exhibit A hereto, all recording references in Exhibit A are to the official real property records of the city, town, county or parish, as appropriate, in which the affected land is located. The references in Exhibit A to liens, encumbrances and other burdens, if any, shall not be deemed to recognize or create any rights in third parties.

Section 9.11. Notices. Unless otherwise specifically provided herein or required by law, all notices, requests and demands to be made hereunder to the parties herein shall be in writing and shall be (a) delivered by hand, or (b) sent by registered or certified U.S. mail, return receipt requested, through the United States Postal Service or (c) transmitted by prepaid telecopy or telex, to the addresses shown below or such other address which the parties may provide to one another in accordance herewith. Unless otherwise expressly provided herein, such notices, requests and demands, if sent by mail, shall be deemed given four (4) business days after deposit in the United States mails; if delivered by hand, shall be deemed given when delivered; and if sent by telecopy or telex, shall be deemed given upon receipt.

To Secured Party: Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust  
Administration  
(Ref. Excel Mortgage  
Funding Corporation)  
Facsimile: (302) 651-8882

With a copy to: State Street Bank and Trust Company  
225 Franklin Street  
Boston, Massachusetts 02110  
Attention: Dawn M. Zanotti  
Facsimile: (617) 985-3095

and to: EQ Services, Inc.  
5775 Peachtree Dunwoody Road  
Building E, Suite 400  
Atlanta, Georgia 30342  
Attention: Pamela P. Griffin  
General Counsel  
Facsimile: (404) 705-5500

and to: Fulbright & Jaworski  
2200 Ross Avenue  
Suite 2800  
Dallas, Texas 75201  
Attention: Linton E. Barbee, Esq.  
Facsimile: (214) 855-8200

and to: Cadwalader, Wickersham & Taft  
660 South Figueroa Street,  
Suite 2300  
Los Angeles, California 90017  
Attn: G. Wilson Horde III, Esq.  
Facsimile: (213) 955-4666

To Debtor: Excel Mortgage Funding Corporation  
c/o Excel Realty Investment, Inc.  
16955 Via Del Campo, Suite 110  
San Diego, California 92127  
Attention: Gary Sabin, President  
Facsimile: (619) 485-8530

With a copy to: Rushall, McGeever and Sappington  
Graham International Plaza  
2111 Palomar Airport Road,  
Suite 200  
Carlsbad, California 92009  
Attention: Bruce J. Rushall, Esq.  
Facsimile: (619) 438-3026

Section 9.12. Successors and Assigns. This Instrument shall bind and inure to the benefit of the respective successors and assigns of Debtor and of Secured Party. As used herein the term "Secured Party" shall mean, at any particular time, any person, corporation, partnership, trust, estate or other entity holding any interest of Secured Party hereunder at that time. Any waiver, consent, approval, notification or other action required or permitted to be obtained from or taken by Secured Party may be obtained from or taken by the agent or agents of Secured Party appointed from time to time for that purpose. Secured Party, if more than one person or entity, may, by agreement among such persons or entities, provide for and regulate the exercise of their rights and remedies hereunder,

but, unless and until modified to the contrary in writing by such persons or entities, Debtor and all others shall be entitled to rely on the waivers, consents, approvals, notifications and other acts of such agent, without inquiry into any such agreements or the existence of required consents or approvals of Secured Party therefor. As of the date of this Instrument, Secured Party is the person identified as Secured Party in the introductory paragraph of this Instrument. As used herein, the term "person" shall mean any individual, corporation, partnership, joint venture, agency or other form of entity or association. Notwithstanding any other provision contained herein, if any property interest granted by this Instrument does not vest on the execution and delivery of this Instrument, it shall vest, if at all, no later than 20 years and 364 days after the death of the last surviving descendant of Joseph P. Kennedy (the late father of the former President of the United States) who is alive on the execution and delivery of this Instrument.

Section 9.13. Captions. The captions or headings at the beginning of Articles and Sections hereof are for the convenience of the parties and are not a part of this Instrument.

