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When recorded mail to:
LandAmerica Financial Group, Inc.
attn: Sonia Delgado
3636 N. Central Ave, Suite 350
Phoenix, AZ 85012
Escrow No. 62-2126

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

Recording requested by and
When recorded return to:

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LandAmerica Financial Group
3636 North Central Avenue, Suite 350
Phoenix, Arizona 85012

M. W. GAYNER
RECORDER

3078

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

NOT OFFICIAL!

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of July 31, 2000 among COUNTRY STORES PROPERTY III, LLC, a Delaware limited liability company ("Debtor"), whose address is c/o U.S. Realty Advisors, LLC, 1370 Avenue of the Americas, New York, New York 10019, CS REMAINDER III, LLC, a Delaware limited liability company ("Remainderman"), whose address is c/o U.S. Realty Advisors, LLC, 1370 Avenue of the Americas, New York, New York 10019, to and for the benefit of FFCA FUNDING CORPORATION, a Delaware corporation ("Mortgagee"), whose address is 17207 North Perimeter Drive, Scottsdale, Arizona 85255.

PRELIMINARY STATEMENT:

The capitalized terms used in this Mortgage, if not elsewhere defined herein, have the meanings set forth in Article I. Remainderman holds a remainder interest in the Land and Debtor holds an estate for years in the Land and a fee simple interest in the Improvements, subject to the Permitted Exceptions. In consideration of Mortgagee making a loan the proceeds of which Debtor will use to acquire its interests in the Mortgaged Property, Remainderman and Debtor are executing this Mortgage for the purpose of granting the interest of Remainderman and Debtor in and to the Mortgaged Property (as defined in the Granting Clauses below) as security for the payment of the Obligations. The Mortgaged Property shall be and remain subject to the lien of this Mortgage and shall constitute security for the Obligations so long as the Obligations shall remain outstanding.

GRANTING CLAUSES:

Remainderman and Debtor, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby create a security interest in, mortgage, warrant, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto Mortgagee and to its successors and assigns WITH POWER OF SALE for the benefit and security of Mortgagee and its successors and assigns, all of Remainderman's (if any) and Debtor's estate, right, title and interest in, to and under any and

01-274251.01
FFCA No. 8001-1399
Contract No. 5818
Unit No. 369
Hammond, IN

HOLD FOR MERIDIAN TITLE CORP

133.00
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all of the following property (the "Mortgaged Property"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

Premises, Rents and Derivative Interests

The Premises, all rents, issues, profits, royalties, income and other benefits derived from the property comprising the Mortgaged Property (collectively, the "Rents"); all leases or subleases covering the Premises or any portion thereof now or hereafter existing or entered into including, without limitation, the Permitted Lease (collectively, "Leases" and individually, a "Lease"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature; all options to purchase or lease the Premises or any portion thereof or interest therein, and any greater estate in the Premises; all interests, estate or other claims, both in law and in equity, with respect to the Premises; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all 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;

Personal Property

All machinery, appliances, furniture, equipment, trade fixtures and other personal property now or hereafter owned by Debtor or Remainderman and situated on or used in connection with the Premises, if any (the "Personal Property");

Intangibles

All existing and future accounts, contract rights, general intangibles, files, books of account, agreements, franchise, license and/or area development agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the property comprising the Mortgaged Property, whether now existing or entered into or obtained after the date hereof, including, without limitation, all construction contracts, architect agreements, plans, specifications, drawings, permits, licenses, agreements, approvals, consents and warranties now or hereafter relating to the construction of the Improvements and all amendments and modifications thereto; all existing and future names under or by which the property comprising the Mortgaged Property or any portion thereof may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the property comprising the Mortgaged Property or any portion thereof; and

Claims and Awards

All the claims or demands with respect to the Mortgaged Property, including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto, 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 Mortgaged Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The Mortgaged Property shall include all products and proceeds of the foregoing property.

TO HAVE AND TO HOLD the Mortgaged Property hereby granted or mortgaged or intended to be granted or mortgaged, unto Mortgagee, and its successors in trust and assigns, upon the terms, provisions and conditions set forth herein.

THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (the "Obligations"):

- (i) Payment of indebtedness evidenced by the Note and the Additional Notes, together with all extensions, renewals, amendments and modifications thereof; and
- (ii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants of Debtor contained in, any Loan Document, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby.

It is the intention of the parties hereto that the Mortgaged Property shall secure all of the Obligations presently or hereafter owed, and that the priority of the lien and security interest created by this Mortgage for all such Obligations shall be controlled by the time of proper recording of this Mortgage. In addition, this Mortgage shall also secure unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Mortgaged Property, together with interest thereon until paid at the Default Rate, all as contemplated in this Mortgage, all of which shall constitute a part of the Obligations. This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Mortgaged Property subsequent to the date of recording of this Mortgage, that until this Mortgage is released, any debt owed Mortgagee by Debtor, including advances made subsequent to the recording of this Mortgage, shall be secured with the priority afforded this Mortgage as recorded.

The Obligations secured by this Mortgage include, without limitation, judgment(s) or final decree(s) rendered to collect any money obligations of Debtor or Remainderman to Mortgagee and/or to enforce the performance or collection of all covenants, agreements, other obligations and liabilities of Debtor or Remainderman under this Mortgage, the Note and the other Loan Documents.

Notwithstanding the foregoing or any other provisions of this Mortgage to the contrary:

- (x) in the event that the Loan becomes the subject of a Securitization, Participation or Transfer, this Mortgage shall only secure indebtedness and obligations

relating to the Loan and any other loans between Debtor on the one hand and any of the Mortgagee Entities on the other hand which are part of the same Loan Pool as the Loan; and

(y) in the event that any loans between Debtor on the one hand and any of the Mortgagee Entities on the other hand (other than the Loan) become the subject of a Securitization, Participation or Transfer, this Mortgage shall not secure any indebtedness and obligations relating to such loans unless the Loan is part of the same Loan Pool as such loans.

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the Note and the other Loan Documents are to be executed, delivered and secured and that the Mortgaged Property is to be held and disposed of by Mortgagee, upon and subject to the provisions of this Mortgage.

NOT OFFICIAL!
This Document is the property of
the Lake County Recorder!

ARTICLE I

DEFINED TERMS

Unless the context otherwise specifies or requires, the following terms shall have the meanings specified (such definitions to be applicable equally to singular and plural nouns and verbs of any tense):

“*Action*” has the meaning set forth in Section 6.01(iv).

“*ADA*” has the meaning set forth in Section 4.03(b).

“*Additional Notes*” means, collectively, all promissory notes executed by Debtor and payable to Mortgagee other than the Note.

“*Additional Rental*” has the meaning set forth in the Permitted Lease.

“*Affiliate*” means any person or entity which directly or indirectly controls, is under common control with, or controlled by any other person or entity. For purposes of this definition “controls”, “under common control with” and “controlled by” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or otherwise.

“*Applicable Regulations*” means all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders and approvals of each Governmental Authority having jurisdiction over the Mortgaged Property, including, without limitation, all health, building, fire, safety and other codes, ordinances and requirements and all applicable standards of the National Board of Fire Underwriters and the ADA, in each case, as amended, and any judicial or

administrative interpretation thereof, including any judicial order, consent, decree or judgment applicable to Debtor.

"Base Annual Rental" has the meaning set forth in the Permitted Lease.

"Base Monthly Rental" has the meaning set forth in the Permitted Lease.

"Business Day" means any day on which national banks are not required or authorized to remain closed.

"Casualty" has the meaning set forth in Section 5.01(a)(i).

"Casualty Termination Payment" has the meaning set forth in the Permitted Lease.

"Closing Date" has the meaning set forth in the Loan Agreement.

"Condemnation Termination Payment" has the meaning set forth in the Permitted Lease.

"Code" means the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

"Default Rate" means 18% per annum or the highest rate permitted by law, whichever is less.

"Defeasance" has the meaning set forth in the Loan Agreement.

"De Minimis Amounts" shall mean, with respect to any given level of Hazardous Materials, that level or quantity of Hazardous Materials in any form or combination of forms the use, storage or release of which does not constitute a violation of any Environmental Laws and is customarily employed in the ordinary course of, or associated with, similar businesses located in the state in which the Mortgaged Property is located.

"Economic Termination Payment" has the meaning set forth in the Permitted Lease.

"Environmental Indemnity Agreement" means that certain Environmental Indemnity Agreement dated as of the date of this Mortgage executed by Debtor for the benefit of Mortgagee and such other parties as are identified in such agreement with respect to the Premises (as well as certain other premises), as the same may be amended from time to time.

"Environmental Insurer" means American International Specialty Lines Insurance Company, or such other insurer providing an Environmental Policy (as defined in the Loan Agreement) reasonably acceptable to Mortgagee.

"Environmental Laws" means any applicable present and future federal, state and local laws, statutes, ordinances, rules, regulations and judicial decisions relating to Hazardous Materials and/or the protection of human health or the environment by reason of a Release or a Threatened Release of Hazardous Materials or relating to liability for or costs of Remediation or prevention of Releases. "Environmental Laws" includes, but is not limited to, the following

statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules and regulations addressing substantially similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Laws" also includes, but is not limited to, any applicable present and future federal, state and local laws, statutes, ordinances, rules and regulations conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority pertaining to the environmental condition of the property; requiring notification or disclosure of Releases or other environmental condition of the Mortgaged Property to any Governmental Authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements relating to Hazardous Materials in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to Hazardous Materials; and relating to wrongful death, personal injury, or property or other damage in connection with the physical condition or use of the Mortgaged Property by reason of the presence of Hazardous Materials in, on, under or above the Mortgaged Property.

"*Environmental Lien*" means any lien or other encumbrance imposed pursuant to any Environmental Law.

"*Event of Default*" has the meaning set forth in Section 6.01.

"*Franchise Finance*" means Franchise Finance Corporation of America, a Delaware corporation, and its successors.

"*GAAP*" means generally accepted accounting principles in the United States, at the time at which the information affected by these principles was prepared, consistently applied.

"*Governmental Authority*" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority of the United States, the state in which the Premises are located or any political subdivision thereof.

"*Guarantor*" means CBRL Group, Inc., a Tennessee corporation.

"*Hazardous Materials*" means (a) any toxic substance, hazardous waste, hazardous substance, regulated substance, solid waste, pollutant or contaminant which is subject to regulation under any Environmental Laws; (b) radon gas, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent, or any petroleum product; and (c) any other chemical, material, gas or substance the exposure to or release of which is prohibited, limited or regulated by any

Governmental Authority with jurisdiction over the Mortgaged Property or the operations or activity at the Mortgaged Property, or any chemical, material, gas or substance that poses a hazard to the health and/or safety of the occupants of the Mortgaged Property or the owners and/or occupants of property adjacent to or surrounding the Mortgaged Property.

"Improvements" means all buildings, fixtures and other improvements now or hereafter located on the Land (whether or not affixed to the Land).

"Indemnified Parties" means Mortgagee and any person or entity who is or will have been involved in the origination of the Loan (but not Environmental Insurer), any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by this Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan (including, but not limited to, investors or prospective investors in any Securitization, Participation or Transfer, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, lenders, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Mortgaged Property, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Mortgagee's assets and business).

"Initial Permitted Lease" means the Master Lease dated on or about the date of this Mortgage between Debtor, as lessor, and Lessee, as lessee, as the same may be amended from time to time.

"Initial Permitted Use" has the meaning set forth in the Loan Agreement.

"Land" means the parcel or parcels of real estate legally described in Exhibit A attached hereto, and all rights, privileges and appurtenances associated therewith.

"Lease Guaranty" means that certain unconditional guaranty of payment and performance dated as of the date of this Mortgage executed by Guarantor for the benefit of Debtor with respect to Lessee's obligations under the Lease.

"Lease" and *"Leases"* has the meaning set forth in the Granting Clause.

"Lease Bankruptcy Default" means an Event of Default occurring pursuant to Section 23.A(iv) of the Permitted Lease as a result of a voluntary bankruptcy proceeding commenced by or on behalf of the lessee under the Permitted Lease or an involuntary bankruptcy proceeding commenced against the lessee under the Permitted Lease by someone other than Debtor.

"Lease Default" means an Event of Default which (i) results from a default by the lessee under the Permitted Lease and (ii) does not result in rights or interest in collateral of Mortgagee being placed in immediate jeopardy.

"Lessee" means Cracker Barrel Old Country Store, Inc., a Tennessee corporation, and its successors.

"Letter of Credit" has the meaning set forth in the Loan Agreement.

"Loan" means the loan made by Mortgagee to Debtor which is evidenced by the Note and secured by this Mortgage.

"Loan Agreement" means the Loan Agreement dated as of even date herewith between Debtor and Mortgagee, as the same may be amended from time to time.

"Loan Documents" has the meaning set forth in the Loan Agreement.

"Loan Pool" has the meaning set forth in the Loan Agreement.

"Losses" means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, reasonable attorneys' fees, court costs and other costs of defense), but specifically excluding any consequential damages.

"Material Adverse Effect" means (i) a material adverse effect on the Premises, including, without limitation, the operation of the Premises as an Initial Permitted Use and/or the value of the Premises, or (ii) a material adverse effect on Debtor's ability to perform its obligations under this Mortgage and the other Loan Documents.

"Material Effect" means impairment of the value of the Mortgaged Property, decrease of the useful life of the Mortgaged Property or increase in the cost of reletting the Mortgaged Property.

"Material Taking" has the meaning set forth in Section 5.01(b)(i).

"Mortgagee Entities" means collectively, Mortgagee, Franchise Finance and any Affiliate of Mortgagee or Franchise Finance.

"Mortgaged Property" has the meaning set forth in the Granting Clause.

"Net Award" has the meaning set forth in Section 5.01(b)(iii).

"Net Insurance Proceeds" means insurance proceeds received by Mortgagee, Remainderman and/or Debtor on account of any Casualty less the costs, fees and expenses

incurred by Mortgagee, Remainderman and/or Debtor in the collection thereof, including, without limitation, adjuster's fees and expenses and attorneys' fees and expenses.

"*Note*" means the promissory note dated as of even date herewith in the amount of \$2,413,035.27 executed by Debtor and payable to Mortgagee which is secured by this Mortgage and any amendments, extensions or modifications thereof. The Note, by its terms, shall mature on August 1, 2020.

"*Partial Taking*" has the meaning set forth in Section 5.01(b)(i).

"*Participation*" has the meaning set forth in the Loan Agreement.

"*Permitted Exceptions*" means the Initial Permitted Lease, those recorded easements, restrictions, liens and encumbrances set forth as exceptions in the title insurance policy issued to Mortgagee and approved by Mortgagee in its sole discretion in connection with this Mortgage, and those easements, restrictions and encumbrances granted by Debtor subsequent to the date of this Mortgage with the prior written consent of Mortgagee.

"*Permitted Lease*" means the Initial Permitted Lease or a Substitute Permitted Lease, as applicable.

"*Person or Persons*" means any individual, corporation, partnership, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

"*Personal Property*" has the meaning set forth in the Granting Clause.

"*Premises*" means the Land and Improvements.

"*Prepayment Charges*" has the meaning set forth in the Permitted Lease.

"*Rejectable Substitution Offer*" has the meaning set forth in the Permitted Lease.

"*Rejectable Substitution Payment*" has the meaning set forth in Section 5.04.

"*Release*" means any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping or disposing of Hazardous Materials into the environment.

"*Remediation*" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Materials, any actions to prevent, cure or mitigate any Release, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials, any of which are required by Environmental Law

or are reasonably required to protect human health and the environment or to preserve the value of the Mortgaged Property.

“*Rents*” has the meaning set forth in the Granting Clause.

“*Restoration*” means the restoration, replacement or rebuilding of the Premises, or any part thereof, as nearly as possible to its value, condition and character immediately prior to any Casualty or Taking.

“*Securitization*” has the meaning set forth in the Loan Agreement.

“*State*” means the State in which the Premises is located.

“*Substitute Permitted Lease*” means any lease for the Premises entered into by Debtor as lessor in accordance with the provisions of Section 6.11(e), as the same may be amended from time to time.

“*Substitute Permitted Use*” means a nationally or regionally recognized restaurant concept.

“*Taking*” has the meaning set forth in Section 5.01(b)(i).

“*Threatened Release*” means a substantial likelihood of a Release at or from the Mortgaged Property which requires action to prevent or mitigate damage to the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air or any other environmental medium comprising or surrounding the Mortgaged Property which may result from such Release.

“*Transfer*” has the meaning set forth in the Loan Agreement.

“*UCC*” has the meaning set forth in Section 6.02(iii).

“*UCC-1 Financing Statements*” means the UCC-1 Financing Statements executed by Debtor pursuant to the Loan Agreement.

“*Yield Maintenance Payment*” has the meaning set forth in the Note.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF DEBTOR

Remainderman and Debtor hereby respectively and as applicable represent and warrant to Mortgagee as of the date hereof as follows (which representations and warranties shall survive the execution and delivery of this Mortgage):

Section 2.01. *Title; Operating Lease.* (a) Remainderman has a good and marketable remainder interest in the Land and Debtor has a good and marketable estate for years in the Land

and good and marketable fee title to the Improvements, all free and clear of all liens, encumbrances, charges and other exceptions to title except the Permitted Exceptions. Remainderman and Debtor have full power and lawful authority to grant their respective interests in the Mortgaged Property to Mortgagee in the manner and form herein done or intended and to forever warrant and defend Remainderman's and Debtor's title in the Mortgaged Property against the claims of all persons, subject to the Permitted Exceptions. This Mortgage constitutes a valid first lien upon and security interest in the Mortgaged Property and Remainderman's interest and Debtor's interest collectively constitute fee simple title to the Mortgaged Property, subject to the Permitted Exceptions.

