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MICHELLE J. ...  
RECORDER

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PREPARED BY AND TO BE RETURNED TO:

Kutak Rock LLP  
1801 California Street, Suite 3100  
Denver, Colorado 80202  
Attn: Peggy A. Richter, Esq.

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

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of 29<sup>th</sup> day of April, 2005, by SPIRIT MASTER HOLDINGS SPE, LLC, a Delaware limited liability company ("Grantor"), whose address is 14631 N. Scottsdale Road, Suite 200, Scottsdale, Arizona 85254-2711, to and for the benefit of CITIBANK, N.A., whose address is 388 Greenwich Street, Floor 14, New York, NY 10013, in its capacity as collateral agent under the Collateral Agency Agreement dated as of April 27, 2005, as the same may be amended from time to time (as the same may be amended, the "Collateral Agency Agreement"), as agent for the Originators and Noteholders from time to time under the terms of the Collateral Agency Agreement and as described in any Loan Agreement or Indenture (any such Originators and/or Noteholders and their respective successors and assigns shall be referred to herein as the "Lender").

Document is  
PRELIMINARY STATEMENT:  
NOT OFFICIAL!

The capitalized terms used in this Mortgage, if not elsewhere defined in the first paragraph above or in Article I of this Mortgage shall have the meaning given such terms in the Collateral Agency Agreement. Grantor holds the fee simple interest in the Trust Estate, subject to the Permitted Exceptions. Grantor is executing this Mortgage for the purpose of granting the interest of Grantor in and to the Trust Estate (as defined in the Granting Clauses below) as security for the payment of the Obligations including, without limitation, repayment of all amounts due under the Note (as such Note, together with any amendments thereto, may be extended, prepaid or modified as provided therein). The Trust Estate 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.

STOP

THIS DOCUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING AND SHOULD BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF THE GRANTOR AS DEBTOR, AND THE COLLATERAL AGENT, AS SECURED PARTY.



HOLD FOR MERIDIAN TITLE CORP

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ca # 2933

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4590 West 5th Avenue, Gary, IN  
File No. 5182/02-15

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## GRANTING CLAUSES:

Grantor, 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, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto the Lender and to its successors and assigns WITH POWER OF SALE AND RIGHT OF ENTRY, for the benefit and security of Collateral Agent as agent for the Lender, and its successors and assigns, all of Grantor's estate, right, title and interest in, to and under the Land (hereinafter defined), the Improvements (hereinafter defined) and any and all of the following property (together with the Land and the Improvements, collectively the "Trust Estate"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

### Trust Estate, Rents and Derivative Interests

The Trust Estate, all rents, issues, profits, royalties, income and other benefits derived by Grantor from the property comprising the Trust Estate and the Personal Property (as defined below) or any portion thereof and any and all lump-sum payments made in connection with the early termination of any Lease (collectively, the "Rents"); all leases or subleases covering the Trust Estate and the Personal Property or any portion thereof now or hereafter existing or entered into (collectively, "Leases" and individually, a "Lease"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature and all guaranties relating to the Leases; all options to purchase or lease the Trust Estate and the Personal Property or any portion thereof or interest therein, and any greater estate in the Trust Estate; all interests, estate or other claims, both in law and in equity, with respect to the Trust Estate and the Personal Property or any portion thereof; 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 Trust Estate and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Trust Estate;

### Personal Property

All tangible personal property owned by the Grantor and now or at any time hereafter located on or at the Trust Estate or used in connection therewith, including, without limitation, all machinery, appliances, furniture, equipment and inventory (the "Personal Property"), but excluding any Personal Property owned by the Lessee under any Lease other than as pledged as security under such Lease;

### Intangibles

All existing and future accounts, contract rights, including, without limitation, with respect to equipment leases, general intangibles, files, books of account, agreements, franchise, license and/or area development agreements, distributor agreements, Indemnity 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 Trust Estate and the Personal Property or any portion thereof, whether now existing or entered into or obtained after the date hereof, all existing and future names under or by which the property comprising the Trust Estate and the Personal 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 Trust Estate and the Personal Property or any portion thereof; and

### Claims and Awards

All the claims or demands with respect to the Trust Estate and the Personal Property or any portion thereof, including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto, claims under any indemnity agreement, including, without limitation, any indemnity agreement executed for the benefit of the Trust Estate and the Personal Property or any portion thereof with respect to Hazardous Materials or USTs, 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 Trust Estate and the Personal Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The Trust Estate shall include all products and proceeds of the foregoing property.

TO HAVE AND TO HOLD the Trust Estate hereby granted or mortgaged or intended to be granted or mortgaged, unto Collateral Agent, and its successors 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 Primary Note together with all extensions, renewals, amendments and modifications thereof;
- (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 contained in the Loan Documents, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and
- (iii) Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations under any Loan Agreement and any other Note in addition to the Primary Note contemplated in (i) above, including, without limitation all Loans and Notes issued under an Indenture from time to time.

It is the intention of the parties hereto that the Trust Estate shall secure all of the Obligations presently or hereafter owed, and that the priority of the security interest created by this Mortgage for all such Obligations shall be controlled by the time of proper recording of this Mortgage and shall perfect all additional amounts funded under any Loan Agreement as a future obligatory advance. In addition, this Mortgage shall also secure unpaid balances of advances made (1) under any Indenture for payment of any fees and expenses of the Indenture Trustee or otherwise in connection with the obligations of the Grantor's obligations under the Indenture, (2) with respect to the Trust Estate for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Trust Estate, together with interest thereon until paid at the Default Rate, all as contemplated in this Mortgage, (3) under the terms of the Collateral Agency Agreement, all of which shall constitute a part of the Obligations secured hereby. This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Trust Estate subsequent to the date of recording of this Mortgage, that until this Mortgage is released, any debt owed the Lender by Grantor, including advances and re-advances made by Lender subsequent to the recording of this Mortgage, shall be secured with the priority afforded this Mortgage as recorded.

Notwithstanding anything herein to the contrary, the total principal amount (but not including interest thereon or collection costs and advances with respect thereto) of the Obligations secured by this Mortgage shall not exceed \$746,709 unless otherwise agreed to in the applicable Note or any Loan Agreement or any amendment thereto. The Loan may not be prepaid in whole or in part except as provided under the terms of the applicable Note and/or Loan Agreement; provided, however, no such prepayment (whether voluntary or involuntary) shall reduce the amount secured by this Mortgage until such time as the Outstanding Obligations are equal to or less than \$746,709.

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 Trust Estate is to be held and disposed of by Collateral Agent, upon and subject to the provisions of this Mortgage.

