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STATE OF INDIANA  
LAKE COUNTY  
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MICHAEL A. BROWN  
RECORDER

WHEN RECORDED RETURN TO:

Joseph Meyers & Associates P.C.  
224 West 30<sup>th</sup> Street, Suite 809  
New York, New York 10001  
Attn: Joseph L. Meyers, Esq.

CHICAGO TITLE INSURANCE COMPANY

CML 20052852

MORTGAGE, SECURITY AGREEMENT AND  
ASSIGNMENT OF LEASES AND RENTS

Document is

DOUGLAS POINTE II ASSOCIATES, LLC  
(Mortgagor)

This Document is the property of  
the Lake County Recorder!

To  
COLUMN FINANCIAL, INC.  
(Mortgagee)

STOP

Dated: April 29, 2005



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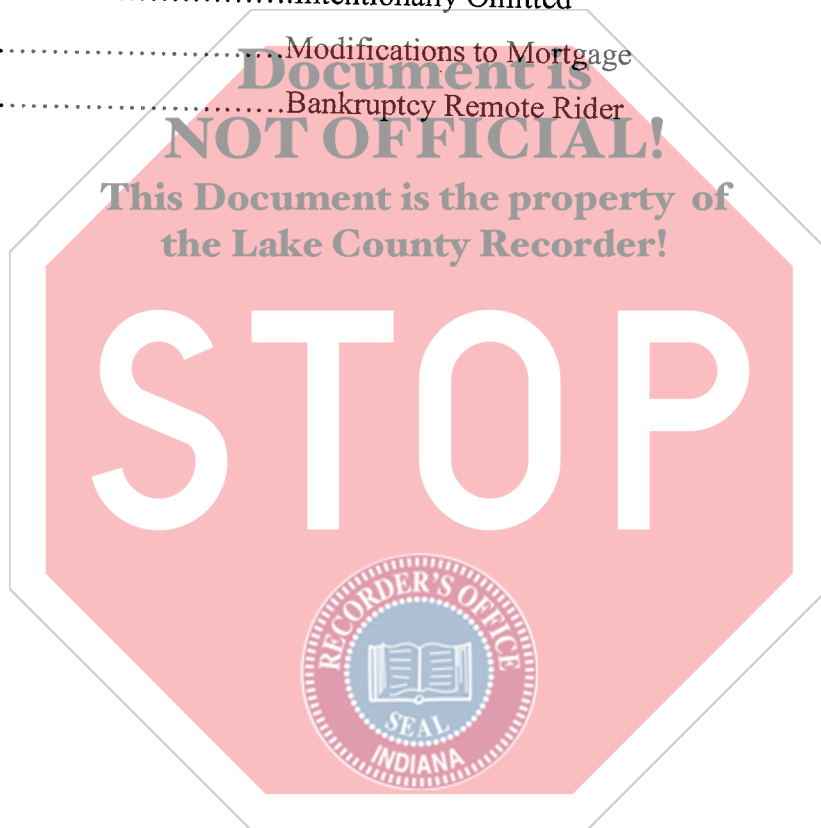
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**WHEN RECORDED, RETURN TO:**

Joseph Meyers & Associates P.C.  
224 West 30<sup>th</sup> Street, Suite 809  
New York, New York 10001  
Attn: Joseph L. Meyers, Esq.

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

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "Mortgage") is made as of the 29<sup>th</sup> day of April, 2005, between DOUGLAS POINTE II ASSOCIATES, LLC, an Indiana limited liability company ("Mortgagor"), whose address is 8900 Keystone Crossing, Suite 1200, Indianapolis, Indiana 46240 and COLUMN FINANCIAL, INC., a Delaware corporation ("Mortgagee"), whose address is Eleven Madison Avenue, 9th Floor, New York, New York 10010, Attn: Edmund Taylor.