(b) Debtor has delivered to Mortgagee a true, correct and complete copy of the Initial Permitted Lease. The Initial Permitted Lease has not been modified, amended, supplemented, assigned or otherwise revised and is the only lease or agreement between Debtor and Lessee with respect to the leasing of the Mortgaged Property. The Premises are not subject to any leases or subleases other than the Initial Permitted Lease. The Initial Permitted Lease is in full force and effect and constitutes the legal, valid and binding obligation of Debtor enforceable against Debtor in accordance with its terms. To Debtor's best knowledge, no event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default by Debtor or Lessee under the Initial Permitted Lease.

(c) Debtor has no actual knowledge of any inaccuracy in any of the representations and warranties made by Lessee in the Initial Permitted Lease.

Section 2.02. Organization and Status of Debtor; Enforceability. (a) Debtor and Remainderman are each limited liability companies, duly organized, validly existing and in good standing under the laws of the state of Delaware and are qualified as foreign limited liability companies to do business in any jurisdiction where such qualification is required (unless otherwise consented to in writing by Mortgagee). Neither Debtor nor Remainderman is a "foreign corporation", "foreign partnership", "foreign limited liability company", "foreign trust" or "foreign estate", as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder. Debtor's and Remainderman's United States tax identification numbers are correctly set forth on the signature page of this Mortgage. The person(s) who have executed this Mortgage on behalf of Debtor and Remainderman are duly authorized to do so.

(b) This Mortgage constitutes the legal, valid and binding obligation of Debtor and Remainderman, enforceable against Debtor and Remainderman, as applicable, in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization, moratorium and other laws affecting the rights of creditors generally and subject to the exercise of judicial discretion in accordance with general principles of equity.

Section 2.03. Litigation; Absence of Breaches or Defaults. (a) There are no suits, actions, proceedings or investigations pending or, to Debtor's or Remainderman's knowledge, threatened against or involving Debtor or Remainderman before an arbitrator or Governmental Authority which might reasonably result in any material adverse change in the contemplated business, condition, worth or operations of Debtor or Remainderman.

(b) Neither Remainderman nor Debtor is in default under any document, instrument or agreement to which Remainderman or Debtor is a party (including, without limitation, the Loan Documents) or by which Debtor or Remainderman or any of Debtor's or Remainderman's property (other than the Premises) is subject or bound. The authorization, execution, delivery and performance of this Mortgage and the other Loan Documents will not result in any breach of or default under any document, instrument or agreement to which Debtor or Remainderman is a party or by which Debtor or Remainderman or any of Debtor's or Remainderman's property is subject or bound. Remainderman and Debtor are in compliance with all Applicable Regulations which are applicable to Debtor and Remainderman generally and not to the Mortgaged Property and with respect to which the failure to comply with might result in a material adverse effect on either the Premises or Debtor's or Remainderman's ability to perform their obligations under the Loan Documents.

Section 2.04. ***Incorporation of Representations and Warranties.*** The representations and warranties of Debtor set forth in the Loan Agreement are incorporated by reference into this Mortgage as if stated in full in this Mortgage and such representations and warranties as incorporated herein shall be deemed to have been made as of the date of this Mortgage and shall survive the execution and delivery of this Mortgage.

Section 2.05. ***Purposes of Loan.*** The Loan evidenced by the Note and secured by this Mortgage is being obtained for business or commercial purposes, and the proceeds thereof will not be used for personal, family, residential, household or agricultural purposes.

ARTICLE III
GENERAL COVENANTS OF DEBTOR

Remainderman (with respect to Sections 3.02, 3.03, 3.04, 3.07 and 3.09) and Debtor (with respect to all of this Article) hereby covenant to Mortgagee and agree as follows until the Obligations are satisfied in full:

Section 3.01. ***Payment of the Note.*** Debtor shall punctually pay, or cause to be paid, the principal, interest and all other sums to become due in respect of the Note and the other Loan Documents in accordance with the Note and the other Loan Documents.

Section 3.02. ***Title.*** Remainderman shall maintain good and marketable title to a remainder interest in the Land and Debtor shall maintain good and marketable fee simple title to the Improvements and shall maintain good and marketable title to its estate for years in the Land, free and clear of all liens, encumbrances, charges and other exceptions to title, except the Permitted Exceptions and this Mortgage. This Mortgage shall constitute a valid first lien upon and security interest in the Mortgaged Property.

Section 3.03. ***Organization and Status of Debtor and Remainderman.*** Debtor and Remainderman shall be validly existing and in good standing under the laws of the state of Delaware and qualified as a foreign limited liability company to do business in any jurisdiction

where such qualification is required (unless otherwise expressly agreed to in writing by Mortgagee).

Section 3.04. **Recording.** Debtor and Remainderman shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Mortgagee may request to cause this Mortgage, each supplement and amendment to such instrument and financing statements with respect thereto and each instrument of further assurance (collectively, the "Recordable Documents") to be filed, registered and recorded as may be required by law to publish notice and maintain the first security interest hereof upon the Mortgaged Property and to publish notice of and protect the validity of the Recordable Documents. Debtor and Remainderman shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any of said documents) reasonably requested by Mortgagee for carrying out the intention of, or facilitating the performance of, this Mortgage. If Debtor or Remainderman shall fail to comply with this Section with respect to UCC filings within ten (10) days following Mortgagee's written demand, Mortgagee shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Debtor and Remainderman to comply therewith (including the execution, delivery and filing of such UCC filings), which appointment is coupled with an interest, but this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default. To the extent permitted by law, Debtor shall pay or cause to be paid recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgment of the Recordable Documents, any instruments of further assurance and the Note.

Section 3.05. **Use; Leases.** (a) Except as provided in Section 6.11(e), the Mortgaged Property shall be used solely for the operation of the Initial Permitted Use and for no other purpose and Debtor shall not, by itself or through any lease or other type of transfer, convert the Premises to an alternative use while this Mortgage is in effect without Mortgagee's consent, which consent may be withheld by Mortgagee in its sole discretion (except for a change in use for which Lessee does not require Debtor's consent under the Permitted Lease). Without limiting the provisions of the preceding sentence, Mortgagee may consider any or all of the following in determining whether to grant its consent: (i) whether the converted use will be consistent with the highest and best use of the Mortgaged Property, (ii) whether the converted use will increase Mortgagee's risks or decrease the value of the Mortgaged Property and (iii) whether the rating agencies then rating any securities issued in any Securitization of which the Loan may be a part shall have confirmed that such converted use will not result in a qualification, reduction, withdrawal or downgrade of any then current rating assigned to such securities issued in connection with such Securitization.

(b) Debtor shall not (i) enter into any Leases (other than the Initial Permitted Lease) without Mortgagee's prior written consent; (ii) modify or amend the terms of any Lease without Mortgagee's prior written consent; (iii) except as required under a Permitted Lease, grant any consents under any Lease, including, without limitation, any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the lessee

under any Lease, a change in use by the lessee under any Lease or any alterations to the Mortgaged Property or any portion thereof by the lessee under any Lease, without Mortgagee's prior written consent; (iv) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder, without Mortgagee's prior written consent, provided that Mortgagee's prior written consent shall not be required with respect to a termination of a Permitted Lease with respect to the Mortgaged Property as a result of a Casualty Termination Payment, Condemnation Termination Payment, Economic Termination Payment or Rejectable Substitution Offer; or (v) other than in connection with an assignment pursuant to Section 3.09, assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Mortgagee, without Mortgagee's prior written consent. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect. Unless Mortgagee otherwise consents or elects, Remainderman's and Debtor's title to the Mortgaged Property and the leasehold interest in the Mortgaged Property created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Debtor, Remainderman, Mortgagee or any other person by purchase, operation of law, foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to this Mortgage or otherwise.

(c) Debtor shall (i) fulfill, perform and observe in all respects each and every condition and covenant of such party contained in any Lease; (ii) give prompt notice to Mortgagee of any claim or event of default under any Lease given to or by Debtor, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Debtor, enforce the performance and observance of each and every material covenant and condition of any Lease to be performed or observed by the lessee thereunder, unless such enforcement is waived in writing by Mortgagee; (iv) appear in and defend any action challenging the validity, enforceability or priority of the lien created hereby or the validity or enforceability of any Lease; and (v) unless Rents are paid directly to Mortgagee, hold that portion of the Rents which is sufficient to discharge all current sums due under the Note for use in the payment of such sums. Debtor shall not interfere with any rights granted to Mortgagee under any Lease. Any impound accounts established under any Lease for taxes, assessments and insurance premiums shall be held by Mortgagee in accordance with the provisions of Section 4.07.

Section 3.06. *Compliance With Applicable Regulations.* Debtor shall, at all times while this Mortgage is in effect, and subject to Debtor's rights to contest as provided herein, comply with all Applicable Regulations now or hereafter in effect which are applicable to Debtor generally and not to the Mortgaged Property and with respect to which the failure to comply with might result in a material adverse effect on either the Premises or Debtor's ability to perform its obligations under the Loan Documents. Debtor shall have the right, on at least five (5) business days' notice to Mortgagee, to contest the application of any Applicable Regulation so long as such contest will not result in any default by Debtor under a Lease, result in any impairment of value of the Mortgaged Property or pose any risk of any lien being placed on the Mortgaged

Property, and Debtor's indemnification obligations set forth in Section 4.08 below shall be applicable to such contest.

Section 3.07. *After-Acquired Property.* All right, title and interest of Remainderman and Debtor in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by or released to Remainderman and Debtor, immediately upon such acquisition or release and without any further granting by Remainderman and Debtor, shall become part of the Mortgaged Property and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Remainderman and Debtor and specifically described in the Granting Clauses hereof. Remainderman and Debtor shall execute and deliver to Mortgagee any further assurances, mortgages, grants, conveyances or assignments thereof as the Mortgagee may reasonably require to subject the same to the lien hereof.

Section 3.08. *Advances by Mortgagee.* To the extent necessary to protect rights or interest in collateral of Mortgagee from immediate jeopardy (as determined by Mortgagee in its reasonable discretion), and at any time after the occurrence and during the continuance of an Event of Default, Mortgagee may make advances to perform any of the covenants contained in this Mortgage on Debtor's or Remainderman's behalf in the event that Debtor or Remainderman shall fail to perform such covenants in a timely manner, and all sums so advanced shall be secured hereby prior to the Note. Debtor and Remainderman shall repay on demand all sums so advanced with interest thereon at the Default Rate, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment.

Section 3.09. *Negative Covenants.* (a) Except as otherwise permitted herein, neither Remainderman nor Debtor shall without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, sell, convey, alienate, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Mortgaged Property or any part thereof (including, without limitation any interest in any Lease) or permit the Mortgaged Property or any part thereof to be sold, conveyed, alienated, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section 3.09 shall be deemed to include, but not limited to, (i) an installment sales agreement wherein Debtor or Remainderman agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Debtor or Remainderman leasing all or any part of the Mortgaged Property (other than pursuant to a Permitted Lease) or a sale, assignment or other transfer of, or the grant of a security interest in, Debtor's or Remainderman's right, title and interest in and to any Lease or any Rents; (iii) if Debtor, Remainderman or any general or limited partner or member of Debtor or Remainderman is a corporation, any merger by or with such corporation, or the voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 49% of such corporation's stock shall or may be vested in a party or parties who are

not now stockholders or any change in control of such corporation directly or indirectly; and (iv) if Debtor, Remainderman or any general or limited partner or any member of Debtor or Remainderman is a limited or general partnership, joint venture or limited liability company, the voluntary or involuntary sale, conveyance, transfer or pledge of the partnership, membership or beneficial interests in such limited or general partnership, joint venture or limited liability company or the creation or issuance of new partnership, membership or beneficial interests in such limited or general partnership, joint venture or limited liability company in one or a series of transactions by which an aggregate of more than 49% of such partnership, membership or beneficial interests shall or may be vested in a party or parties who are not now owners of such partnership, membership or beneficial interests or the change, removal, resignation or addition of a general partner, managing partner or managing member of such limited or general partnership, joint venture or limited liability company.

(c) Notwithstanding the foregoing provisions of this Section 3.09 or the provisions of any other Loan Document, a sale, conveyance or transfer of the Mortgaged Property or Debtor's or Remainderman's interest therein in its entirety (hereinafter, "Sale") to a single-purpose bankruptcy-remote entity shall be permitted, provided that Mortgagee's prior written consent is obtained, which consent shall be granted promptly if each of the following terms and conditions are satisfied:

- (1) no Event of Default is then continuing hereunder or under any of the other Loan Documents;
- (2) Debtor or Remainderman pays Mortgagee, concurrently with the closing of such Sale, all costs referred to in the first sentence of Section 3.09(e);
- (3) the transferee assumes and agrees to pay the indebtedness secured hereby and all obligations and liabilities of the Debtor and/or Remainderman contained in this Mortgage, the other Loan Documents and the Permitted Lease (subject to any non-recourse provisions contained in any such documents, as applicable), and Debtor and/or Remainderman shall be relieved of such obligations thereafter, and prior to or concurrently with the closing of such Sale, the transferee executes, without any cost or expense to Mortgagee, such documents or agreements as Mortgagee shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions as Mortgagee may reasonably require;
- (4) Remainderman, Debtor and the transferee execute, without any cost or expense to Mortgagee, new financing statements or financing statement amendments and any additional documents reasonably requested by Mortgagee;
- (5) at Mortgagee's sole discretion, the rating agencies then rating any securities issued in any Securitization of which the Loan may be a part shall have confirmed that such Sale will not result in a qualification, reduction, withdrawal or downgrade of any then current rating assigned to such securities issued in connection with such Securitization; and

(6) at Mortgagee's sole discretion, Mortgagee and, if the Loan is included in a Securitization, the rating agencies then rating any securities issued in such Securitization shall have received acceptable opinions of independent counsel, in form and substance reasonably satisfactory to Mortgagee and such rating agencies, covering such matters as Mortgagee may reasonably require and as are customarily required in similar transactions.

(d) Notwithstanding the foregoing provisions of this Section 3.09 or any provisions of any other Loan Document, a sale, conveyance, transfer, pledge or assignment of more than 49% of the stock, membership interests, partnership interests or beneficial interests of Debtor or a change of control (hereinafter, a "Sale of Beneficial Interests") shall be permitted, provided that Mortgagee's prior written consent is obtained, which consent shall be granted promptly if each of the following terms and conditions are satisfied:

(1) no Event of Default is then continuing hereunder or under any of the other Loan Documents;

(2) Debtor or Remainderman pays Mortgagee, concurrently with the closing of such Sale of Beneficial Interests, all costs referred to in the first sentence of Section 3.09(e);

(3) at Mortgagee's sole discretion, the rating agencies then rating any securities issued in any Securitization of which the Loan may be a part shall have confirmed that such Sale of Beneficial Interests will not result in a qualification, reduction, withdrawal or downgrade of any then current rating assigned to such securities issued in connection with such Securitization; and

(4) at Mortgagee's sole discretion, Mortgagee and, if the Loan is included in a Securitization, the rating agencies then rating any securities issued in such Securitization shall have received acceptable opinions of independent counsel, in form and substance reasonably satisfactory to Mortgagee and such rating agencies, covering such matters as Mortgagee may reasonably require and as are customarily required in similar transactions.

In addition, a Sale of Beneficial Interests shall be permitted, without Mortgagee's prior written consent, if such Sale of Beneficial Interests is (i) by devise or descent or by operation of law upon the death of the owner of the interest being transferred, or (ii) to U.S. Realty Advisors, LLC, Realty Holdings of America, LLC, any wholly-owned subsidiaries or affiliates thereof or any entity in which any of the foregoing shall have a controlling interest, or (iii) to any insurer which provides residual value insurance for the benefit of Mortgagee.

(e) Remainderman and Debtor each agree (with respect to a request by such party) to bear and shall pay or reimburse Mortgagee on demand for all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage,

grant, bargain, encumbrance, pledge, assignment, or transfer, provided that, Remainderman and Debtor shall not be obligated to pay Mortgagee or Franchise Finance a servicing fee with respect to same. Furthermore, in the event Mortgagee has the right under this Section 3.09 to withhold its consent in its sole discretion, Mortgagee reserves the right to condition the consent required hereunder upon a modification of the terms hereof and on assumption of the Note, this Mortgage and the other Loan Documents as so modified by the proposed transferee, payment of a transfer fee equal to one percent (1%) of the principal balance of the Note (provided, however, that no fee shall apply to a sale, conveyance, transfer, pledge or assignment required to be consented to pursuant to subsections 3.09(c) or (d) or for which no consent is required), the approval by a rating agency selected by Mortgagee of the proposed transferee, the proposed transferee's continued compliance with the covenants set forth in this Mortgage, or such other conditions as Mortgagee shall determine in its sole discretion to be in the interest of Mortgagee.

(f) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon Remainderman's or Debtor's sale, conveyance, alienation, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property without Mortgagee's consent, as required hereunder. The provisions of this Section 3.09 shall apply to every sale, conveyance, alienation, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property. Any sale, conveyance, alienation, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer made in contravention of this Section 3.09 shall be null and void and of no force and effect.

