

55842

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

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
94023754

CADWALADER, WICKERSHAM & TAFT
660 South Figueroa Street, Suite 2300
Los Angeles, California 90017
Attention: G. Wilson Horde III, Esq.

MAR 30 12 20 PM '94
SARAH
RECORDER

STATE OF INDIANA, S.S.I.N.D.
LAKE COUNTY
FILED FOR RECORD

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

ABSOLUTE ASSIGNMENT OF RENTS AND LEASES
(INDIANA)

THIS ABSOLUTE ASSIGNMENT OF RENTS AND LEASES, made and entered into as of this 1st day of March, 1994 ("Assignment"), by EXCEL MORTGAGE FUNDING CORPORATION, a Delaware corporation, whose address is 16955 Via Del Campo, San Diego, California 92127 ("Assignor"), to WILMINGTON TRUST COMPANY, a Delaware banking corporation ("Assignee"), as "Trustee" under that certain Indenture, dated as of March 1, 1994 (the "Indenture"), by and among Assignor, as the "Company," EQ Services, Inc., a Delaware corporation, as "Servicer" ("Servicer"), and Assignee, 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 (collectively, the "Note"), whose address is Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890.

RECITALS

A. WHEREAS, pursuant to the Indenture Assignor has executed the Note payable to the order of Holder, in the original principal amount of \$100,000,000.00, which Note is secured by, among other things, a Mortgage, Absolute Assignment of Rents, Security Agreement, Financing Statement and Fixture Filing (the "Mortgage") of even date herewith in favor of Assignee as mortgagee, encumbering Assignor's interest in the real property described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Demised Premises").

B. Assignor has heretofore entered into (or has been assigned the lessor's interest under) those certain leases identified on Exhibit "B" attached hereto and incorporated herein by this reference, covering all or a portion of the Demised Premises. Said leases, together with any and all other leases, subleases, licenses, franchises, concessions, occupancy or other agreements, whether written or oral, now existing or hereafter created and affecting all or any portion of the Demised Premises.

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or the use or occupancy thereof entered into by (or assigned to) Assignor; and together with all modifications, amendments, extensions and renewals thereof, are hereinafter collectively referred to as the "Leases."

C. As a condition precedent to the financing evidenced by the Note, Assignor is required to execute, acknowledge and deliver to Assignee this Assignment.

NOW, THEREFORE, in consideration of the foregoing, for the purposes aforesaid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

1. All initially capitalized terms used herein which are defined in the Mortgage shall have the same meaning herein unless the context otherwise requires.

2. Assignor hereby absolutely and unconditionally grants, bargains, sells, transfers, assigns and conveys to Assignee:

(a) All of the rents, issues, profits, avails, room rents, receivables, accounts, accounts receivable, profits, royalties, income and other benefits (collectively, the "Rents") derived from the Leases or otherwise derived by Assignor; together with all of Assignor's right, title and interest in the Leases and all rights and privileges incident thereto; together with all security deposits, guarantees and other security now or hereafter held by Assignor as security for the performance of the obligations of the tenants thereunder;

(b) The right to the use and possession of and the right to rent, let and lease any or all of the furniture, furnishings, fixtures, fittings, attachments, appliances, machinery, equipment, devices and appurtenances of every kind and description now or hereafter affixed to, attached to, located in or on the Demised Premises and available for the use of the tenants under the Leases or the operation of the Demised Premises and in or to which Assignor has any right, title or interest (the "Equipment"); and

(c) The right to the use and possession of the Demised Premises and the Rents now due and which may hereafter become due under and by virtue of the Leases and/or the Equipment which may have heretofore been made or may hereafter be made or agreed to between Assignor or any other owner of the Demised Premises or any other owner of the Equipment and any tenant or occupant of any part of the Demised Premises and/or the Equipment, or which may be made or agreed to by Assignee under the power herein granted.