**ARTICLE I**  
**DEFINED TERMS**

**Section 1.01. Incorporation of Other Definitions.** Capitalized terms used in this Mortgage, if not elsewhere parenthetically defined in the preamble hereto or Section 1.02 of this Mortgage, shall have the meaning given such terms in the Collateral Agency Agreement

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**Section 1.02. Definitions.** 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):

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

“*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 the Lender, the Indenture Trustee and Collateral Agent and any person or entity who is or will have been involved in the origination of the Loan, 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, 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 Trust Estate, 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 Collateral Agent’s or the Lender’s assets and business).

“*Indenture*” means, collectively, one or more base indentures between Grantor and an Indenture Trustee, and including any supplemental indentures thereto, evidencing a Loan for the benefit of the Lender.

“*Indenture Trustee*” means an indenture trustee serving in such capacity under the terms of an Indenture.

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

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

“*Loan*” means, collectively, the loan evidenced by the Primary Note and together with the loans made from time to time by a Lender to Grantor under the terms of a Loan Agreement and which are evidenced by a Note and secured by this Mortgage under the terms of any cross-collateralization provisions in such Loan Agreement.

“*Loan Agreement*” means, collectively, the agreement, agreements, and any amendments thereto entered into from time to time between Grantor and the Lender and any and all Indentures between the Grantor and an Indenture Trustee for the benefit of the Lender, in each case, pursuant to which the Lender has agreed to make loans and/or loan advances to Grantor for the financing by Grantor of the Trust Estate and other commercial real estate owned by Grantor identified in any Loan Agreement secured hereby, including, without limitation, (i) certain loans and loan agreements entered into from time to time by and between the Grantor, as borrower, and an affiliate of Grantor (or such affiliate’s predecessor holder of such loans), as Lender, and (ii) certain loan notes and loan advances made from time to time and issued by Grantor under one or more Indentures.

“*Loan Documents*” means the Primary Note, this Mortgage and any other document or instrument evidencing or securing the Primary Note.

“*Losses*” has the meaning set forth in Section 7.09.

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

“*Net Award*” has the meaning set forth in Section 4.01(b)(v).

“*Net Insurance Proceeds*” has the meaning set forth in Section 4.01(a)(iii).

"*Note*" means, collectively, the Primary Note and all other promissory note or notes issued from time to time and delivered by Grantor to or for the benefit of the Lender or its designee pursuant to a Loan Agreement and evidencing the Obligations secured by this Mortgage, and any amendments, extensions or modifications thereof.

"*Noteholder*" means, initially, the originator or the holder of the Note as of the date of this Mortgage and, thereafter any holder of the Note from time to time, including any holder under any collateral assignment of the Note and any Indenture Trustee, in each case, for the benefit of the Lender.

"*Notices*" has the meaning set forth in Section 7.04.

"*Obligations*" has the meaning set forth in the Granting Clauses.

"*Outstanding Obligations*" means the sum of the outstanding principal balance of the Note and any other amounts due under the Obligations secured under this Mortgage, all accrued but unpaid interest on the Note, all other sums due under any Note, Loan Agreement and Indenture, all sums advanced by Collateral Agent under this Mortgage and all other sums due and payable under this Mortgage and the other Loan Documents corresponding to the Trust Estate.

"*Partial Taking*" has the meaning set forth in Section 4.01(b)(ii).

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

"*Primary Note*" means the promissory note made by Grantor to and for the benefit of the Lender in the original principal amount of \$27,270,000 dated as of the date of this Mortgage as the same may be amended, restated, consolidated, extended or otherwise modified from time to time; except, however, the Obligations secured by this Mortgage is limited to the amount of \$497,806.

"*Prohibited Transaction*" has the meaning set forth in Section 3.08.

"*Recordable Documents*" has the meaning set forth in Section 3.01.

"*Rents*" has the meaning set forth in the Granting Clause.

"*Restoration*" means the restoration, replacement or rebuilding of the Trust Estate, or any part thereof, as nearly as possible to its value, condition and character immediately prior to any damage, destruction or Taking.

"*State*" means the State in which the Trust Estate is located.

"*Taking*" has the meaning set forth in Section 4.01(b)(i).

"*Total Taking*" has the meaning set forth in Section 4.01(b)(ii).

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

ARTICLE II  
INCORPORATION OF REPRESENTATIONS,  
WARRANTIES AND COVENANTS OF GRANTOR

The representations, warranties and covenants of Grantor set forth in any Note, Loan Agreement and Indenture are incorporated by reference into this Mortgage as if stated in full in this Mortgage. All representations and warranties as incorporated herein shall be deemed to have been made as of the date of this Mortgage and all representations, warranties and covenants incorporated herein shall survive the execution and delivery of this Mortgage.

## ARTICLE III

### COVENANTS OF GRANTOR

In addition to any covenants of Grantor set forth in any Note, Loan Agreement, Indenture or any other Loan Document, Grantor hereby covenants to Collateral Agent and agrees as follows until the Obligations are satisfied in full:

**Section 3.01. Recording.** Grantor shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Collateral Agent 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 lien or security interest, as applicable, hereof upon the Trust Estate and to publish notice of and protect the validity of the Recordable Documents. Grantor 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) requested by Collateral Agent for carrying out the intention of, or facilitating the performance of, this Mortgage. Collateral Agent shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Grantor to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), which appointment is coupled with an interest; provided, however, Collateral Agent shall not exercise such power of attorney unless Grantor has first failed to comply with this Section, and provided, further, that 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, Grantor 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 3.02. Use; Maintenance and Repair; Leases.** The Trust Estate shall be used solely as contemplated in the Lease. Grantor shall not, and shall not permit any lessee under any Lease, to convert the Trust Estate to an alternative use while this Mortgage is in effect without Collateral Agent's consent, which consent shall not be unreasonably withheld. Collateral Agent may consider any or all of the following in determining whether to grant its consent, without being deemed to be unreasonable: (i) whether the converted use will be consistent with the highest and best use of the Trust Estate, and (ii) whether the converted use will increase Collateral Agent's risks or decrease the value of the Trust Estate. Grantor shall comply with the Loan Documents in connection with any Lease and, if prohibited by the Loan Documents, shall not (i) enter into any Leases without Collateral Agent's prior written consent; (ii) modify or amend the terms of any Lease without Collateral Agent's prior written consent; (iii) 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, without Collateral Agent'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 Collateral Agent's prior written consent; or (v) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Collateral Agent, without Collateral Agent'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 Collateral Agent otherwise consents or elects, Grantor's title to the Trust Estate and the leasehold interest in the Trust Estate created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Grantor, Collateral Agent or any other person by purchase, operation of law, foreclosure of this Mortgage, sale of the Trust Estate pursuant to this Mortgage or otherwise. Grantor shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Grantor contained in any Lease; (ii) give prompt notice to Collateral Agent of any claim or event of default under any Lease given to or by Grantor, 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 Grantor, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Collateral Agent; (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) 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.