Section 9.14. Attorneys' Fees. If the Obligations are not paid when due or if any Event of Default occurs, Debtor promises to pay all costs of enforcement and collection, including but not limited to, reasonable attorneys' fees, whether or not such enforcement and collection includes the filing of a lawsuit.

Section 9.15. No Merger of Lease. If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Collateral shall at any time become vested in one owner, this Instrument and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Secured Party so elects as evidenced by recording a written declaration so stating and, unless and until Secured Party so elects, Secured Party shall continue to have and enjoy all of the rights and privileges of Secured Party as to the separate estates. In addition, upon the foreclosure of the lien created by this Instrument on the Collateral pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Collateral shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Secured Party or any purchaser at such foreclosure shall so elect. No act by or on behalf of Secured Party or any such purchaser shall constitute a termination of any lease or sublease unless Secured Party or such purchaser shall give written notice thereof to such tenant or subtenant.

Section 9.16. Nonforeign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person.

To inform Secured Party that the withholding of tax will not be required in the event of the disposition of the Premises, or any portion thereof, pursuant to the terms of this Instrument, Debtor hereby certifies, under penalty of perjury, that:

(a) Debtor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder; and

(b) Debtor's U.S. employer identification number is 33-0540640; and

(c) Debtor's principal place of business is 16955 Via Del Campo, San Diego, California 92127.

It is understood that Secured Party may disclose the contents of this certification to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. Debtor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Secured Party shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Instrument or acceptance of a deed in lieu thereof.

Section 9.17. Interpretation. In this Instrument the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 9.18. Purpose of the Loan. Debtor hereby represents and agrees that the loan evidenced by the Note as secured by this Instrument is being obtained for business or commercial purposes, and the proceeds thereof will not be used for personal, family, residential leasehold or agricultural purposes.

Section 9.19. Relationship of Parties. The relationship between Debtor and Secured Party is that of borrower and lender only and neither Debtor nor Secured Party is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other.

Section 9.20. Bankruptcy. Debtor agrees that, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, if Debtor or any general partner of Debtor shall (a) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended, (b) be the subject of any order for relief issued under such Title 11 of the U.S. Code, as amended, (c) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to



bankruptcy, insolvency, or other relief for debtors, (d) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, (e) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Debtor shall not assert or request any other party to assert that the automatic stay provided by Section 362 of Title 11 of the U.S. Code (the "Bankruptcy Code") shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Secured Party to enforce any rights it has by virtue of this Instrument, the Loan Documents, or at law or in equity, or any other rights Secured Party has, whether now or hereafter acquired, against Debtor or against any collateral for the loans evidenced by the Note, including, but not limited to the Collateral. Specifically, without limiting the foregoing, in the event of any such voluntary or involuntary bankruptcy filing following the execution and delivery of this Instrument, Secured Party shall be entitled, and Debtor irrevocably consents, to an order granting relief from any and all stays, including the automatic stay imposed by Section 362 of the Bankruptcy Code or equitable relief under Section 105 of the Bankruptcy Code, so as to permit Secured Party to foreclose upon the Collateral and to exercise any and all other rights and remedies of Secured Party under this Instrument, the Loan Documents, or at law or in equity, and Debtor hereby irrevocably waives any right to object to such relief.

Section 9.21. Sole Discretion of Secured Party.

Wherever pursuant to this Instrument, Secured Party exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Secured Party, the decision of Secured Party to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Secured Party and shall be final and conclusive, except as may be otherwise specifically provided herein.

Section 9.22. Estoppel Certificates. (a) Within ten

(10) calendar days after request by Secured Party (which request shall not be made by Secured Party more frequently than Secured Party reasonably deems necessary), Debtor shall furnish Secured Party from time to time with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest in the Note, (iv) the date through which all installments of interest and/or principal have been paid, (v) any offsets or defenses to the payment of the Note, if any, and (vi) that the Loan Documents have not been modified or if modified, giving particulars of such modification.

(b) After request by Secured Party, Debtor, will use best efforts to obtain and furnish (within the time periods provided in the applicable Leases) Secured Party from time to time with estoppel certificates from any tenants under then existing Leases, which certificates shall be in form and substance as required by such Leases.