This Assignment is intended by Assignor and Assignee to create and shall be construed to create an absolute assignment to Assignee of all of Assignor's right, title and interest in the Rents and in the Leases and shall not be deemed to create a security interest therein for the payment of any indebtedness or the performance of any obligations of Assignor under the Loan Documents. Assignor further agrees that, during the term of this Assignment, the Rents shall not constitute property of Assignor (or of any estate of Assignor) within the meaning of 11 U.S.C. § 541, as amended from time to time. By its acceptance of this Assignment and so long as an Event of Default shall not have occurred and be continuing under the Note or the other Loan Documents, Assignee hereby grants to Assignor a revocable license to enforce the Leases, to collect the Rents and to remit or apply the Rents as provided in the Indenture.

3. Assignor hereby covenants and agrees:

(a) Faithfully to abide by, perform and discharge each and every obligation, covenant and agreement of the Leases, which is to be performed by the lessor thereunder; to give prompt notice to Assignee of any notice of default on the part of Assignor with respect to the Leases which is received by Assignor from the lessees thereunder or from any guarantors thereof or any other notice with respect to the Leases which is received or given by Assignor, together with an accurate and complete copy of any such notice; and, at the sole cost and expense of Assignor, to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Leases to be performed by the lessees thereunder;

(b) That Assignor will not, without the prior written consent of Assignee: (i) amend, change, terminate or modify, in a material or adverse manner, any of the Leases or any interest therein or any extensions or renewals provided for therein except as expressly provided by its terms, unless, after giving effect to the proposed modification or termination, the Debt Service Coverage Ratio (as defined in the Indenture) for the Demised Premises will continue to satisfy subsections (i) and (ii) of Section 1102 of the Indenture for the release of the Demised Premises from the lien of the Mortgage; or (ii) tender or accept a surrender of the Leases. Assignor further covenants that it will not accept any prepayment of rent under any of the Leases in excess of one (1) month of any rent due thereunder. Any attempt to exercise any such right without the written authority and consent of Assignee thereto being first had and obtained shall be void and ineffective as against Assignee and shall constitute a breach of the terms hereof entitling Assignee to declare all sums secured hereby to be immediately due and payable;

(c) At Assignor's sole cost and expense, to appear in and defend any action or proceeding arising under,

growing out of or in any manner connected with the Leases hereby assigned, or the obligations, duties or liabilities of the lessor or lessees thereunder or any guarantors thereof, and to pay all costs and expenses of Assignee, including attorneys' fees in a reasonable sum, in any such action or proceeding in which Assignee may appear;

(d) That if Assignor should fail to make any payment or to do any act as herein provided, then Assignee, but without obligation so to do and without notice to or demand on Assignor, and without releasing Assignor from any obligation hereunder, may make or do the same in such manner and to such extent as Assignee may deem necessary to protect Assignee's rights and interests under this Assignment, including specifically without limiting Assignee's general powers, the right to appear in and defend any action or proceeding purporting to affect the Leases or Assignee's interest therein under this Assignment or the rights or powers of Assignee hereunder, and the right to perform and discharge each and every obligation, covenant and agreement of the lessor contained in the Leases; and in exercising any such powers, to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees; and

(e) To pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the per annum rate then in effect under the Note, and the same shall be added to the said indebtedness and shall be secured hereby.

4. Assignor hereby covenants and warrants to Assignee that: (a) Assignor has not executed any prior assignment of the Leases and Assignor is entitled to receive the Rents and to enjoy all other rights mentioned herein, and that Assignor has free right to transfer to Assignee such rights, interests, powers and authorities as are herein granted or conferred; (b) Assignor has not performed any act or executed any instrument which might prevent Assignee from operating under any of the terms and conditions hereof, or which would limit Assignee in such operation; (c) Assignor has not accepted rent under the Leases for any part of the Demised Premises for any period subsequent to the current period for which rent has already become due and payable; (d) there is no material default now existing under any of the Leases; and (e) Assignor has not executed or granted any modification or amendment whatever of any of the Leases hereby assigned, either orally or in writing.