Section 3.10. *Financial Statements.* Within 150 days after the end of each fiscal year of Debtor, Debtor shall deliver to Mortgagee (i) complete financial statements of Debtor including a balance sheet, profit and loss statement, statement of cash flows and all other related schedules for the fiscal period then (ii) such other financial information as Mortgagee may reasonably request in order to establish the compliance of Debtor with the financial covenants in the Loan Documents, including, without limitation, Section 7 of the Loan Agreement. All such financial statements shall be certified to be accurate and complete by Debtor (or the Treasurer or other appropriate officer of Debtor). Debtor understands that Mortgagee is relying upon such financial statements and Debtor represents that such reliance is reasonable. In the event that Debtor's property and business with respect to the Mortgaged Property is ordinarily consolidated with business other than that conducted at the real property securing the Additional Notes for financial statement purposes, such financial statements shall be prepared on a consolidated basis showing separately the sales, profits and losses, assets and liabilities pertaining to the Mortgaged Property with the basis for allocation of overhead of other charges being clearly set forth. The financial statements delivered to Mortgagee need not be audited, but Debtor shall deliver to Mortgagee copies of any audited financial statements of Debtor which may be prepared, as soon as they are available. In addition to the foregoing, Debtor shall promptly deliver to Mortgagee any financial statements delivered to Debtor by the lessee under any Lease.

ARTICLE IV

COVENANTS OF DEBTOR WHEN NO PERMITTED LEASE EXISTS

In addition to the covenants set forth in Article III, Debtor (and any one succeeding to Debtor's interest in the Mortgaged Property) hereby covenants to Mortgagee and agrees as follows until the Obligations are satisfied in full but only during such time that a Permitted Lease is not in effect:

Section 4.01. *Licenses and Permits.* Debtor shall obtain and maintain all required licenses and permits, both governmental and private, to use and operate the Mortgaged Property for the uses and operations permitted by this Mortgage.

Section 4.02. *Maintenance and Repair.* Debtor shall (i) maintain the Mortgaged Property in good condition and repair, subject to reasonable and ordinary wear and tear, free from actual or constructive waste, and (ii) pay all operating costs of the Premises in the ordinary course of business.

Section 4.03. *Compliance With Laws.* (a) Debtor's use and occupation of the Mortgaged Property, and the condition thereof, shall, at Debtor's sole cost and expense, and subject to Debtor's right to contest as provided in this subsection (a), comply with all Applicable Regulations and all restrictions, covenants and encumbrances of record with respect to the Mortgaged Property, except for such noncompliance which is not reasonably likely to have a Material Adverse Effect. Debtor shall maintain or cause to be maintained all required licenses and permits, both governmental and private, necessary to use and operate the Mortgaged Property as a Substitute Permitted Use. Debtor shall have the right, on at least five (5) Business Days notice to Mortgagee, to contest the application of any Applicable Regulation so long as such contest will not result in any default by Debtor under a Lease, result in any impairment of value of the Mortgaged Property, place any rights or interest in collateral of Mortgagee in immediate jeopardy of loss or forfeiture, or pose any risk of any lien being placed on the Mortgaged Property, and Debtor's indemnification obligations set forth in Section 4.08 below shall be applicable to such contest.

(b) Without limiting the generality of the other provisions of this Section, Debtor agrees that it shall be responsible for complying in all respects with the Americans with Disabilities Act of 1990, as such act may be amended from time to time, and all regulations promulgated thereunder (collectively, the "ADA"), as it affects the Mortgaged Property, except for such noncompliance which is not reasonably likely to have a Material Adverse Effect.

(c)(i) All uses and operations on or of the Mortgaged Property, whether by Debtor, Lessee or any other person or entity, shall comply with all Environmental Laws and permits issued pursuant thereto, except for such noncompliance which is not reasonably likely to have a Material Adverse Effect.

(ii) There shall be no Releases in, on, under or from the Mortgaged Property, except in De Minimis Amounts.

(iii) There shall be no Hazardous Materials in, on or under the Mortgaged Property, except in De Minimis Amounts, or underground storage tanks.

(iv) Debtor shall keep the Mortgaged Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Debtor or any other person or entity (the "Environmental Liens").

(v) Debtor shall, at its sole cost and expense, reasonably cooperate in all activities pursuant to subsection (d) below, including but not limited to providing access to all relevant information and making knowledgeable persons employed by Debtor or under Debtor's control available for interviews.

(vi) Debtor shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Mortgaged Property as may be reasonably requested by Mortgagee (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Mortgagee and Environmental Insurer the reports and other results thereof, and Mortgagee, Environmental Insurer and the other Indemnified Parties shall be entitled to rely on such reports and other results thereof.

(vii) Debtor shall, at its sole cost and expense, comply with all reasonable written requests of Mortgagee to (1) reasonably effectuate Remediation of any condition (including but not limited to a Release) in, on, under or from the Mortgaged Property required by any Governmental Authority; (2) comply with all applicable Environmental Laws; (3) comply with any directive from any Governmental Authority; and (4) take any other reasonable action necessary or appropriate for protection of human health or the environment; provided, however, with respect to the requirements described in the preceding subitems (1), (2) and (3), an Event of Default shall not have occurred as a result of Debtor's failure to comply with the requirements set forth in such subitems provided Debtor is contesting in good faith its obligation to satisfy such requirements and Debtor's failure to satisfy such requirements does not place any portion of the Mortgaged Property in immediate jeopardy of loss or forfeiture.

(viii) Debtor shall not do or allow Lessee or any other tenant or other user of the Mortgaged Property to do any act that (1) materially increases the dangers to human health or the environment, (2) poses an unreasonable risk of harm to any person or entity (whether on or off the Mortgaged Property), (3) is reasonably likely to have a Material Adverse Effect, (4) is contrary to any requirement of any insurer, (5) constitutes a public or private nuisance, (6) constitutes waste, or (7) violates any covenant, condition, agreement or easement applicable to the Mortgaged Property.

(ix) Debtor shall promptly notify Mortgagee in writing when Debtor obtains actual knowledge of (A) any Releases or Threatened Releases in, on, under, from or migrating towards the Mortgaged Property which presence is reasonably likely to have a Material Adverse Effect; (B) any non-compliance with any Environmental Laws related in any way to the Mortgaged Property which non-compliance is reasonably likely to have a Material Adverse Effect; (C) any actual Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Mortgaged Property; and (E) any written notice received by Debtor from any source

whatsoever (including but not limited to a Governmental Authority) relating to Hazardous Materials or Remediation thereof which is reasonably likely to have a Material Adverse Effect, possible liability of any person or entity pursuant to any Environmental Law for conditions reasonably expected to adversely affect the Mortgaged Property, or any actual or threatened administrative or judicial proceedings in connection with anything referred to in this Section.

(d) If Mortgagee has a reasonable basis for believing that a Release of Hazardous Materials (other than in De Minimis Amounts) has occurred on the Mortgaged Property, and Debtor, following Mortgagee's reasonable request, fails to conduct such investigation as required by the preceding subsection (c), or upon the occurrence and during the continuance of an Event of Default, then Mortgagee and any other person or entity designated by Mortgagee, including but not limited to Environmental Insurer, any receiver, any representative of a Governmental Authority, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Mortgaged Property at all reasonable times (including, without limitation, in connection with any Securitization, Participation or Transfer or in connection with the exercise of any remedies set forth in this Mortgage or the other Loan Documents) to assess any and all aspects of the environmental condition of the Mortgaged Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Mortgagee's reasonable discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Debtor shall cooperate with and provide access to Mortgagee, Environmental Insurer and any other person or entity designated by Mortgagee. Any such assessment or investigation shall be at Debtor's sole cost and expense. Notwithstanding the foregoing, any such entry shall be carried out so as not to materially and adversely interfere with the use and occupancy of the Mortgaged Property by Debtor or any tenant of Debtor.

(e) Debtor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (excluding Losses suffered by an Indemnified Party arising out of the gross negligence or willful misconduct of such Indemnified Party or its agents; provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Mortgagee's interest in the Mortgaged Property or Mortgagee's failure to act in respect of matters which are or were the obligation of Debtor under this Mortgage) and costs of Remediation, engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) any presence of any Hazardous Materials in, on, above, or under the Mortgaged Property; (ii) any past or present Release or Threatened Release in, on, above, under or from the Mortgaged Property; (iii) any activity by Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any other tenant or other user of the Mortgaged Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Mortgaged Property of any Hazardous Materials at any time located in, under, on or

above the Mortgaged Property; (iv) any activity by Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any other tenant or other user of the Mortgaged Property in connection with any actual or proposed Remediation of any Hazardous Materials at any time located in, under, on or above the Mortgaged Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (v) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Mortgaged Property or operations thereon, including but not limited to any failure by Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any other tenant or other user of the Mortgaged Property to comply with any order of any Governmental Authority in connection with any Environmental Laws; (vi) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Mortgaged Property; (vii) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Section; (viii) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Mortgaged Property, including but not limited to costs to investigate and assess such injury, destruction or loss; (ix) any acts of Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any other tenant or other user of the Mortgaged Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Materials owned or possessed by Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any other tenant or other user of the Mortgaged Property, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials; (x) any acts of Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any other tenant or other user of the Mortgaged Property in accepting any Hazardous Materials for transport to disposal or treatment facilities, incineration vessels or sites selected by Debtor, Lessee, any person or entity affiliated with Debtor or Lessee or any other tenant or other user of the Mortgaged Property, from which there is a Release, or a Threatened Release of any Hazardous Materials which causes the incurrence of costs for Remediation; (xi) except to the extent covered by insurance, any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Mortgaged Property; and (xii) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to this Section 4.03. Debtor's obligations under the foregoing provisions of this Section 4.03(e) shall not apply to situations with respect to which the Indemnified Parties have been protected, defended, indemnified, released and held harmless by the lessee under the Permitted Lease and such lessee is in compliance with the applicable provisions of such Permitted Lease.

(f) Debtor fully and completely releases, waives and covenants not to assert any claims, liabilities, actions, defenses, challenges, contests or other opposition against Mortgagee, however characterized, known or unknown, foreseen or unforeseen, now existing or arising in the future, relating to this Mortgage and any Hazardous Materials, Releases and/or Remediation on, at or affecting the Mortgaged Property.

(g) The obligations of Debtor and the rights and remedies of Mortgagee set forth in this Section are independent from those of Debtor pursuant to the Environmental Indemnity Agreement. Furthermore, the obligations of Debtor and rights and remedies of Mortgagee set forth in this Section shall survive the termination, expiration and/or release of the Loan Agreement, the Environmental Indemnity Agreement, the Note and the other Loan Documents and/or the judicial or nonjudicial foreclosure of this Mortgage by Mortgagee or the delivery of a deed-in-lieu of foreclosure for the Premises by Debtor to Mortgagee; provided, however, the indemnification and hold harmless provisions of the preceding subsection 4.03(e) shall not apply to any Release on or affecting the Premises caused by the acts or omissions of any person or entity other than Debtor or any Affiliate of Debtor which first occurs on a date which is subsequent to the release of this Mortgage pursuant to Section 7.01 of this Mortgage.

Section 4.04. *Alterations and Improvements.* Debtor shall not alter the exterior, structural, plumbing or electrical elements of the Mortgaged Property in any manner without the consent of Mortgagee, which consent shall not be unreasonably withheld or conditioned; provided, however, Debtor may undertake nonstructural alterations to the Mortgaged Property costing less than \$50,000 without Mortgagee's consent. If Mortgagee's consent is required hereunder and Mortgagee consents to the making of any such alterations, the same shall be made by Debtor at no expense to Mortgagee by a licensed contractor and according to plans and specifications reasonably approved by Mortgagee and subject to such other conditions as Mortgagee shall reasonably require. Any work at any time commenced on the Mortgaged Property shall be prosecuted diligently to completion, shall be of good workmanship and materials and shall comply fully with all the terms of this Mortgage. Upon completion of any alterations or any Restoration, Debtor shall promptly provide Mortgagee with (i) evidence of full payment to all laborers and materialmen contributing to the alterations, (ii) an architect's certificate certifying the alterations to have been completed in conformity with the plans and specifications, (iii) a certificate of occupancy (if the alterations are of such a nature as would require the issuance of a certificate of occupancy), and (iv) any other documents or information reasonably requested by Mortgagee.

Section 4.05. *Taxes.* (a) Debtor shall do or cause to be done everything necessary to preserve the lien hereof without expense to Mortgagee, including, without limitation, paying and discharging or causing to be paid and discharged, whether or not payable directly by Debtor or subject to withholding at the source, unless Debtor shall contest the amount or validity thereof in accordance with subsection (b), (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general, special, ordinary or extraordinary, and all charges for utility or communications services, which may at any time be assessed, levied or imposed upon Debtor, the Mortgaged Property, this Mortgage, the Obligations or the Rents or which may arise in respect of the occupancy, use, possession or operation thereof, (ii) all income, excess profits, sales, gross receipts and other taxes, duties or imposts, whether similar or not in nature, assessed, levied or imposed by any Governmental Authority on Debtor, the Mortgaged Property or the Rents, (iii) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a lien on the Mortgaged Property, or on the Rents.

(b) Debtor may, at its own expense, contest or cause to be contested (in the case of any item involving more than \$50,000.00, after prior written notice to Mortgagee), by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified in subsection (a) or lien therefor, provided that (i) such proceeding shall suspend the collection thereof from the Mortgaged Property or any interest therein, (ii) neither the Mortgaged Property nor any interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings, (iii) no Event of Default has occurred and is continuing, (iv) Debtor shall have deposited with Mortgagee adequate reserves for the payment of the taxes, together with all interest and penalties thereon, unless paid in full under protest, and (v) Debtor shall have furnished the security as may be required in the proceeding or as may be required by Mortgagee to insure payment of any contested taxes.

Section 4.06. *Insurance.* (a) Debtor shall maintain with respect to the Mortgaged Property, at its sole cost and expense, the following types and amounts of insurance (which may be included under a blanket insurance policy if all the other terms hereof are satisfied), in addition to such other insurance as Mortgagee may reasonably require from time to time:

(i) Insurance against loss, damage or destruction by fire and other casualty, including theft, vandalism and malicious mischief, flood (if the Premises are in a location designated by the Federal Emergency Management Administration as a Special Flood Hazard Area), earthquake (if the Premises are in an area subject to destructive earthquakes within recorded history), boiler explosion (if there is any boiler upon the Premises), plate glass breakage, sprinkler damage (if the Premises have a sprinkler system), all matters covered by a standard extended coverage endorsement, all other matters covered by a special coverage endorsement commonly known as an "all risk" endorsement and such other risks as Mortgagee may reasonably require, insuring the Mortgaged Property for not less than 100% of their full insurable replacement cost.

(ii) Commercial general liability and property damage insurance, including a products liability clause, covering Mortgagee, Franchise Finance and Debtor against bodily injury liability, property damage liability and automobile bodily injury and property damage liability, including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Mortgaged Property or adjoining ways, streets or sidewalks and, if applicable, insurance covering Mortgagee and Franchise Finance, against liability arising from the sale of liquor, beer or wine on the Premises. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Debtor's obligations under Section 4.08 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Debtor, Mortgagee or Franchise Finance because of the negligence or other acts of the other, shall be in amounts of not less than \$1,000,000.00 per injury and occurrence with respect to any insured liability, whether for personal injury or property damage, or such higher limits as Mortgagee may reasonably require from time to time, and shall be of form and substance satisfactory to Mortgagee.

(iii) Business income insurance equal to 100% of the principal and interest payable under the Note for a period of not less than six months.

(iv) State Worker's compensation insurance in the statutorily mandated limits, employer's liability insurance with limits not less than \$500,000 or such greater amount as Mortgagee may from time to time require and such other insurance as may be necessary to comply with applicable laws.

(b) All insurance policies shall:

(i) Provide for a waiver of subrogation by the insurer as to claims against Mortgagee or Franchise Finance, their employees and agents and provide that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Debtor, or its officers, directors, employees or agents;

(ii) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Mortgagee or Franchise Finance and that the insurance policy shall not be brought into contribution with insurance maintained by Mortgagee or Franchise Finance;

(iii) Contain a standard without contribution mortgage clause endorsement in favor of Mortgagee and Franchise Finance and any other lender designated by Mortgagee;

(iv) Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to Mortgagee, Franchise Finance and to any lender covered by any standard mortgage clause endorsement;

(v) Provide that the insurer shall not have the option to restore the Premises if Mortgagee elects to terminate this Mortgage in accordance with the terms hereof;

(vi) Be issued by insurance companies licensed to do business in the state in which the Premises is located and which are rated A:VI or better by Best's Insurance Guide or otherwise approved by Mortgagee; and

(vii) Provide that the insurer shall not deny a claim because of the negligence of Debtor, anyone acting for Debtor or any tenant or other occupant of the Mortgaged Property.

It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Debtor for its acts or omissions as provided in this Mortgage. All insurance policies (with the exception of worker's compensation insurance to the extent not available under statutory law) shall designate Mortgagee and Franchise Finance as additional insureds as their interests may appear and shall be payable as set forth in Article IV hereof. All such policies shall be written as primary policies with deductibles not to exceed 10% of the amount of coverage. Any other policies, including any policy now or hereafter carried by Mortgagee or Franchise Finance, shall serve as excess coverage. Debtor shall procure policies

for all insurance for periods of not less than one year and shall provide to Mortgagee certificates of insurance or, upon Mortgagee's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Mortgage is in effect at all times.

Section 4.07. Impound Account. Upon the occurrence of an Event of Default under this Mortgage or any other Loan Document, Mortgagee may require Debtor to pay to Mortgagee sums which will provide an impound account (which shall not be deemed a trust fund) for paying up to the next one year of taxes, assessments and/or insurance premiums. Upon such requirement, Mortgagee will estimate the amounts needed for such purposes and will notify Debtor to pay the same to Mortgagee in equal monthly installments, as nearly as practicable, in addition to all other sums due under this Mortgage. Should additional funds be required at any time, Debtor shall pay the same to Mortgagee on demand. Debtor shall advise Mortgagee of all taxes and insurance bills which are due and shall cooperate fully with Mortgagee in assuring that the same are paid. Mortgagee may deposit all impounded funds in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Mortgagee. Interest or other gains from such funds, if any, shall be the sole property of Mortgagee. Upon the occurrence and during the continuance of an Event of Default, Mortgagee may apply all impounded funds against any sums due from Debtor to Mortgagee. Mortgagee shall give to Debtor an annual accounting showing all credits and debits to and from such impounded funds received from Debtor.