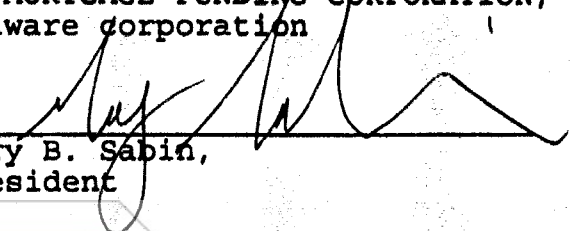
Section 9.23. Acceptance of Late and Partial Payments. The acceptance by Secured Party of the payment of any sum or the performance of any other Obligation after its due date shall not constitute a waiver of the right to require prompt payment or performance when due of all other and future sums and Obligations so secured, or to declare an Event of Default for any failure to so pay or perform, or to proceed with foreclosure or sale for any other Event of Default then existing. The acceptance by Secured Party of the payment of a portion of any sum, or the partial performance of any other obligation, secured by this Instrument at such time that the same is due and/or payable in its entirety shall neither cure nor excuse the Event of Default caused by failure to pay the whole of such installment or otherwise fully perform such obligation, or affect any notice of default recorded prior to such acceptance, unless such notice of default is expressly revoked in writing by Secured Party. Such acceptance shall not constitute a waiver of Secured Party's rights to require full payment or performance when due of all other and future sums or other obligations so secured.

Section 9.24. Limitation of Liability. It is expressly understood and agreed by the parties hereto that (a) this Instrument is accepted by Wilmington Trust Company, not personally or individually, but solely in its capacity as trustee under the Indenture, and (b) each of the representations, undertakings and agreements herein made on the part of the Secured Party is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose of binding only the Trust Estate (as defined in the Indenture).

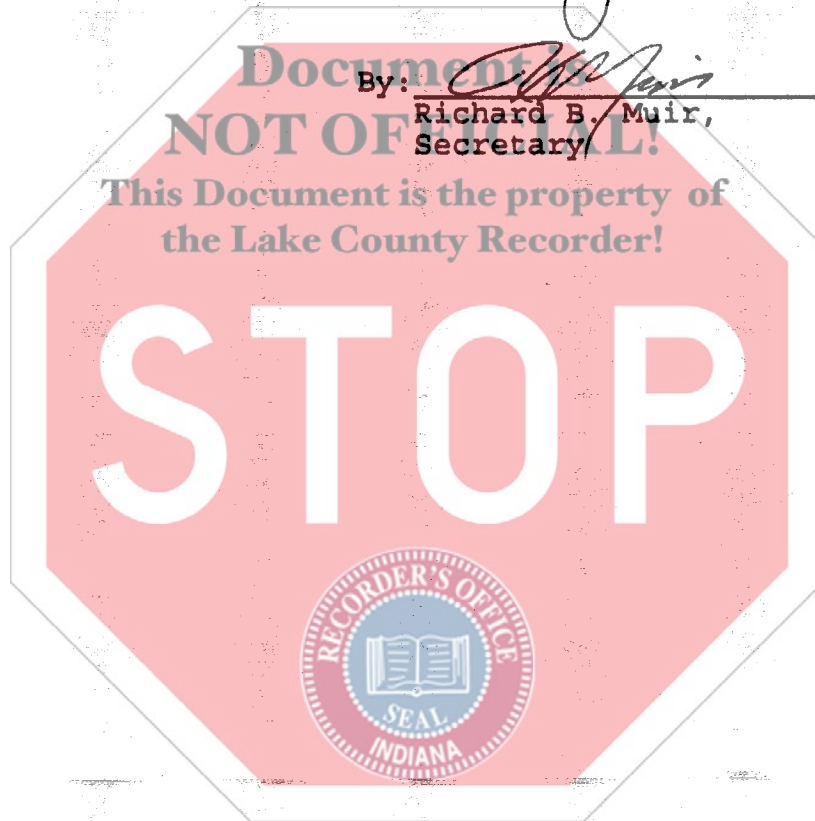
IN WITNESS WHEREOF, Debtor has on the date set forth in the acknowledgements hereto, effective as of the date first above written, caused this Instrument to be duly EXECUTED, SEALED AND DELIVERED.