**Section 3.03. *After-Acquired Property.*** All right, title and interest of Grantor in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to, the Trust Estate, hereafter acquired by or released to Grantor, immediately upon such acquisition or release and without any further granting by Grantor, shall become part of the Trust Estate and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Grantor and specifically described in the Granting Clauses hereof. Grantor shall execute and deliver to Collateral Agent any further assurances, mortgages, grants, conveyances or assignments thereof as the Collateral Agent may reasonably require to subject the same to the lien hereof.

**Section 3.04. *Taxes, Assessments, Charges and Other Impositions.*** (a) Grantor shall do or cause to be done everything necessary to preserve the lien hereof without expense to Collateral Agent, including, without limitation, enforcing the payment obligations of the lessee under the Lease. Grantor shall pay or cause to be paid prior to delinquency any and all taxes, assessments, water and sewer charges, and other charges now or hereafter assessed against the Trust Estate.

(b) Grantor may, at its own expense, contest or cause to be contested, 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) Grantor shall provide written notice to Collateral Agent of any contest involving more than \$10,000.00, (ii) such proceeding shall suspend the collection thereof from the Trust Estate or any interest therein, (iii) neither the Trust Estate nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (iv) no Event of Default has occurred and is continuing, and (v) Grantor shall have deposited with Collateral Agent adequate reserves for the payment of the taxes, together with all interest and penalties thereon, unless paid in full under protest, or Grantor shall have furnished the security as may be required in the proceeding or as may be required by Collateral Agent to insure payment of any contested taxes.

**Section 3.05. *Insurance.*** Grantor shall maintain, with respect to the Trust Estate, at its sole expense, or cause the lessee under the Lease to maintain at such lessee's expense, the types and amounts of insurance required by the Lease.

**Section 3.06. *Impound Account.*** Upon the occurrence of an Event of Default under this Mortgage or any other Loan Document, Collateral Agent may require Grantor to pay to Collateral Agent 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, Collateral Agent will estimate the amounts needed for such purposes and will notify Grantor to pay the same to Collateral Agent 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, Grantor shall pay the same to Collateral Agent on demand. Grantor shall advise Collateral Agent of all taxes and insurance bills which are due and shall cooperate fully with Collateral Agent in assuring that the same are paid. Collateral Agent 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 Collateral Agent. Interest or other gains from such funds, if any, shall be the sole property of Collateral Agent. If an Event of Default shall occur subsequent to Collateral Agent requiring the establishment of an impound account pursuant to this Section, Collateral Agent may apply all impounded funds against any sums due from Grantor to Collateral Agent. Collateral Agent shall give to Grantor upon request an annual accounting showing all credits and debits to and from such impounded funds received from Grantor.

**Section 3.07. *Advances by the Lender.*** If the Grantor fails to perform any covenant of the Grantor contained herein, the Lender or Collateral Agent may make advances to perform any of the covenants contained in this Mortgage on Grantor's behalf and all sums so advanced (and all sums advanced pursuant to any other provision hereof) by the Lender or Collateral Agent shall be secured hereby. Grantor 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, and at Collateral Agent's election, the Lender

or Collateral Agent may add the amount of such advance to the principal balance of the Primary Note secured by this Mortgage.

**Section 3.08. Negative Covenants.** Without limiting the terms and conditions of Section 5.2 of the Loan Agreement, Grantor agrees that Grantor shall not, without the prior written consent of Collateral Agent (each, a "Prohibited Transaction"), sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Trust Estate or any part thereof or permit the Trust Estate or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than sales from inventory in the ordinary course of business and the replacement of obsolete Personal Property. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Grantor agrees to sell the Trust Estate or any part thereof for a price to be paid in installments; and (b) an agreement by Grantor leasing all or any part of the Trust Estate (other than the Lease) or a sale, assignment or other transfer of, or the grant of a security interest in, Grantor's right, title and interest in and to any Lease or any Rents.

Collateral Agent's consent to a Prohibited Transaction shall be subject to the satisfaction of such conditions as Collateral Agent shall determine in its sole discretion, including, without limitation, (i) Grantor having executed and delivered such modifications to the terms of this Mortgage and the other Loan Documents as Collateral Agent shall request, and (ii) the proposed transferee having assumed the Note, this Mortgage and the other Loan Documents (as modified pursuant to clause (i) above). Collateral Agent 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 Grantor's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate without Collateral Agent's consent, as required hereunder. The provisions of this Section shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate regardless of whether voluntary or not, or whether or not Collateral Agent has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate.

**Section 3.09. Priority of Loan Agreement.** In the event that any Loan Agreement provides for any covenants or requirements that are inconsistent with the provisions of this Article III, the Loan Agreement provisions shall control.

**ARTICLE IV**

**POSSESSION, USE AND RELEASE OF THE MORTGAGED PROPERTY**

**Section 4.01. Casualty or Condemnation.** Grantor, immediately upon obtaining knowledge of any casualty to any portion of the Trust Estate or of any proceeding or negotiation for the taking of all or any portion of the Trust Estate in condemnation or other eminent domain proceedings, shall notify Collateral Agent of such casualty, proceeding or negotiation. Unless Grantor is required under the Lease to restore the Trust Estate or pay any Proceeds (defined below) to the lessee under the Lease, any award, compensation or other payment resulting from such casualty or condemnation or eminent domain proceeding, as applicable, shall be applied as set forth below (the "Proceeds"). If Grantor is required under the terms of the Lease to restore the Trust Estate or pay any Proceeds to the lessee under the Lease, the Proceeds shall be applied as provided in the Lease. Collateral Agent may participate in any condemnation or eminent domain proceeding, and Grantor will deliver or cause to be delivered to Collateral Agent all instruments reasonably requested by Collateral Agent to permit such participation.

(a) **Casualty.** (i) In the event of any material damage to or destruction of the Trust Estate or any part thereof, Grantor will promptly give written notice to Collateral Agent, generally describing the nature and extent of such damage or destruction. No damage to or destruction of the Trust Estate shall relieve Grantor 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 damage to or destruction of the Trust Estate or any part thereof, Grantor, whether or not the Proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, at its expense, shall promptly cause the Restoration to be commenced and completed.