5. To further protect Assignee's interest in the Leases under this Assignment, Assignor further agrees, with respect to the Demised Premises, as follows:

(a) Assignor hereby irrevocably constitutes and appoints Assignee its true and lawful attorney-in-fact, effective

upon the occurrence of an Event of Default by Assignor under the Indenture or the other Loan Documents, and Assignor's failure to cure such default within the express time period (if any) therein provided, in Assignor's name and stead (i) to collect the Rents; (ii) to use such measures, legal or equitable, as in Assignee's discretion may be deemed necessary or appropriate to enforce the payment of the Rents or any security given in connection therewith; (iii) to secure and maintain the use and possession of the Demised Premises and the Equipment or any part of either; (iv) to fill any and all vacancies and to rent, lease or let the Demised Premises and the Equipment or any part thereof at Assignee's discretion, hereby granting full power and authority to Assignee to use and apply said Rents for the following purposes in such order of priority as Assignee deems proper: (A) for the purposes of the payment of any taxes, assessments and charges of any nature whatsoever that may be levied or assessed in connection with the Demised Premises and the Equipment; (B) to the payment of premiums on policies of insurance on or in connection with the whole or any part of the Demised Premises and the Equipment as may be required by any other security instrument securing the Note; (C) to the purchase of and/or the payment for such Equipment as may be deemed necessary or advisable by Assignee for the Demised Premises; (D) to the payment of all expenses incurred in the care and management of the Demised Premises, including such repairs, alterations, additions and improvements to the Demised Premises and the Equipment or any part of either as may be deemed necessary or advisable by Assignee; (E) to the payment of attorneys' fees, court costs, labor costs, charges and expenses incurred in connection with any and all things which Assignee may do or cause to be done by virtue hereof; and (F) to the payment of any and all indebtedness, liability, interest and principal of Assignor evidenced by the Note or on any of the foregoing, if any, whether now existing or hereafter to exist, as may be deemed necessary or advisable by Assignee;

(b) In furtherance of these provisions, Assignor hereby grants to Assignee full power and authority to make contracts for the care and management of the whole or any part of the Demised Premises and/or the Equipment, in such form and providing for such compensation as may be deemed advisable by Assignee. Assignor, for the performance or execution of any or all of these presents, hereby further grants to Assignee the full power and authority as the attorney-in-fact of Assignor to constitute, appoint and authorize for Assignor, and in its place and stead to put and substitute, one attorney or more for Assignor, and as its attorney or attorneys-in-fact to do, execute, perform and finish for Assignor and in its name all and singular those things which shall be necessary or advisable or which Assignor's attorney-in-fact or its substitute shall deem necessary or advisable in and about, for, touching or concerning these presents as thoroughly, amply and fully as Assignor could do concerning the same being personally present. Assignor hereby

agrees that whatever its said attorney-in-fact or its said substitute attorney or attorneys-in-fact shall do or cause to be done in, about or concerning these presents, is hereby ratified and confirmed; and

(c) Assignor hereby grants to Assignee full power and authority to exercise at any and all times, and without notice to Assignor, each and every right, privilege and power herein granted.

6. It is understood that so long as there shall exist no Event of Default under the Indenture, the Mortgage or any other Loan Document or in the performance of any obligation, covenant or agreement contained herein, Assignor may, pursuant to the revocable license granted in Paragraph 2, collect the Rents, but not in excess of one (1) month prior to accrual and only as trustee for the benefit of Assignee; and Assignor shall thereafter deposit such Rents into the Operating Account (as defined in the Indenture) as more particularly provided in Article Eleven of the Indenture. Nothing contained in this Paragraph 6 or elsewhere in this Assignment shall be construed to make Assignee a mortgagee-in-possession unless and until Assignee actually takes possession of the Demised Premises in person.

