

RECORDING REQUESTED BY:

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

WHEN RECORDED RETURN TO: 2005 048554

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Wells Fargo Bank, N.A.
c/o American Commercial Capital
5938 Priestly Drive, Suite 200
Carlsbad, CA 92008
Attention: Loan Administration
Loan No.: 03 1824 001
Unit No(s): See Exhibit A
Property(ies): See Exhibit A

MERIDIAN TITLE CORP
1023 LK05

AMENDED AND RESTATED LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING THIS LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING (the "Mortgage") is made as of May 25, 2005, by FALCON HOLDINGS LLC, a Delaware limited liability company, having its principal place of business at 1200 Harger Road, Suite 800, Oak Brook, IL 60523 ("Debtor") for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, having an office at c/o American Commercial Capital, 5938 Priestly Drive, Suite 200, Carlsbad, California 92008 ("Secured Party").

THE DEBTOR'S OBLIGATIONS SECURED BY THIS MORTGAGE ARE SUBJECT TO VARIABLE RATES OF INTEREST AS SET FORTH IN THE NOTE (DEFINED HEREIN).

This Mortgage amends and restates in its entirety that certain Leasehold Mortgage, Assignment of Leases and Rents, and Fixture Filing dated as of September 1, 2004, recorded as Instrument No. 2004-178376 in Marion County, Indiana on September 15, 2004, (the "Original Mortgage") which was given by Debtor as security for certain promissory notes dated as of September 1, 2004 (the "Original Notes") evidencing a loan made pursuant to that certain Credit Agreement dated as of September 1, 2004 (the "Original Credit Agreement") and other documents executed in connection therewith (the "Original Loan Documents"). Debtor and Secured Party have agreed to amend and restate the Original Credit Agreement, Original Notes, Original Mortgage and other Original Loan Documents pursuant to that certain Amended and Restated Credit Agreement dated of even date herewith (the "Credit Agreement"), the Note (defined below) and all other documents and instruments executed and delivered in connection therewith (collectively, the "Loan Documents").

Terms used herein and not otherwise defined herein have the meanings accorded to such terms in the paragraph above and in the DEFINITIONS SCHEDULE attached hereto, or in the Credit Agreement. Terms used herein and not otherwise defined have the meaning accorded to such terms in the UCC.

HOLD FOR MERIDIAN TITLE CORP

1023 LK05
1024 LK05
1025 LK05
2933 MT

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The obligations secured by this Mortgage are comprised of the following:

- (i) the full and punctual payment when due of (a) an indebtedness in the Initial Principal Amount (as defined below), in lawful money of the United States of America, to be paid with interest and periodic charges (said indebtedness and interest, periodic charges, along with any prepayment premium amount and all other sums which may or shall become due hereunder being hereinafter collectively referred to as the "Debt") according to that certain Amended and Restated Secured Promissory Note (Term Loan/Variable Rate) in the original principal amount of \$17,550,000.00 (the "Initial Principal Amount") dated concurrently herewith executed by Debtor in favor of Secured Party; such Secured Promissory Note is collectively referred to as the "Note";
- (ii) the full and punctual payment and performance of all amounts payable under this Mortgage, the Credit Agreement and all other Loan Documents, including without limitation, indemnification and expense reimbursement obligations;
- (iii) the timely and full payment and performance and observance of each other Obligation, however and whenever incurred, due or to become due, and whether Debtor is obligated alone, or with others on a joint, several or solitary basis, as a principal obligor or as a surety (including any interest, prepayment premium, costs, fees and expenses which at any time accrue or otherwise payable on or with respect to the foregoing, whether before or after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of the Debtor), and each other term, covenant, agreement, requirement, condition and other provision under or in connection with any Loan Document; and
- (iv) any other Obligations of Debtor to Secured Party.

GRANTING CLAUSE

NOW THEREFORE, in consideration of the premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, for the purpose of securing the due and punctual payment, performance and observance of the Obligations and intending to be bound hereby, Debtor has MORTGAGED, WARRANTED, GRANTED, BARGAINED, SOLD, CONVEYED and CONFIRMED and by these presents does hereby MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, CONVEY and CONFIRM unto Secured Party, its successors and assigns, FOREVER, for the purposes and on the terms and conditions hereinafter set forth, with power of sale and right of entry and possession, all right, title, interest and estate of Debtor now owned or existing, or hereafter acquired or arising, in and to the following property, rights and interests, wheresoever located, subject however to the Permitted Encumbrances, if any, (such property, rights and interests being hereinafter collectively referred to as the "Mortgaged Property"):

- (1) All right, title and interest of Debtor in, to, under or derived from or related to the lease described in Exhibit A (the "Subject Lease") affecting the real property described in Exhibit A attached hereto and all buildings and other improvements ("Improvements") now or hereafter located thereon (the Subject Lease and the Improvements are collectively referred to as the "Premises"), together with all modifications, amendments,

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supplements, extensions, consolidations, restatements, replacements of the Subject Lease, now or hereafter entered into, together with all other, further, additional or greater estate, right, title and interest of Debtor in, to or under or derived from or related to the Premises, now or hereafter located thereon, which may at any time be acquired by Debtor by the terms of the Subject Lease, by reason of the exercise of any option or otherwise (collectively, the "Leasehold Estate");

- (2) All easements, right-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, riparian, littoral, and water rights and powers, air rights, access rights, development rights and parking rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof;
- (3) All machinery, furnishings, appliances, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other personal and other property of every kind and nature (hereinafter collectively called the "Equipment"), whether tangible or intangible, whatsoever owned by Debtor, or in which Debtor has or shall have an interest, now or hereafter located upon the Premises, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and all building equipment, materials and supplies of any nature whatsoever owned by Debtor, or in which Debtor has or shall have an interest, now or hereafter located upon the Premises, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises, including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Debtor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code superior in lien to the lien of this Mortgage;
- (4) All Loss Proceeds and other awards or payments (including, without limitation, tax refunds), including interest thereon, which may heretofore and hereafter be made with respect to the Premises, whether from the exercise of the right of eminent domain or Condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises;
- (5) All leases, subleases and other agreements (including without limitation, any and all security interests, contractual Liens and security deposits thereunder) affecting the use, enjoyment or occupancy of the Premises heretofore and hereafter entered into (the "Leases") and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Premises (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness and other Obligations of Debtor to Secured Party;

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- (6) All Insurance Proceeds and other proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property (whether or not such insurance is required hereunder), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;
- (7) The right, in the name and on behalf of Debtor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Secured Party in the Mortgaged Property;
- (8) All accounts, payment intangibles, escrows, documents, instruments, chattel paper, claims, deposits, General Intangibles, Certificates of Title, Fixtures, Money, Instruments, Investment Property, Documents, Chattel Paper, Deposit Accounts, Letters of Credit, Letter-of-Credit-Rights, Supporting Obligations, Commodity Accounts, Commodity Contracts, Health-Care Insurance Receivables, Commercial Tort Claims, Promissory Notes, Certificated and Uncertificated Securities, Financial Assets, Securities Accounts, Securities Entitlements, Payment Intangibles and Software (as the foregoing terms are defined in the UCC), all Contractual Obligations and all other contract rights, franchises, books, records, plans, specifications, maps, surveys, permits, and licenses (to the extent assignable), approvals, actions, and causes of action, trade, service and business marks and names which now or hereafter relate to, are derived from or are used in connection with the Premises, or the use, operation, maintenance, occupancy or employment thereof or the conduct of any business or activities thereon (hereinafter collectively called the "Intangibles");
- (9) All Consents and Other Action and all other permits, and licenses (including alcoholic beverage licenses), to the extent assignable by Debtor, agreements (including all license, operating, management, service, supply and maintenance agreements), and any other agreements, permits or contracts of any nature whatsoever now or hereafter obtained or entered into by Debtor with respect to the ownership, operation maintenance and administration of the Mortgaged Property, including without limitation those documents and agreements described in that certain Assignment of Licenses, Permits and Contracts dated concurrently herewith executed by Debtor in favor of Secured Party; and
- (10) Any and all proceeds, products and commingled goods of any of the foregoing and any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Obligations, including the performance of Debtor's obligations under the Loan Documents.

TO HAVE AND TO HOLD the Mortgaged Property and Debtor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Secured Party, its successors and assigns, FOREVER, under and subject to the terms and conditions of this Mortgage, and for security and enforcement of the prompt and complete payment and performance when due of all Obligations.

PROVIDED that Secured Party may from time to time release all or a portion of the Mortgaged Property, in accordance with the terms and conditions of the Credit Agreement and

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applicable Law.

DEBTOR ADDITIONALLY COVENANTS AND AGREES WITH AND REPRESENTS AND WARRANTS TO SECURED PARTY AS FOLLOWS:

1. Payment of Debt; Continued Effectiveness. Debtor shall pay the Debt at the time and in the manner provided for its payment in the Note, the Credit Agreement and in this Mortgage and Debtor shall pay, perform and observe the other Obligations in accordance with their terms. Debtor shall cause the representations and warranties of Debtor in this Mortgage and the Loan Documents to continue to be true in each and every respect at all times prior to the termination of this Mortgage.

2. Warranty of Title and Lien; Subject Lease.

(a) Debtor represents and warrants that Debtor is the owner of a valid and subsisting leasehold interest in the Premises and other Mortgaged Property free of Liens, except to the extent of the Permitted Encumbrances, if any. The Subject Lease creates and constitutes in the tenant thereunder a valid and subsisting leasehold interest in the Leasehold Estate. No action has been commenced or is pending to terminate, restate or replace the Subject Lease. Debtor has the right to Grant the Lien to Secured Party hereunder without any Consent or Other Action. The Lien created by this Mortgage constitutes a valid, binding and enforceable Lien on the Mortgaged Property.

(b) Debtor represents and warrants that (i) Exhibit A contains an accurate description of the Subject Lease; (ii) Debtor has furnished to Secured Party a copy of the Subject Lease certified as true and correct by Debtor; (iii) except as described in Exhibit A, the Subject Lease has not been modified, amended, assigned by Debtor or, to the knowledge of Debtor, assigned by the landlord thereunder; (iv) the Subject Lease is in full force and effect and, to the knowledge of Debtor, there is no default, or existing condition which with the giving of notice or passage of time or both would cause a default under the Subject Lease, and all rents due under the Subject Lease have been timely paid in full; and (v) the execution, delivery and performance of this Mortgage do not require any consent under, and will not contravene any provision of or cause a default under, the Subject Lease.

(c) Debtor (i) shall duly and punctually pay, perform and observe all of its obligations under the Subject Lease; (ii) shall do all things reasonably necessary or appropriate to enforce, preserve and keep unimpaired the rights of Secured Party; (iii) shall not enter into any amendment or other agreement or take any other action or fail to take any action that would modify or terminate any rights or obligations of Debtor or of the landlord under the Subject Lease or subordinate any right of Debtor under the Subject Lease to any Lien; (iv) shall notify Secured Party in writing not later than ninety (90) days prior to the last date on which Debtor can exercise (A) any right to extend the term of the Subject Lease or (B) any option to purchase or otherwise acquire the interest of the landlord under the Subject Lease; (v) to the extent the current term of the Subject Lease does not extend beyond the maturity date of the Loan, shall exercise (not later than thirty (30) days prior to the last date on which Debtor may timely do so) each right or option of Debtor under the Subject Lease to extend the term thereof; (vi) shall notify Secured Party (promptly after receipt or contemporaneously when given, as the case may

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be) of the receipt or giving by Debtor of any notice of default under, or any notice of the possible or actual termination of, the Subject Lease, accompanied by a copy of such notice (the failure of Debtor to comply with this subclause (vi) shall constitute an Event of Default hereunder); and (vii) shall promptly notify Secured Party, upon Debtor's acquisition of knowledge thereof, of the occurrence of any event or condition which with the passage of time or giving of notice would constitute a default under the Subject Lease. Secured Party is hereby irrevocably appointed the true and lawful attorney of Debtor and any subsequent owner of the Mortgaged Property to exercise, in its own name and stead or in the name of Debtor, each right or option of Debtor under the Subject Lease to extend the term thereof or to purchase or otherwise acquire the interest of the landlord under the Subject Lease, and for that purpose Secured Party may execute all necessary documents and instruments to exercise each right or option and may substitute Persons with like power and Debtor or any subsequent owner of the Subject Leasehold Estate hereby ratifies and confirms all that said attorney or such substitutes shall lawfully do by virtue hereof. Nevertheless, Debtor or any subsequent owner of the Leasehold Estate, if so requested in writing by Secured Party shall ratify and confirm the exercise of any such right or option by executing and delivering to Secured Party or to such purchasers any instrument which, in the Discretion of Secured Party, is suitable or appropriate therefor. Debtor acknowledges and agrees (i) that this power of attorney is given to Secured Party in consideration for Secured Party's (A) making of the Loan and (B) not requiring Debtor to exercise the option to extend the term of the Subject Lease or exercise any purchase option before the maturity date of the Note; (ii) that it is reasonable for Secured Party to require the leasehold term to extend beyond the maturity of the Note; (iii) that (a) Secured Party shall be under no obligation to act or to refrain from acting under this power of attorney and (b) if any option is exercised by Secured Party or any other action is taken by Secured Party under this power of attorney or in furtherance thereof, Debtor agrees that Debtor is and shall remain solely liable with respect thereto as tenant under the Subject Lease and releases Secured Party from any and all liability with respect thereto or claims relating thereto.

(d) The Subject Lease or a memorandum thereof has been or will be duly recorded; the Subject Lease permits the interest of the lessee thereunder to be encumbered by this Mortgage; and there has been no material change in the terms of such Subject Lease since its or the memorandum's recordation, with the exception of written instruments which have been delivered to Secured Party or which have been executed in connection with this Mortgage.

(e) Except as may be indicated in the title insurance policy insuring the lien of this Mortgage, the Subject Lease is not subject to any liens or encumbrances superior to, or of equal priority with, this Mortgage, other than the related fee interest.

(f) Upon foreclosure of this Mortgage or assignment of Debtor's interest in the Subject Lease in lieu thereof, Secured Party is entitled to become the owner of such interest upon notice to, but without the consent of, the landlord under the Subject Lease and, in the event that Secured Party becomes the owner of such interest, such interest is further assignable by Secured Party and its successors and assigns upon notice to Landlord under the Subject Lease, but without a need to obtain the consent of Landlord under the Subject Lease.