(iii) Proceeds received by Collateral Agent and Grantor on account of any occurrence of damage to or destruction of the Trust Estate or any part thereof, less the costs, fees and expenses incurred by Collateral Agent and Grantor in the collection thereof, including, without limitation, adjuster's fees and expenses and attorneys' fees and expenses (the "Net Insurance Proceeds"), shall be paid to (1) Grantor, if the amount of such Net Insurance Proceeds is less than \$100,000 and applied by Grantor toward the cost of the Restoration, and (2) Collateral Agent, if the amount of such Net Insurance Proceeds is \$100,000 or greater. Provided that no Event of Default is continuing, Net Insurance Proceeds paid to Collateral Agent shall be held and disbursed by Collateral Agent, or as Collateral Agent may from time to time direct, as the Restoration progresses, to pay or reimburse Grantor for the cost of the Restoration, upon written request of Grantor accompanied by evidence, reasonably satisfactory to Collateral Agent, that (aa) the Restoration is in full compliance with all Applicable Regulations and all private restrictions and requirements, (bb) the amount requested has been paid or is then due and payable and is properly a part of such cost, (cc) there are no mechanics' or similar liens for labor or materials theretofore supplied in connection with the Restoration, (dd) if the estimated cost of the Restoration exceeds the Net Insurance Proceeds (exclusive of Proceeds received from Grantor's business income insurance), Grantor has deposited into an escrow satisfactory to Collateral Agent such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Collateral Agent, (ee) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection and (ff), after making the payment requested will be sufficient to pay the balance of the cost of the Restoration. Upon receipt by Collateral Agent of evidence reasonably 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 Grantor. If at the time of the damage or destruction to the Trust Estate or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, all Net Insurance Proceeds shall be paid to Collateral Agent, and Collateral Agent 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 Collateral Agent in its discretion shall deem proper, or to cure such Event of Default, or, in Collateral Agent's discretion, Collateral Agent may pay such Net Insurance Proceeds in whole or in part to Grantor to be applied toward the cost of the Restoration. If Collateral Agent shall receive and retain Net Insurance Proceeds, the lien of this Mortgage shall be reduced only by the amount received and retained by Collateral Agent and actually applied by Collateral Agent in reduction of the Obligations.

(b) *Condemnation.* (i) In case of a taking of all or any part of the Trust Estate or the commencement of any proceedings or negotiations which might result in a taking, 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 Collateral Agent, Grantor and those authorized to exercise such right ("Taking"), Grantor will promptly give written notice thereof to Collateral Agent, generally describing the nature and extent of such Taking. Collateral Agent shall file and prosecute on behalf of Collateral Agent and Grantor any and all claims for Proceeds, and all Proceeds on account of a Taking shall be paid to Collateral Agent.

(ii) In case of a Taking of the whole of the Trust Estate, other than for temporary use ("Total Taking"), or in case of a Taking of less than all of the Trust Estate ("Partial Taking"), the Loan Documents shall remain in full force and effect. In the case of a Partial Taking, Grantor, whether or not the Proceeds, if any, on account of such Partial Taking shall be sufficient for the purpose (but provided they are made available by Collateral Agent for such purpose), at its own or Lessee's cost and expense, will promptly commence and complete or cause the commencement and completion of the Restoration. In case of a Partial Taking, other than a temporary use, of such a substantial part of the Trust Estate as shall result in the Trust Estate remaining after such Partial Taking being unsuitable for use, such Taking shall be deemed a Total Taking.

(iii) In case of a temporary use of the whole or any part of the Trust Estate by a Taking, the Loan Documents shall remain in full force and effect without any reduction of any monetary sum payable under the Loan Documents. In any proceeding for such Taking, Collateral Agent shall have the right to intervene and participate; provided that, if such intervention shall not be permitted, Grantor shall consult with Collateral Agent, its attorneys

and experts, and make all reasonable efforts to cooperate with Collateral Agent in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Trust Estate, Grantor will, at its own or Lessee's cost and expense, promptly commence and complete or cause the commencement and completion of the Restoration.

(iv) Proceeds on account of a Taking, less the costs, fees and expenses incurred by Collateral Agent and Grantor in connection with the collection thereof, including, without limitation, attorneys' fees and expenses, shall be applied in the following order:

(x) Proceeds received by Collateral Agent or Grantor on account of a Total Taking shall be allocated as follows:

(aa) There shall be paid to the Collateral Agent an amount up to the Outstanding Obligations, as of the date on which such payment is made, such amount shall be applied first against all sums advanced by Collateral Agent under this Mortgage, second against the accrued but unpaid interest on the Note, and third to the remaining unpaid principal amount of the Note and other sums due under this Mortgage. If the Proceeds received on account of a Total Taking are not sufficient to satisfy the Outstanding Obligations, Grantor shall pay to Collateral Agent simultaneously with the payment of such Proceeds to Collateral Agent the difference between the amount of such Proceeds and the amount of the Outstanding Obligations.

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

(y) Proceeds received by Collateral Agent or Grantor on account of a Partial Taking shall be held and allocated as follows:

(i) first, toward the cost of the Restoration, such application of net awards and other payments to be made substantially in the manner provided in Section 4.01(a)(iii) of this Mortgage; and

(ii) then, all or any portion of the balance of such proceeds shall, in Collateral Agent's sole discretion, either be paid to:

(1) Collateral Agent, as the holder of this Mortgage, and applied toward the Outstanding Obligations in such order, priority and proportion, and at such time on or prior to the Maturity Date (as defined in the Note), as Collateral Agent shall determine; or

(2) Grantor; provided, however, in Collateral Agent's sole discretion, such proceeds shall be pledged to Collateral Agent to secure the Outstanding Obligations pursuant to a security agreement reasonably satisfactory to Collateral Agent, or, with Collateral Agent's consent, Grantor shall provide Collateral Agent with alternative security satisfactory to Collateral Agent in its sole discretion.

Collateral Agent may deposit any funds held by it in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Collateral Agent. Interest or gains from such funds, if any, shall be the sole property of Collateral Agent.

(z) Proceeds received by Collateral Agent or Grantor on account of a Taking for temporary use shall be held by Collateral Agent and applied to the payment of the monthly installments of combined interest and principal becoming due under the Note, until such Taking for temporary use 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 damage to or destruction of the Trust Estate, such portion shall be held and applied as provided in Section 4.01(a)(iii) hereof. The balance, if any, of such awards and payments shall be paid to Grantor.