Section 4.08. Indemnification. Debtor shall indemnify and hold harmless each of the Indemnified Parties for, from and against any and all Losses (excluding Losses suffered by an Indemnified Party arising out of the gross negligence or willful misconduct of such Indemnified Party or its agents) caused by, incurred or resulting from Debtor's operations of, or relating in any manner to, the Mortgaged Property, whether relating to its original design or construction, ADA, latent defects, alteration, maintenance, use by Debtor or any person thereon, supervision or otherwise, or from any breach of, default under or failure to perform any term or provision of this Mortgage by Debtor or its officers, employees, agents or other persons. It is expressly understood and agreed that Debtor's obligations under this Section shall survive the expiration or earlier termination of this Mortgage for any reason. Debtor's obligations under the foregoing provisions of this Section 4.08 shall not apply to situations with respect to which the Indemnified Parties have been protected, defended, indemnified, released and held harmless by the lessee under the Permitted Lease and such lessee is in compliance with the applicable provisions of such Permitted Lease.

ARTICLE V

POSSESSION, USE AND RELEASE OF THE MORTGAGED PROPERTY

Section 5.01. Casualty or Condemnation. (a) *Casualty.* (i) In the event of any material damage to or destruction of the Mortgaged Property or any part thereof (a "Casualty"), Debtor, or Remainderman upon obtaining knowledge of such Casualty, shall promptly give written notice to Mortgagee, generally describing the nature and extent of such Casualty and including copies of any documents or notices received in connection therewith. Thereafter, Debtor and

Remainderman shall promptly send Mortgagee copies of all correspondence, documents or notices sent or received by Debtor or Remainderman relating to such Casualty. Unless the lessee under the Permitted Lease shall have the sole right to do so pursuant to the provisions thereof and provided an Event of Default shall not have occurred and be continuing under the Loan Documents, Debtor or Remainderman shall file and prosecute on behalf of Mortgagee, Remainderman and Debtor any and all claims for any insurance proceeds, provided that Mortgagee shall have the right to intervene and participate in proceedings relating thereto and neither Debtor nor Remainderman shall have the right to settle, adjust or compromise any such claims without the consent of the Mortgagee, which shall not be unreasonably withheld or delayed. No Casualty shall relieve Debtor of its obligation to pay any monetary sum due under the Loan Documents at the time and in the manner provided in the Loan Documents.

(ii) In the event of any Casualty while a Permitted Lease is not in effect, Debtor, whether or not the insurance proceeds, if any, on account of such Casualty shall be sufficient for the purpose, at its expense, shall promptly commence and complete the Restoration. The Net Insurance Proceeds relating to any Casualty occurring while a Permitted Lease is not in effect shall be paid to (1) Debtor, if the amount of such Net Insurance Proceeds is less than \$50,000 and applied by Debtor toward the cost of the Restoration, and (2) Mortgagee, if the amount of such Net Insurance Proceeds is \$50,000 or greater. In such event, Net Insurance Proceeds paid to Mortgagee shall be held and disbursed by Mortgagee, or as Mortgagee may from time to time direct, as the Restoration progresses, to pay or reimburse Debtor for the cost of the Restoration, upon written request of Debtor accompanied by evidence, satisfactory to Mortgagee, that (v) the Restoration is in full compliance with all applicable laws, regulations, restrictions and requirements, whether governmental or private, (w) the amount requested has been paid or is then due and payable and is properly a part of such cost, (x) there are no mechanics' or similar liens for labor or materials theretofore supplied in connection with the Restoration, (y) if the estimated cost of the Restoration exceeds the Net Insurance Proceeds, Debtor has deposited into an escrow satisfactory to Mortgagee such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Mortgagee, and (z) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection (y), after making the payment requested will be sufficient to pay the balance of the cost of the Restoration. Upon receipt by Mortgagee of evidence satisfactory to it that the Restoration has been completed and the cost thereof paid in full, and that there are no mechanics' or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such Net Insurance Proceeds shall be paid to Mortgagee and applied by Mortgagee in reduction of the Obligations.

(iii) In the event of a Casualty while a Permitted Lease is in effect which results in the lessee under the Permitted Lease making a Casualty Termination Payment, Debtor shall pay Mortgagee on or before the date of such Casualty Termination Payment the entire unpaid principal balance of the Note, all accrued and unpaid interest thereon and all other sums due under the Note, this Mortgage and any other Loan Documents with respect to the Mortgaged Property, including, without limitation, the Yield Maintenance Payment, and, upon such payment, Mortgagee shall cause the lien of this Mortgage to be released from the Mortgaged Property and the Net Insurance Proceeds shall be applied in accordance with the terms of the Permitted Lease.

(iv) In the event of any Casualty while a Permitted Lease is in effect which does not result in the lessee under the Permitted Lease making a Casualty Termination Payment, Debtor shall not terminate the Permitted Lease with respect to the Mortgaged Property without the prior written consent of Mortgagee, which consent may be withheld by Mortgagee in its sole discretion. If (x) Debtor seeks to terminate the Permitted Lease with respect to the Mortgaged Property, (y) Mortgagee, in its sole discretion, consents to such termination, and (z) the lessee under the Permitted Lease does not elect to continue the Permitted Lease with respect to the Mortgaged Property as provided therein, then Debtor shall, upon receipt of notice from such lessee that it has not elected to continue such Permitted Lease with respect to the Mortgaged Property or the expiration of the time period during which such lessee may elect to continue such Permitted Lease with respect to the Mortgaged Property (whichever occurs first), pay to Mortgagee the entire unpaid principal balance of the Note, all accrued and unpaid interest thereon and all other sums due under the Note, this Mortgage and any other Loan Documents, including, without limitation, the Yield Maintenance Payment, and, upon such payment, Debtor shall be entitled to receive and retain the Net Insurance Proceeds. If (x) Debtor does not seek to terminate the Permitted Lease with respect to the Mortgaged Property, (y) Mortgagee does not consent to the termination of the Permitted Lease with respect to the Mortgaged Property, or (z) Debtor terminates the Permitted Lease with respect to the Mortgaged Property with Mortgagee's consent but the lessee under the Permitted Lease elects to continue the Permitted Lease with respect to the Mortgaged Property as provided therein, then the Net Insurance Proceeds shall be held and applied in accordance with the provisions of the Permitted Lease.

(v) Notwithstanding the foregoing, if at the time of a Casualty or at any time thereafter an Event of Default shall have occurred and shall be continuing under the Loan Documents and a Permitted Lease is not in effect, all Net Insurance Proceeds shall be paid to Mortgagee, and Mortgagee may retain and apply the Net Insurance Proceeds toward the Obligations whether or not then due and payable, in such order, priority and proportions as Mortgagee in its discretion shall deem proper, or to cure such Event of Default, or, in Mortgagee's discretion, Mortgagee may pay such Net Insurance Proceeds in whole or in part to Debtor to be applied toward the cost of the Restoration. If Mortgagee shall receive and retain the Net Insurance Proceeds, the lien of this Mortgage shall be reduced only by the amount received and retained by Mortgagee and actually applied by Mortgagee in reduction of the Obligations.

(b) *Eminent Domain.* (i) In the event of a taking of all or any part of the Mortgaged Property for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Debtor or Remainderman and those authorized to exercise such right ("Taking") or the commencement of any proceedings or negotiations which might result in a Taking, Debtor and Remainderman, upon obtaining knowledge of such Taking, proceedings or negotiations, shall promptly give written notice thereof to Mortgagee, generally describing the nature and extent of such Taking, proceedings or negotiations and including copies of any documents or notices received in connection therewith. Thereafter, Debtor and Remainderman shall promptly send Mortgagee copies of all correspondence, documents or notices sent or received by Debtor or Remainderman relating to such Taking, proceedings or negotiations. Unless the lessee under the Permitted Lease shall be entitled to do so pursuant to the provisions thereof and provided an Event of Default shall not have occurred and be continuing

under the Loan Documents, Debtor and Remainderman shall file and prosecute on behalf of Mortgagee, Remainderman and Debtor any and all claims for an award, provided that Mortgagee shall have the right to intervene and participate in proceedings relating thereto (if such intervention shall not be permitted, Debtor and Remainderman shall consult with Mortgagee, its attorneys and experts, and make all reasonable efforts to cooperate with Mortgagee in the prosecution or defense of such proceedings) and neither Remainderman nor Debtor shall have the right to settle, adjust or compromise any such claims without the consent of the Mortgagee, which shall not be unreasonably withheld or delayed. All awards and other payments on account of a Taking shall be paid to Mortgagee except as provided below and subject to the provisions below. In the event of a Taking, the Loan Documents shall remain in full force and effect (subject to the provisions of Section 5.01(b)(iv)) without any reduction of any monetary sum payable under the Loan Documents. As used in this Section 5.01:

(X) the term "Material Taking" shall mean a Taking of the whole of the Mortgaged Property, other than for temporary use, or a Taking of any of the Mortgaged Property (other than for temporary use) which will: (i) materially impair access to the Mortgaged Property in Lessee's reasonable judgment (or if a Permitted Lease is not in effect, such determination shall be made in Debtor's reasonable judgment); (ii) either result in the loss of 10% or more of the parking spaces at the Mortgaged Property or the loss of such parking spaces as would result in the Property being reasonably incapable of satisfying the parking requirements under Applicable Regulations either by the addition or replacement of parking spaces; or (iii) result in the permanent closure or removal of such portion of the improvements located on the Mortgaged Property as to make uneconomical the continued use of the remainder of the Mortgaged Property as the Initial Permitted Use or the Substitute Permitted Use;

(Y) the term "Partial Taking" shall mean a Taking of less than all of the Mortgaged Property, other than a Material Taking or a Temporary Taking (as defined in the following subitem (Z)); and

(Z) the term "Temporary Taking" shall mean a Taking of all or any part of the Mortgaged Property for a temporary use.

(ii) In the event of a Taking while a Permitted Lease is not in effect, other than a Taking of the whole of the Mortgaged Property or a Partial Taking of such a substantial part of the Mortgaged Property as shall result in the Mortgaged Property remaining after such Partial Taking being unsuitable for use as the Initial Permitted Use or the Substitute Permitted Use, Debtor, whether or not the awards or payments, if any, on account of such Taking shall be sufficient for the purpose (but provided they are made available by Mortgagee for such purpose), at its own cost and expense, shall promptly commence and complete the Restoration. In the event of a Temporary Taking while a Permitted Lease is not in effect, Debtor, after the termination of such Temporary Taking and at its own cost and expense, shall promptly commence and complete the Restoration.

(iii) Subject to Section 5.01(b)(vii), the awards and other payments on account of a Taking, less the costs, fees and expenses incurred by Mortgagee and Debtor in connection with the

collection thereof, including, without limitation, attorneys' fees and expenses (the "Net Award"), shall be applied as follows:

(w) While a Permitted Lease is in effect, the Net Award shall be applied as set forth in Section 5.01(b)(iv), 5.01(b)(v) or 5.01(b)(vi), as applicable.

(x) The Net Award on account of a Material Taking while a Permitted Lease is not in effect shall be allocated as follows:

(aa) There shall be paid to the Mortgagee an amount up to the sum of the outstanding principal, including all sums advanced by Mortgagee hereunder, and interest under the Note, all as of the date on which such payment is made, such amount shall be applied first against all sums advanced by Mortgagee under this Mortgage, second against the accrued but unpaid interest on the Note, and third to the remaining unpaid principal amount of the Note.

(bb) Any remaining balance shall be paid to Debtor.

(y) The Net Award on account of a Partial Taking while a Permitted Lease is not in effect shall be held and allocated as follows: (i) toward the cost of the Restoration, such portion to be held and applied as provided in Section 5.01(a)(ii) of this Mortgage; and (ii) the remaining balance, if any, shall be paid to Mortgagee and applied by Mortgagee in reduction of the Obligations.

(z) The Net Award on account of a Temporary Taking while a Permitted Lease is not in effect shall be held by Mortgagee and applied to the payment of the monthly installments of combined interest and principal becoming due under the Note, until such Temporary Taking is terminated and the Restoration, if any, has been completed; provided, however, that, if any portion of any such award or payment is made by reason of any Casualty to the Mortgaged Property, such portion shall be held and applied as provided in Section 5.01(a)(ii) hereof. The balance, if any, of such awards and payments shall be paid to Mortgagee and applied by Mortgagee in reduction of the Obligations.

(iv) In the event of a Taking while a Permitted Lease is in effect which results in the lessee under the Permitted Lease making a Condemnation Termination Payment, Debtor shall pay Mortgagee on or before the date of such Condemnation Termination Payment the entire unpaid principal balance of the Note, all accrued and unpaid interest thereon and all other sums due under the Note, this Mortgage and any other Loan Documents, and, upon such payment, Mortgagee shall cause the lien of this Mortgage to be released from the Mortgaged Property and the Net Award shall be applied in accordance with the terms of the Permitted Lease.

(v) In the event of a Taking while a Permitted Lease is in effect which is not a Temporary Taking and does not result in the lessee under the Permitted Lease making a Condemnation Termination Payment, Debtor shall not terminate the Permitted Lease with respect to the Mortgaged Property without the prior written consent of Mortgagee, which consent may be

withheld by Mortgagee in its sole discretion. If (x) Debtor seeks to terminate the Permitted Lease with respect to the Mortgaged Property, (y) Mortgagee, in its sole discretion, consents to such termination, and (z) the lessee under the Permitted Lease does not elect to continue the Permitted Lease with respect to the Mortgaged Property as provided therein, then Debtor shall, upon receipt of notice from such lessee that it has elected not to continue such Permitted Lease with respect to the Mortgaged Property or the expiration of the time period during which such lessee may elect to continue such Permitted Lease (whichever occurs first), pay to Mortgagee the entire unpaid principal balance of the Note, all accrued and unpaid interest thereon and all other sums due under the Note, this Mortgage and any other Loan Documents, and, upon such payment, Debtor shall be entitled to receive and retain the Net Award. If (x) Debtor does not seek to terminate the Permitted Lease with respect to the Mortgaged Property, (y) Mortgagee does not consent to the termination of the Permitted Lease with respect to the Mortgaged Property, or (z) Debtor terminates the Permitted Lease with respect to the Mortgaged Property with Mortgagee's consent but the lessee under the Permitted Lease elects to continue the Permitted Lease as provided therein, then the Net Award shall be held and applied in accordance with the provisions of the Permitted Lease; provided, however, the portion of the Net Award remaining after such application shall be paid to Mortgagee and applied by Mortgagee in reduction of the Obligations.

(vi) In the event of a Temporary Taking while a Permitted Lease is in effect, the Net Award on account of such Temporary Taking shall be paid to the lessee under the Permitted Lease to the extent required by the Permitted Lease and the balance, if any, of such Net Award shall be paid to Mortgagee and applied by Mortgagee in reduction of the Obligations.

(vii) Notwithstanding the foregoing, if at the time of any Taking or at any time thereafter an Event of Default shall have occurred and shall be continuing under the Loan Documents and the Permitted Lease is not in effect, Mortgagee is hereby authorized and empowered, in the name and on behalf of Debtor and otherwise, to file and prosecute Debtor's claim, if any, for an award on account of any Taking and to collect such award and apply the Net Award toward the Obligations whether or not then due and payable, in such order, priority and proportions as Mortgagee in its discretion shall deem proper, or to cure such Event of Default, or, in Mortgagee's discretion, Mortgagee may pay the Net Award in whole or in part to Debtor to be applied toward the cost of the Restoration. If Mortgagee shall receive and retain the Net Award, the lien of this Mortgage shall be reduced only by the amount received and retained by Mortgagee and actually applied by Mortgagee in reduction of the Obligations.

Section 5.02. Conveyance in Anticipation of Condemnation, Granting of Easements, Etc. If no Event of Default shall have occurred and be continuing, Debtor and Remainderman may, from time to time with respect to its interest in the Mortgaged Property, and with Mortgagee's prior written consent, (i) sell, assign, convey or otherwise transfer any interest therein to any person legally empowered to take such interest under the power of eminent domain, (ii) grant easements and other rights in the nature of easements, (iii) release existing easements or other rights in the nature of easements which are for the benefit of the Mortgaged Property, (iv) dedicate or transfer unimproved portions of the Mortgaged Property for road, highway or other public purposes, (v) execute petitions to have the Mortgaged Property annexed

to any municipal corporation or utility district, and (vi) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

Section 5.03. **Mortgagee's Power.** At any time, or from time to time, without liability therefor, Mortgagee, without affecting the personal liability of any person for payment of the Obligations or the effect of this Mortgage upon the remainder of said Mortgaged Property, may from time to time without notice (i) release any part of said Mortgaged Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof, (v) release any person so liable, (vi) extend the maturity or alter any of the terms of any Obligations, (vii) grant other indulgences, (viii) take or release any other or additional security for any Obligations, (ix) make compositions or other arrangements with debtors in relation thereto, or (x) advance additional funds to protect the security hereof or to pay or discharge the Obligations in the event Debtor or Remainderman fails to do so, and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Mortgagee.