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(g) The Subject Lease has an original term with renewal options which extends beyond the stated maturity date of the loan evidenced by the Note and the Loan Documents.

(h) Any insurance proceeds other than in respect of a total or substantially total loss or taking, will be applied to the repair or restoration of all or part of the Mortgaged Property, with either Secured Party or landlord under the Subject Lease acting as trustee to hold and disburse such proceeds as the repair or restoration progresses.

(i) The Subject Lease does not impose any restrictions on subletting which would be viewed as commercially unreasonable. The Subject Lease contains a covenant that landlord under the Subject Lease is not permitted, in the absence of an uncured default, to disturb the possession, interest or quiet enjoyment of any lessee in the portion of the Mortgaged Property subject to such Subject Lease for any reason, or in any manner which would materially adversely affect the security provided by this Mortgage.

(j) In the event (i) of any default by Debtor in the performance of any of its obligations under the Subject Lease, and/or (ii) of the giving of any notice of the failure of Debtor to perform any such obligations and the failure of Debtor to cure such failure at least ten (10) days prior to the expiration of any applicable grace and/or notice period set forth in the Subject Lease (including, without limitation, any default in the payment of rent and other charges and impositions made payable by the tenant thereunder), then, in either event and in each and every case, Secured Party may, at its option, except in the case of an emergency, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Debtor under the Subject Lease in the name of and on behalf of Debtor. Debtor shall, on demand, reimburse Secured Party for all advances made and expenses incurred by Secured Party in curing any such default (including, without limitation, reasonable attorneys' fees), together with interest thereon computed at the Default Rate specified in the Note, to and including the date the same is paid, and all such sums shall become part of the Debt and shall be secured by this Mortgage and the other Loan Documents. Debtor hereby appoints Secured Party its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of Debtor, following an Event of Default and the expiration of any applicable notice period. This power, being coupled with an interest, shall be irrevocable as long as the Debt remains unpaid. A default by Debtor in the performance of any of the terms, covenants or conditions contained in the Subject Lease shall constitute an Event of Default under this Mortgage and the other Loan Documents.

(k) If the Subject Lease is canceled or terminated by proper lawful proceedings, and if Secured Party or its nominee shall acquire an interest in any new lease of the property demised thereby, Debtor shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease; provided, however, the foregoing shall in no way constitute a waiver of any rights Debtor may have under the Subject Lease.

(l) Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an absolute assignment of the Subject Lease and Secured Party shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage. Secured Party shall be liable for the obligations of the tenant arising under the Subject Lease for only that

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period of time which Secured Party is in actual possession of the premises therein described or has acquired, by foreclosure or otherwise, and is holding all of Debtor's right, title and interest therein;

(m) So long as any portion of the Obligations shall remain unpaid, unless Secured Party shall otherwise consent, the fee title to the Premises and the Leasehold Estate therein created pursuant to the provisions of the Subject Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estate in Debtor, the owner, or in any other person by purchase, operation of law or otherwise. Secured Party reserves the right, at any time, to release portions of the Mortgaged Property, including, but not limited to, the Leasehold Estate created by the Subject Lease, with or without consideration, at Secured Party's election, without waiving or affecting any of its rights hereunder or under the Loan Documents and any such release shall not affect Secured Party's rights in connection with the portion of the Mortgaged Property not so released.

(n) So long as any portion of the Obligations shall remain unpaid, if Debtor shall become the owner and holder of the fee title to the Premises, the Lien of this Mortgage shall be spread to cover Debtor's fee title to the Premises and said fee title shall be deemed to be included in the Mortgaged Property. Debtor agrees to execute any and all documents or instruments necessary to subject its fee title to the Premises to the Lien of this Mortgage, in form and substance satisfactory to the Secured Party.

(o) Debtor hereby unconditionally assigns, transfers and sets over to Secured Party all of Debtor's claims and rights to the payment of damages arising from any rejection by the owner of the Subject Lease under the Bankruptcy Code. Secured Party shall have the right to proceed in its own name or in the name of Debtor in respect of any claim, suit, action or proceeding relating to the rejection of the Subject Lease, including, without limitation, the right to file and prosecute, to the exclusion of Debtor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the owner under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Any amounts received by Secured Party as damages arising out of the rejection of the Subject Lease as aforesaid shall be applied first to all costs and expenses of Secured Party (including, without limitation, attorneys' fees and disbursements) incurred in connection with the exercise of any of its rights or remedies hereunder.

(p) Debtor shall not, without Secured Party's prior written consent, elect to treat the Subject Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without Secured Party's prior written consent shall be void.

(q) If pursuant to Section 365 (h)(1) of the Bankruptcy Code, Debtor seeks to offset against the Rent reserved in the Subject Lease the amount of any damages caused by the non-performance by the owner of any of the owner's obligations under the Subject Lease after the rejection by the owner of the Subject Lease under the Bankruptcy Code, Debtor shall, prior to effecting such offset, notify Secured Party of its intention to do so, setting forth the amounts proposed to be so offset, and the basis therefor. Secured Party shall have the right, within (10)

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days after receipt of such notice from Debtor, to reasonably object to all or any part of such offset, and, in the event of such reasonable objection, Debtor shall not effect any offset of the amounts so objected to by Secured Party for a period of thirty (30) days after Secured Party has delivered its objection notice to Debtor during which time Secured Party shall have the right to bring its objection to the attention of any court supervising the bankruptcy of the owner of the Subject Lease and both Secured Party and Debtor agree to abide by the decision of any such court. If (A) Secured Party has failed to object as aforesaid within ten (10) days after notice from Debtor or (B) the court fails to render its decision within the above-mentioned thirty (30) days period, Debtor may proceed to effect such offset in the amounts set forth in Debtor's notice. Neither Secured Party's failure to object as aforesaid nor any objection or other communication between Secured Party and Debtor relating to such offset shall constitute an approval of any such offset by Secured Party.

(r) If any action, proceeding, motion or notice shall be commenced or filed in respect of Debtor or the Mortgaged Property in connection with any case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to Debtor), Secured Party shall have the option, (but not the obligation), exercisable upon notice from Secured Party to Debtor, to conduct and control (to the exclusion of Debtor) any such litigation with counsel of Secured Party's choice. Secured Party may proceed in its own name or in the name of Debtor in connection with any such litigation, and Debtor agrees to execute any and all powers, authorizations, consents and other documents required by Secured Party in connection therewith. Debtor shall pay Secured Party all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) paid or incurred by Secured Party in connection with the prosecution or conduct of any such proceedings within five (5) days after notice from Secured Party setting forth such costs and expenses in reasonable detail. Any such costs or expenses not paid by Debtor as aforesaid shall be secured by the Lien of this Mortgage and shall be added to the principal amount of the Indebtedness secured hereby. Debtor shall not commence any action, suit, proceeding or case or file any application or make any motion, in respect of the Subject Lease in any such case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to Debtor) without the prior written consent of Secured Party, which consent shall not be unreasonably withheld.

(s) Debtor shall promptly, after obtaining knowledge thereof, notify Secured Party of any filing by or against the owner of the Premises of a petition under the Bankruptcy Code, setting forth any information available to Debtor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Debtor shall promptly deliver to Secured Party following receipt copies of any and all notices, summonses, pleadings, applications and other documents received by Debtor in connection with any such petition and any proceedings relating thereto.

(t) If there shall be filed by or against Debtor a petition under the Bankruptcy Code, and Debtor, as the tenant under the Subject Lease, shall determine to reject the Subject Lease pursuant to Section 365 (a) of the Bankruptcy Code, then Debtor shall give Secured Party not less than ten (10) days prior notice of the date on which Debtor shall apply to the bankruptcy court for authority to reject the Subject Lease. Secured Party shall have the right, but not the obligation, to serve upon Debtor within such 10-day period a notice stating that (i) Secured Party demands that Debtor assume and assign the Subject Lease to Secured Party pursuant to

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Section 365 of the Bankruptcy Code and (ii) Secured Party covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance of Debtor's obligations under the Subject Lease. If Secured Party serves upon Debtor the notice described in the preceding sentence, Debtor shall not seek to reject the Subject Lease and shall seek court approval to comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Secured Party of the covenant provided for in clause (ii) of the preceding sentence.

(u) Effective upon the entry of an order for relief in respect of Debtor under the Bankruptcy Code, Debtor hereby assigns and transfers to Secured Party a non-exclusive right to apply to the bankruptcy court under Section 365 (d)(4) of the Bankruptcy Code for an order extending the period during which the Subject Lease may be rejected or assumed.

3. Insurance. Debtor shall keep the Mortgaged Property insured in accordance with the provisions of the Credit Agreement. Except as otherwise set forth in the Credit Agreement, sums paid to Secured Party by any insurer may be retained and applied by Secured Party toward payment of the Debt and other Obligations whether or not then due and payable in such order, priority and proportions as Secured Party in its Sole Discretion shall deem proper or, at the Sole Discretion of Secured Party, the same may be paid, either in whole or in part, to Debtor for such purposes as Secured Party shall designate. If Secured Party shall receive and retain such Insurance Proceeds, then such proceeds shall be applied as provided in the Credit Agreement.

4. Payment of Taxes, etc. Debtor shall pay all Taxes and Other Charges, now or hereafter levied or assessed against the Mortgaged Property prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by Law for the nonpayment thereof. Debtor shall deliver to Secured Party, upon request, receipted bills, canceled checks and other evidence satisfactory to Secured Party evidencing the payment of the Taxes and Other Charges prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by Law for the nonpayment thereof. After an Event of Default, Debtor shall, until all Obligations have been paid in full, pay to Secured Party each month an amount estimated by Secured Party in its Sole Discretion to be an amount approximately equal to (a) the Taxes and Other Charges, (b) all payments under the Subject Lease, (c) all payments and premiums with respect to Insurance Requirements, and (d) any payments required under Permitted Encumbrances, if any, (collectively, the "Required Payments"). Except to the extent required to satisfy the Requirements of Law or otherwise determined by Secured Party in its Sole Discretion, amounts so paid shall not bear interest. Amounts so paid shall be additions to Collateral and subject to the terms of the Credit Agreement and, prior to the occurrence of an Event of Default may be applied by Secured Party in its Discretion to the payment of the Required Payments or released to Debtor for application to and payment of the Required Payments.

5. Condemnation. Notwithstanding any Condemnation, Debtor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, the Credit Agreement and this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Secured Party to the discharge of the Debt. Subject to the Credit Agreement, Secured Party may apply the entire amount of any such award or payment to the discharge of the Debt or other Obligations whether or not then due and

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payable in such order, priority and proportions as Secured Party in its Discretion shall deem proper. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Secured Party of such award or payment, Secured Party shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Debt and other Obligations, whichever is less. Debtor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Secured Party in accordance with the Credit Agreement. Debtor hereby irrevocably authorizes and empowers Secured Party, in the name of Debtor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, Debtor shall, upon demand of Secured Party, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Secured Party, free and clear of any Lien of any kind or nature whatsoever.

6. Leases and Rents. Debtor acknowledges and confirms that it has executed and delivered to Secured Party an Assignment of Leases and Rents of even date (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Assignment of Leases and Rents"), intending that such instrument create a present, absolute assignment to Secured Party of the Leases and the Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Leases and Rents, Debtor hereby assigns to Secured Party, as further security for the Debt and the Obligations, the Leases and Rents. While any Event of Default exists, Secured Party shall be entitled to exercise any or all of the remedies provided in the Assignment of Leases and Rents and in this Mortgage, including, without limitation, the right to have a receiver appointed (to the extent permitted by applicable law). Subject to the terms of this paragraph, Secured Party waives the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grants Debtor the right to collect the Rents. Debtor shall hold the Rents, or an amount sufficient to cover the payment of all operating expenses of the Mortgaged Property and to discharge all current sums due on the Debt, in trust for use in payment of such current operating expenses and current sums due on the Debt. The right of Debtor to collect the Rents may be revoked by Secured Party upon any Event of Default by giving notice of such revocation to Debtor. Following such notice Secured Party may retain and apply the Rents toward payment of the Debt or other Obligations in such order, priority and proportions as Secured Party, in its Discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property, and irrespective of whether Secured Party shall have commenced a foreclosure of this Mortgage or a sale of the Mortgaged Property pursuant to the provisions of this Mortgage or shall have applied or arranged for the appointment of a receiver. Debtor shall not, without the consent of Secured Party, make, or suffer to be made, any Leases or modify or cancel any Leases or accept prepayments of installments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. Debtor shall (a) fulfill or perform each and every provision of the Leases on the part of Debtor to be fulfilled or performed, (b) promptly send copies of all notices of default which Debtor shall send or receive under the Leases to Secured Party, and (c) enforce, short of termination of the Leases, the performance or observance of the provisions thereof by the tenants thereunder. In addition to the other rights which Secured Party may have herein, in the event of any default under this Mortgage, Secured Party, at its option, may require Debtor to pay monthly in advance to Secured Party or any receiver appointed to collect the Rents, the fair and

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reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Debtor. Upon default in any such payment, Debtor will vacate and surrender possession of the Mortgaged Property to Secured Party or to such receiver and, in default thereof, Debtor may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be construed as imposing on Secured Party any of the obligations of the lessor under the Leases. Nothing in this paragraph 6 is intended to affect adversely in any way any rights of Secured Party pursuant to the Assignment of Leases and Rents, and in the event of any conflict between the provisions of this paragraph 6 and the provisions of the Assignment of Leases and Rents, the provisions of the Assignment of Leases and Rents shall control.

7. Maintenance of the Mortgaged Property. Debtor, at its sole cost and expense, shall cause the Mortgaged Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Mortgaged Property. The Equipment shall not be removed, demolished or materially altered (except for normal repairs and replacement of the Equipment in accordance with the Credit Agreement), without the consent of Secured Party. Debtor shall promptly comply with all existing and future Requirements of Law affecting the Mortgaged Property, or any portion thereof or the use thereof. Debtor shall promptly repair, replace or rebuild all or any part of the Mortgaged Property which has suffered any Loss, whether by casualty or Condemnation or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. Debtor shall not, without obtaining the prior consent of Secured Party, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Mortgaged Property or any part thereof. Debtor shall promptly notify Secured Party of the receipt by Debtor of notice (or of Debtor's knowledge) of any Conflict under any Requirement of Law, or of any Conflict or threatened or actual termination of any Contractual Obligations or Consent or Other Action relating to the Premises.