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

**Section 4.02. Conveyance in Anticipation of Condemnation, Granting of Easements, Etc.** If no Event of Default shall have occurred and be continuing, Grantor may, from time to time with respect to its interest in the Trust Estate, and with Collateral Agent'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 Trust Estate, (iv) dedicate or transfer unimproved portions of the Trust Estate for road, highway or other public purposes, (v) execute petitions to have the Trust Estate 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 4.03. Collateral Agent's Power.** At any time, or from time to time, without liability therefor, Collateral Agent, without affecting the personal liability of any person for payment of the Obligations or the effect of this Mortgage upon the remainder of said Trust Estate, may from time to time without notice, solely in order to protect the security hereof or to pay or discharge the Obligations in the event Grantor fails to do so, (i) release any part of said Trust Estate, (ii) consent in writing to the making of any map or plat thereof, (iii) join in any extension agreement or any agreement subordinating the lien or charge hereof, (iv) release any person so liable, (v) extend the maturity or alter any of the terms of any Obligations, (vi) grant other indulgences, (vii) take or release any other or additional security for any Obligations, (viii) make compositions or other arrangements with debtors in relation thereto, or (ix) advance additional funds and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Collateral Agent.

**Section 4.04. Priority of Loan Agreement.** In the event that any Loan Agreement provides for any covenants or requirements that are inconsistent with the provisions of this Article IV, the Loan Agreement provisions shall control.

**ARTICLE V**  
**SECURITY INTEREST**

**Section 5.01. Security Agreement.** With respect to the Personal Property or any portion of the Trust Estate which constitutes fixtures or other property governed by the UCC, this Mortgage shall constitute a security agreement between Grantor, as the debtor, and Collateral Agent, as the secured party, and Grantor hereby grants to Collateral Agent a security interest in such portion of the Trust Estate. Cumulative of all other rights of Collateral Agent hereunder, Collateral Agent shall have all of the rights conferred upon secured parties by the UCC. Grantor authorizes Collateral Agent to file financing statements with respect to the security interest of Collateral Agent, continuation statements with respect thereto, and any amendments to such financing statements which may be allowed pursuant to the Loan Documents. Furthermore, at any time, and from time to time, Grantor will execute and deliver to Collateral Agent all financing statements that may from time to time be required by Collateral Agent to establish and maintain the validity and priority of the security interest of Collateral Agent, or any modification thereof. Collateral Agent may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property. If, upon the occurrence and during the continuance of an Event of Default, Collateral Agent proceeds to dispose of such property in accordance with the provisions of the UCC, 10 days' notice by Collateral Agent to Grantor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Collateral Agent may at its option dispose of such property in accordance with

Collateral Agent's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC. Grantor represents that its exact legal name and state of formation or organization are as set forth in the first paragraph of this Mortgage. Grantor agrees that, notwithstanding any provision in the UCC to the contrary, Grantor shall not file a termination statement of any financing statement filed by Collateral Agent in connection with any security interest granted under this Mortgage if Collateral Agent reasonably objects to the filing of such termination statement.

## 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 Grantor fails to pay any principal or interest payment due under the Primary Note within five days after the date such payment is due and payable.

(ii) Subject to the provisions of Section 3.04(b) of this Mortgage, if Grantor 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 Trust Estate pursuant to Applicable Regulations.

(iii) If Grantor shall fail to maintain insurance in accordance with the requirements of Section 3.05 of this Mortgage.

(iv) If Grantor materially 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 or any of the Notes made pursuant to any Loan Agreement, is not willful or intentional, does not place any rights or interest in collateral of Collateral Agent in immediate jeopardy, and is within the reasonable power of Grantor to promptly cure after receipt of notice thereof, all as determined by Collateral Agent, the Indenture Trustee or Lender, as applicable, in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Collateral Agent shall have given Grantor notice thereof and a period of 30 days shall have elapsed, during which period Grantor 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 Collateral Agent in its reasonable discretion, and Grantor is diligently pursuing a cure of such failure, then Grantor shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 90 days after receiving notice of the failure from Collateral Agent. If Grantor shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(v) If there is an "Event of Default" under any Loan Agreement and all cure periods with respect thereto have expired without the Grantor curing such "Event of Default".

**Section 6.02. *Remedies.*** Upon the occurrence and during the continuance of an Event of Default subject to the limitations set forth in Section 6.01. Collateral Agent 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, upon the occurrence and during the continuance of an Event of Default, Collateral Agent 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 Trust Estate or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, take any action described herein, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any Obligations, all in such order as the Lender may determine. The entering upon and taking possession of the Trust Estate, 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 Trust Estate or the collection, receipt and application of Rents, the Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon any Event of Default.

(ii) Commence an action to foreclose this Deed in a single parcel or in several parcels, appoint a receiver or specifically enforce any of the covenants hereof;

(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 Grantor and all others claiming under Grantor, 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 Grantor in respect of the Personal Property or any part thereof. In the event the Lender demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Grantor promises and agrees to promptly turn over and deliver complete possession thereof to the Lender;

(2) Without notice to or demand upon Grantor, make such payments and do such acts as the Lender 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 Grantor to assemble the Personal Property or any portion thereof, at the Trust Estate, and promptly to deliver such Personal Property to the Lender, or an agent or representative designated by it. The Lender, and its agents and representatives, shall have the right to enter upon any or all of Grantor's premises and property to exercise the Lender'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 the Lender may determine. The Lender 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, the Lender shall give Grantor 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 Grantor at the address set forth at the beginning of this Deed 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 Trust Estate 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 Trust Estate 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) Exercise all of Grantor's rights and remedies under the Indemnity Agreements, including, without limitation, making demands and claims and receiving payments under the Indemnity Agreements. Grantor hereby grants the Lender a power of attorney (which grant shall be deemed irrevocable and coupled with an interest) to exercise such rights and remedies;

(v) Apply any sums then deposited in the impound account described in Section 3.06 toward payment of the taxes, assessment and insurance premiums for the Trust Estate and/or as a credit on the Obligations in such priority and proportion as the Lender may determine in its sole discretion;

(vi) If held by the Lender, surrender the insurance policies maintained pursuant to Section 3.05, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as the Lender in its sole discretion shall deem proper, and in connection therewith, Grantor hereby appoints the Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for the Lender to collect such insurance premiums; and

(vii) Sell Grantor's interest in the Trust Estate pursuant to the power of sale herein conferred. If Collateral Agent elects to sell Grantor's interest in the Trust Estate by exercise of such power of sale, Collateral Agent shall notify Lender to cause such sale to be performed in the manner then required by law.