Section 5.04. **Termination of Lease in Connection with a Rejectable Substitution Offer.** In the event Lessee makes a Rejectable Substitution Offer pursuant to the Permitted Lease, Debtor shall not reject such offer without the prior written consent of Mortgagee; provided, however, if Debtor notifies Mortgagee that Lessee has made a Rejectable Substitution Offer and Debtor wishes to reject such Rejectable Substitution Offer, and Debtor either:

(x) deposits with an escrow agent satisfactory to Mortgagee an amount sufficient to pay the entire unpaid principal balance of the Note, all accrued and unpaid interest thereon and all other sums then due under the Note, this Mortgage and any other Loan Documents, including, without limitation, the Yield Maintenance Payment (the "Rejectable Substitution Payment"), or

(y) pays Mortgagee such Rejectable Substitution Payment,

Mortgagee shall thereupon provide such written consent. If Debtor deposits the Rejectable Substitution Payment with an escrow agent as contemplated by the preceding subitem (x), such Rejectable Substitution Payment shall be paid by such escrow agent to Mortgagee on the date on which Mortgagee provides such written consent. Upon Mortgagee's receipt of the Rejectable Substitution Payment, Mortgagee shall cause the lien of this Mortgage to be released from the Mortgaged Property. If the Rejectable Substitution Offer is accepted or deemed accepted as contemplated by the Permitted Lease, then Mortgagee agrees to reasonably cooperate in connection with the closing of such substitution, including, without limitation, releasing the lien of this Mortgage simultaneously with the granting of a mortgage on the Substitute Premises (as defined in the Loan Agreement) as contemplated by Section 17 of the Loan Agreement.

Section 5.05. **Termination of Lease in Connection with an Economic Termination Payment.** In the event that the lessee under the Permitted Lease has elected to make an Economic Termination Payment with respect to the Mortgaged Property, Debtor shall pay Mortgagee on or before the date of such Economic Termination Payment the entire unpaid principal balance of the Note, all accrued and unpaid interest thereon and all other sums due under the Note, this Mortgage

and any other Loan Documents with respect to the Mortgaged Property, including, without limitation, the Yield Maintenance Payment, and, upon such payment, Mortgagee shall cause the lien of this Mortgage to be released from the Mortgaged Property.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.01. *Events of Default.* Each of the following shall be an event of default under this Mortgage (each an "Event of Default"):

(i) If any representation or warranty of Debtor or Remainderman set forth in any of the Loan Documents is false in any material respect as of the date hereof or if Debtor or Remainderman renders any false statement or account.

(ii) If any principal, interest or other monetary sum due under the Note, any Additional Note, this Mortgage or any other Loan Document is not paid within five Business Days from the date when due; provided, however, notwithstanding the occurrence of such an Event of Default, Mortgagee shall not be entitled to exercise its rights and remedies set forth in Section 6.02 below or otherwise under any of the Loan Documents unless and until Mortgagee shall have given Debtor notice thereof and a period of six Business Days from the delivery of such notice shall have elapsed without such Event of Default being cured.

(iii) If Debtor, at any time a Permitted Lease is not in effect, fails to pay, prior to delinquency, any taxes, assessments or other charges, the failure of which to pay will result in the imposition of a lien against the Mortgaged Property pursuant to Applicable Regulations and such failure continues for ten (10) days after Mortgagee shall have given Debtor notice of such failure, unless such failure is a result of Debtor contesting such taxes, assessments or other charges in accordance with the provisions of Section 4.05(b).

(iv) If Debtor or Remainderman becomes insolvent within the meaning of the Code, files or notifies Mortgagee that it intends to file a petition under the Code, initiates a proceeding under any similar law or statute relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts (collectively, hereinafter, an "Action"), becomes the subject of either a petition under the Code or an Action which is not dissolved within 90 days after filing, or is not generally paying its debts as the same become due.

(v) If Debtor or Remainderman fails to observe or perform any of the covenants, conditions, or obligations of this Mortgage, provided, however, if any such failure does not involve the payment of any principal, interest or other monetary sum due under the Note, is not willful or intentional, does not place any rights or interest in collateral of Mortgagee in immediate jeopardy, and is within the reasonable power of Debtor or Remainderman to promptly cure after receipt of notice thereof, all as determined by Mortgagee in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Mortgagee shall have given

Debtor notice thereof and a period of 30 days shall have elapsed, during which period Debtor may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Mortgagee in its reasonable discretion, and Debtor or Remainderman is diligently pursuing a cure of such failure, then Debtor and Remainderman shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 210 days after receiving notice of the failure from Mortgagee. If Debtor shall fail to correct or cure such failure within such 210-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(vi) If there is an "Event of Default" or a breach or default, after the passage of all applicable notice and cure or grace periods, under any other Loan Document.

(vii) If there is an "Event of Default" or a breach or default, after the passage of all applicable notice and cure or grace periods, under the Permitted Lease; provided, however, with respect to each such Event of Default occurring pursuant to Section 23.A(ii) of the Permitted Lease, Mortgagee shall not be entitled to exercise its rights and remedies set forth in Section 6.02 below or otherwise under any of the Loan Documents as a result of such Event of Default unless and until Mortgagee shall have given Lessor and Lessee written notice thereof and a period of six Business Days from the delivery of such written notice shall have elapsed without such Event of Default being cured.

(viii) If a final, nonappealable judgment is rendered by a court against Debtor which has a material adverse effect on the ability to conduct business at the Mortgaged Property for its intended use, or which does not have a material adverse effect on the ability to conduct business at the Mortgaged Property for its intended use but which is in the amount of \$25,000 or more, and in either event is not discharged or provision made for such discharge within 60 days from the date of entry thereof.

Section 6.02. **Remedies.** Upon the occurrence and during the continuance of an Event of Default subject to the limitations set forth in Sections 6.01, 6.10 and 6.11, Mortgagee may declare all or any part of the Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice (including notice of intent to accelerate and notice of acceleration) of any kind except as otherwise expressly provided herein. Furthermore, subject to Sections 6.01, 6.10 and 6.11, upon the occurrence of an Event of Default and unless theretofore cured, Mortgagee may:

(i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, take any action described herein, sue for or otherwise collect the Rents,

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including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any Obligations, all in such order as Mortgagee may determine. The entering upon and taking possession of the Mortgaged Property, the taking of any action described herein, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of Rents, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon any Event of Default, including the right to exercise the power of sale herein conferred;

(ii) Commence an action to foreclose this Mortgage in a single parcel or in several parcels, appoint a receiver, specifically enforce any of the covenants hereof or sell Debtor's and Remainderman's interests in the Mortgaged Property pursuant to the power of sale herein conferred;

(iii) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code as adopted in the State ("UCC"), including, without limitation:

(1) Either personally or by means of a court appointed receiver, commissioner or other officer, take possession of all or any of the Personal Property and exclude therefrom Debtor and/or Remainderman and all others claiming under Debtor and/or Remainderman, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Debtor and/or Remainderman's in respect of the Personal Property or any part thereof. In the event Mortgagee demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Debtor and Remainderman promise and agree to promptly turn over and deliver complete possession thereof to Mortgagee;

(2) Without notice to or demand upon Debtor or Remainderman, make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder and, in exercising any such powers or authority, to pay all expenses incurred in connection therewith;

(3) Require Debtor and Remainderman to assemble the Personal Property or any portion thereof, at the Premises, and promptly to deliver such Personal Property to Mortgagee, or an agent or representative designated by it. Mortgagee, and its agents and representatives, shall have the right to enter upon any or all of Debtor's or Remainderman's premises and property to exercise Mortgagee's rights hereunder;

(4) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Mortgagee may determine. Mortgagee may be a purchaser at any such sale;

(5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give Debtor at least 10 days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be delivered to Debtor at the address set forth at the beginning of this Mortgage and shall be deemed to be given as provided herein; and

(6) Any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of all or a portion of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personal Property hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC.

(iv) Apply any sums then deposited in the impound account described in Section 4.07 toward payment of the taxes, assessment and insurance premiums for the Mortgaged Property and/or as a credit on the Obligations in such priority and proportion as Mortgagee may determine in its sole discretion; and

(v) If held by Mortgagee, surrender the insurance policies maintained pursuant to Section 4.06, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as Mortgagee in its sole discretion shall deem proper, and in connection therewith, Debtor and Remainderman hereby appoint Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagee to collect such insurance premiums.

Upon the occurrence and continuance of an Event of Default, Mortgagee shall have the right to foreclose the lien hereof for such Obligations or part thereof, in accordance with the terms hereof. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such

decree the true condition of the title to or the value of the Mortgaged Property. All reasonable expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Debtor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

If Mortgagee elects to sell Debtor's and Remainderman's interests in the Mortgaged Property by exercise of the power of sale herein contained, Mortgagee shall cause such sale to be performed in the manner then required by law.

(a) Mortgagee shall cause to be recorded, published and delivered such notices of default and notices of sale as may then be required by law and by this Mortgage. Thereafter, Mortgagee shall sell Debtor's and Remainderman's interests in the Mortgaged Property at the time and place of sale fixed by it, either as a whole, or in separate lots or parcels or items as Mortgagee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Mortgagee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Debtor, Remainderman or Mortgagee, may purchase at such sale. Mortgagee may sell not only the real property but also the Personal Property and other interests which are a part of the Mortgaged Property, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Mortgaged Property separately from the remainder of the Mortgaged Property. Mortgagee shall not be required to take possession of any part of the Mortgaged Property or to have any of the Personal Property present at any sale of the Mortgaged Property. Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the posting of notices and the conduct of sale, but in the name and on behalf of Mortgagee. In the event any sale hereunder is not completed or is defective in the opinion of Mortgagee, such sale shall not exhaust the power of sale hereunder, and Mortgagee shall have the right to cause a subsequent sale or sales to be made hereunder.

(b) As may be permitted by law, Mortgagee shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by the Mortgagee in exercising the power of sale or foreclosing this Mortgage, (ii) second, to the payment of the Obligations (including, without limitation, the principal, accrued interest and other sums due and owing under the Note, the Additional Notes and the amounts due and owing to Mortgagee under this Mortgage) in such manner and order as Mortgagee may elect, and (iii) third, the remainder, if any, shall be paid to Debtor, or

to Debtor's heirs, devisees, representatives, successors or assigns, or such other persons as may be entitled thereto by law.

(c) Mortgagee may in the manner provided by law postpone sale of all or any portion of the Mortgaged Property.

Section 6.03. **Appointment of Receiver.** Subject to Sections 6.10 and 6.11, if an Event of Default shall have occurred and is continuing, Mortgagee, as a matter of right with notice as required by law, and without notice to Debtor or Remainderman or anyone claiming under Debtor or Remainderman, and without regard to the then value of the Mortgaged Property or the interest of Debtor or Remainderman therein, or the insolvency of Debtor and Remainderman or the then-owner of the Mortgaged Property, may seek the appointment of a receiver for the Mortgaged Property upon *ex parte* application provided in such case all legally required notices are given to Debtor and Remainderman to any court of the competent jurisdiction. Such receiver shall be empowered (a) to take possession of the Mortgaged Property and any businesses conducted by Debtor or Remainderman thereon and any business assets used in connection therewith, (b) to exclude Debtor and Remainderman and Debtor's and Remainderman's agents, servants and employees from the Mortgaged Property, or, at the option of the receiver, in lieu of such exclusion, to collect a fair market rental from any such persons occupying any part of the Mortgaged Property, (c) to collect the Rents, (d) to complete any construction that may be in progress, (e) to continue the development, marketing and sale of the Mortgaged Property, (f) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (g) to use all stores of materials, supplies and maintenance equipment on the Mortgaged Property and replace such items at the expense of the receivership estate, (h) to pay all taxes and assessments against the Mortgaged Property, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (i) to request that Mortgagee advance such funds as may reasonably be necessary to the effective exercise of the receiver's powers, on such terms as may be agreed upon by the receiver and Mortgagee, but not in excess of the Default Rate, and (j) generally to do anything that Debtor or Remainderman could legally do if Debtor or Remainderman were in possession of the Mortgaged Property. All expenses incurred by the receiver or his agents, including obligations to repay funds borrowed by the receiver, shall constitute a part of the Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and by Mortgagee, together with interest thereon at the highest rate of interest applicable in the Note from the date incurred until repaid, and the balance shall be applied toward the Obligations or in such other manner as the court may direct.

Section 6.04. **Remedies Not Exclusive.** Mortgagee shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Mortgage or under any Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage 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

Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee, or to which Mortgagee may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee. Mortgagee may pursue inconsistent remedies.

The acceptance by Mortgagee of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a subsequent Event of Default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Debtor to pay the entire sum then due, and failure of Debtor to pay such entire sum then due as contemplated by Section 6.01(ii) shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Mortgagee shall be, at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon it, and the right to proceed with a sale under any notice of default, or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Mortgagee to any action or inaction of Debtor or Remainderman which is subject to consent or approval of Mortgagee hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

Section 6.05. *Possession of Mortgaged Property.* In the event of a trustee's sale or foreclosure sale hereunder and after the time of such sale, Debtor or Remainderman occupies the portion of the Mortgaged Property so sold, or any part thereof, Debtor and/or Remainderman shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property; and this Mortgage and a trustee's or sheriff's deed shall constitute a lease and agreement under which the tenant's possession arose and continued. Nothing contained in this Mortgage shall be construed to constitute Mortgagee as a "mortgagee in possession" in the absence of its taking actual possession of the Mortgaged Property pursuant to the powers granted herein.

Section 6.06. *Waiver of Rights.* Debtor and Remainderman waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisal before sale of any portion of the Mortgaged Property, or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made in collecting the Obligations. Debtor and Remainderman agree that neither

Remainderman nor Debtor will at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, redemption or homestead exemption, and Debtor and Remainderman, for Debtor, Remainderman, Debtor's and Remainderman's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Debtor, Remainderman, Debtor's and Remainderman's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Debtor and Remainderman expressly waive and relinquish any and all rights, remedies and defenses that Debtor or Remainderman may have or be able to assert by reason of the laws of the State pertaining to the rights, remedies and defenses of sureties.

Section 6.07. Relief From Stay. In the event that Debtor commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, subject to court approval, Mortgagee shall thereupon be entitled and Debtor and Remainderman irrevocably consent to relief from any stay imposed by Section 362 of the Code on or against the exercise of the rights and remedies otherwise available to Mortgagee as provided in the Loan Documents and Debtor and Remainderman hereby irrevocably waive their rights to object to such relief. In the event Debtor or Remainderman shall commence a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, Debtor hereby agree that no injunctive relief against Mortgagee shall be sought under Section 105 or other provisions of the Code by Debtor or Remainderman or other person or entity claiming through Debtor or Remainderman, nor shall any extension be sought of the stay provided by Section 362 of the Code.

Section 6.08. Cash Collateral. Debtor and Remainderman hereby acknowledge and agree that in the event that Debtor or Remainderman commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code: (i) that all of the Rents are, and shall for purposes be deemed to be, "proceeds, product, offspring, rents, or profits" of the Premises covered by the lien of this Mortgage, as such quoted terms are used in Section 552(b) of the Code; (ii) that in no event shall Debtor or Remainderman assert, claim or contend that any portion of the Rents are, or should be deemed to be, "accounts" or "accounts receivable" within the meaning of the Code and/or applicable state law; (iii) that the Rents are and shall be deemed to be in any such bankruptcy proceeding "cash collateral" of Mortgagee as that term is defined in Section 363 of the Code; and (iv) that Mortgagee has valid, effective, perfected, enforceable and "choate" rights in and to the Rents without any further action required on the part of Mortgagee to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Debtor or Remainderman under Section 546(b) of the Code.

Section 6.09. Assignment of Rents and Leases. (a) Debtor and Remainderman (with respect to any Leases for which Remainderman may in the future have an interest as lessor) hereby assign, transfer, convey and set over to Mortgagee, subject to the terms of this Section 6.09, all of Debtor's and Remainderman's estate, right, title and interest in, to and under (x) the Initial Permitted Lease, and (y) any and all other Leases, together with (i) all rents, income, profits, purchase prices, insurance proceeds, condemnation awards, funds deposited by Lessee or by any sublessee to pay costs of construction, restoration or repair, and any other awards and settlements arising from the Initial Permitted Lease and such other Leases, including, without limitation, all Base Annual Rental, Additional Rental, Casualty Termination Payments, Condemnation Termination Payments, Economic Termination Payments, Prepayment Charges and Letter of Credit proceeds, (ii) the rights to sue for, collect and receive such rents, income and profits, insurance proceeds, condemnation awards and any other awards or settlements, (iii) all amendments, supplements, modifications, renewals and extensions thereof now existing or hereafter made, (iv) the right to amend, supplement, modify, waive, extend, renew or cancel the Initial Permitted Lease and such other Leases, and (v) any and all guarantees of any lessee's obligations under the Initial Permitted Lease and any other Lease, including, without limitation, the Lease Guaranty, (vi) the rights of Debtor to collect, receive, hold and apply all bonds and security in all of said Leases provided to be furnished to Debtor thereunder, (vii) the rights of Debtor to enforce any and all of the agreements, terms, covenants and conditions in all of the Leases and to give notices, consents, releases and waivers thereunder, (viii) the right to make all waivers and agreements, (ix) the right to give all notices, consents, releases and other instruments, (x) the right to give all notices of default and to take all action upon the happening of a default under the Initial Permitted Lease, including the commencement, conduct and consummation of proceedings as shall be permitted under any provision of the Initial Permitted Lease, or by law or in equity, subject to the cure rights contained in Sections 6.01, 6.10 and 6.11 of this Mortgage, (xi) the right to receive all notices sent to Debtor, as lessor under the Initial Permitted Lease, and (xii) the right to do any and all other things whatsoever which Debtor or any lessor is or may be entitled to do under the Initial Permitted Lease.

In the event a court of competent jurisdiction construes the assignment of the Rents set forth in this Section 6.09 to be collateral that secures the Obligations rather than an absolute assignment, the assignment shall constitute an assignment of rents as set forth in IC 32-1-2-16.3 and thereby creates a security interest in the Rents that will be perfected upon the recording of this Mortgage.