8. Estoppel Certificates. Debtor, within ten (10) days after request by Secured Party and at Debtor's expense, will furnish Secured Party with a statement, duly acknowledged and certified, setting forth the amount of the Debt and the offsets or defenses thereto, if any.

9. Transfer or Encumbrance of the Mortgaged Property. Subject to the terms of the Credit Agreement, no part of the Mortgaged Property nor any interest of any nature whatsoever therein, nor any interest of any nature whatsoever in Debtor (whether partnership, stock, equity, beneficial, profit, loss or otherwise) shall in any manner be Disposed of or further encumbered, sold, transferred, assigned or conveyed, or permitted to be Disposed of or further encumbered, sold, transferred, assigned or conveyed or otherwise be subject to a Lien without the prior consent of Secured Party, which consent in any and all circumstances may be withheld in the Sole Discretion of Secured Party. The provisions of the foregoing sentence of this paragraph shall apply to each and every such Disposition and further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not Secured Party has consented to, or waived by its action or inaction its rights hereunder with respect to, any Disposition and such previous further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such Disposition and further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of Law or is otherwise made.

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10. Notice. Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be sent in the manner specified in the Credit Agreement.

11. Sale of Mortgaged Property. If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the Discretion of Secured Party, be sold in one or more parcels or in several interests or portions and in any order or manner.

12. Changes in Laws Regarding Taxation. In the event of the passage after the date of this Mortgage of any Law of the State in which the Premises are located deducting from the value of real property for the purpose of taxation any Lien or encumbrance thereon or changing in any way the Laws for the taxation of deeds of trusts or mortgages or debts secured by deeds of trust or mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, the Note or the Debt, Debtor shall, if permitted by Law, pay any tax imposed as a result of any such Law within the statutory period, provided, however, that if, in the opinion of the attorneys for Secured Party, Debtor is not permitted by Law to pay such taxes, Secured Party shall have the right, at its option, to declare the Debt due and payable on a date specified in a prior notice to Debtor of not less than ninety (90) days.

13. No Credits on Account of the Debt. Debtor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes and Other Charges assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Debt.

14. Documentary Stamps and Recording Tax. If at any time any Government Authority shall require revenue or other stamps to be affixed to the Note, or this Mortgage or any Loan Document, or impose any recording or privilege tax on recording this Mortgage, Debtor shall pay for the same, with interest and penalties thereon, if any.

15. Performance of Other Agreements. Debtor shall observe and perform each and every term to be observed or performed by Debtor pursuant to the terms of any Contractual Obligation (including any recorded instrument) affecting or pertaining to the Mortgaged Property.

16. Events of Default. The Debt shall become due at the option of Secured Party upon the occurrence of any one or more of the following events (herein collectively referred to as "Events of Default"):

- (a) if an Event of Default, as defined in the Credit Agreement, shall occur;
- (b) if Debtor shall fail to pay within thirty (30) days of written notice and demand by Secured Party, any installment of any assessment against the Mortgaged Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a Lien on the Mortgaged Property;

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(c) if without the consent of Secured Party any Leases are made, canceled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned;

(d) if Debtor shall be in default, beyond any applicable grace, notice and/or cure period, under any deed of trust or mortgage covering any part of the Mortgaged Property whether superior or inferior in Lien to this Mortgage, and including, without limitation, any such deed of trust or mortgage now or hereafter held by Secured Party;

(e) if the Mortgaged Property shall become subject (i) to any Lien for Taxes and Other Charges, other than a Lien for real estate taxes and assessments not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's Lien, mechanic's or materialman's Lien or other Lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of Secured Party by the title company insuring the Lien of this Mortgage within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in Lien or other priority to the Lien of this Mortgage and irrespective of whether the same constitutes a perfected or inchoate Lien or encumbrance on the Mortgaged Property or is only a matter of record or notice; or

(f) if an Event of Default shall occur under any other deed of trust or mortgage or any other Loan Document now or hereafter entered into by Debtor or an Affiliate of Debtor in favor of Secured Party.

17. Remedies. Upon the occurrence of an Event of Default and subject to any applicable cure period, Secured Party may, at Secured Party's option, by Secured Party itself, through any Person or otherwise, do any one or more of the following:

(a) Right to Perform Debtor's Covenants. If Debtor has failed to keep or perform any covenant whatsoever contained in this Mortgage or the other Loan Documents, Secured Party may, but shall not be obligated to any Person to do so, perform or attempt to perform said covenant; and any payment made or expense incurred in the performance or attempted performance of any such covenant, together with any sum expended by Secured Party that is chargeable to Debtor or subject to reimbursement by Debtor under the Loan Documents, shall be and become a part of the Debt, and Debtor promises, upon demand, to pay to Secured Party, at the place where the Note is payable, all sums so incurred, paid or expended by Secured Party, with interest from the date when paid, incurred or expended by Secured Party at the Default Rate as specified in the Note.

(b) Right of Entry. Secured Party may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to rent the same for the account of Debtor and to deduct from such Rents all reasonable costs, expenses, and liabilities of every character incurred by the Secured Party in collecting such Rents and in managing, operating,

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maintaining, protecting, or preserving the Mortgaged Property and to apply the remainder of such Rents on the Debt in such manner as Secured Party may elect. All such costs, expenses, and liabilities incurred by the Secured Party in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as hereinabove provided, shall constitute a future advance owed and a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the Default Rate as specified in the Note, all of which shall constitute a portion of the Debt. If necessary to obtain the possession provided for above, the Secured Party may invoke any and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by the Secured Party pursuant to this subparagraph, the Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of the Secured Party in managing the Mortgaged Property unless such loss is caused by the gross negligence or willful misconduct of the Secured Party, nor shall the Secured Party be obligated to perform or discharge any obligation, duty, or liability under any of the Leases or under or by reason hereof or the exercise of rights or remedies hereunder. Debtor shall and does hereby agree to indemnify the Secured Party for, and to hold the Secured Party harmless from, any and all liability, loss, or damage, which may or might be incurred by the Secured Party under any such Leases or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against the Secured Party by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any such Lease. Should the Secured Party incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate as specified in the Note, shall be secured hereby, and Debtor shall reimburse the Secured Party therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon the Secured Party for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make the Secured Party responsible or liable for any waste committed on the Mortgaged Property, or for any hazardous substances or environmental conditions on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger.

(c) Right to Accelerate. Secured Party may without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Debtor and all other parties obligated in any manner whatsoever on the Debt, declare the entire unpaid balance of the Debt immediately due and payable, and upon such declaration, the entire unpaid balance of the Debt shall be immediately due and payable.

(d) Foreclosure-Power of Sale. Secured Party may institute a proceeding or proceedings, judicial, or nonjudicial, by advertisement or otherwise, for the complete or partial foreclosure of this Mortgage or the complete or partial sale of the Mortgaged Property under the power of sale contained herein or under any applicable provision of Law. Secured Party may sell the Mortgaged Property, and all estate, right, title, interest, claim and demand of Debtor

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therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and/or personal property, and at such time and place and upon such terms as it may deem expedient, or as may be required by applicable Law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a Lien and security interest on the remaining portion of the Mortgaged Property.

(e) Reserved.

(f) Judicial Remedies. Secured Party may proceed by suit or suits, at law or in equity, to enforce the payment of the Debt or other Obligations to foreclose the Liens of this Mortgage as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to the Secured Party under this Mortgage or the other Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of the Secured Party.

(g) Secured Party's Right to Appointment of Receiver. As a matter of right and (i) without regard to the sufficiency of the security for repayment of the Debt and without notice to Debtor, (ii) without any showing of insolvency, fraud, or mismanagement on the part of Debtor, (iii) without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, and (iv) without regard to the then value of the Mortgaged Property, Secured Party shall be entitled to the appointment of a receiver or receivers for the protection, possession, control, management and operation of the Mortgaged Property, including the power to collect the Rents. Debtor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(h) Secured Party's Uniform Commercial Code Remedies. The Secured Party may exercise its rights of enforcement under the Uniform Commercial Code in effect in the state in which the Mortgaged Property is located.

(i) Other Rights. Secured Party (i) may surrender the insurance policies maintained pursuant to the Insurance Requirements, and upon receipt shall apply the unearned premiums as a credit on the Debt and other Obligations, and, in connection therewith, Debtor hereby appoints Secured Party as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Debtor to collect such premiums; and (ii) may apply any funds held by Secured Party toward payment of the Debt and other Obligations; and (iii) shall have and may exercise any and all other rights and remedies which Secured Party may have at law or in equity, or by virtue of any of the Loan Documents, or otherwise.

(j) Discontinuance of Remedies. In case Secured Party shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Secured Party shall have the unqualified right so to do and, in such event, Debtor and Secured Party shall be restored to their former positions with respect to the Debt and other Obligations, the Loan Documents, the

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Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Secured Party shall continue as if same had never been invoked.

(k) Remedies Cumulative. All rights, remedies, and recourses of Secured Party granted in the Note, this Mortgage and the other Loan Documents, any other pledge of collateral, or otherwise available at Law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Debtor, the Mortgaged Property, or any one or more of them, at the Sole Discretion of Secured Party; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Debtor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Secured Party exercising or pursuing any remedy in relation to the Mortgaged Property prior to Secured Party bringing suit to recover the Debt or other Obligations; and (vi) in the event Secured Party elects to bring suit on the Debt or other Obligations and obtains a judgment against Debtor prior to exercising any remedies in relation to the Mortgaged Property, all security interests and other Liens, including the Lien of this Mortgage, shall remain in full force and effect and may be exercised thereafter at Secured Party's option.

(l) Election of Remedies. Secured Party may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the Lien evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Debtor or any other party to pay the Debt or other Obligations. For payment of the Debt or other Obligations, Secured Party may resort to any collateral securing the payment of the Debt or other Obligations in such order and manner as Secured Party may elect. No collateral taken by Secured Party shall in any manner impair or affect the Lien given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(m) Waivers. Debtor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Debtor by virtue of any present or future Law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) except as expressly provided herein, all notices of any Event of Default or of Secured Party's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets, a sale in inverse order of alienation or any other right to direct, in any manner, the order of sale of any of the Mortgaged Property.

(n) Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the U.S. Bankruptcy Code (the "Bankruptcy Code") by or against Debtor (other than an involuntary petition filed by or joined in by Secured Party), the Debtor shall not assert, or request any other party to assert, that the automatic stay under Section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Secured Party to enforce any rights it has by virtue of this Mortgage, or any other rights that Secured Party has, whether now or hereafter acquired, against any guarantor of the Debt. Further, Debtor shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to Section 105 of the Bankruptcy Code or any other

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provision therein to stay, interdict, condition, reduce or inhibit the ability of Secured Party to enforce any rights it has by virtue of this Mortgage against any guarantor of the Debt or other Obligations. The waivers contained in this paragraph are a material inducement to Secured Party's willingness to enter into this Mortgage and Debtor acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Secured Party of Secured Party's rights and remedies against Debtor or any guarantor of the Debt or other Obligations.

(o) Bankruptcy Acknowledgment. In the event that the Mortgaged Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then Secured Party shall immediately become entitled, in addition to all other relief to which Secured Party may be entitled under this Mortgage, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code so to permit Secured Party to pursue its rights and remedies against Debtor as provided under this Mortgage and all other rights and remedies of Secured Party at law and in equity under applicable Law, and (ii) an order from the Bankruptcy Court prohibiting Debtor's use of all "cash collateral" as defined under Section 363 of the Bankruptcy Code. In connection with such Bankruptcy Court orders, Debtor shall not contend or allege in any pleading or petition filed in any court proceeding that Secured Party does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by the Debtor to stay, condition, or inhibit Secured Party from exercising its remedies are hereby admitted by Debtor to be in bad faith and Debtor further admits that Secured Party would have just cause for relief from the automatic stay in order to take such actions authorized under Law.

(p) Application of Proceeds. The proceeds from any sale, lease, or other Disposition made pursuant to this Mortgage, or the Insurance Proceeds (including proceeds from the surrender of any insurance policies pursuant hereto), or any Rents collected by Secured Party from the Mortgaged Property, and any other amounts received pursuant to the Loan Documents, shall be applied by Secured Party (or the receiver, if one is appointed), as the case may be, to the Debt or other Obligations in the following order and priority: (1) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums or other sums including reasonable attorneys' fees and reasonable fees or commissions; (2) to the satisfaction of the Debt and other Obligations, in whole or in part (whether or not due), in such order as Secured Party may, in its Sole Discretion, elect; (3) to the holder or beneficiary of any inferior Liens covering the Mortgaged Property, if any, in order of the priority of such inferior Liens (Secured Party shall hereby be entitled to rely exclusively on a commitment for title insurance issued to determine such priority) or as otherwise provided in the Credit Agreement; and (4) lastly, the cash balance, if any, to the Debtor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Debt or other Obligations like any other payment. The balance of the Debt or other Obligations remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note and the other Loan Documents.

(q) Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Debtor or Debtor's representatives, successors or assigns, or any other persons claiming any interest in the Mortgaged Property by, through or under

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Debtor are occupying or using the Mortgaged Property, or any part thereof, then, to the extent not prohibited by applicable Law, each and all shall, at the option of Secured Party or the purchaser at such sale, as the case may be, 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 landlord or tenant, at a reasonable rental per day based upon the value of the Mortgaged Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable Law, in the event the tenant fails to surrender possession of the Mortgaged Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Mortgaged Property in the appropriate court of the county in which the Premises are located.

(r) Notice to Account Debtors. Secured Party may, at any time after a default hereunder, which default is not cured within any applicable grace, notice or cure period, notify the account debtors and obligors of any accounts, chattel paper, or general intangibles, or negotiable instruments or other evidences of Indebtedness to Debtor included in the Mortgaged Property to pay Secured Party directly. Debtor shall at any time or from time to time upon the request of Secured Party provide to Secured Party a current list of all such account debtors and obligors and their addresses.

(s) Payment of Expenses. Debtor shall pay on demand all of Secured Party's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Secured Party until actually paid by Debtor at the Default Rate, and the same shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Indebtedness evidenced by the Note or other Obligations.