(aa) Upon receipt of such notice from Collateral Agent and at the direction of Collateral Agent, Lender 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. Lender shall, only at the direction of Collateral Agent and without demand on Grantor, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell Grantor's interest in the Trust Estate at the time and place of sale fixed by it, either as a whole, or in separate lots or parcels or items as Collateral Agent 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. Lender shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, with general warranty of title by Grantor, as applicable. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Lender, Grantor or Collateral Agent, may purchase at such sale. Lender or Collateral Agent may sell not only the real property but also the Personal Property and other interests which are a part of the Trust Estate, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Trust Estate separately from the remainder of the Trust Estate. Lender or Collateral Agent shall not be required to take possession of any part of the Trust Estate or to have any of the Personal Property present at any sale of the Trust Estate. Lender or Collateral Agent 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 Lender or Collateral Agent, including the posting of notices and the conduct of sale, but in the name and on behalf of Collateral Agent. In the event any sale hereunder is not completed or is defective in the opinion of Lender or Collateral Agent, such sale shall not exhaust the power of sale hereunder, and Lender or Collateral Agent shall have the right to cause a subsequent sale or sales to be made hereunder until all of the Trust Estate has been lawfully sold.

(bb) As may be permitted by law, Lender or Collateral Agent shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by the Collateral Agent 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 and the amounts due and owing to Collateral Agent under this Mortgage) in such manner

and order as Collateral Agent may elect, and (iii) third, the remainder, if any, shall be paid to Grantor, or to Grantor's heirs, devisees, representatives, successors or assigns, or such other persons as may be entitled thereto.

(cc) Lender may in the manner provided by law postpone sale of all or any portion of the Trust Estate.

**Section 6.03. Appointment of Receiver.** If an Event of Default shall have occurred and be continuing, Collateral Agent, as a matter of right and without notice to Grantor or anyone claiming under Grantor, Grantor hereby waiving any right to a hearing or notice of hearing prior to the appointment of a receiver, and without regard to any showing of insolvency, fraud or mismanagement and without regard to the then sufficiency of the security for the payment of the Obligations and without notice to Grantor and without any showing of insolvency, fraud or mismanagement on the part of the Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Trust Estate or any part thereof, and of the income, rents, issues and profits thereof, and Grantor hereby irrevocably consents to the appointment of a receiver or receivers. Any receivers appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters. To the extent permitted by applicable law, Grantor or the then-owner of the Trust Estate, may seek the appointment of a receiver for the Trust Estate upon *ex parte* application to any court of the competent jurisdiction. Such receiver shall be empowered (a) to take possession of the Trust Estate and any businesses conducted by Grantor thereon and any business assets used in connection therewith, (b) to exclude Grantor and Grantor's agents, servants and employees from the Trust Estate, 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 Trust Estate, (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 Trust Estate, (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 Trust Estate and replace such items at the expense of the receivership estate, (h) to pay all taxes and assessments against the Trust Estate, 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 Collateral Agent 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 Collateral Agent, but not in excess of the Default Rate, and (j) generally to do anything that Grantor could legally do if Grantor were in possession of the Trust Estate. 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 Collateral Agent, 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.** Collateral Agent shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Mortgage or under the 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, Mortgage, 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 Collateral Agent's right to realize upon or enforce any other security now or hereafter held by Collateral Agent, it being agreed that Collateral Agent shall be entitled to enforce this Mortgage and any other security now or hereafter held by Collateral Agent in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Collateral Agent 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 Collateral Agent, or to which Collateral Agent may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Collateral Agent. Collateral Agent may pursue inconsistent remedies.

The acceptance by Collateral Agent 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 Collateral Agent 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 Grantor to pay the entire sum then due, and failure of Grantor to pay such entire sum then due shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Collateral Agent shall be, at all times thereafter and until the entire sum then due as contemplated by the Loan Documents shall have been paid, and notwithstanding the acceptance by Collateral Agent thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, 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 Collateral Agent to any action or inaction of Grantor which is subject to consent or approval of Collateral Agent 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 Trust Estate.** In the event of a trustee's sale or foreclosure sale hereunder and after the time of such sale, Grantor occupies the portion of the Trust Estate so sold, or any part thereof, Grantor 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 Trust Estate 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 Trust Estate; 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 Collateral Agent as a "mortgagee in possession" in the absence of its taking actual possession of the Trust Estate pursuant to the powers granted herein.

**Section 6.06. Waiver of Rights.** Grantor 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 Trust Estate, 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. Grantor agrees that Grantor will not 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 Grantor, for Grantor, Grantor's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Trust Estate, 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 Grantor, Grantor'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. Grantor expressly waives and relinquishes any and all rights, remedies and defenses that Grantor may have or be able to assert by reason of the laws of the State pertaining to the rights, remedies and defenses of sureties.

If an Event of Default shall have occurred and be continuing, Grantor hereby irrevocably and unconditionally waives and releases (i) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Trust Estate from attachment, levy or sale on execution or providing for any appraisal, valuation, state of execution, exemption from civil process, redemption, or extension of time for payment; and (ii) any right to a marshaling or assets or a sale in inverse order of alienation.

**Section 6.07. Relief From Stay.** In the event that Grantor 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, Collateral Agent shall thereupon be entitled and Grantor irrevocably consents 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 Collateral Agent as provided in the Loan Documents and Grantor hereby irrevocably waives its rights to object to such relief. In the event Grantor 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, Grantor hereby agrees that no injunctive relief against Collateral Agent shall be sought under Section 105 or other provisions of the Code by Grantor or other person or entity claiming through Grantor, nor shall any extension be sought of the stay provided by Section 362 of the Code.



**Section 6.08. Cash Collateral.** Grantor hereby acknowledges and agrees that in the event that Grantor 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 Trust Estate 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 Grantor 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 Collateral Agent as that term is defined in Section 363 of the Code; and (iv) that Collateral Agent has valid, effective, perfected, enforceable and “choate” rights in and to the Rents without any further action required on the part of Collateral Agent to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Grantor under Section 546(b) of the Code.