The foregoing assignment is a present and irrevocable assignment and not an assignment for additional security only. However, in no event shall this reference diminish, alter, impair, or affect any other rights or remedies of Mortgagee.

Notwithstanding the foregoing assignment:

(A) So long as (i) no Event of Default shall have occurred and be continuing, or (ii) if an Event of Default shall have occurred and be continuing which was caused by a Lease Default and Debtor is performing its obligations under Section 6.11 of this Mortgage, Debtor exclusively shall have the right to (a) exercise the rights of the

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"Lessor" pursuant to Sections 17, 18 and 21 of the Initial Permitted Lease with respect to repairs, restorations and alterations which do not have a Material Effect, Section 12 of the Initial Permitted Lease relating to insurance and Section 26 relating to assignment and subletting and (b) enter into easements, restrictive covenants and other encumbrances with respect to the Mortgaged Property which do not have a Material Effect.

(B) So long as (i) no Event of Default shall have occurred and be continuing, or (ii) if an Event of Default shall have occurred and be continuing which was caused by a Lease Default and Debtor is performing its obligations under Section 6.11 of this Mortgage, and except as otherwise expressly set forth herein (including, without limitation, Section 3.05 hereof) or in the Initial Permitted Lease, the Lease Guaranty or any other Lease, Debtor, with the prior written consent of Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed), acting on its initiative or at the request of Mortgagee, in any event shall have the right to exercise any election or option or to make any decision or determination or to give any notice, consent, waiver or approval or to take any other action as the lessor under or in respect of the Initial Permitted Lease, the Lease Guaranty or any other Lease, and Mortgagee shall not have such rights.

(C) So long as (i) no Event of Default shall have occurred and be continuing, or (ii) if an Event of Default shall have occurred and be continuing which was caused by a Lease Default and Debtor is performing its obligations under Section 6.11 of this Mortgage, Debtor shall retain, to the exclusion of Mortgagee, but subject to the conditions precedent to a substitution set forth in Section 17 of the Loan Agreement, the right (I) to accept or reject any Rejectable Substitution Offer, (II) to take any action with respect to purchase options and/or renewal options under the Initial Permitted Lease, and (III) to select accountants, engineers, counsel or appraisals required in connection with the Initial Permitted Lease, the Lease Guaranty or any other Lease.

(D) During the continuance of any Event of Default caused solely by a Lease Default (and only during such period as all payments due under the Note are being paid in full), Debtor shall have the right, on a nonexclusive basis with Mortgagee (but subject to Sections 6.10 and 6.11), (i) to enforce any covenant or obligation (including obligations in respect of the payment of Rents) of Lessee under the Initial Permitted Lease or any other Lease or of Guarantor under the Lease Guaranty, (ii) to declare the Initial Permitted Lease, the Lease Guaranty or any other Lease in default although no remedies may be exercised thereunder by Debtor without the prior written consent thereto of Mortgagee (not to be unreasonably withheld, conditioned or delayed), and (iii) subject to the applicable provisions of clauses (A), (B) and (C) above, to give or receive any notice, consent, opinion, document, information, estoppel certificate, waiver, approval or make any determination under the Initial Permitted Lease, the Lease Guaranty or any other Lease.

(E) Notwithstanding the foregoing clauses (A) through (D), during the continuance of any Event of Default caused solely by a Lease Default (during which

period the payments due under the Note are delinquent), Mortgagee shall be entitled to exclusively exercise all rights of Debtor relating to the Initial Permitted Lease and the Lease Guaranty.

(F) Notwithstanding the foregoing clauses (A) through (E), but subject to clause (G), during the continuance of any Event of Default not caused by a Lease Default, Mortgagee shall be entitled to exclusively exercise all rights of Debtor relating to the Initial Permitted Lease, the Lease Guaranty and the other Leases.

(G) Notwithstanding the foregoing clauses (E) and (F), Debtor shall at all times retain the right, on a nonexclusive basis with Mortgagee, to (i) receive from Lessee any notices, certificates or other reports which Lessee shall provide pursuant to the Initial Permitted Lease, (ii) make any inspection of the Mortgaged Property permitted under the Initial Permitted Lease, and (iii) give any notice of default for nonpayment of Base Annual Rental or Additional Rental.

Subject to the provisions of the preceding subitems (A) through (G), Mortgagee and Debtor shall have the rights to (a) request and receive estoppel certificates and financial information pursuant to Sections 25 and 31 of the Initial Permitted Lease, (b) enforce Lessee's obligations under the Initial Permitted Lease (provided that such enforcement will not cause a termination of either thereof or include the exercise of remedies under the Initial Permitted Lease without the consent of Mortgagee), (c) give notices under the Initial Permitted Lease (provided that no such notices shall waive any provisions of the Initial Permitted Lease, or terminate or otherwise modify the Initial Permitted Lease), and (d) receive all notices given under the Initial Permitted Lease; provided, further, however, that, subject to the foregoing provisions of clauses (A) through (G), Mortgagee shall have and hereby retains the exclusive right to exercise any and all remedies of the Lessor under the Initial Permitted Lease during the continuance of an Event of Default and provided, further, however, that neither Debtor nor Mortgagee without the prior written consent of the other party may waive any event which, with notice or passage of time or both would constitute an Event of Default under the Initial Permitted Lease.

(b) Subject to the terms of this Section 6.09 and Section 6.11, Debtor and Remainderman each irrevocably appoint Mortgagee their true and lawful attorney-in-fact, at the option of Mortgagee, at any time and from time to time upon the occurrence and during the continuance of an Event of Default, to take possession and control of the Premises, pursuant to Debtor's and/or Remainderman's rights under the Leases, to exercise any of Debtor's and/or Remainderman's rights under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Debtor, Remainderman, or Mortgagee, for all of the Rents. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due Mortgagee for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Debtor and Remainderman hereby release Mortgagee from all liability (other than as a result of the gross negligence or willful misconduct of Mortgagee) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto.

(c)(i) Debtor hereby designates Mortgagee to receive all Base Annual Rental, Additional Rental, Casualty Termination Payments, Condemnation Termination Payments, Economic Termination Payments, Prepayment Charges and Letter of Credit proceeds and other sums payable to Debtor under the Initial Permitted Lease (but not amounts payable to third parties other than Debtor or as a result of the assignment) (collectively, "Lease Payments"), and to receive (in addition to, and not to the exclusion of, Debtor) duplicate originals of all notices, undertakings, demands, statements, documents, financial statements and other communications which Lessee is required or permitted to give, make, deliver to or serve pursuant to the Initial Permitted Lease. Provided no Event of Default shall have occurred and be continuing, Mortgagee shall pay to Debtor, within three Business Days after Mortgagee's receipt of any Lease Payments, the excess (if any) of Lease Payments over all amounts then due and payable to Mortgagee under the Loan Documents.

(ii) Without limiting Mortgagee's rights contained in the Mortgage and any other Loan Document and subject to Debtor's rights set forth in Sections 6.10 and 6.11 of this Mortgage, following the occurrence and during the continuance of an Event of Default, Mortgagee, without in any way waiving such Event of Default, at its option, without notice and without regard to the adequacy of the security for the Obligations, either in person or by agent, upon bringing an action or proceeding, or by a receiver appointed by a court, may take possession of all or any portion of the Mortgaged Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Mortgagee may deem proper. Debtor hereby consents to the possession and to the appointment of a receiver after the occurrence and during the continuance of an Event of Default under this Mortgage, subject to the provisions of Sections 6.10 and 6.11. Mortgagee, either with or without taking possession of the Mortgaged Property in its own name, may (in addition to any other remedies allowed hereunder or under the other Loan Documents) demand, sue for or otherwise collect and receive all Rents, including any Rents past due and unpaid, and shall have the right to apply such Rents to the payment of: (a) all expenses of managing the Mortgaged Property, including, without limitation, the salaries, fees and wages of any managing agent and such other agents, independent contractors or employees as Mortgagee may deem reasonably necessary and all expenses of operating and maintaining the Mortgaged Property, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which are due and payable and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Mortgaged Property; and (b) the Obligations, together with all costs and attorneys' fees, in such order or priority as Mortgagee may elect. The exercise by Mortgagee of the option granted it in this subsection and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any Event of Default or of any default or event of default under any Loan Document. Debtor agrees that the exercise by Mortgagee of one or more of its rights and remedies hereunder shall in no way be deemed or construed to make Mortgagee a mortgagee in possession unless and until such time as Mortgagee takes actual possession of the Mortgaged Property.

(iii) Mortgagee shall not be liable for any loss sustained by any Person resulting from Mortgagee's failure to let the Mortgaged Property or any portion thereof after the occurrence of

an Event of Default or from any other act or omission of Mortgagee either in collecting the Rents or, if Mortgagee shall have taken possession of all or any portion of the Mortgaged Property, in managing all or any portion of the Mortgaged Property after any such Event of Default. Mortgagee shall not be obligated to perform or discharge, nor does Mortgagee hereby undertake to perform or discharge, any obligation, duty or liability of Debtor under any Lease or under or by reason of this Mortgage, and Debtor shall, and does hereby agree to, indemnify Mortgagee for, and to hold Mortgagee harmless from, any and all liability, loss or damage which may or might be incurred under said Leases or under or by reason of this Mortgage and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases (collectively, the "Claims"), except to the extent such Claims are a direct result of Mortgagee's gross negligence, willful misconduct or bad faith. Should Mortgagee incur any such liability under said Leases or under or by reason of this Mortgage or in defense of any such claims or demands, Debtor shall reimburse Mortgagee therefor, including, without limitation, its costs, expenses and reasonable attorneys' fees, within five (5) Business Days after demand, and upon the failure of Debtor to do so Mortgagee may, at its option, exercise Mortgagee's remedies under this Mortgage or under any other Loan Document. It is further understood that this Mortgage shall not operate to place responsibility for the control, care, management or repair of all or any portion of the Mortgaged Property upon Mortgagee, nor for the carrying out of any of the terms and conditions of any Lease; nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Mortgaged Property by Lessee or any other parties, or for any dangerous or defective condition affecting any portion of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any lessee, licensee, invitee, employee, stranger or any other Person. Mortgagee or the receiver shall have access to the books and records used in the operation and maintenance of the Premises and shall be liable to account only for those Rents received.

(iv) While the assignment made in this Mortgage is present, direct and continuing, the execution and delivery hereof shall not in any way impair or diminish the obligations of Debtor under the provisions of any Lease nor shall any of the obligations contained in any Lease be imposed upon Mortgagee.

(d) Mortgagee shall not be liable to Debtor or Remainderman, anyone claiming under or through Debtor or Remainderman or anyone having an interest in the Premises by reason of anything done or left undone by Mortgagee hereunder, except to the extent of Mortgagee's gross negligence or willful misconduct.

(e) Any entering upon and taking possession and control of the Premises by Mortgagee or the receiver and any application of Rents as provided herein shall not cure or waive any Event of Default hereunder or invalidate any other right or remedy of Mortgagee under applicable law or provided therein.

Section 6.10 Enforcement of Remedies. (a) Any provision of the Loan Agreement, this Mortgage or any other Loan Document to the contrary notwithstanding, while a Permitted

Lease is in effect, if a Lease Default has occurred and is continuing which is not a Lease Bankruptcy Default and no other Event of Default under this Mortgage or any of the other Loan Documents has occurred and is continuing, then Mortgagee shall not foreclose the lien of this Mortgage or sell the Mortgaged Property pursuant to the power of sale granted herein, unless either (x) Mortgagee has exercised or is exercising, contemporaneously with a foreclosure of the lien of this Mortgage, remedies under the Permitted Lease involving termination of the Permitted Lease or a termination of the right to possession of the lessee thereunder or (y) such Lease Default shall have continued for a period of at least 270 days; it being understood and agreed that if, during such 270 day period, any other Event of Default occurs under this Mortgage or any of the other Loan Documents which is not a Lease Default, then the foregoing restriction on Mortgagee's right to foreclose the lien of this Mortgage or sell the Mortgaged Property pursuant to the power of sale granted herein shall no longer be applicable.

(b) Any provision of the Loan Agreement, this Mortgage or any other Loan Document to the contrary notwithstanding, while a Permitted Lease is in effect, if a Lease Bankruptcy Default occurs and no other Event of Default under this Mortgage or any of the other Loan Documents has occurred and is continuing, then Mortgagee shall not foreclose the lien of this Mortgage or sell the Mortgaged Property pursuant to the power of sale granted herein, unless the Permitted Lease is rejected in the applicable bankruptcy proceeding; it being understood and agreed that if, prior to such rejection, any other Event of Default occurs under this Mortgage or any of the other Loan Documents which is not a Lease Default, then the foregoing restriction on Mortgagee's right to foreclose the lien of this Mortgage or sell the Mortgaged Property pursuant to the power of sale granted herein shall no longer be applicable.

(c) Notwithstanding anything contained in the Note to the contrary, while a Permitted Lease is in effect, in the event that Mortgagee shall be entitled to and shall intend to foreclose the lien of this Mortgage or sell the Mortgaged Property pursuant to the power of sale herein granted, as a result of any Lease Default, then Debtor or any owner of a beneficial interest of Debtor, without the consent of Mortgagee, shall have the right to prepay the entire outstanding principal balance of the Note, together with all accrued and unpaid interest thereon and all other sums due under the Note, this Mortgage and any other Loan Documents, without penalty or premium.

Section 6.11 *Right of Debtor to Cure Permitted Lease Default; Substitute Lessee.* (a) In the event of any default by a lessee under a Permitted Lease in the payment of any installment of Base Monthly Rental due under such Permitted Lease, Debtor or any owner of a beneficial interest in Debtor, without the consent of Mortgagee, may pay to Mortgagee, for application in accordance with the Note and this Mortgage, a sum equal to the amount of all (but not less than all) principal and interest as shall then be due and payable on the Note, together with any interest at the Default Rate on account of such payment being overdue, provided, however, that any such payment must be made by Debtor no later than six days after Mortgagee has given Debtor notice pursuant to Section 6.01(ii) that the payment then due on the Note was not received by Mortgagee.

(b) In the event of any default by the lessee under a Permitted Lease in the performance of any obligation under such Permitted Lease (other than the obligation to pay Base

Monthly Rental), Debtor, without the consent of Mortgagee, may exercise Debtor's rights under such Permitted Lease to perform such obligation on behalf of such lessee, provided that, Mortgagee's consent shall be required and may be withheld by Mortgagee in its sole discretion if an Event of Default has occurred and is continuing under this Mortgage which is not a Lease Default.

(c) Any: (A) payment by Debtor pursuant to, and in compliance with, Section 6.11(a) shall, for the purposes of this Mortgage, be deemed to remedy any default by the lessee under a Permitted Lease in the payment of installments of Base Monthly Rental theretofore due and payable under such Permitted Lease; and (B) performance by Debtor of any obligation of the lessee under a Permitted Lease pursuant to, and in compliance with, Section 6.11(b) shall, for the purposes of this Mortgage, be deemed to remedy any default by the lessee under such Permitted Lease in the performance of such obligation under such Permitted Lease, provided that such performance by Debtor occurs within the grace period provided for under Section 6.01(v).

(d) Upon the exercise of any cure right under this Section 6.11, Debtor shall not obtain any lien on any part of the Mortgaged Property on account of any payment made or the costs and expenses incurred in connection therewith nor shall any claim of Debtor against the lessee under the Permitted Lease or any other Person for the repayment thereof impair the prior right and security interest of Mortgagee in and to the Mortgaged Property.

(e) If (i) any default exists by the lessee under a Permitted Lease in the performance of any obligation under such Permitted Lease and Debtor has and is curing such default in accordance with the foregoing provisions of this Section 6.11 and (ii) no Event of Default has occurred and is continuing under this Mortgage which is not a Lease Default, then Debtor shall have the right to enter into a Substitute Permitted Lease to replace such Permitted Lease, provided that Mortgagee's prior written consent is obtained, which consent shall be granted if each of the following conditions shall have been met in conjunction with the proposed Substitute Permitted Lease:

(1) the right to possession of the lessee under the Permitted Lease to be replaced shall be terminated;

(2) the Substitute Permitted Lease shall only permit the lessee thereunder to use the Mortgaged Property for a specific Substitute Permitted Use listed in the Substitute Permitted Lease, which specific Substitute Permitted Use shall be reasonably acceptable to Mortgagee, provided, however, if the proposed substitution is to take place after the fifteenth anniversary of the date of the Note, the Substitute Permitted Lease may permit the lessee thereunder to use the Mortgaged Property for either a specific Substitute Permitted Use listed in the Substitute Permitted Lease or a different use reasonably acceptable to Mortgagee which is listed in the Substitute Permitted Lease;

(3) the proposed lessee under the Substitute Permitted Lease shall have all permits, licenses and other governmental approvals, if any, as are necessary or desirable in connection with the use and occupancy of the Mortgaged Property for the use permitted by the Substitute Permitted Lease;

(4) the proposed lessee under the Substitute Permitted Lease shall have a net worth which is reasonably satisfactory to Mortgagee;

(5) the rent to be paid by the lessee under the Substitute Permitted Lease shall be not less than the rent to be paid by the Lessee under the Initial Permitted Lease and the expiration date of the primary term of the Substitute Permitted Lease shall be no earlier than the expiration date of the primary term of the Initial Permitted Lease;

(6) except as provided above, the Substitute Permitted Lease shall be in substantially the same form and substance as the Initial Permitted Lease with only such changes which are acceptable to Debtor and Mortgagee in their sole discretion, and, to the extent any such changes would necessitate changes in this Mortgage or any other Loan Documents, Debtor, Mortgagee and, if necessary, the lessee under the proposed Substitute Permitted Lease shall execute, acknowledge and deliver such instruments as would be reasonably necessary to effectuate such changes;

(7) at Mortgagee's sole discretion, the rating agencies then rating any securities issued in any Securitization of which the Loan may be a part shall have confirmed that such substitution will not result in a qualification, reduction, withdrawal or downgrade of any then current rating assigned to such securities issued in connection with such Securitization;

(8) at Mortgagee's sole discretion, Mortgagee and, if the Loan is included in a Securitization, the rating agencies then rating any securities issued in such Securitization shall have received acceptable opinions of independent counsel, in form and substance reasonably satisfactory to Mortgagee and such rating agencies, covering such matters as Mortgagee may reasonably require; and

(9) upon any such substitution, Debtor, the lessee under the Permitted Lease to be replaced or the lessee under the Substitute Permitted Lease shall pay all reasonable out-of-pocket costs and expenses of Mortgagee in connection with such substitution (including attorneys' fees).