18. Non-Waiver. The failure of Secured Party to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. Debtor shall not be relieved of Debtor's obligation to pay the Debt or other Obligations at the time and in the manner provided for its payment in the Note, the Credit Agreement, this Mortgage, or the other Loan Documents by reason of (i) failure of Secured Party to comply with any request of Debtor to take any action to foreclose this Mortgage or sell the Mortgaged Property pursuant to the provisions of this Mortgage or otherwise enforce any of the provisions hereof or of the Note or any other deed of trust, mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or other Obligations or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt or other Obligations, or (iii) any agreement or stipulation between Secured Party and any subsequent owner or owners of the Mortgaged Property or other Person extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Credit Agreement, this Mortgage, or other Loan Documents or any other deed of trust, mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or other Obligations or any portion thereof, without first having obtained the consent of Debtor, and in the latter event, Debtor shall continue to be obligated to pay the Debt and other Obligations at the time and in the manner provided in the Note, the Credit Agreement, this Mortgage, and other Loan Documents, as so extended, modified and supplemented, unless expressly released and

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discharged from such obligation by Secured Party in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien, encumbrance, right, title or interest in or to the Mortgaged Property, Secured Party may release any Person at any time liable for the payment of the Debt or other Obligations or any portion thereof or any part of the security held for the Debt or other Obligations and may extend the time of payment or otherwise modify the terms of the Note, the Credit Agreement, this Mortgage, or other Loan Documents, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Mortgage or the Lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Debt and other Obligations over any such subordinate Lien, right, title or interest. Secured Party may resort for the payment of the Debt or other Obligations to any other security held by Secured Party in such order and manner as Secured Party, in its Discretion, may elect. Secured Party may take action to recover the Debt or other Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Secured Party thereafter to foreclose this Mortgage or to effect a sale of the Mortgaged Property in accordance with the provisions of this Mortgage. Secured Party shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by any Loan Document or Law. The rights of Secured Party under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Secured Party shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

19. Further Acts, etc. Debtor will, at the cost of Debtor, and without expense to Secured Party, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Secured Party shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Secured Party, as the case may be, the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Debtor may be or may hereafter become bound to convey or assign to Secured Party, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage and, on demand, will execute and deliver and hereby authorizes Secured Party to prepare and file in the name of Debtor to the extent Secured Party may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the Lien hereof upon the Mortgaged Property.

20. Performance and Subrogation. If Debtor shall fail to pay or perform any of its Obligations under any Loan Documents (including, without limitation, any payment of expenses), and such failure shall continue beyond any applicable grace, notice and/or cure period, Secured Party without notice to or consent of Debtor may, from time to time, but need not, pay or perform (or cause to be paid or performed) any such Obligation, in any form or manner Secured Party may determine in its Discretion, and any amount so paid or expended, with interest at the Default Rate, shall be added to the Obligations and shall be paid by Debtor on demand. No such action (or in action) of Secured Party shall be considered as a waiver of default or Event of Default or any right accruing to Secured Party on account of the occurrence of any default on the party of Debtor under this Mortgage or any Loan Document. To the extent that Secured Party pays any sum due from Debtor or in respect of the Premises under any Law or Contractual Obligation, Secured Party shall be subrogated to and shall receive and enjoy all

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rights and benefits (including any Liens) possessed, held or enjoyed by any payee or other Person with respect thereto, and the same shall remain in existence for the benefit of Secured Party and shall secure the amount expended by Secured Party and other Obligations.

21. Headings, etc. The headings, titles and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

22. Filing of Mortgage, etc. Debtor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a Lien or evidencing the Lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future Law in order to publish notice of and fully to protect, preserve and perfect the Lien hereof upon, and the interest of Secured Party in, the Mortgaged Property. Debtor will pay all filing, registration and recording fees and taxes, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any deed of trust or any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance. Debtor shall hold harmless and indemnify Secured Party, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

23. Intentionally Deleted.

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

25. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage shall be used interchangeably in singular or plural form and the word "Debtor" shall mean each Debtor and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein; the word "Secured Party" shall mean Secured Party or any subsequent holder of the Note"; the word "Note" shall mean the Secured Promissory Note or any other evidence of indebtedness secured by this Mortgage; the words "Credit Agreement" shall mean the Credit Agreement; the word "Guarantor" shall mean each person guaranteeing payment of the Debt or other Obligations or any portion thereof or performance by Debtor of any of the terms of this Mortgage and their respective heirs, executors, administrators, legal representatives, successors and assigns; the words "Mortgaged Property" shall include any portion of the Mortgaged Property and the word "default" shall include any default by Debtor or other Person in the observance or performance of any of the terms, covenants or provisions of this Mortgage, the Note, the Credit Agreement or any other Loan Documents on the part of Debtor or such other Person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Mortgage.

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Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

26. Waiver of Notice. Debtor shall not be entitled to any notices of any nature whatsoever from Secured Party except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Secured Party to Debtor, and Debtor hereby expressly waives the right to receive any notice from Secured Party with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Secured Party to Debtor.

27. Waiver of Statutory Rights. Debtor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption Laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Laws to the full extent that Debtor may do so under applicable Law. Debtor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the Lien of this Mortgage and agrees that any court having jurisdiction to foreclose such Lien may order the Mortgaged Property sold as an entirety. Debtor hereby waives for itself and all who may claim through or under it, and to the full extent Debtor may do so under applicable Law, any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or granted under any Law now existing or hereafter enacted.

28. Waiver of Counterclaims. Debtor absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature with respect to this Mortgage or the obligations of Debtor under this Mortgage in any action or proceeding brought by Secured Party to collect the Debt or other Obligations, or any portion thereof, or to enforce the obligations of the Debtor under this Mortgage.

29. Superior Lien. If Debtor fails to pay any installment of principal or interest or any other sum due under any deed of trust or mortgage or other Lien superior to the Lien of this Mortgage, as the same becomes due and payable, Secured Party may, at its option, pay the same, and Debtor shall upon demand reimburse Secured Party for all sums so expended by Secured Party, with interest at a rate per annum equal to the Default Rate. All such sums expended by Secured Party, with interest, shall be secured by this Mortgage.

30. Credit Agreement. Unless specifically provided to the contrary, all of the terms and provisions of the Credit Agreement are hereby incorporated and shall become a part of this Mortgage.

31. Solvency, Binding Effect and Enforceability. The Debtor is (and, after giving effect to this Mortgage, will be) solvent. This Mortgage is the legal, valid and binding obligation of the Debtor enforceable in accordance with its terms.

32. Future Advances. In addition to all other indebtedness secured by this Mortgage, this Mortgage shall also secure and constitute a first Lien on the Mortgaged Property for all

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future advances made by Secured Party to Debtor for any purpose within twenty (20) years from the date of this Mortgage to the same extent as if such advances were made on the date of the execution of this Mortgage. Any such advances may be made at the option of Secured Party. The total amount of the indebtedness, including future advances, that is secured by this Mortgage, may increase or decrease from time to time, but shall not exceed a maximum principal amount of Seventeen Million Five Hundred Fifty Thousand and No/100ths Dollars (\$ 17,550,000.00) at any one time, plus interest thereon and any disbursement made by Secured Party for the payment of taxes, levies or insurance on the Mortgaged Property encumbered by this Mortgage, with interest on such disbursement.

33. Governing Law; Consent to Jurisdiction.

(a) WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN ALL MATTERS RELATING TO THIS MORTGAGE AND ALL OF THE INDEBTEDNESS AND OBLIGATIONS DESCRIBED HEREIN.

(b) DEBTOR AND SECURED PARTY HEREBY CONSENT, UNCONDITIONALLY AND IRREVOCABLY TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OTHER THAN PURSUIT OF A JUDGMENT ON THE NOTE WHERE SUIT IS ALSO BROUGHT IN THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED TO TAKE JURISDICTION OF THE MORTGAGED PROPERTY. DEBTOR FURTHER CONSENTS, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO THE MORTGAGED PROPERTY INCLUDING BUT NOT LIMITED TO FORECLOSURES. DEBTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH HEREIN IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, DEBTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF SECURED PARTY TO

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SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST DEBTOR IN ANY JURISDICTION. To the extent that the Debtor has or may hereafter acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to the Debtor or the Debtor's property, the Debtor hereby irrevocably waives such immunity in respect of its obligations under this Mortgage to the fullest extent permitted by Law.

34. WAIVER OF TRIAL BY JURY. DEBTOR BY EXECUTION AND DELIVERY HEREOF AND SECURED PARTY BY ACCEPTANCE HEREOF, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT OF ANY LITIGATION BASED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY IN CONNECTION HEREWITH OR THEREWITH.

1.01 Special State Provisions. Notwithstanding anything to the contrary contained in this Mortgage, in the event of any conflict or inconsistency between the provisions of this Section 35 and the other provisions of this Mortgage, the provisions of this Section will govern.

(a) **Definitions.** Terms used in this Section that are not otherwise defined are given the same meaning as set forth in this Mortgage. The following terms and references (for purposes of this Section only) shall mean the following:

- (i) **"Applicable Law"** means statutory and case law in the State, including, but not by way of limitation, Mortgage Foreclosure Actions, Ind. Code 32-30-10, Receiverships, Ind. Code 32-30-5, and the Uniform Commercial Code - Secured Transactions, Ind. Code 26-1-9.1 (the "UCC"), as amended, modified and/or recodified from time to time; provided, however, if by reason of mandatory provisions of law, the perfection, the effect of perfection or nonperfection, and the priority of a security interests in any Collateral are governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to perfection, effect of perfection or non-perfection, and the priority of the security interests in any such Collateral.
- (ii) **"County"** means the County in the State in which the Premises is located.
- (iii) **"Disclosure Law"** means the Indiana Responsible Property Transfer Law, Ind. Code 13-25-3-1 et seq.
- (iv) **"Environmental Law"** means the "Environmental Management Laws" as defined in Ind. Code 13-11-2-71.

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(v) "State" means the state in which the Mortgaged Property is located.

(b) **Disclosure Law.** Debtor hereby represents, warrants and covenants that it has complied, and will comply, with the Disclosure Law, by (A) the completion and delivery to the Secured Party of a disclosure document in the form required by the Disclosure Law (the "Disclosure Document"), (B) the timely recording in the Office of the Recorder of the County of a Disclosure Document, and (C) the timely filing in the Office of the Indiana Department of Environmental Management, of the Disclosure Document; or Debtor has determined after diligent investigation that the Premises does not constitute "property" under the Disclosure Law and therefore delivery, filing and recording of a Disclosure Document is not required.

(c) **No Notice of Lien.** Neither Debtor nor, to the best of Debtor's knowledge, after diligent inquiry and investigation, any tenant of the Mortgaged Property has received a notice of intention to hold a lien as may be imposed under applicable Environmental Law

(d) **Rights and Remedies under Applicable Law.** Notwithstanding anything in this Mortgage, the Note, the Credit Agreement or the other Loan Documents to the contrary, Secured Party shall be entitled to all rights and remedies that a mortgagee would have under Applicable Law. In the event of any inconsistency between the provisions of this Mortgage and the provisions of Applicable Law, the provisions of Applicable 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 Applicable Law. Conversely, if any provision of this Mortgage shall grant to Secured Party any rights or remedies upon default of the Debtor which are more limited than the rights or remedies that would otherwise be vested in this Mortgage under Applicable Law in the absence of said provision, Secured Party shall be vested with the rights and remedies granted under Applicable Law. Notwithstanding any provision in this Mortgage relating to a power of sale or other provision for sale of the Mortgaged Property upon an Event of Default other than under a judicial proceeding, any sale of the Mortgaged Property pursuant to this Mortgage will be made through a judicial proceeding, except as otherwise may be permitted under the UCC.

(e) **Unenforceable Remedies.** To the extent Applicable Law limits: (i) the availability of the exercise of any of the remedies set forth in this Mortgage, including without limitation the remedies involving a power of sale on the part of Secured Party and the right of Secured Party to exercise self-help in connection with the enforcement of the terms of this Mortgage, or (ii) the enforcement of waivers and indemnities made by Debtor, 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 whether such remedies, waivers or indemnities were enforceable at the time of the execution and delivery of this Mortgage.

(f) **Non-Waiver.** Nothing in this Mortgage, the Note, the Credit Agreement or the other Letter of Credit is intended to constitute a waiver of deficiency under Ind. Code §32-29-7-5 nor a consent by this Secured Party to such a waiver.

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(g) **Security Interest – Rents.** Without limiting the scope of the assignment of Rents contained in this Mortgage, the assignment of Rents set forth herein shall constitute an assignment of rents as set forth in Ind. Code 32-21-4-2 and thereby creates, and Debtor hereby grants to Secured Party, a security interest in the Rents that will be perfected upon the recording of this Mortgage.

(h) **Future Advances.** Notwithstanding anything contained in this Mortgage or the other Loan Documents to the contrary, this Mortgage shall secure (i) a maximum principal amount of 200% of the Initial Principal Amount, exclusive of any items described in (ii) below, including any additional advances made from time to time after the date hereof pursuant to the Loan Documents whether made as part of the obligations secured hereby, made at the option of the Secured Party, made after a reduction to a zero (0) or other balance, or made otherwise, (ii) all other amounts payable by Debtor, or advanced by Secured Party for the account, or on behalf, of Debtor, pursuant to the Loan Documents, including amounts advanced with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums and other costs and impositions incurred for the protection of the Mortgaged Property to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage; and (iii) future modifications, extensions, and renewals of any Loan Documents or Obligations secured by this Mortgage. Pursuant to Ind. Code 32-29-1-10, the lien of this Mortgage with respect to any future advances, 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 future advance, modification, extension, or renewal may occur after this Mortgage is executed. Notwithstanding anything to the contrary contained herein or in the Credit Agreement, Debtor acknowledges and agrees that Secured Party is under no obligation to make any additional advances following the initial advance evidenced by the Note.

(i) **UCC Remedies.** This Mortgage is intended to be a security agreement as defined under the UCC. Accordingly, if an Event of Default shall occur under this Mortgage, then in addition to having any other right or remedy available at law or in equity, Secured Party shall have the option pursuant to Applicable Law of either (i) proceeding under the UCC and exercising such rights and remedies as may be provided to a secured party by the UCC with respect to all or any portion of the (including, without limitation, taking possession of and selling such Collateral) or (ii) treating such Collateral as real property and proceeding with respect to both the real and personal property constituting the Mortgaged Property in accordance with Secured Party's rights, powers and remedies with respect to the real property (in which event the default provisions of the UCC shall not apply).