**Section 6.09. Assignment of Rents and Leases.** (a) Grantor hereby assigns, transfers, conveys and sets over to Collateral Agent all of Grantor’s estate, right, title and interest in, to and under the Leases, whether existing on the date hereof or hereafter entered into, together with any changes, extensions, revisions or modifications thereof and all rights, powers, privileges, options and other benefits of Grantor as the lessor under the Leases regarding the current tenants and any future tenants, and all the Rents from the Leases, including those now due, past due or to become due. Grantor irrevocably appoints Collateral Agent its true and lawful attorney-in-fact, at the option of Collateral Agent, 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 Trust Estate, pursuant to Grantor’s rights under the Leases, to exercise any of Grantor’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 Grantor or Collateral Agent, 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 Collateral Agent for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Grantor hereby releases Collateral Agent from all liability (other than as a result of the gross negligence or willful misconduct of Collateral Agent) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto. The consideration received by Grantor to execute and deliver this assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Grantor. It is intended by Grantor and Collateral Agent that the assignment set forth herein constitutes an absolute assignment and not merely an assignment for additional security. Notwithstanding the foregoing, this assignment shall not be construed to bind Collateral Agent to the performance of any of the covenants, conditions or provisions of Grantor contained in the Leases or otherwise to impose any obligation upon Collateral Agent, and, so long as no Event of Default shall have occurred and be continuing, Grantor shall have a license, revocable upon an Event of Default, to possess and control the Trust Estate and collect and receive all Rents. Upon an Event of Default, such license shall be automatically revoked.

(b) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, at any time without notice (except if required by applicable law), either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Collateral Agent’s security, and at its sole election (without any obligation to do so), enter upon and take possession and control of the Trust Estate, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Trust Estate, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Trust Estate, execute or terminate contracts providing for the management or maintenance of the Trust Estate, all on such terms as are deemed best to protect the security of this assignment, and in Collateral Agent’s or Grantor’s name, sue for or otherwise collect such Rents as specified in this Mortgage as the same become due and payable, including, but not limited to, Rents then due and unpaid. Collateral Agent may so sue for or otherwise collect such Rents with or without taking possession of the Trust Estate. Grantor agrees that upon the occurrence and during the continuance of an Event of Default, each tenant of the Trust Estate shall make its rent payable to and pay such rent to Collateral Agent (or Collateral Agent’s agents) on Collateral Agent’s written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Grantor.

(c) Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Collateral Agent to the costs, if any, of taking possession and control of and managing the Trust Estate and collecting such amounts, including, but not limited to, reasonable attorney’s fees, receiver’s fees,

premiums on receiver's bonds, costs of repairs to the Trust Estate, premiums on insurance policies, taxes, assessments and other charges on the Trust Estate, and the costs of discharging any obligation or liability of Grantor with respect to the Leases and to the sums secured by this Mortgage. Collateral Agent or the receiver shall have access to the books and records used in the operation and maintenance of the Trust Estate and shall be liable to account only for those Rents actually received.

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

(e) Any entering upon and taking possession and control of the Trust Estate by Collateral Agent 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 Collateral Agent under applicable law or provided therein.

## 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 Grantor shall pay or cause to be paid all Obligations and all other sums payable by the Grantor 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 Collateral Agent agrees to execute an instrument evidencing the satisfaction of all obligations under this Mortgage and releasing this Mortgage which shall be prepared and recorded at Grantor'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 Grantor 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) machine confirmation, 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 Collateral Agent: Citibank, N.A.  
388 Greenwich Street, Floor 14  
New York, NY 10013  
Attention: Agency & Trust, Spirit  
Telephone: (212) 816-5693  
Telecopy: (212) 816-5527

If to Grantor: Spirit Master Holdings SPE  
14631 N. Scottsdale Road  
Suite 200  
Scottsdale, Arizona 85254-2711  
Attention: Catherine Long  
Telephone: (480) 606-0820  
Telecopy: (480) 606-0826

with a copy to: Kutak Rock LLP  
1801 California Street  
Suite 3100  
Denver, Colorado 80202  
Attention: Paul E. Belitz, Esq.  
Telephone: (303) 297-2400  
Telecopy: (303) 292-2277

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 Grantor and Collateral Agent 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. Successors and Assigns; Successor to Collateral Agent.** 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. In the event that the Collateral Agent is replaced, substituted or removed under the terms of the Collateral Agency Agreement, the party to whom the Lender transfers such collateral agency obligations (including, without limitation, any successor collateral agent, trustee or agent) shall automatically (and without record notice) be deemed the successor "Collateral Agent" hereunder and no amendment or assignment of this Mortgage shall be required. In addition, if the Collateral Agency Agreement is terminated in its entirety and no successor is appointed by Lender, then Lender shall be deemed the "Collateral Agent" and no assignment, notice or recorded document shall be required in connection therewith.

**Section 7.06. 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 7.07. Time of the Essence.** Time is of the essence in the performance of each and every obligation under this Mortgage.

**Section 7.08. Forum Selection; Jurisdiction; Venue; Choice of Law.** Grantor acknowledges that this Mortgage was substantially negotiated in the State of Arizona, this Mortgage was delivered 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 Arizona. 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 Arizona. Grantor consents that it may be served with any process or paper by

registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, Grantor 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 Collateral Agent with respect to the Trust Estate, 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 its principles of conflicts of law. With respect to other provisions of this Mortgage, this Mortgage shall be governed by the internal laws of the State of Arizona, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Collateral Agent to commence any proceeding in the federal or state courts located in the State to the extent Collateral Agent deems such proceeding necessary or advisable to exercise remedies available under the Mortgage or the other Loan Documents.

**Section 7.09. Indemnification.** Grantor shall indemnify and hold harmless each of the Indemnified Parties for, from and against 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, attorneys' fees, court costs and other costs of defense) (collectively, "Losses") (excluding Losses suffered by an Indemnified Party arising out of such Indemnified Party's gross negligence or willful misconduct; 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 Grantor's interest in the Trust Estate or Grantor's failure to act in respect of matters which are or were the obligation of Grantor under the Loan Documents) caused by, incurred or resulting from Grantor's operations of, or relating in any manner to, the Trust Estate, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Grantor 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 Grantor, its officers, employees, agents or other persons. It is expressly understood and agreed that Grantor's obligations under this Section shall survive the expiration or earlier termination of this Mortgage for any reason.

**Section 7.10. Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** COLLATERAL AGENT, BY ACCEPTING THIS MORTGAGE, AND GRANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE, THE RELATIONSHIP OF COLLATERAL AGENT AND GRANTOR, GRANTOR'S USE OR OCCUPANCY OF THE MORTGAGED PROPERTY, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, GRANTOR AND COLLATERAL AGENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, MEMBERS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, MEMBERS 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 GRANTOR AND COLLATERAL AGENT OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

**Section 7.11. Entire Agreement.** THIS DEED AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

**Section 7.12. State Specific Provisions.** See Exhibit B attached hereto and incorporated herein.

*[Remainder of page intentionally left blank; signature page to follow]*

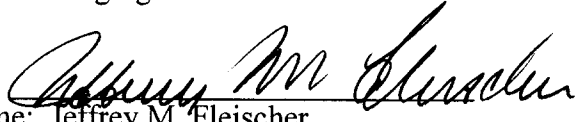


IN WITNESS WHEREOF, Grantor has executed and delivered this security instrument as of the day and year first above written.