7. Upon or at any time after an Event of Default under the Indenture, the Mortgage or any other Loan Document or in the performance of any obligation, covenant or agreement herein, Assignee may: (i) revoke the license granted to Assignor under Paragraph 2 by giving written notice of such revocation to Assignor. Upon such revocation, Assignor shall promptly deliver to Assignee all Rents then held by Assignor, if any, and Assignee shall thereafter be entitled to enforce the Leases, to collect and receive, without deduction or offset, all Rents payable thereunder, including but not limited to, all Rents which were accrued and unpaid as of the date of such revocation and to apply such Rents; (ii) declare all sums evidenced by the Note (or the Indenture, as the case may be) to be immediately due and payable; (iii) without notice (except as required by law) (and, if the Note be secured by a mortgage or deed of trust or other security instrument, irrespective of whether a declaration of default under any of such security instruments has been delivered to the appropriate party thereunder, or remedies under such security instruments have been exercised thereunder), exercise all rights and remedies contained herein or in any such security instruments, and, in addition, without regard to the adequacy of security for the indebtedness evidenced by the Note, with or without notice (except as required by law), bring any action or proceeding or, either in person or by agent or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate the Demised Premises or any part thereof, make, enforce, modify and accept the surrender of the Leases, obtain and evict tenants, fix or modify the Rents, and do any acts which Assignee deems proper to protect Assignee's rights and interests

under this Assignment, and either with or without taking possession of the Demised Premises, in Assignee's own name, sue for or otherwise collect and receive the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness evidenced by the Note and in such order as Assignee may determine. The entering upon and taking possession of the Demised Premises, the collection of the Rents, and the application thereof as aforesaid, shall not cure or waive any default or waive, modify or affect any notice of default under any instrument securing or relating to the Note, or invalidate any act done pursuant to such notice; and/or (iv) send any tenant a notice to the effect that: (a) an Event of Default has occurred and that Assignee has revoked Assignor's license to collect the Rents; (b) Assignee has elected to exercise its rights under this Assignment; and (c) such tenant is thereby directed to thereafter make all payments of Rent and to perform all obligations under its Lease to or for the benefit of Assignee or as Assignee shall direct.

8. Assignee shall not be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability under the Leases assigned hereunder or under or by reason of this Assignment. No failure or delay in exercising any of said rights, remedies or powers of Assignee shall constitute a waiver thereof or a waiver of any default of Assignor. Assignor shall and does hereby agree to indemnify Assignee (in its individual and trustee capacities) against and hold it harmless from any and all liability, loss, damage, cost or expense which Assignee may or might incur under the Leases or under or by reason of this Assignment, and against and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on Assignee's part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, loss, damage, cost or expense under the Leases or under or by reason of this Assignment, or in the defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest at the maximum rate permitted by law, shall be secured by any and all security instruments relating to the Note, and Assignor shall reimburse Assignee therefor immediately upon demand, and upon the failure of Assignor so to do, Assignee may declare all sums evidenced by the Note to be immediately due and payable.

9. Until the indebtedness evidenced by the Note shall have been paid in full, Assignor covenants and agrees to use due diligence to attempt to rent all of the Demised Premises and keep the same leased at a good and sufficient rental, and upon demand to transfer and assign to Assignee any and all subsequent leases upon all or any part of the Demised Premises, upon the same or substantially the same terms and conditions as are herein

contained, and to make, execute and deliver to Assignee upon demand any and all instruments that may be necessary or desirable therefor, but the terms and provisions of this Assignment shall apply to any such subsequent lease upon the Demised Premises, whether or not so assigned and transferred.

10. Upon the payment in full of all indebtedness evidenced by the Note and release of the Mortgage, this Assignment shall become null and void and shall be of no further force or effect and Assignee shall reassign the Leases and the Rents to Assignor.

11. The term the "Leases" as used herein shall mean not only any leases hereby assigned or any extension or renewal thereof, but also any lease subsequently executed by Assignor or Assignor's successors, covering the Demised Premises or any part thereof. In this Assignment, whenever the context so requires, the neuter gender includes the masculine or feminine, and the singular number includes the plural, and vice versa.