(j) **Fixture Filing.** It is intended that as to the fixtures, as such term is defined in Ind. Code 26-1-9.1-102(41), that are part of the Mortgaged Property, this Mortgage shall be effective as a continuously perfected financing statement filed pursuant to Ind. Code 26-1-9.1-515 as a fixture filing from the date of the filing of this Mortgage for record with the Recorder of the County. In order to satisfy Ind. Code 26-1-9.1-502(a) and Ind. Code 26-1-9.1-502(b), the following information is hereby provided:

Name of Debtor: Falcon Holdings LLC, a Delaware limited liability company

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Address of Debtor: 1200 Harger Road, Suite 800, Oak Brook, IL 60523

Type of Organization: LLC

State of Organization: Delaware

Organization Number: 3093083

Name of Secured Party: Wells Fargo Bank, National Association

Address of Secured Party: 5938 Priestly Drive, Suite 200, Carlsbad, CA 92008

Record Owner of Mortgaged Property: Falcon Holdings LLC, a Delaware limited liability company

Debtor hereby acknowledges receipt of a copy of this Mortgage in compliance with Secured Party's obligation to deliver a copy of the fixture filing to Debtor pursuant to Section 9.1-502(f) of the UCC.

(k) **Maturity Date.** The Note, if not sooner paid, shall mature on or before June 1, 2010.

(l) **Incorporation by Reference.** To the extent necessary to interpret this Mortgage, the provisions of the Credit Agreement and the other Loan Documents are hereby incorporated by reference into this Mortgage with the same effect as if set forth herein. In the event that any such incorporated provisions of the Credit Agreement and the other Loan Documents are inconsistent with the provisions hereof, the provisions of Credit Agreement and the other Loan Documents shall govern and control to the extent of the inconsistency; provided, however, the provisions of this Section 35 shall govern and control in all circumstances, anything in this Mortgage, the Credit Agreement or the other Loan Documents to the contrary notwithstanding; provided, however, the provisions in this Mortgage regarding creation, validity, perfection, priority and enforceability of the lien and security interests created and granted hereby, all warranties of title contained herein with respect to the Mortgaged Property and all provisions hereof relating to the realization of the security covered hereby with respect to the Mortgaged Property shall be governed by this Mortgage and Applicable Law.

(m) **Release.** The lien of this Mortgage shall be released from the Mortgaged Property upon payment in full of the Obligations secured hereby, or otherwise in accordance with the provisions of this Mortgage and the Credit Agreement. Secured Party, on written request and at expense of Debtor, will execute and deliver such proper instruments of release and satisfaction as may reasonably be requested to evidence such release, and any such instrument, when duly executed by Secured Party and duly received by Debtor in the place where this Mortgage is recorded, shall conclusively evidence the release of this Mortgage; provided, however, any of the terms and provisions of this Mortgage that are intended to survive, shall nevertheless survive, to the extent permitted by Applicable Law, the release or satisfaction of this Mortgage whether voluntarily granted by Secured Party, as a result of a judgment upon judicial foreclosure of this Mortgage or in the event a deed in lieu of foreclosure is granted by Debtor to Secured Party.

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IN WITNESS WHEREOF, Debtor has duly executed this Mortgage as of the date first above written.

DEBTOR:

FALCON HOLDINGS LLC,
a Delaware limited liability company

By: *Aslam Khan*
Name: Aslam Khan
Title: President

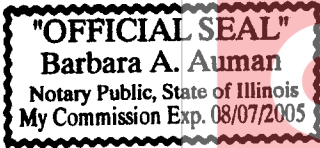
STATE OF Ill)
COUNTY OF DuPage) ss:

Before me, a Notary Public in and for said County and State, personally appeared Aslam Khan, the President of Falcon Holdings LLC, a Delaware limited liability company and acknowledged the execution of the foregoing instrument as such President acting for and on behalf of said limited liability company.

Witness my hand and Notarial Seal this 7th day of May, 2005.

This Document is the property of
the Lake County Recorder

Barbara A. Auman
Notary Public



Barbara A. Auman
(Type or Print Name)

(SEAL)

My Commission Expires:

8-7-05



Resident of DuPage County

This instrument prepared by:
Ana Lazo Tenzer, Esq.
Brownstein Hyatt & Farber
410 Seventeenth Street, 22nd Floor
Denver, CO 80202

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EXHIBIT A

(Description of the Subject Lease and the Real Property)

Coll. #	Unit No.	Address	City/State	Fee Type	County
18	250	5443 East 21st St	Indianapolis, IN 46218	Leasehold (Spirit)	Marion
19	261	3860 N College Ave	Indianapolis, IN 46205	Leasehold (Spirit)	Marion
20	265	3863 N Post Rd	Indianapolis, IN 46226	Leasehold (Spirit)	Marion
21	298	5040 E 38th St	Indianapolis, IN 46218	Leasehold (Spirit)	Marion
22	320	4590 W 5th Ave	Gary, IN 46406	Leasehold (Spirit)	Lake
23	532	1409 South Broadway	Gary, IN 46407	Leasehold (Spirit)	Lake
24	588	3701 Grant St	Gary, IN 46408	Leasehold (Spirit)	Lake
25	7392	3970 Lafayette Road	Indianapolis, IN 46254	Leasehold (Spirit)	Marion
81	633	2910 Westlane Rd	Indianapolis, IN 46268	Sub-leased (Cajun)	Marion
82	238	2501 N Keystone Ave	Indianapolis, IN 46218	Leasehold (Cajun)	Marion
83	247	240 E 22nd St	Indianapolis, IN 46202	Leasehold (Cajun)	Marion
84	260	1404 E Prospect St	Indianapolis, IN 46203	Leasehold (Cajun)	Marion
85	262	2502 Martin Luther King Jr St	Indianapolis, IN 46208	Leasehold (Cajun)	Marion
86	266	5129 E Washington St	Indianapolis, IN 46219	Leasehold (Cajun)	Marion
87	274	2964 S Shelby St	Indianapolis, IN 46203	Leasehold (Cajun)	Marion
88	608	4850 W. 16 th St.	Indianapolis, IN 46224	Leasehold (Spirit)	Marion
89	632	5170 W. Washington St.	Indianapolis, IN 46241	Leasehold	Marion
90	8817	8975 E Washington St.	Indianapolis, IN 46219	LH (Lor Corporation)	Marion

Collateral #18/(Unit #250) – Leasehold:

THE LEASEHOLD ESTATE CREATED BY THAT MASTER LAND AND BUILDING LEASE AGREEMENT, EXECUTED BY SPIRIT SPE PORTFOLIO 2004-6, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSOR, AND FALCON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY __, 2005, AS DISCLOSED BY THAT CERTAIN MEMORANDUM OF MASTER LAND AND BUILDING LEASE AGREEMENT, WHICH IS BEING RECORDED CONCURRENTLY HEREWITH IN THE OFFICIAL RECORDS OF MARION COUNTY, INDIANA, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

LOTS 149, 150 AND 151 IN RITTER PARK REVISED, 4TH SECTION, AN ADDITION TO THE CITY OF INDIANAPOLIS, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 28, PAGE 294 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

Also known as 5443 East 21st Street, Indianapolis, Marion County, Indiana 46218

Collateral #19/(Unit #261) – Leasehold Estate:

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Exhibit A-1

THE LEASEHOLD ESTATE CREATED BY THAT MASTER LAND AND BUILDING LEASE AGREEMENT, EXECUTED BY SPIRIT SPE PORTFOLIO 2004-6, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSOR, AND FALCON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY __, 2005, AS DISCLOSED BY THAT CERTAIN MEMORANDUM OF MASTER LAND AND BUILDING LEASE AGREEMENT, WHICH IS BEING RECORDED CONCURRENTLY HEREWITH IN THE OFFICIAL RECORDS OF MARION COUNTY, INDIANA, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

LOTS 177 AND 178 IN ARDMORE, AN ADDITION TO THE CITY OF INDIANAPOLIS, AS PER PLAT THEREOF RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

Also known as 3860 N. College Avenue, Marion County, Indiana 46205

Collateral #20/(Unit #265) – Leasehold Estate:

THE LEASEHOLD ESTATE CREATED BY THAT MASTER LAND AND BUILDING LEASE AGREEMENT, EXECUTED BY SPIRIT SPE PORTFOLIO 2004-6, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSOR, AND FALCON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY __, 2005, AS DISCLOSED BY THAT CERTAIN MEMORANDUM OF MASTER LAND AND BUILDING LEASE AGREEMENT, WHICH IS BEING RECORDED CONCURRENTLY HEREWITH IN THE OFFICIAL RECORDS OF MARION COUNTY, INDIANA, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

A PART OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 5 EAST IN MARION COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID QUARTER SECTION A DISTANCE OF 570.00 FEET NORTH 00 DEGREES 27 MINUTES 15 SECONDS WEST OF THE SOUTHWEST CORNER OF SAID QUARTER SECTION; THENCE NORTH 00 DEGREES 27 MINUTES 15 SECONDS WEST UPON AND ALONG THE WEST LINE OF SAID QUARTER SECTION A DISTANCE OF 90.00 FEET TO A POINT; THENCE NORTH 89 DEGREES 34 MINUTES 47 SECONDS EAST AND PARALLEL WITH THE SOUTH LINE OF SAID QUARTER SECTION A DISTANCE 245.00 FEET TO A POINT; THENCE SOUTH 00 DEGREES 27 MINUTES 15 SECONDS EAST AND PARALLEL TO THE WEST LINE OF SAID QUARTER SECTION A DISTANCE OF 90.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 34 MINUTES 47 SECONDS WEST AND PARALLEL WITH THE SOUTH LINE OF SAID QUARTER SECTION A DISTANCE OF 245.00 FEET TO THE POINT OF BEGINNING.

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Exhibit A-2

EXCEPT, THAT PART CONVEYED TO THE CONSOLIDATED CITY OF INDIANAPOLIS BY DEED RECORDED FEBRUARY 15, 1974 AS INSTRUMENT NO. 74-8294, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PART OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 5 EAST IN MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING NORTH 00 DEGREES 47 MINUTES 19 SECONDS WEST 660.00 FEET ALONG THE WEST LINE OF SAID QUARTER SECTION AND NORTH 89 DEGREES 15 MINUTES 11 SECONDS EAST, 45.00 FEET FROM THE SOUTHWEST CORNER OF SAID QUARTER SECTION; THENCE CONTINUING NORTH 89 DEGREES 15 MINUTES 11 SECONDS EAST, PARALLEL TO THE SOUTH LINE OF SAID QUARTER SECTION 5 FEET; THENCE SOUTH 00 DEGREES 47 MINUTES 19 SECONDS EAST PARALLEL TO THE WEST LINE OF SAID QUARTER SECTION 90.00 FEET; THENCE SOUTH 89 DEGREES 15 MINUTES 11 SECONDS WEST PARALLEL TO THE SOUTH LINE OF SAID QUARTER SECTION 5 FEET; THENCE NORTH 00 DEGREES 47 MINUTES 19 SECONDS WEST PARALLEL TO THE WEST LINE OF SAID QUARTER SECTION 90.00 FEET TO THE POINT OF BEGINNING.

Also known as 3863 N. Post Road, Indianapolis, Marion County, Indiana 46226

Collateral #21/(Unit #298) – Leasehold Estate:

THE LEASEHOLD ESTATE CREATED BY THAT MASTER LAND AND BUILDING LEASE AGREEMENT, EXECUTED BY SPIRIT SPE PORTFOLIO 2004-6, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSOR, AND FALCON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY __, 2005, AS DISCLOSED BY THAT CERTAIN MEMORANDUM OF MASTER LAND AND BUILDING LEASE AGREEMENT, WHICH IS BEING RECORDED CONCURRENTLY HEREWITH IN THE OFFICIAL RECORDS OF MARION COUNTY, INDIANA, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16 AND PART OF THE NORTHEAST QUARTER OF SECTION 21, IN TOWNSHIP 16 NORTH, RANGE 4 EAST, MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, SAID POINT BEING 519.05 FEET WEST OF THE EAST LINE AND 350.03 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 16 NORTH, RANGE 4 EAST; THENCE RUNNING EAST AND PARALLEL WITH THE NORTH LINE OF SAID QUARTER QUARTER SECTION A DISTANCE OF 110 FEET TO A POINT; THENCE SOUTH AND PARALLEL TO THE EAST LINE OF SAID QUARTER QUARTER SECTION, EXTENDED, A DISTANCE OF 393.60 FEET TO A POINT ON THE NORTH PROPERTY LINE OF EAST 38th STREET AS NOW LOCATED; THENCE WEST ON AND ALONG THE NORTH PROPERTY LINE OF EAST 38th STREET A DISTANCE OF 110 FEET TO A POINT; THENCE NORTH AND PARALLEL TO THE EAST LINE OF SAID QUARTER

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Exhibit A-3

QUARTER SECTION, EXTENDED, A DISTANCE OF 393.15 FEET TO A POINT TO THE POINT OF BEGINNING.