GRANTOR:


**SPIRIT SPE PORTFOLIO 2004-6, LLC**, a Delaware limited liability company

By: Spirit SPE Management Company  
2004-6, a Delaware corporation, its  
Managing Member

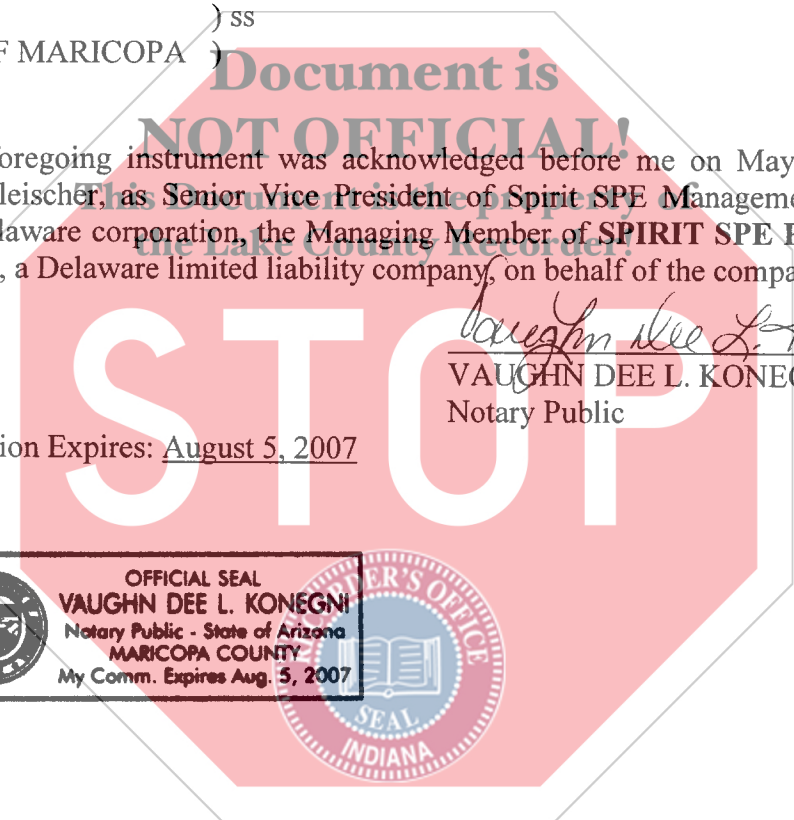
By:   
Name: Jeffrey M. Fleischer  
Title: Senior Vice President  
Tax Identification No. 20-1262089  
Organization Identification Number  
3817755

STATE OF ARIZONA     )  
  ) ss  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me on May 19, 2005 by Jeffrey M. Fleischer, as Senior Vice President of Spirit SPE Management Company, 2004-6, a Delaware corporation, the Managing Member of **SPIRIT SPE PORTFOLIO 2004-6, LLC**, a Delaware limited liability company, on behalf of the company.

  
VAUGHN DEE L. KONEGNI,  
Notary Public

My Commission Expires: August 5, 2007  
[SEAL]



**EXHIBIT A**

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN IN GARY, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF FIFTH AVENUE (80 FEET WIDE) WITH THE EAST LINE OF CLARK STREET (66 FEET WIDE); THENCE EAST ALONG THE NORTH LINE OF FIFTH AVENUE (100 FEET); THENCE NORTH AND PARALLEL WITH THE EAST LINE OF CLARK STREET (125 FEET); THENCE WEST AND PARALLEL WITH THE NORTH LINE OF FIFTH AVENUE (100 FEET) TO THE EAST LINE OF CLARK STREET; THENCE SOUTH ALONG THE EAST LINE OF CLARK STREET (125 FEET) TO THE PLACE OF BEGINNING.

*Also known as 4590 W. 5<sup>th</sup> Avenue, Gary, Lake County, Indiana 46406*



## EXHIBIT B

### STATE SPECIFIC PROVISIONS

#### INDIANA

1. **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 Trust Estate and is to be filed for record in the real estate records of each county where any part of the Trust Estate (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 Trust Estate is located (the "County"), pursuant to IC 26-1-9-402 and 26-1-9-403. Part of the Trust Estate 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 this 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 introductory paragraph of this Mortgage. The "secured party" is Collateral Agent and its name and mailing address from which information concerning the security interests hereunder may be obtained is the address of Collateral Agent as set forth in the introductory paragraph of this Mortgage. A statement describing the portion of the Trust Estate comprised 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.

2. **Other Provisions.** Notwithstanding anything contained in this Mortgage to the contrary:

(a) Anything contained in IC 32-8-16-1.5 to the contrary notwithstanding, no waiver made by Grantor 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 Collateral Agent or any judgment holder of the Obligations of the right to seek a deficiency judgment against the Grantor 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 Collateral Agent for its own behalf and its successors and assigns.

(b) Collateral Agent shall be entitled to all rights and remedies that a lender 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 Collateral Agent and the right of Collateral Agent 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 Grantor, 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 Grantor fails to sign UCC financing statements upon Collateral Agent's request, Collateral Agent is hereby authorized by Grantor to execute and file financing statements signed only by a representative of Collateral Agent covering the security interest of Collateral Agent in any of the Personal Property and/or fixtures constituting part of the Trust Estate.



(d) Notwithstanding anything contained in this Mortgage to the contrary, this Mortgage shall secure (i) a maximum amount not exceeding 150% of the amount of the Note, (ii) any advances made, from time to time after the date hereof, pursuant to this Mortgage or the other Loan Documents, (iii) all other amounts payable by Grantor, or advanced by Collateral Agent for the account, or on behalf, of Grantor, pursuant to the other Loan Documents, including amounts advanced with respect to the Trust Estate for the payment of taxes, assessments, insurance premiums and other costs and impositions incurred for the protection of the Trust Estate to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage, and (iv) 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 this Mortgage is executed and recorded without regard to the fact that any such advance, modification, extension or renewal may occur after this Mortgage is executed.

(e) None of the Trust Estate 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). Grantor 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 in accordance with the terms of this Mortgage, the court in which such complaint is filed may appoint a receiver of the Trust Estate, and Grantor consents to the appointment of such receiver for the purpose of preserving and maximizing the value of the Trust Estate. 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 Trust Estate 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 Grantor, 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 Grantor and all persons whose interests in the Trust Estate 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 Trust Estate 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.