12. All notices, demands or documents which are required or permitted to be given or served hereunder 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 Assignee:

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 Assignor: Excel Mortgage Funding Corporation
c/o Excel Realty Investment, Inc.
16955 Via Del Campo
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

13. Assignor will execute upon request of Assignee any and all instruments requested by Assignee to carry these presents into effect.

14. Assignor hereby additionally covenants and agrees:

(a) During the term of these presents and also during any proceedings brought to enforce the Note or any instrument securing or relating to the Note, Assignor will not remove or cause to be removed from the Demised Premises any of the Equipment, unless such Equipment is promptly replaced with

Equipment of at least equal quality, and will not look to Assignee for any damage to the same.

(b) Assignee shall not be required to seek the appointment of a receiver or to institute any proceedings of any kind, possessory or otherwise, to secure or enjoy the full benefits of this Assignment.

(c) These presents shall in no way operate or prevent Assignee from pursuing any remedy which Assignee now or hereafter may have because of any present or future breach of the terms or conditions of the Note, any extension or renewal of the Note or any instrument securing the Note.

(d) Assignor hereby specifically authorizes and instructs each and every present and future lessee or tenant to the whole or any part of the Demised Premises to pay to Assignee all unpaid rental agreed in each tenancy upon receipt of demand from said Assignee so to pay the same. Assignor agrees that such lessees and tenants shall have the right to rely on such demand without obligation to inquire as to whether default exists notwithstanding any contrary claim of Assignor.

(e) Assignor shall not make or execute any other assignment of leases, rents, issues, income or profits from the Demised Premises or any part thereof during the term of this Assignment, without the prior written consent of Assignee (which may be granted or denied in Assignee's sole and absolute discretion).

(f) Assignee's omission or failure to give any notice of or under this Assignment to Assignor or any lessee, tenant or other occupant of the Demised Premises or any part thereof, or to collect the Rents, or any part thereof, shall not constitute or be deemed a waiver of any Assignee's rights hereunder.

15. In the event any provisions of this Assignment or the application hereof to Assignor or any other persons or circumstances shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Assignment or the application of such provision or provisions to Assignor or such other persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and each and every provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

16. The Indenture provides that it is governed by, and construed and enforced in accordance with, the laws of the State of New York. This Assignment 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 Assignment pertaining to the perfection of the interests granted or assigned to Assignee hereunder and the enforcement or realization by Assignee of its rights and remedies under this Assignment against the Collateral (as defined in the Mortgage), shall be governed by, and construed and enforced in accordance with, to the extent, and only to the extent, necessary to permit Assignee to enforce or realize upon its rights and remedies hereunder with respect to such Collateral, the internal laws of the State of Indiana without regard to Indiana's principles governing the conflicts of law; (ii) Assignor 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 Assignee, Assignee shall have the right to seek such a deficiency judgment against Assignor in the State of New York; (iii) Assignor agrees that if Assignee 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 Assignor 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 Assignee of its respective rights and remedies under this Instrument or with respect to the Collateral; and (v) Assignor hereby agrees that no action, proceeding or judgment initiated, pursued or obtained by Assignee in any state with respect to the Collateral or this Assignment shall be considered a "judgment" for the purposes of such Sections 580b and 580d or an "action" for the purposes of such Section 726.

17. This Assignment and all of the terms, covenants and conditions hereof shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee and its successors and assigns.

18. In the event of any litigation between Assignor and Assignee which may arise after the date hereof in connection with the enforcement or interpretation of this Assignment, the party prevailing in such litigation shall be entitled to be reimbursed by the other party for its reasonable attorneys' fees and court costs.