Also known as 5040 E. 38th Street, Indianapolis, Marion County, Indiana 46218

Collateral #22/(Unit #320) – Leasehold Estate:

THE LEASEHOLD ESTATE CREATED BY THAT MASTER LAND AND BUILDING LEASE AGREEMENT, EXECUTED BY SPIRIT SPE PORTFOLIO 2004-6, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSOR, AND FALCON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY __, 2005, AS DISCLOSED BY THAT CERTAIN MEMORANDUM OF MASTER LAND AND BUILDING LEASE AGREEMENT, WHICH IS BEING RECORDED CONCURRENTLY HEREWITH IN THE OFFICIAL RECORDS OF LAKE COUNTY, INDIANA, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

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. 5th Avenue, Gary, Lake County, Indiana 46406

Collateral #23/(Unit #532) – Leasehold Estate:

THE LEASEHOLD ESTATE CREATED BY THAT MASTER LAND AND BUILDING LEASE AGREEMENT, EXECUTED BY SPIRIT SPE PORTFOLIO 2004-6, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSOR, AND FALCON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY __, 2005, AS DISCLOSED BY THAT CERTAIN MEMORANDUM OF MASTER LAND AND BUILDING LEASE AGREEMENT, WHICH IS BEING RECORDED CONCURRENTLY HEREWITH IN THE OFFICIAL RECORDS OF LAKE COUNTY, INDIANA, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

LOTS 16, 17, 18, 19 AND 20 IN BLOCK 7 IN GARY LAND COMPANY'S TENTH SUBDIVISION IN THE CITY OF GARY, LAKE COUNTY, INDIANA, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 20, PAGE 33, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

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Exhibit A-4

Also known as 1409 South Broadway, Gary, Lake County, Indiana 46407

Collateral #24/(Unit #988) – Leasehold Estate:

THE LEASEHOLD ESTATE CREATED BY THAT MASTER LAND AND BUILDING LEASE AGREEMENT, EXECUTED BY SPIRIT SPE PORTFOLIO 2004-6, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSOR, AND FALCON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY __, 2005, AS DISCLOSED BY THAT CERTAIN MEMORANDUM OF MASTER LAND AND BUILDING LEASE AGREEMENT, WHICH IS BEING RECORDED CONCURRENTLY HEREWITH IN THE OFFICIAL RECORDS OF LAKE COUNTY, INDIANA, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

LOTS 42, 43, 44, 45, 46, 47 AND 48, BLOCK 4, WOODROW WILSON'S ADDITION TO GARY, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 11, PAGE 10, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

Also known as 3701 Grant Street, Gary, Lake County, Indiana 46408

Collateral #25/(Unit #7392) – Leasehold Estate:

THE LEASEHOLD ESTATE CREATED BY THAT MASTER LAND AND BUILDING LEASE AGREEMENT, EXECUTED BY SPIRIT SPE PORTFOLIO 2004-6, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSOR, AND FALCON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY __, 2005, AS DISCLOSED BY THAT CERTAIN MEMORANDUM OF MASTER LAND AND BUILDING LEASE AGREEMENT, WHICH IS BEING RECORDED CONCURRENTLY HEREWITH IN THE OFFICIAL RECORDS OF MARION COUNTY, INDIANA, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

A PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 16 NORTH, RANGE 3 EAST, MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID HALF QUARTER SECTION; THENCE SOUTH 89 DEGREES 35 MINUTES 39 SECONDS WEST (ASSUMED AS BASIS OF BEARING) ALONG THE SOUTH LINE THEREOF 520.42 FEET; THENCE NORTH 00 DEGREES 24 MINUTES 21 SECONDS WEST PERPENDICULAR TO SAID SOUTH LINE 70.87 FEET TO THE NORTH RIGHT OF WAY LINE OF 38th STREET, AS TAKEN BY THE BOARD OF COMMISSIONERS OF MARION COUNTY PURSUANT TO CONDEMNATION ACTION, FILED IN MARION COUNTY CIRCUIT COURT AS CAUSE NO. C-61-880; THENCE NORTH 00 DEGREES 40 MINUTES 49 SECONDS EAST 185.84 FEET; THENCE NORTH 52 DEGREES 09 MINUTES 53 SECONDS EAST 299.98 FEET TO A POINT OF A CURVE AND THE SOUTHWESTERN RIGHT OF WAY LINE OF LAFAYETTE ROAD, AS PER PLANS ON FILE WITH THE INDIANA DEPARTMENT OF HIGHWAYS, PROJECT NO. 40-FY1934, DATED JUNE 7, 1934; THENCE

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Exhibit A-5

NORTHWESTERLY ALONG SAID RIGHT OF WAY 140.138 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 34,327.47 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 37 DEGREES 57 MINUTES 08 SECONDS WEST AND A LENGTH OF 140.138 FEET; THENCE NORTH 38 DEGREES 04 MINUTES 09 SECONDS WEST 537.03 FEET ALONG SAID RIGHT OF WAY; THENCE SOUTH 51 DEGREES 55 MINUTES 51 SECONDS WEST 24.26 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 00 DEGREES 16 MINUTES 26 SECONDS EAST 130.00 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 34 SECONDS WEST 100.00 FEET; THENCE NORTH 00 DEGREES 16 MINUTES 26 SECONDS WEST 130.00 FEET; THENCE NORTH 89 DEGREES 43 MINUTES 34 SECONDS EAST 100.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.2984 ACRES MORE OR LESS.

TOGETHER WITH THOSE NON-EXCLUSIVE EASEMENTS FOR PARKING, DRIVEWAYS, PEDESTRIAN WALKWAYS, VEHICULAR INGRESS AND EGRESS, STORM AND SANITARY SEWER UTILITY LINES AS SET OUT IN A WARRANTY DEED FROM LAFAYETTE ASSOCIATES TO HARDEE'S FOOD SYSTEMS, INC. DATED JULY 26, 1983 AND RECORDED JULY 27, 1983 AS INSTRUMENT NUMBER 83-52608 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

AND TOGETHER WITH THOSE NON EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS OVER THE AREAS MARKED DRIVEWAYS AS SET FORTH IN EXHIBIT C AND EXHIBIT D AS DESCRIBED IN MUTUAL EASEMENT AGREEMENT RECORDED AS DOCUMENT NUMBER 83-13142 IN THE OFFICE OF THE RECORDER OF MARION COUNTY INDIANA.

Also known as 3970 Lafayette Road, Indianapolis Marion County, Indiana 46254

Collateral #88/(Unit #608) – Leasehold Estate:

THE LEASEHOLD ESTATE CREATED BY THAT MASTER LAND AND BUILDING LEASE AGREEMENT, EXECUTED BY SPIRIT SPE PORTFOLIO 2004-6, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSOR, AND FALCON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY __, 2005, AS DISCLOSED BY THAT CERTAIN MEMORANDUM OF MASTER LAND AND BUILDING LEASE AGREEMENT, WHICH IS BEING RECORDED CONCURRENTLY HERewith IN THE OFFICIAL RECORDS OF MARION COUNTY, INDIANA, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

PART OF BLOCK 1 IN BUTLER K. SMITH'S HEIRS' SUBDIVISION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 16 NORTH, RANGE 3 EAST, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 7, PAGE 97 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS, TO-WIT:

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Exhibit A-6

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BEGINNING AT A POINT WHERE THE CENTERLINE OF THE CRAWFORDSVILLE GRAVEL ROAD INTERSECTS THE SOUTH LINE OF THE RIGHT-OF-WAY OF THE RAILROAD COMPANY, FORMERLY KNOWN AS THE INDIANAPOLIS, DANVILLE AND CRAWFORDSVILLE RAILROAD; THENCE WEST WITH THE CENTERLINE OF SAID GRAVEL ROAD 273.50 FEET; THENCE DUE NORTH 134.38 FEET, MORE OR LESS TO THE SOUTH LINE OF SAID RAILROAD COMPANY'S RIGHT-OF-WAY; THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE SOUTH LINE OF SAID RIGHT-OF-WAY TO THE PLACE OF BEGINNING.

Also known as 4850 W. 16th Street, Indianapolis, Marion County, Indiana 46224

Collateral #81/(Unit #633) – Sublease Estate:

LEASEHOLD ESTATE HELD BY FALCON HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, SUCCESSOR BY MERGER WITH ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC., A DELAWARE LIMITED LIABILITY COMPANY, PURSUANT TO THAT CERTAIN LEASE AGREEMENT (SUBLEASE) DATED MARCH 24, 1997 BETWEEN ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC, AS TENANT, AND AFC ENTERPRISES, INC., A MINNESOTA CORPORATION, AS LANDLORD, AS DISCLOSED BY A MEMORANDUM OF LEASE BY AND BETWEEN AFC ENTERPRISES, INC., AS LESSOR AND ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC, AS LESSEE, RECORDED APRIL 4, 1997 AS INSTRUMENT NO. 97-49236 AND FURTHER AMENDED BY AN AFFIDAVIT FOR PROOF OF FIRST AMENDMENT TO LEASE DATED MAY 9, 2001 AND RECORDED MAY 10, 2001 AS INSTRUMENT NO. 2001-76317; AND PURSUANT TO THAT CERTAIN LEASE AGREEMENT DATED NOVEMBER 15, 1996 BETWEEN THOMAS COTTON, AS LANDLORD, AND AFC ENTERPRISES, INC., SUCCESSOR TO AMERICA'S FAVORITE CHICKEN COMPANY, AS TENANT, AS DISCLOSED BY MEMORANDUM OF LEASE BY AND BETWEEN THOMAS COTTON, AS LESSOR AND AMERICA'S FAVORITE CHICKEN COMPANY, AS LESSEE DATED NOVEMBER 15, 1996 AND RECORDED JANUARY 29, 1997 AS INSTRUMENT NO. 97-17811 WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

PARCEL 1:

PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 17 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID HALF QUARTER SECTION; THENCE SOUTH 89 DEGREES 50 MINUTES 38 SECONDS EAST (ASSUMED BEARING) ALONG THE SOUTH LINE OF SAID HALF QUARTER SECTION 1070.48 FEET TO THE CENTERLINE OF U.S. HIGHWAY 421 (MICHIGAN ROAD); THENCE NORTH 19 DEGREES 22 MINUTES 30 SECONDS WEST ALONG LAST SAID CENTERLINE 850.71 FEET TO THE CENTERLINE OF WESTLANE ROAD; THENCE SOUTH 73 DEGREES 05 MINUTES 00 SECONDS WEST ALONG LAST SAID CENTERLINE 237.28 FEET TO THE

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Exhibit A-7

POINT OF BEGINNING OF THIS DESCRIBED TRACT; THENCE CONTINUING ALONG SAID CENTERLINE SOUTH 73 DEGREES 05 MINUTES 00 SECONDS WEST 92.71 FEET; THENCE NORTH 19 DEGREES 22 MINUTES 30 SECONDS WEST 217.16 FEET; THENCE NORTH 73 DEGREES 05 MINUTES 00 SECONDS EAST 90.03 FEET; THENCE SOUTH 16 DEGREES 55 MINUTES 00 SECONDS EAST 16.00 FEET; THENCE SOUTH 32 DEGREES 42 MINUTES 13 SECONDS EAST 44.11 FEET; THENCE SOUTH 16 DEGREES 55 MINUTES 00 SECONDS EAST 158.52 FEET TO THE POINT OF BEGINNING.

EXCEPT, THAT PART CONVEYED TO THE CITY OF INDIANAPOLIS BY FINDING AND JUDGMENT UNDER CAUSE NO. S582-1298 AND RECORDED MAY 17, 1985 AS INSTRUMENT NO. 85-39523, DESCRIBED AS FOLLOWS:

A PART OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 17 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID QUARTER SECTION; THENCE EAST ON AND ALONG THE SOUTH LINE OF SAID QUARTER SECTION A DISTANCE OF 1071.40 FEET TO A POINT IN THE CENTERLINE OF MICHIGAN ROAD; THENCE NORTHWESTERLY ALONG SAID CENTERLINE A DISTANCE OF 851.40 FEET TO ITS INTERSECTION WITH 73RD STREET (WESTLANE ROAD); THENCE SOUTH 72 DEGREES 13 MINUTES 00 SECONDS WEST ALONG THE CENTERLINE OF 73RD STREET (WESTLANE ROAD) A DISTANCE OF 331.08 FEET; THENCE NORTH 17 DEGREES 47 MINUTES 00 SECONDS WEST A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING, SAID POINT BEING THE SOUTHWEST CORNER OF THE OWNER'S LAND, SAID POINT ALSO BEING THE NORTHERN RIGHT-OF-WAY LINE OF 73RD STREET (WESTLANE ROAD), THENCE NORTH 20 DEGREES 14 MINUTES 30 SECONDS WEST ALONG THE WEST LINE OF THE OWNER'S LAND A DISTANCE OF 10.00 FEET TO A POINT; THENCE NORTH 72 DEGREES 13 MINUTES EAST ALONG A LINE BEING PARALLEL TO THE NORTHERLY RIGHT-OF-WAY LINE OF 73RD STREET (WESTLANE ROAD) A DISTANCE OF 266.72 FEET TO A POINT; THENCE NORTH 22 DEGREES 21 MINUTES 17 SECONDS EAST A DISTANCE OF 19.60 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF MICHIGAN ROAD; THENCE SOUTH 20 DEGREES 14 MINUTES 30 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 25.00 FEET TO A POINT; THENCE SOUTH 72 DEGREES 13 MINUTES 00 SECONDS WEST ON AND ALONG SAID RIGHT-OF-WAY A DISTANCE OF 280.00 FEET TO THE POINT OF BEGINNING.



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Exhibit A-8

PARCEL 2:

EASEMENT FOR INGRESS AND EGRESS THE BENEFIT OF PARCEL 1 AS CREATED BY MUTUAL EASEMENT AGREEMENT DATED MAY 9, 2001 AND RECORDED AS DOCUMENT NUMBER 2001 0076320 OVER PORTIONS OF THE LAND AS DESCRIBED THEREIN.

Also known as 2910 Westlane Road, Indianapolis, Marion County, Indiana 46268

Collateral #82/(Unit #238) – Leasehold Estate:

LEASEHOLD ESTATE HELD BY FALCON HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, SUCCESSOR BY MERGER WITH ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC., A DELAWARE LIMITED LIABILITY COMPANY, PURSUANT TO THAT CERTAIN LEASE AGREEMENT DATED MARCH 24, 1997 BETWEEN AFC ENTERPRISES, INC., AS LANDLORD, AND ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC, AS TENANT, AS DISCLOSED BY MEMORANDUM OF LEASE FILED APRIL 4, 1997 AS INSTRUMENT NO. 97-49233 WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

LOTS 1, 2 AND 3 IN BLOCK 1 IN ELMWOOD ADDITION TO THE CITY OF INDIANAPOLIS, INDIANA, RECORDED IN PLAT BOOK 13, PAGE 180 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

TOGETHER WITH THE WEST 7 FEET OF A VACATED ALLEY EAST OF AND ADJACENT TO THE EAST LINE OF LOT 3 HERETOFORE VACATED BY PROCEEDINGS UNDER DECLARATORY RESOLUTION 73-VAC-30/30A AS SET OUT IN A TRANSCRIPT RECORDED AUGUST 31, 1973 AS INSTRUMENT NO. 73-56513, AS CORRECTED BY A CERTAIN INTER-DEPARTMENT COMMUNICATION RECORDED SEPTEMBER 19, 1973 AS INSTRUMENT NO. 73-60711.