ARTICLE VII

MISCELLANEOUS

Section 7.01. *Satisfaction.* If and when the Obligations shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and Debtor or Remainderman shall pay or cause to be paid (provided such payment is permitted or required by the Note and the Additional Notes) the full amount thereof and shall also pay or cause to be paid all other sums payable by Debtor or Remainderman to the Mortgagee Entities with respect to the Obligations, then this Mortgage shall be void (otherwise it shall remain in full force and effect in law and equity forever) and Mortgagee. Notwithstanding the foregoing, if:

- (i) the terms of this Mortgage, the Loan Agreement or any of the other Loan Documents permit Debtor to prepay the Note and Debtor pays Mortgagee, or causes to be paid to Mortgagee, the entire unpaid principal balance of the Note, all accrued and unpaid interest thereon and all other sums then due under the Note, this Mortgage and any other Loan Documents, including, without limitation, the Yield Maintenance Payment, to the extent such Yield Maintenance Payment is applicable; or
- (ii) Debtor satisfies each of the requirements for Defeasance of the Loan set forth in Section 18 of the Loan Agreement,

Mortgagee agrees to execute an instrument evidencing the satisfaction of all obligations under this Mortgage and releasing this Mortgage, which instrument shall be prepared and recorded at Debtor's or Remainderman's sole expense.

Section 7.02. *Limitation of Rights of Others.* Nothing in this Mortgage is intended or shall be construed to give to any person, other than Debtor, Remainderman and the holder of the Note, any legal or equitable right, remedy or claim under or in respect of this Mortgage or any covenant, condition or provision herein contained.

Section 7.03. *Severability.* In case any one or more of the provisions contained herein or in the Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Mortgage shall be construed as if such provision had never been contained herein or therein.

Section 7.04. *Notices; Amendments; Waiver.* All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Mortgage (collectively called "Notices") shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) the next Business Day after transmission, if delivered by facsimile, (c) the next Business Day, if delivered by express overnight delivery service, or (d) the fifth Business Day following the day of deposit of such notice with the United States Postal

Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Debtor: Country Stores Property III, LLC
c/o U.S. Realty Advisors, LLC
1370 Avenue of the Americas
New York, NY 10019
Attention: David M. Ledy
Telephone: (212) 581-4540
Facsimile: (212) 581-4950

With a copy to: Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299
Attention: Kenneth S. Hilton, Esq.
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

If to Remainderman: CS Remainder III, LLC
c/o U.S. Realty Advisors, LLC
1370 Avenue of the Americas
New York, NY 10019
Attention: David M. Ledy
Telephone: (212) 581-4540
Facsimile: (212) 581-4950

With a copy to: Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299
Attention: Kenneth S. Hilton, Esq.
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

If to Mortgagee: Dennis L. Ruben, Esq.
Executive Vice President, General Counsel and
Secretary
FFCA Funding Corporation
17207 North Perimeter Drive
Scottsdale, AZ 85255
Telephone: (480) 585-4500
Facsimile: (480) 585-2226

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Mortgage the giving of Notice is required, the giving thereof may be waived in writing at any

time by the person or persons entitled to receive such Notice. Except as in this Mortgage otherwise expressly provided, (i) this Mortgage may not be modified except by an instrument in writing executed by Debtor, Remainderman and Mortgagee and (ii) no requirement hereof may be waived at any time except by a writing signed by the party against whom such waiver is sought to be enforced, nor shall any waiver be deemed a waiver of any subsequent breach or default.

Section 7.05. Counterparts. This Mortgage may be executed in any number of counterparts and each thereof shall be deemed to be an original; and all such counterparts shall constitute but one and the same instrument.

Section 7.06. Successors and Assigns. All of the provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, to the same extent as if each such successor and assign were in each case named as a party to this Mortgage. Wherever used, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 7.07. Headings. The headings appearing in this Mortgage have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Mortgage.

Section 7.08. Security Agreement. With respect to the Personal Property or any portion of the Mortgaged Property which constitutes fixtures or other property governed by the UCC, this Mortgage shall constitute a security agreement between Debtor, as the debtor and Mortgagee, as the secured party, and Debtor and Remainderman hereby grant to Mortgagee a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Mortgagee hereunder, Mortgagee shall have all of the rights conferred upon secured parties by the UCC. Debtor and Remainderman will execute and deliver to Mortgagee all financing statements that may from time to time be required by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all costs and expenses of any searches required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that if upon an Event of Default Mortgagee should proceed to dispose of such property in accordance with the provisions of the UCC, 10 days' notice by Mortgagee to Debtor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Mortgagee may at its option dispose of such property in accordance with Mortgagee's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC.

Debtor and Remainderman shall give advance notice in writing to Mortgagee of any proposed change in Debtor's or Remainderman's name, identity, or business form or structure and will execute and deliver to Mortgagee, prior to or concurrently with the occurrence of any such change, all additional financing statements that Mortgagee may require to establish and maintain the validity and priority of Mortgagee's security interest with respect to any of the Mortgaged Property described or referred to herein.

Section 7.09. Effective as a Financing Statement and Fixture Filing. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property (including said fixtures) is situated. This Mortgage shall also be deemed to constitute a continuously perfected fixture filing to be filed of record in the office of the Recorder of the county in which the Premises is located (the "County"), pursuant to IC 26-1-9-402 and 26-1-9-403. Part of the Mortgaged Property is or may become fixtures. It is intended that, as to such fixtures, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of the filing of the Mortgage for record in the County. The information provided in this paragraph is provided in order that this Mortgage shall comply with the requirements of the UCC as enacted in the State, for a mortgage instrument to be filed as a financing statement. Debtor is the "debtor" and its name and mailing address are set forth in the preamble of this Mortgage. Remainderman is a "debtor", and its name and mailing address are set forth in the preamble of this Mortgage. The "secured party" is Mortgagee and its name and mailing address from which information concerning the security interests hereunder may be obtained is the address of Mortgagee as set forth in the introductory paragraph of this Mortgage. A statement describing the portion of the Mortgaged Property comprising of Personal Property that may now be or hereafter become fixtures hereby secured is set forth in the Granting Clauses hereof. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section. Debtor and Remainderman are the record owners of their respective interests in the Mortgaged Property.

Section 7.10. Characterization; Interpretation. It is the intent of the parties hereto that the business relationship created by the Note, this Mortgage and the other Loan Documents is solely that of creditor and debtor and has been entered into by both parties in reliance upon the economic and legal bargains contained in the Loan Documents. None of the agreements contained in the Loan Documents is intended, nor shall the same be deemed or construed, to create a partnership between Mortgagee and Debtor, or Mortgagee and Remainderman to make them joint venturers, to make Debtor an agent, legal representative, partner, subsidiary or employee of Mortgagee, nor to make Mortgagee in any way responsible for the debts, obligations or losses of Debtor.

Mortgagee, Remainderman and Debtor acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Mortgage after being fully advised by said counsel as to its effect and significance. This Mortgage shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party.

Section 7.11. Time of the Essence. Time is of the essence in the performance of each and every obligation under this Mortgage.

Section 7.12. Document Review. In the event Debtor or Remainderman makes any request upon Mortgagee or the attorneys of Mortgagee requiring Mortgagee to review and/or

prepare (or cause to be reviewed and/or prepared) any documents, plans, specifications or other submissions in connection with or arising out of this Mortgage, then, Debtor or Remainderman shall reimburse Mortgagee or its designee within 30 days following Mortgagee's demand therefor for all reasonable out-of-pocket costs and expenses incurred by Mortgagee in connection with such review and/or preparation plus a reasonable processing and review fee.

Section 7.13. Estoppel Certificate. (a) At any time, and from time to time, Debtor and Remainderman agree, promptly and in no event later than 20 days after a request from Mortgagee, to execute, acknowledge and deliver to Mortgagee a certificate in the form supplied by Mortgagee, certifying:

(1) to Debtor's knowledge, whether there are then any existing defaults by Debtor or Remainderman, and, if there are any such defaults, specifying the nature and extent thereof;

(2) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Debtor or Remainderman; and

(3) any other information reasonably requested by Mortgagee in connection with the Loan Agreement,

and confirming, based upon information provided by Mortgagee, the date to which principal and interest have been paid under the Note and the amount thereof then payable.

(b) At any time, and from time to time, Mortgagee agrees, promptly and in no event later than 20 days after a request from Debtor or Remainderman, to execute, acknowledge and deliver to Debtor or Remainderman, as applicable, a certificate in the form supplied by Debtor or Remainderman, as applicable, certifying: (1) the date to which principal and interest have been paid under the Note and the amount thereof then payable; (2) that no notice has been delivered by Mortgagee of any default under this Mortgage which has not been cured, except as to defaults specified in the certificate; (3) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Mortgagee; and (4) any other information reasonably requested by Debtor or Remainderman in connection with the Loan Agreement.

Section 7.14. Limitation of Interest. Notwithstanding anything to the contrary contained in any of the Loan Documents, the obligations of Debtor or Remainderman to Mortgagee under the Note, this Mortgage and any other Loan Documents are subject to the limitation that payments of interest and late charges to Mortgagee shall not be required to the extent that receipt of any such payment by Mortgagee would be contrary to provisions of applicable law limiting the maximum rate of interest that may be charged or collected by Mortgagee. The portion of any such payment received by Mortgagee that is in excess of the maximum interest permitted by such provisions of law shall be credited to the principal balance of the Note or if such excess portion exceeds the outstanding principal balance of the Note, then such excess portion shall be refunded to Debtor or Remainderman. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and/or spread

throughout the full term of the Note (including, without limitation, the period of any renewal or extension thereof) so that interest for such full term shall not exceed the maximum amount permitted by applicable law.

Section 7.15. Forum Selection; Jurisdiction; Venue; Choice of Law. Each of Debtor and Remainderman acknowledges that this Mortgage was substantially negotiated in the State of Arizona, all payments under the Loan Documents will be delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of New York. For purposes of any action or proceeding arising out of this Mortgage, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of New York. Each of Debtor and Remainderman consents that it may be served with any process or paper by registered mail or by personal service within or without the State of New York in accordance with applicable law. Furthermore, each of Debtor and Remainderman waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. The creation of this Mortgage and the rights and remedies of Mortgagee with respect to the Mortgaged Property, as provided herein and by the laws of the State, shall be governed by and construed in accordance with the internal laws of the State without regard to principles of conflict of law. With respect to other provisions of this Mortgage, this Mortgage shall be governed by the internal laws of the State of New York, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Mortgagee to commence any proceeding in the federal or state courts located in the State to the extent Mortgagee deems such proceeding necessary or advisable to exercise remedies available under the Mortgage or the other Loan Documents, nor, to the extent Mortgagee does so, limit or restrict the rights of Debtor or Remainderman to assert a counterclaim in any such proceeding.

Section 7.16. Waiver of Jury Trial and Punitive, Consequential and Indirect Damages. MORTGAGEE, BY ACCEPTING THIS MORTGAGE, AND DEBTOR AND REMAINDERMAN HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST ANY OF THE OTHERS OR THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE, THE RELATIONSHIP OF MORTGAGEE, DEBTOR AND REMAINDERMAN, DEBTOR'S OR REMAINDERMAN'S USE OR OCCUPANCY OF THE MORTGAGED PROPERTY, ANY CLAIM FOR INJURY OR DAMAGE, AND/OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, MORTGAGEE, DEBTOR AND REMAINDERMAN HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL AND INDIRECT DAMAGES FROM ANY OF THE OTHERS OR ANY OF THE OTHERS' AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO

ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST ANY OF THE OTHERS OR ANY OF THE OTHERS' AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY THE PARTIES OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

Section 7.17. *Transfer of Loan.* Mortgagee may, at any time, sell, transfer or assign the Note, this Mortgage and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement as contemplated by the Loan Agreement.

Section 7.18. *Exculpation.* (a) Notwithstanding anything to the contrary contained in this Mortgage or any other Loan Documents, except as otherwise provided in this Section 7.18, Mortgagee shall not enforce the liability and obligation of Debtor to pay the indebtedness evidenced by the Note nor shall Mortgagee enforce the obligation of Debtor or Remainderman to pay any other sums owing or to perform and observe the obligations contained in this Mortgage, the Note or in any other Loan Documents, as applicable, by any action or proceeding wherein a money judgment or personal liability shall be sought against Debtor or Remainderman, any beneficiaries, members, partners, shareholders, officers, directors or employees of Debtor or Remainderman or any partners, beneficiaries, officers, shareholders, members, directors, employees of any thereof (collectively, the "Released Parties"), and Mortgagee, by accepting this Mortgage, the Note and the other Loan Documents, agrees that it shall not, except as otherwise provided in this Section 7.18, sue for, seek or demand any deficiency judgment against any of the Released Parties in any action or proceeding under, or by reason of, or in connection with this Mortgage, the Note or the other Loan Documents; provided that Mortgagee may sell the Mortgaged Property pursuant to the power of sale herein conferred or Mortgagee may bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Mortgagee to enforce and realize upon the Note, this Mortgage, the other Loan Documents, and the Mortgaged Property, the Rents and any other collateral given to Mortgagee pursuant to this Mortgage and the other Loan Documents, provided, however, that any judgment in any action or proceeding shall be enforceable against Debtor and Remainderman only to the extent of their respective interests in the Mortgaged Property, the Rents and any other collateral given to Mortgagee. In no event shall cash flow or excess proceeds distributed to Debtor by Mortgagee pursuant to Section 6.09 of this Mortgage constitute Rents subsequent to such distribution.

(b) The provisions of Section 7.18(a) shall not (i) constitute a waiver, release or impairment of the Obligations; (ii) impair the right of Mortgagee to name Debtor and/or Remainderman as a party defendant in any action or suit for judicial or non-judicial foreclosure and sale under this Mortgage as long as no deficiency judgement is sought against any of the

Released Parties; (iii) affect the validity or enforceability of any indemnity, guaranty, lease or similar instrument made in connection with the Note, this Mortgage or the other Loan Documents; (iv) impair the right of Mortgagee to obtain the appointment of a receiver; or (v) impair the enforcement of the assignment of leases and rents set forth in Section 6.09 of this Mortgage.

(c) Notwithstanding the provisions of this Section to the contrary, Debtor and Remainderman shall be personally liable to Mortgagee for any losses incurred by Mortgagee as a result of (i) fraud or intentional misrepresentation by any of the Released Parties in connection with the execution and delivery of the Note, this Mortgage or the other Loan Documents; (ii) the misapplication or misappropriation by any of the Released Parties of Rents actually received by any of the Released Parties after the occurrence of an Event of Default; (iii) the misappropriation by any of the Released Parties of tenant security deposits or Rents collected in advance and actually received by any of the Released Parties; (iv) the misappropriation by any of the Released Parties of insurance proceeds or condemnation awards actually received by any of the Released Parties; (v) any affirmative act of actual waste, willful damage or arson by any of the Released Parties; or (vi) the Mortgaged Property or any portion thereof or interest therein becoming an asset in (A) a voluntary bankruptcy or insolvency proceeding commenced by or on behalf of any of the Released Parties or (B) an involuntary bankruptcy or insolvency proceeding commenced by any of the Released Parties.

(d) Nothing herein shall be deemed to be a waiver of any right which Mortgagee may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Code to file a claim for the full amount of the Obligations secured by this Mortgage or to require that all collateral shall continue to secure all of the Obligations owing to Mortgagee in accordance with the Note, this Mortgage and the other Loan Documents.

Section 7.19 Suretyship Provisions. Remainderman acknowledges that this Mortgage secures the Obligations of Debtor, and that to the extent this Mortgage secures the Obligations of Debtor, Remainderman may be deemed to be a guarantor or surety with respect to Debtor, to the extent of Remainderman's interest in the Mortgaged Property or otherwise. Insofar as Remainderman may be a guarantor or surety, Remainderman agrees as follows:

(a) Remainderman hereby waives:

(i) all suretyship defenses and defenses in the nature thereof, including without limitation, any rights or defenses that are or may become available to Remainderman by reason of any statute or common law;

(ii) any right or claim of right to cause a marshalling of the assets of Debtor or of any collateral given by Debtor or otherwise securing the Loan from time to time, or to cause Mortgagee to proceed against any of the other security for the obligations of Debtor or any other obligor with respect to the Loan before proceeding under this Mortgage against Remainderman in any particular order;

(iii) all rights and remedies, including, but not limited to, any rights of subrogation, rights of contribution, reimbursement, exoneration or indemnification, pursuant to any agreement between Debtor and Remainderman, express or implied, or now or hereafter accorded by applicable law to indemnitors, guarantors, sureties or accommodation parties;

(iv) notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, or any and all notice of nonpayment, nonperformance, nonobservance or default, or other proof or notice of demand whereby to charge Remainderman therefor; and

(v) without limiting any of the foregoing, all rights and defenses that Remainderman may have because and to the extent the obligations of Debtor under the Loan Documents are secured by real property. Among other things, Mortgagee may foreclose on any real or personal property collateral without first foreclosing on any real or personal property collateral pledged by Debtor.