19. Assignor agrees that, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, if Assignor shall (i) 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, (ii)

be the subject of any order for relief issued under such Title 11 of the U.S. Code, as amended, (iii) 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, (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, (v) 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, Assignor 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 Assignee to enforce any rights it has by virtue of this Assignment, the Loan Documents, or at law or in equity, or any other rights Assignee has, whether now or hereafter acquired, against Assignor or against any collateral for the indebtedness evidenced by the Note, including, but not limited to the Demised Premises. Specifically, without limiting the foregoing, in the event of any such voluntary or involuntary bankruptcy filing following the execution and delivery of this Assignment, Assignee shall be entitled, and Assignor 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 Assignee to foreclose upon the Demised Premises and to exercise any and all other rights and remedies of Assignee under this Assignment, the Loan Documents, or at law or in equity, and Assignor hereby irrevocably waives any right to object to such relief.

20. (a) Where actions are to be taken by Assignee under this Assignment, including, without limitation, the giving of any consent or approval or the exercise of any right or remedy granted Assignee hereunder, Holder (or its authorized representative), acting alone or, if necessary, with Assignee under the Indenture, shall be the party who shall have the exclusive right to take any such action.

(b) 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 Assignee under this Assignment 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 Assignee to Assignor.

21. It is expressly understood and agreed by the parties hereto that (a) this Assignment 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 Assignee 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, Assignor has executed this Assignment as of the day and year first above written.

"ASSIGNOR"

EXCEL MORTGAGE FUNDING CORPORATION,
a Delaware corporation

Document is NOT OFFICIAL!

This Document is the property of the Lake County Recorder!

By: _____

Gary B. Sabin
President

By: _____

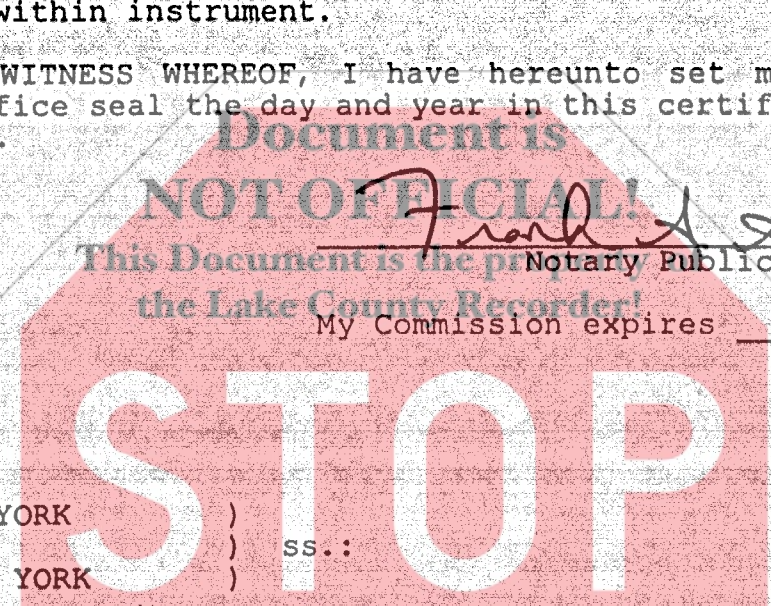
Richard B. Muir
Secretary



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

On the 15th 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.



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

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

On the 15th 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]



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.

EXHIBIT "B"

Lucky-Eagle-Hobart, IN (EAG 11)

- (a) Lease, dated November 16, 1982, by and between OTR, an Ohio general partnership, and Eagle Stores, Inc., an Indiana corporation.
- (b) Indenture, dated November 16, 1982, by and between OTR and Eagle Stores, Inc.
- (c) Guarantee, dated November 16, 1982, by Lucky Stores, Inc., a California corporation, of the performance of Eagle Stores, Inc.
- (d) Assignment of Lease and Agreement, dated November 12, 1987, by and between Lucky Stores, Inc., a Delaware corporation (as successor by merger to Lucky Stores, Inc., a California corporation, successor in interest by operation of law to Eagle Stores, Inc.), and Eagle Food Centers, L.P., a Delaware limited partnership.
- (e) Assignment and Assumption of Lease, dated August 4, 1993, between OTR and Excel Mortgage Funding Corporation, a Delaware corporation.