Also known as 2501 N. Keystone Avenue, Indianapolis, Marion County, Indiana 46218

Collateral #83/(Unit #247) – Leasehold Estate:

LEASEHOLD ESTATE HELD BY FALCON HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, SUCCESSOR BY MERGER WITH ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC., A DELAWARE LIMITED LIABILITY COMPANY, PURSUANT TO THAT CERTAIN LEASE AGREEMENT BY AND BETWEEN AFC ENTERPRISES INC., AS LANDLORD, AND ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC, AS TENANT, DATED MARCH 24, 1997, AS DISCLOSED BY MEMORANDUM OF LEASE RECORDED APRIL 4, 1997 AS INSTRUMENT NO. 97-49233 WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

A PART OF LOT 1 AND ALL OF LOT 2 IN MARTINDALE'S LINCOLN PARK, 1ST SECTION, BLOCK 4, AN ADDITION TO THE CITY OF INDIANAPOLIS, AS PER PLAT

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Exhibit A-9

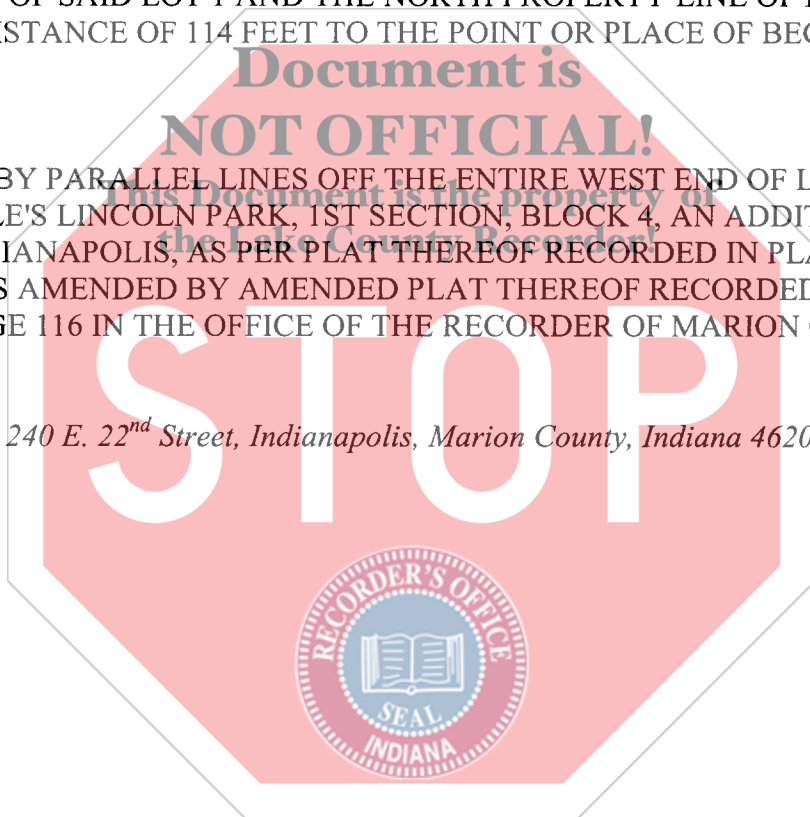
THEREOF RECORDED IN PLAT BOOK 8, PAGE 189, AS AMENDED BY AMENDED PLAT THEREOF RECORDED IN PLAT BOOK 9, PAGE 116 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1, SAID POINT BEING THE INTERSECTION OF THE WEST PROPERTY LINE OF ALABAMA STREET WITH THE NORTH PROPERTY LINE OF E. 22ND STREET; RUNNING THENCE NORTH AND ALONG THE EAST LINE OF LOTS 1 AND 2 AND THE WEST PROPERTY LINE OF ALABAMA STREET, A DISTANCE OF 80 FEET TO A POINT, SAID POINT BEING THE NORTHEAST CORNER OF SAID LOT 2; RUNNING THENCE WEST ON AND ALONG THE NORTH LINE OF LOT 2, A DISTANCE OF 144.64 FEET TO THE NORTHWEST CORNER OF SAID LOT 2; RUNNING THENCE SOUTH ON AND ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 40 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2 AND ALSO THE NORTHWEST CORNER OF SAID LOT 1; RUNNING THENCE EAST ON THE SOUTH LINE OF LOT 2 AND THE NORTH LINE OF LOT 1 A DISTANCE OF 31.16 FEET TO A POINT; THENCE SOUTH AND PARALLEL TO THE WEST LINE OF SAID LOT 1 A DISTANCE OF 40 FEET TO A POINT, SAID POINT BEING 31.16 FEET EAST OF THE SOUTHWEST CORNER OF LOT 1 AND ON THE NORTH PROPERTY LINE OF E. 22ND STREET; RUNNING THENCE EAST AND ALONG THE SOUTH LINE OF SAID LOT 1 AND THE NORTH PROPERTY LINE OF EAST 22ND STREET A DISTANCE OF 114 FEET TO THE POINT OR PLACE OF BEGINNING.

ALSO:

31.165 FEET BY PARALLEL LINES OFF THE ENTIRE WEST END OF LOT 1 IN MARTINDALE'S LINCOLN PARK, 1ST SECTION, BLOCK 4, AN ADDITION TO THE CITY OF INDIANAPOLIS, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 189, AS AMENDED BY AMENDED PLAT THEREOF RECORDED IN PLAT BOOK 9, PAGE 116 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

Also known as 240 E. 22nd Street, Indianapolis, Marion County, Indiana 46202



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Exhibit A-10

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Collateral #84/(Unit #260) – Leasehold Estate:

LEASEHOLD ESTATE HELD BY FALCON HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, SUCCESSOR BY MERGER WITH ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC., A DELAWARE LIMITED LIABILITY COMPANY, PURSUANT TO THAT CERTAIN LEASE AGREEMENT DATED MARCH 24, 1997 BY AND BETWEEN AFC ENTERPRISES, INC., AS LANDLORD, AND ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC, AS TENANT, AS DISCLOSED BY MEMORANDUM OF LEASE RECORDED APRIL 4, 1997 AS INSTRUMENT NO. 97-49233 WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

LOTS 194 AND 195 IN E.T.S.K. AND A.E. FLETCHER'S WOODLAWN SUBURB TO THE CITY OF INDIANAPOLIS, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 3, PAGE 156 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

Also known as 1404 East Prospect Street, Indianapolis, Marion County, Indiana 46203

Collateral #85/(Unit #262) – Leasehold Estate:

LEASEHOLD ESTATE HELD BY FALCON HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, SUCCESSOR BY MERGER WITH ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC, A DELAWARE LIMITED LIABILITY COMPANY, PURSUANT TO THAT CERTAIN LEASE AGREEMENT DATED MARCH 24, 1997 BY AND BETWEEN AFC ENTERPRISES, INC., AS LANDLORD, AND ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC, AS TENANT, AS DISCLOSED BY MEMORANDUM OF LEASE RECORDED APRIL 4, 1997 AS INSTRUMENT NO. 97-49234 WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

LOTS 1, 2, 3, 4 AND 5 IN LIEBER'S ADDITION TO NORTH INDIANAPOLIS, NOW IN THE CITY OF INDIANAPOLIS, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 10, PAGE 122 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

EXCEPT, THAT PORTION OF SAID LOTS TAKEN FOR THE WIDENING OF NORTHWESTERN AVENUE, AS SHOWN IN TOWN LOT RECORD 318, PAGE 514 AND PLAT BOOK 12, PAGES 27 AND 28.

Also known as 2502 MLK Drive, Indianapolis, Marion County, Indiana 46208

Collateral #86/(Unit 266) – Leasehold Estate:

LEASEHOLD ESTATE HELD BY FALCON HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, SUCCESSOR BY MERGER WITH ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC., A DELAWARE LIMITED LIABILITY COMPANY, PURSUANT TO THAT CERTAIN LEASE AGREEMENT DATED MARCH 24, 1997 BY AND BETWEEN AFC ENTERPRISES, INC., AS LANDLORD, AND ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC, AS TENANT, AS DISCLOSED BY

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Exhibit A-11

MEMORANDUM OF LEASE RECORDED APRIL 4, 1997 AS INSTRUMENT NO. 97-49233 WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

PART OF LOT 59 AND ALL OF LOT 60 IN PATTISON'S UNIVERSITY ADDITION TO IRVINGTON, NOW A PART OF THE CITY OF INDIANAPOLIS, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 10, PAGE 59 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF WASHINGTON STREET AND THE SOUTHEASTERLY LINE OF SPENCER AVENUE AT A CROSS CUT IN THE SIDEWALK; THENCE EAST ALONG WASHINGTON STREET 136.07 FEET, MORE OR LESS TO THE EAST LINE OF LOT 59; THENCE SOUTH ALONG SAID LOT LINE 93 FEET; THENCE WESTERLY PARALLEL WITH WASHINGTON STREET 10 FEET; THENCE SOUTHWESTERLY APPROXIMATELY 40 FEET TO THE SOUTHEASTERLY LINE OF SPENCER AVENUE AT A POINT 144.22 FEET SOUTHEASTERLY FROM THE POINT OF BEGINNING; THENCE NORTHWESTERLY ALONG SPENCER AVENUE TO THE POINT OF BEGINNING.

(AFC ENTERPRISES, INC., AS TO THE LAND ONLY; FALCON HOLDINGS, L.L.C., SUCCESSOR BY MERGER TO ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC, AS TO THE IMPROVEMENTS ONLY).

Also known as 5129 E. Washington Street, Indianapolis, Marion County, Indiana 46219

Collateral #87/(Unit #274) – Leasehold Estate:

LEASEHOLD ESTATE HELD BY FALCON HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, SUCCESSOR BY MERGER WITH ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC., A DELAWARE LIMITED LIABILITY COMPANY, PURSUANT TO THAT CERTAIN LEASE AGREEMENT DATED MARCH 24, 1997 BY AND BETWEEN AFC ENTERPRISES, INC., AS LANDLORD, AND ATLANTA FRANCHISE DEVELOPMENT COMPANY, LLC, AS TENANT, AS DISCLOSED BY MEMORANDUM OF LEASE RECORDED AS DISCLOSED BY MEMORANDUM OF LEASE RECORDED APRIL 4, 1997 AS INSTRUMENT NO. 97-49233 WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

LOTS 1, 2 AND 3 IN BERKELEY, AN ADDITION TO THE CITY OF INDIANAPOLIS, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGE 158 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

Also known as 2964 S. Shelby Street, Indianapolis, Marion County, Indiana 46203

Collateral #89/(Unit #632) – Leasehold Estate:

LEASEHOLD ESTATE HELD BY FALCON HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, PURSUANT TO THAT CERTAIN LEASE AGREEMENT DATED

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Exhibit A-12

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JANUARY 28, 2002 BY AND BETWEEN AFC ENTERPRISES, INC., AS LANDLORD, AND FALCON HOLDINGS, LLC, AS TENANT, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

LOTS NUMBERED 2 AND 3 IN NATIONAL HEIGHTS, AN ADDITION TO THE CITY OF INDIANAPOLIS, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 10, PAGE 190 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

Also known as 5170 West Washington Street, Indianapolis, Marion County, Indiana 46241

Collateral #90/(Unit #8817) – Leasehold Estate:

LEASEHOLD ESTATE HELD BY FALCON HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, PURSUANT TO THAT CERTAIN INDENTURE OF LEASE DATED AUGUST 8, 2003 BY AND BETWEEN LOR CORPORATION, AS LANDLORD, AND FALCON HOLDINGS, LLC, AS TENANT, WITH RESPECT TO THE FOLLOWING DESCRIBED LAND:

PARCEL 1:

PART OF THE EAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 6, TOWNSHIP 15 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN IN MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE SAID SOUTHEAST QUARTER SECTION 1374.57 FEET NORTH OF THE SOUTHEAST CORNER THEREOF AND RUNNING THENCE NORTH ON AND ALONG THE EAST LINE 50 FEET TO A POINT; THENCE DEFLECT 92 DEGREES 57 MINUTES TO THE LEFT IN A WESTERLY DIRECTION AND PARALLEL TO THE CENTER LINE OF U.S. 40, AS NOW LOCATED AND ESTABLISHED 200 FEET TO A POINT; THENCE NORTH AND PARALLEL TO THE EAST LINE OF THE SAID SOUTHEAST QUARTER SECTION 200 FEET TO THE CENTER LINE OF U.S. 40, AS NOW LOCATED AND ESTABLISHED; THENCE DEFLECT 92 DEGREES 57 MINUTES TO THE LEFT IN A WESTERLY DIRECTION AND ALONG THE CENTER LINE OF U.S. 40 AFORESAID 150 FEET TO A POINT; THENCE SOUTH AND PARALLEL TO THE EAST LINE OF SAID SOUTHEAST QUARTER SECTION 250 FEET TO A POINT; THENCE EASTERLY AND PARALLEL TO THE CENTER LINE OF U.S. 40, AS NOW LOCATED AND ESTABLISHED AS THE POINT OF BEGINNING.

EXCEPTING THEREFROM A PART OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 15 NORTH, RANGE 5 EAST IN MARION COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION; RUNNING THENCE NORTH ON AND ALONG THE EAST LINE OF SAID QUARTER SECTION 1424.57 FEET; THENCE DEFLECTING 92 DEGREES 57 MINUTES TO THE