DEBTOR:

EXCEL MORTGAGE FUNDING CORPORATION,  
a Delaware corporation

By:   
Gary B. Sabin,  
President

By:   
Richard B. Muir,  
Secretary



STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 15<sup>th</sup> day of March, 1994, before me, a Notary Public in and for said State, personally appeared Gary B. Sabin, known to me to be President of Excel Mortgage Funding Corporation, the corporation that executed the within instrument and also known to me to be the person who executed it on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my office seal the day and year in this certificate first above written.

Document is  
NOT OFFICIAL

Frank S. Stern

Notary Public

This Document is the property of  
the Lake County Registrar  
My Commission expires

FRANK S. STERN  
NOTARY PUBLIC, State of New York  
No. 31-4924810  
Qualified in New York County  
Commission Expires Feb. 28, 1996

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the 15<sup>th</sup> day of March, 1994, before me, a Notary Public in and for said State, personally appeared Richard B. Muir, known to me to be Secretary of Excel Mortgage Funding Corporation, the corporation that executed the within instrument and also known to me to be the person who executed it on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my office seal the day and year in this certificate first above written.

Frank S. Stern

Notary Public

My Commission expires

FRANK S. STERN  
NOTARY PUBLIC, State of New York  
No. 31-4924810  
Qualified in New York County  
Commission Expires Feb. 28, 1996

EXHIBIT A

LEGAL DESCRIPTION OF LAND

[See Following Pages]



Lucky/Eagle/Hubert, Indiana/EAG 11

**Parcel 1: (FEE SIMPLE) Part of the Northwest Quarter of the Northeast Quarter of the Northwest Quarter of Section 30, Township 36 North, Range 7, West of the Second Principal Meridian, in Lake County, Indiana described as follows:**

Commencing at an iron rod found at the intersection of the North Line of 38th Avenue and the East Line of Colorado Street;

Thence North 89°59'46" East (Formerly a record direction of "East"), along said North Line, a distance of 299.21 feet to an iron pipe set at the true point of beginning;

Thence North 00°01'26" East a distance of 124.50 feet to a P.K. Nail Set;

Thence North 89°58'34" West a distance of 46.00 feet to a P.K. Nail Set;

Thence North 00°01'26" East, a distance of 50.00 feet to a P.K. Nail Set;

Thence South 89°58'34" East, a distance of 25.0 feet to a cross out in concrete;

Thence North 00°01'26" East, a distance of 207.21 feet to a P.K. Nail Set;

Thence North 89°58'34" West, a distance of 49.85 feet to a P.K. Nail Set;

Thence North 00°01'26" East, a distance of 216.85 feet (formerly a record distance of 217.00 feet) to an iron pipe set on the South Line of 37th Avenue;

Thence South 89°58'34" East along said South Line, a distance of 276.00 feet;

Thence South 00°01'26" West, a distance of 230.00 feet to a P.K. Nail Set;

Thence North 89°58'34" West, a distance of 67.15 feet to a P.K. Nail Set;

Thence South 00°01'26" West, a distance of 368.49 feet (formerly a record distance of 368.66 feet) to a cross out in a concrete driveway curb on the North Line of 38th Avenue;

Thence South 89°59'46" West (formerly a record direction of "West"), along said North Line, a distance of 138.00 feet to the true point of beginning

CONTINUED

**Parcel 2: Non-Exclusive Easement rights for ingress and egress, passage and parking of motor vehicles, into, out of, on, over and across all parking areas, driveways and service areas established on the Parcels of the Shopping Center; ingress and egress and passage of pedestrians, into, out of, on, over and across the Common Area; and Non-Exclusive easements under, through and across the Common Area for water drainage systems or structures, water mains, sewers, water sprinkler system line, telephones or electrical conduits or systems, gas mains, other public utilities and service easements, as created and set forth in Declaration of Restrictions and Grant of Easements, recorded December 18, 1981 as Instrument No. 654168.**