(b) The ability of Mortgagee to proceed against the collateral pledged by Remainderman under this Mortgage shall in no way be limited or impaired by, and Remainderman hereby assents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents (to which Remainderman is not a party) to or with Mortgagee by Debtor or any person who succeeds Debtor as owner of any collateral pledged by Debtor. In addition, the liability of Remainderman under this Mortgage shall in no way be limited or impaired by:

(i) any extensions of time for performance by Debtor required by any of the Loan Documents;

(ii) any amendment to or modification of any of the Loan Documents (other than this Mortgage) agreed to by Debtor;

(iii) the accuracy or inaccuracy of any of the representations or warranties made by or on behalf of Debtor under any of the Loan Documents, or otherwise;

(iv) the release of Debtor, any principal of Debtor, or any other person or entity, from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Mortgagee's voluntary act, or otherwise;

(v) the filing of any bankruptcy or reorganization proceeding by or against Debtor, any other party, or any principal of Debtor or any other party;

(vi) the release or substitution in whole or part of any collateral or security for the obligations of Debtor or any other party under the Loan Documents;

(vii) the release of any other party now or hereafter liable upon or in respect of this Mortgage or any of the other Loan Documents; or

(viii) the invalidity or unenforceability of all or any portion of any of the Loan Documents as to Debtor or any other party.

Any of the foregoing may be accomplished with or without notice to Remainderman.

(c) Except as may be otherwise specifically provided for in the Loan Agreement, any indebtedness of Debtor to Remainderman now or hereafter existing together with any interest thereon shall be, and such indebtedness is, hereby deferred, postponed and subordinated to the prior, full payment and satisfaction of all obligations of Debtor to Mortgagee under the Loan Agreement, the Note and the other Loan Documents.

Section 7.20 *Indiana Provisions.* Notwithstanding anything contained in this Mortgage to the contrary, subject to Section 7.18:

(a) Anything contained in IC 32-8-16-1.5 to the contrary notwithstanding, no waiver made by Debtor or Remainderman in this Mortgage, the Note, the Loan Agreement or any of the other Loan Documents shall constitute the consideration for or be deemed to be a waiver or release by Mortgagee or any judgment holder of the Obligations of the right to seek a deficiency judgment against the Debtor, Remainderman or any other person or entity who may be personally liable for the Obligations, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Mortgagee for its own behalf and its successors and assigns.

(b) Mortgagee shall be entitled to all rights and remedies that a mortgagee would have under State law or in equity in addition to all rights and remedies it may have hereunder. Where any provision of this Mortgage is inconsistent with any provision of the laws of the State regulating the creation or enforcement of a lien or security interest in real or personal property including, but not by way of limitation, IC 32-15-6 Foreclosure of Mortgages, the provisions of State law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with State law. Should applicable State law confer any rights or impose any duties inconsistent with or in addition to any of the provisions of this Mortgage, the affected provisions of this Mortgage shall be considered amended to conform to such applicable law, but all other provisions hereof shall remain in full force and effect without modification. To the extent the laws of the State limit (i) the availability of the exercise of any of the remedies set forth herein, including without limitation the remedies involving a power of sale on the part of Mortgagee and the right of Mortgagee to exercise self-help in connection with the enforcement of the terms of this Mortgage, or (ii) the enforcement of waivers and indemnities made by Debtor or Remainderman, such remedies, waivers, or indemnities shall be exercisable or enforceable, any provisions in this Mortgage to the contrary notwithstanding, if, and to the extent, permitted by the laws in force at the time of the exercise of such remedies or the enforcement of such waivers or indemnities without regard to the enforceability of such remedies, waivers or indemnities at the time of the execution and delivery of this Mortgage.

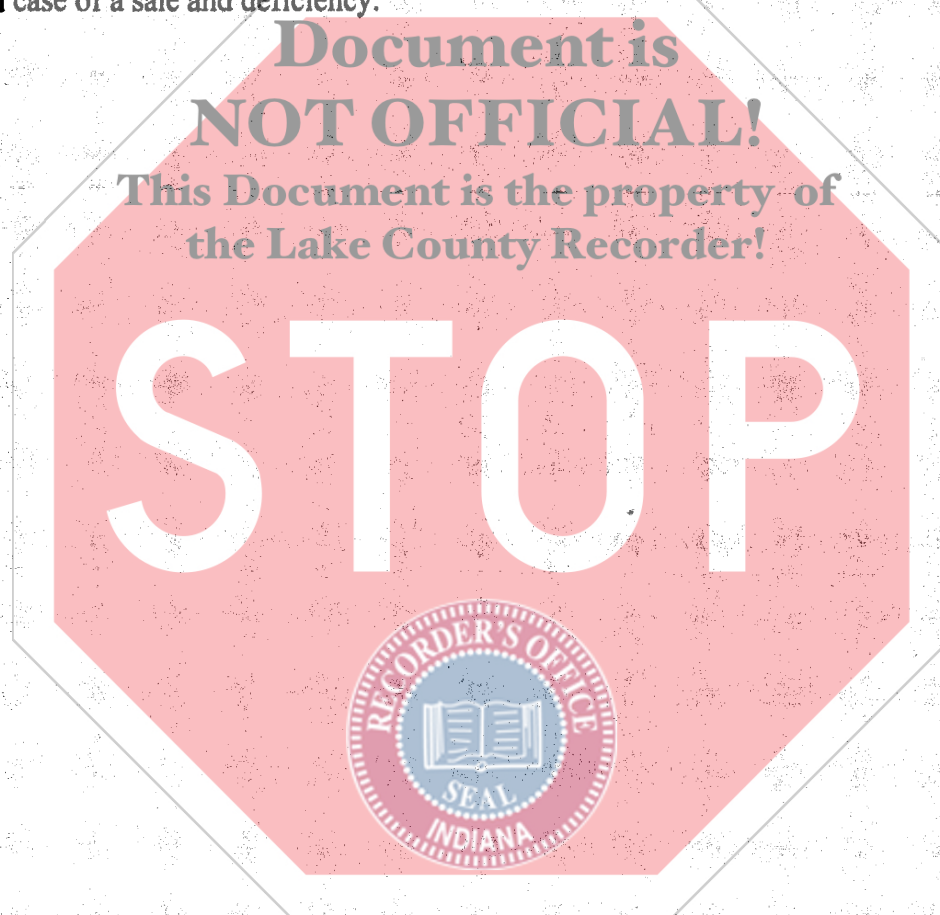
(c) Upon the occurrence and during the continuance of an Event of Default, in the event Debtor or Remainderman fails to sign UCC financing statements upon Mortgagee's request, Mortgagee is hereby authorized by Debtor and Remainderman to execute and file financing statements signed only by a representative of Mortgagee covering the security interest of Mortgagee in any of the Personal Property and/or fixtures constituting part of the Mortgaged Property.

(d) Notwithstanding anything contained in this Mortgage to the contrary, this Mortgage shall secure (i) a maximum amount not exceeding \$31,256,644.29, exclusive, of any items described in (ii) below, including any additional advances made, from time to time after the date hereof pursuant to this Mortgage or the other Loan Documents, (ii) all other amounts payable by Debtor, or advanced by Mortgagee for the account, or on behalf, of Debtor, pursuant to the other Loan Documents, including amounts advanced with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums and other costs and impositions incurred for the protection of the Mortgaged Property to the same extent as if the future obligations and advances were made on the date of execution of the Mortgage; and (iii) future modifications, extensions, and renewals of the Obligations and/or the Loan Documents secured by this Mortgage. Pursuant to IC 32-8-11-9, the lien of this Mortgage with respect to any advances made, from time to after the date hereof pursuant to this Mortgage and the Other Loan Documents, modifications, extensions and renewals referred to herein and made from time to time shall have the same priority to which this Mortgage otherwise would be entitled as of the date the Mortgage is executed and recorded without regard to the fact that any such advance, modification, extension or renewal may occur after the Mortgage is executed.

(e) None of the Mortgaged Property is within the definition of the term "property" contained in Section 6 (IC 13-11-2-174) of the Indiana Responsible Property Transfer Law ("IRPTL") (IC 13-25-3). Debtor and Remainderman shall observe, perform and comply with the requirements of IRPTL in connection with this Mortgage and the transaction evidenced by this Mortgage.

(f) Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Mortgaged Property, and Debtor and Remainderman consent to the appointment of such receiver for the purpose of preserving and maximizing the value of the Mortgaged Property. Such receiver shall have all of the usual powers and duties of receivers pursuant to IC 34-48, as amended from time to time including, without limitation, the power: (a) to collect the rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Debtor or Remainderman, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Obligations hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be

binding upon Debtor, Remainderman and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Obligations secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.



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IN WITNESS WHEREOF, Debtor and Remainderman have caused this Mortgage to be executed and delivered this Mortgage as of the day and year first above written.

DEBTOR:

COUNTRY STORES PROPERTY III, LLC, a
Delaware limited liability company

By Country Stores Equity III, LLC, a Delaware
limited liability company, member

By


Jamie Elliott
Vice President

Tax ID No: 13-4126753

Document is
NOT OFFICIAL!
This Document is the property of
the Lake County Recorder!

STOP

REMAINDERMAN:

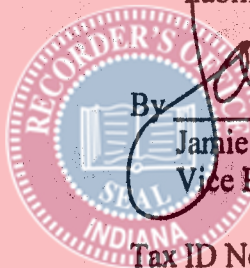
CS REMAINDER III, LLC, a Delaware
limited liability company

By CS Remeq III, LLC, a Delaware limited
liability company, member

By


Jamie Elliott
Vice President

Tax ID No: 13-4126778




This instrument prepared by:


Mark R. Nethers, Esq.
Kutak Rock LLP
8601 North Scottsdale Road
Scottsdale, AZ 85253
Telephone: (480) 429-5000
Telecopy: (480) 492-5001

01-274251.01
FFCA No. 8001-1399
Contract No. 5818
Unit No. 369
Hammond, IN

POWER OF ATTORNEY

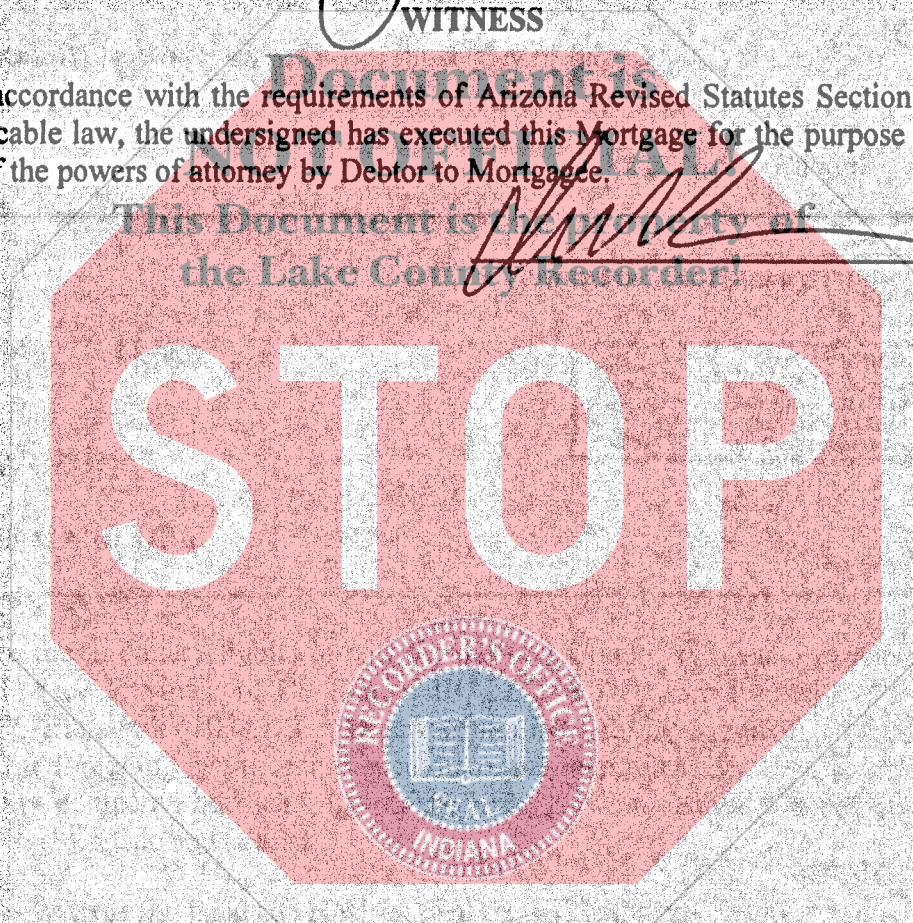
Mortgagee may act as attorney-in-fact or otherwise on behalf of Debtor pursuant to Sections 3.04, 6.02 and 6.09(b) of this Mortgage. This power of attorney is coupled with an interest, is durable and is not affected by subsequent disability or incapacity of the principal or lapse of time.


Witness


Debtor

WITNESS

In accordance with the requirements of Arizona Revised Statutes Section 14-5506 and other applicable law, the undersigned has executed this Mortgage for the purpose of witnessing the grant of the powers of attorney by Debtor to Mortgagee.



STATE OF ARIZONA]
] SS.
COUNTY OF MARICOPA]

Before me, a Notary Public in and for the said County and State, personally appeared Jamie Elliott, Vice President of Country Stores Equity III, LLC, a Delaware limited liability company, member of Country Stores Property III, LLC, a Delaware limited liability company, who acknowledged execution of the foregoing instrument as such managing member acting for and on behalf of said limited liability company, and who, having been duly sworn, stated that any representations therein contained are true and correct.

Witness my hand and Notarial Seal this 27 day of July, 2000.

Janice S. Bott
(Signature of Notary Public)

Janice S. Bott
(Printed name of Notary Public)

Resident of Maricopa County.



STATE OF ARIZONA]
] SS.
COUNTY OF MARICOPA]

Before me, a Notary Public in and for the said County and State, personally appeared Jamie Elliott, Vice President of CS Remeq III, LLC, a Delaware limited liability company, member of CS Remainder III, LLC, a Delaware limited liability company, who acknowledged execution of the foregoing instrument as such managing member acting for and on behalf of said limited liability company, and who, having been duly sworn, stated that any representations therein contained are true and correct.

Witness my hand and Notarial Seal this 27 day of July, 2000.

Janice S. Bott
(Signature of Notary Public)

Janice S. Bott
(Printed name of Notary Public)

Resident of Maricopa County.

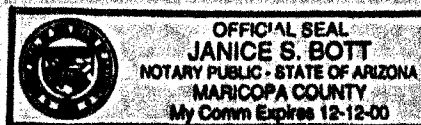
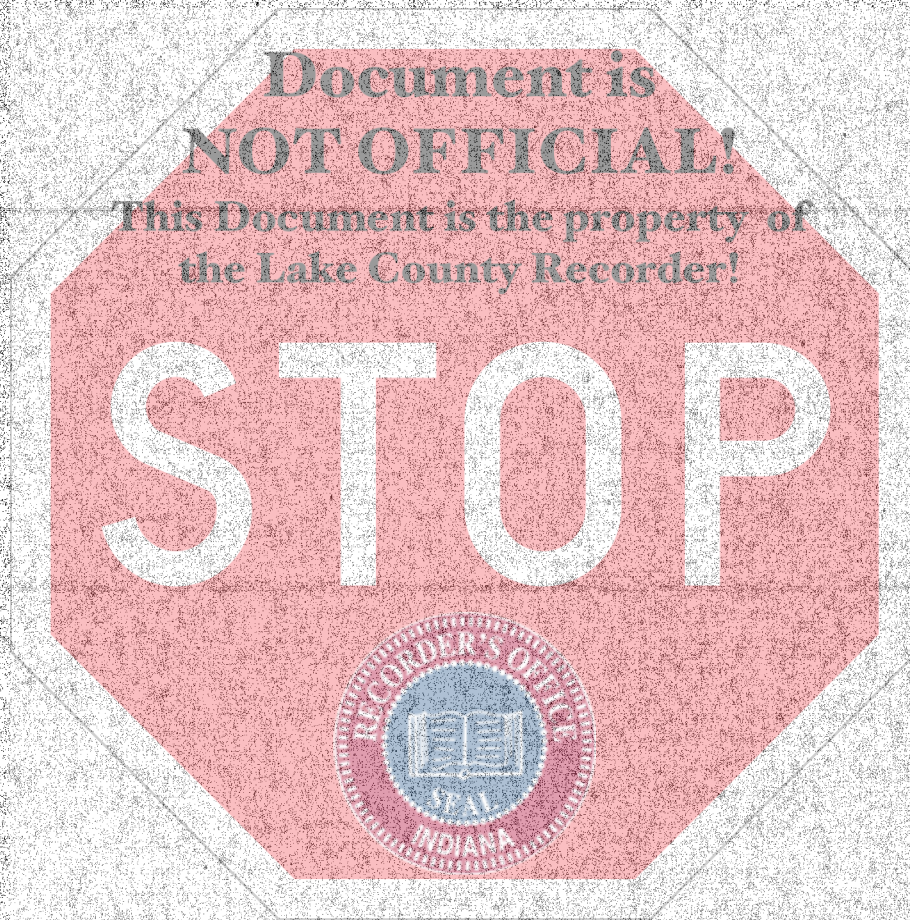


EXHIBIT A

LEGAL DESCRIPTION

Lot 4, Whiteco First Addition, to the City of Hammond, as shown in Plat Book 82, page 95, in Lake County, Indiana.



FFCA #8001-1399
Unit #369
Hammond, IN

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