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Exhibit A-13

LEFT IN A WESTERLY DIRECTION 25.03 FEET TO THE WEST BOUNDARY LINE OF POST ROAD AND THE POINT OF BEGINNING; THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID QUARTER SECTION AND ALONG THE WEST BOUNDARY LINE OF POST ROAD 50.00 FEET; THENCE DEFLECTING 87 DEGREES 03 MINUTES TO THE RIGHT IN A WESTERLY DIRECTION AND PARALLEL TO THE CENTER LINE OF WASHINGTON STREET, 25.03 FEET; THENCE NORTH PARALLEL TO THE EAST LINE OF SAID QUARTER SECTION 50.00 FEET; THENCE DEFLECTING 87 DEGREES 03 MINUTES TO THE RIGHT IN AN EASTERLY DIRECTION AND PARALLEL TO THE CENTER LINE OF WASHINGTON STREET 25.03 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THE REAL ESTATE CONVEYED TO THE STATE OF INDIANA IN A WARRANTY DEED RECORDED AS INSTRUMENT NO. 2003-218638, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 15 NORTH, RANGE 5 EAST, MARION COUNTY, INDIANA, AND BEING THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT-OF-WAY LINES DEPICTED ON THE ATTACHED RIGHT-OF-WAY PARCEL PLAT MARKED EXHIBIT "B", DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION, DESIGNATED AS POINT "22" ON THE LOCATION CONTROL ROUTE SURVEY PLAT RECORDED IN INSTRUMENT 99-70287 IN THE OFFICE OF THE RECORDER OF SAID COUNTY; THENCE NORTH 0 DEGREES 41 MINUTES 30 SECONDS WEST 418.635 METERS (1,373.48 FEET) (1,374.57 FEET BY INSTRUMENT 2002-0135710) ALONG THE EAST LINE OF SAID SECTION TO THE PROLONGED SOUTHERN LINE OF THE GRANTOR'S LAND; THENCE SOUTH 86 DEGREES 22 MINUTES 02 SECONDS WEST 15.260 METERS (50.07 FEET) ALONG SAID PROLONGED LINE TO THE WEST BOUNDARY OF POST ROAD AND THE POINT OF BEGINNING OF THIS DESCRIPTION, WHICH POINT OF BEGINNING IS THE SOUTHEAST CORNER OF THE GRANTOR'S LAND; THENCE CONTINUING SOUTH 86 DEGREES 22 MINUTES 02 SECONDS WEST 1.762 METERS (5.78 FEET) ALONG THE SOUTHERN LINE OF THE GRANTOR'S LAND; THENCE NORTH 0 DEGREES 41 MINUTES 30 SECONDS WEST 13.482 METERS (44.23 FEET) TO POINT "908" DESIGNATED ON SAID PARCEL PLAT; THENCE SOUTH 89 DEGREES 18 MINUTES 30 SECONDS WEST 0.500 METERS (1.64 FEET) TO POINT "907" DESIGNATED ON SAID PARCEL PLAT; THENCE NORTH 0 DEGREES 41 MINUTES 30 SECONDS WEST 33.500 METERS (109.91 FEET) TO POINT "903" DESIGNATED ON SAID PARCEL PLAT; THENCE NORTH 47 DEGREES 11 MINUTES 05 SECONDS WEST 12.630 METERS (41.44 FEET) TO POINT "901" DESIGNATED ON SAID PARCEL PLAT; THENCE NORTH 89 DEGREES 49 MINUTES 07 SECONDS WEST 15.033 METERS (49.32 FEET) TO POINT "900" DESIGNATED ON SAID PARCEL PLAT; THENCE SOUTH 86 DEGREES 22 MINUTES 02 SECONDS WEST 64.933 METERS (213.04 FEET) TO THE WEST LINE OF THE GRANTOR'S LAND; THENCE NORTH 0 DEGREES 41 MINUTES 30 SECONDS WEST 3.765 METERS (12.35 FEET) ALONG SAID WEST LINE TO THE SOUTHERN BOUNDARY OF U.S.R. 40 (EAST WASHINGTON STREET); THENCE NORTH 86 DEGREES 22 MINUTES 02 SECONDS EAST 90.124 METERS (295.68 FEET) ALONG THE BOUNDARY OF SAID U.S.R. 40 TO THE SOUTHWESTERN BOUNDARY OF THE

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Exhibit A-14

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INTERSECTION OF SAID U.S.R. 40 AND SAID POST ROAD; THENCE SOUTH 51 DEGREES 52 MINUTES 22 SECONDS EAST 1.661 METERS (5.45 FEET) ALONG THE BOUNDARY OF THE INTERSECTION OF SAID U.S.R. 40 AND SAID POST ROAD TO THE WEST BOUNDARY OF SAID POST ROAD; THENCE SOUTH 0 DEGREES 41 MINUTES 30 SECONDS EAST 59.832 METERS (196.30 FEET) ALONG THE BOUNDARY OF SAID POST ROAD TO THE POINT OF BEGINNING AND CONTAINING 0.0524 HECTARES (0.130 ACRES), MORE OR LESS.

PARCEL 2:

EASEMENT FOR PURPOSES OF MOTOR VEHICLE AND PEDESTRIAN INGRESS AND EGRESS THE BENEFIT OF PARCEL 1 AS CREATED BY AGREEMENT FOR CROSSED DRIVEWAY EASEMENTS DATED MARCH 16, 1972 AND RECORDED AS DOCUMENT NUMBER 72 29186 OVER PORTIONS OF THE LAND AS DESCRIBED THEREIN.

Also known as 8975 East Washington Street, Indianapolis, Marion County, Indiana 46219



DEFINITIONS SCHEDULE

Mortgage/Deed of Trust

“**Affiliate**” or “**Affiliates**” shall mean, with respect to any Person, (i) any Person who controls, is controlled by, or is under common control with such Person, (ii) any Person who is a manager, director or officer of, partner in, trustee of, or blood or legal relative, guardian or representative of the specified Person, or any Person who acts or serves in a similar capacity with respect to the specified Person, (iii) any Person of which or whom the specified Person is a manager, director or officer, partner, trustee, or blood or legal relative, guardian or representative, or with respect to which or whom, the specified Person acts or serves in a similar capacity; (iv) any Person, who, directly or indirectly, is the legal or beneficial owner of or controls 10% or more of any class of equity securities of the specified Person, and (v) any Person who is an Affiliate as defined in clauses (i), (ii), (iii) or (iv) of an Affiliate of the specified Person.

“**Business**” shall mean the business of operating a Unit in accordance with the Principal Agreements.

“**Collateral**” shall mean all personal property, including, without limitation, Equipment, Inventory, Fixtures, Accessions, General Intangibles (including Principal Agreements), Accounts, Certificates of Title, Money, Instruments, Investment Property, Documents, Chattel Paper, Deposit Accounts, Letters of Credit, Commodity Accounts, Commodity Contracts, Health-Care Insurance Receivables, Commercial Tort Claims, Promissory Notes, Certificated and Uncertificated Securities, Financial Assets, Securities Accounts, Securities Entitlements, Payment Intangibles and Software (as all of such terms are defined in the UCC or otherwise herein or in the Loan Documents), credit balances, deposits, bankers’ acceptances, guaranties, supporting obligations, letter-of-credit rights, credits, claims, choses in action, demands, liens, security interests, rights, insurance, awards, compensation, remedies, title and interest in, to and in respect of other Collateral, and all Collateral Revenues and all other personal property, now or hereafter owned, acquired, existing, arising, held, sold, used or consumed in connection with the Business or any Unit and any other property, rights, and interests which at any time relate to, arise out of or in connection with the foregoing or which come into the possession, custody or control of Secured Party or any of its agents, representatives, associates or correspondents, for any purpose, and all products and Proceeds of the foregoing.

“**Collateral Revenues**” shall mean with respect to any Collateral all interest, income, dividends, distributions, rents, revenues, profits and earnings thereon or other monies or revenues derived therefrom, including any such property received in connection with any disposition of any Principal Agreement and all moneys which may become payable or received under any policy insuring the Collateral or otherwise required to be maintained under the Credit Agreement (including return of unearned premium.)

“**Condemnation**” shall mean any taking by any Governmental Authority or other Person.

“**Conflict**” or “**Conflicting**” shall mean, with respect to any Contractual Obligation, Organizational Document, Requirement of Law, Consent or Other Action or any other item, any

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conflict with, breach of, default under, any triggering of rights, benefits, or obligations under or in connection with such item.

“Consent or Consents and Other Action” shall mean any consent, authorization, Judgment, directive, approval, license, certificate, registration, permit, exception, exemption, filing, notice, declaration or other action by, with or to any Person.

“Contractual Obligation” shall include any obligation under or in connection with any Instrument, Document, General Intangible.

“Credit Agreement” shall mean the Amended and Restated Credit Agreement between Debtor and Secured Party, relating to the Loan and, among other things, Granting the Secured Party a Lien on the Collateral.

“Debtor” shall mean each Debtor and any Person executing any Agreement of Principal, Affiliate Guarantee (if any), Credit Agreement, Mortgage/Deed of Trust, or other Contractual Obligation securing or evidencing the Loan from Secured Party, and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein.

“Default Rate” shall have the meaning accorded to such term in the Note.

“Discretion” shall mean Sole Discretion.

“Dispose” or **“Disposing”** or **“Disposed”** or **“Disposition”** shall include, with respect to any property, assets, obligations or other items, any sale, assignment, conveyance, pledge, Grant, encumbrance, lease, gift, abandonment or other disposition.

“GAAP” shall mean the generally accepted accounting principles and practices as in effect in the United States of America from time to time, consistently applied.

“Governmental Authority” shall mean any public office, court, arbitration or mediation panel, or office, administrative agency, regulatory authority, government, self-regulatory agency or authority or any subdivision thereof.

“Grant” or **“Grants”** or **“Granting”** shall include to grant, assign, transfer, convey, set over and dispose.

“Indebtedness” shall mean and include (i) with respect to any Person, (a) all items of indebtedness and liabilities which, in accordance with GAAP, would be included in determining liabilities that are shown on the liability side of the balance sheet of such Person, (b) all indebtedness and liabilities of other Persons assumed or guaranteed by such Person or in respect to which such Person is secondarily or contingently liable whether by any agreement to acquire indebtedness and liabilities or to supply or advance funds or otherwise, and (c) all indebtedness and liabilities of other Persons secured by any Lien in any property of such Person; and (ii) with respect to a Unit, (a) all items of indebtedness and liabilities which, in accordance with GAAP, would be included in determining liabilities that are shown on the liability side of the balance sheet of a Unit, (b) to the extent such indebtedness or liability specifically relates to the Unit or depends on cash flow of the Unit for repayment (as provided in an assumption of debt, guaranty

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or other agreement), all indebtedness and liabilities of other Persons assumed or guaranteed by any Person or in respect of which such Person is secondarily or contingently liable whether by any agreement to acquire indebtedness and liabilities or to supply or advance funds or otherwise and (c) all indebtedness and liabilities secured by any Lien on any property used in the operation of each of a Unit, to the extent not included pursuant to clauses (a) and (b) of this definition.

“Insurance Proceeds” means, at any time, all insurance proceeds or payments to which Debtor may be or become entitled by reason of any casualty under the insurance policies with respect to any Unit required to be maintained pursuant to the Credit Agreement plus (i) the amounts of any deductibles under such insurance policies; (ii) if Debtor fails to maintain any of the insurance policies required under the Credit Agreement, the amounts which would have been available with respect to such casualty had Debtor maintained such insurance policies; and (iii) all insurance proceeds and payments to which Debtor may be or become entitled, including, without limitation, pursuant to title insurance or by reason of any casualty under any other insurance policies coverage maintained by Debtor with respect to any Unit.

“Instrument” shall have the meaning accorded to such term in the UCC.

“Insurance Requirements” shall have the meaning accorded to such terms in the Credit Agreement.

“Judgment” shall mean any order, decision, decree, award, injunction of any Governmental Authority.

“Law” or **“Laws”** shall mean any statute, law, code, rule, regulation, ordinance.

“License” or **“Licenses”** shall mean any license, permit, directive, authorization, approval or stipulation required to operate the Business at the Property.

“Lien” or **“Liens”** shall mean any pledge, security, title, security interest, encumbrance, right of set off or offset, rights of others, benefits, claims or other liens (including federal or state tax liens), but excluding any Capital Lease.

“Loan” or **“Loans”** shall mean the indebtedness of Debtor to Secured Party as evidenced by the Loan Documents.

“Loan Document” or **“Loan Documents”** shall mean the Note, the Credit Agreement, and any other note, security agreement, mortgage, deed of trust, deed to secure debt, collateral assignments, and other contractual Obligations, filings (including financing statements) and recordings executed, delivered or filed, including any amendments, supplements, renewals, extensions replacements thereof, executed between Debtor and Secured Party or by Debtor for the benefit of Secured Party.

“Loss” shall have the meaning accorded to such term in Section 2.22 of the Credit Agreement.

“Loss Proceeds” shall have the meaning accorded to such term in Section 2.22 of the Credit Agreement.

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“Mortgage” as such term is used in this Definitions Schedule shall mean the mortgage or deed o& trust to which this Definitions Schedule is attached.

“Mortgaged Property” shall have the meaning as defined in the Mortgage.

“Note” shall have the meaning accorded to such term in the Mortgage.

“Obligations” shall mean all of Debtor’s Indebtedness, obligations and liabilities to Secured Party evidenced by, arising under or in connection with the Note (including, without limitation, indebtedness, obligations and liabilities in respect of principal and interest.), the Credit Agreement, or any of the other Loan Documents (executed between Debtor and Secured Party or by Debtor for the benefit of Secured Party), and any future advances thereon, renewals, extensions, modifications, amendments, substitutions and consolidations thereof, or any other agreement with Secured Party under or in connection with the Loan, including Debtor’s obligations to pay (or reimburse Secured Party for) all costs and expenses (including attorneys fees and disbursements) incurred by Secured Party in obtaining, maintaining, protecting and preserving its interest in the Collateral or its security interest therein, foreclosing, retaking, holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Collateral or in exercising its rights hereunder or as secured party under the UCC, any other applicable Law or Loan Document, and all other indebtedness, obligations and liabilities of any kind of Debtor to Secured Party now or hereafter existing (including future advances whether or not pursuant to commitment), arising directly between Debtor and Secured Party or acquired outright, conditionally or as collateral security from another, absolute or contingent, joint and/or several, secured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, or direct or indirect, including Debtor’s liabilities to Secured Party as a member, partner or equity owner of any Person or group, and whether incurred by Debtor as principal, surety, indorser, guarantor, accommodation party or otherwise, including all amounts which would be payable or owing to Secured Party but for the fact they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Debtor or any Person.

“Permitted Encumbrance” or **“Permitted Encumbrances”** shall have the meaning accorded to such term in Section 2.16 of the Credit Agreement.

“Person” or **“Persons”** shall mean any natural person, corporation, partnership, limited liability company, trust, association, firm, entity or Governmental Authority.

“Principal Agreement” or **“Principal Agreements”** shall have the meaning as set forth in the Credit Agreement.

“Property” or **“Properties”** shall mean the real property (whether one or more) upon which the Debtor operates the Business as more particularly described in Exhibit A of the Credit Agreement and in the other Loan Documents.

“Requirement of Law” or **“Requirements of Law”** shall mean any requirement, direction, policy or procedure of any Law or License, Judgment, or Consent or Other Action.

“Sole Discretion” shall mean with respect to any decision or action (including granting of any consent or approval) the discretion to make or take or fail to take or make any decision or action with or without any reason, taking into account such factors, if any, as the decision maker or action taker determines (including self interest), and any decision or action may be subject to any such conditions or no conditions as the decision maker or action taker determines and shall be final and conclusive.

“Taxes and Other Charges” shall mean all taxes, assessments and other governmental charges, ground rents, or other rents, rates and charges, excises, levies, fees and other charges (public or private) which may be assessed, levied, confirmed or imposed on, or in respect of or be a lien upon the Collateral, the Unit or the Business or any part thereof or any interest therein.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time as adopted in the State where the Properties are located.

“Unit” or **“Units”** shall collectively mean the Business, Collateral and Mortgaged Property and other property and assets related to the Business or located at the Mortgaged Property.