**WITNESSETH:**

**NOT OFFICIAL!**

THAT FOR AND IN CONSIDERATION OF THE SUM OF TEN AND NO/100 DOLLARS (\$10.00), AND OTHER VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, MORTGAGOR HEREBY IRREVOCABLY MORTGAGES, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO MORTGAGEE, ITS SUCCESSORS AND ASSIGNS, with power of sale, in all of Mortgagor's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter acquired (collectively, the "Property"):

(A) All that certain real property situated in the County of Lake, State of Indiana, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Real Estate"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim and demand whatsoever of Mortgagor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

(B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements");

(C) All personal property owned by Mortgagor and now or hereafter located on, attached to or used in and about the Improvements and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Mortgagor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Real Estate or Improvements (the "Equipment"), and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

(D) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, drainage rights and other emblements now or hereafter located on the Real Estate or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

(E) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Real Estate;

(F) All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Mortgagee pursuant to this Mortgage or any other of the Loan Documents (as hereinafter defined) including, without limitation, all funds now or hereafter on deposit in the Impound Account, the Replacement Fund or in the Repair and Remediation Reserve (each as hereafter defined);

(G) All leases, licenses, concessions and occupancy agreements of the Real Estate or the Improvements now or hereafter entered into and all rents, royalties, issues, profits, revenue, income and other benefits (collectively, the "Rents and Profits" or "Leases, Rents and Profits") of the Real Estate or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees or licensees, subject to, however, the provisions contained in Section 1.8 hereinbelow;

(H) All contracts and agreements now or hereafter entered into covering any part of the Real Estate or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the



Real Estate or the Improvements or to the management or operation of any part of the Real Estate or the Improvements;

(I) All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles, all names by which the Real Estate or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Mortgagor has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Real Estate or the Improvements and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Real Estate or the Improvements (collectively, the "General Intangibles");

(J) All right, title and interest of Mortgagor in any insurance policies or binders now or hereafter relating to the Property including any unearned premiums thereon;

(K) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards.

FOR THE PURPOSE OF SECURING:

(1) The debt evidenced by that certain Promissory Note (such Note, together with any and all renewals, modifications, consolidations and extensions thereof, is hereinafter referred to as the "Note") of even date with this Mortgage, made by Mortgagor to the order of Mortgagee in the principal face amount of TWO MILLION ONE HUNDRED FIFTY THOUSAND AND 00/100 (\$2,150,000.00) DOLLARS, together with interest as therein provided;

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the Note, this Mortgage, and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") and the payment of all other sums therein covenanted to be paid; and

(3) Any and all future or additional advances (whether or not obligatory) made by Mortgagee for the benefit of Mortgagor to protect or preserve the Property or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Mortgagor's obligations hereunder or under the other Loan Documents or for any other purpose

provided herein or in the other Loan Documents (whether or not the original Mortgagor remains the owner of the Property at the time of such advances); and

(4) Any and all other indebtedness now owing or which may hereafter be owing by Mortgagor to Mortgagee, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof.

(All of the sums referred to in Paragraphs (1) through (4) above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby").

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns forever, for the purposes and uses herein set forth.

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall have been paid and all other covenants contained in the Loan Documents shall have been performed, then, in such case, this Mortgage shall be satisfied and the estate, right, title and interest of Mortgagee in the Property shall cease, and upon payment to Mortgagee of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, Mortgagee shall release this Mortgage and the lien hereof by proper instrument.

**This Document is the property of  
the Lake County Recorder!**

**ARTICLE I**  
**COVENANTS OF MORTGAGOR**

For the purpose of further securing the indebtedness secured hereby and for the protection of the security of this Mortgage, for so long as the indebtedness secured hereby or any part thereof remains unpaid, Mortgagor covenants and agrees as follows:

1.1. Warranties of Mortgagor.

Mortgagor, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Mortgagee, its successors and assigns, that:

(a) Mortgagor has good and marketable fee simple title to the Property subject only to those exceptions shown in the title insurance policy insuring the lien of this Mortgage and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer and mortgage its interest in the Property in the manner and form hereby done or intended. Mortgagor will preserve its interest in and title to the Property and will forever warrant and defend the same to Mortgagee against any and all claims whatsoever

and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever;

(b) No bankruptcy or insolvency proceedings are pending or contemplated by Mortgagor or, to the best knowledge of Mortgagor, against Mortgagor or by or against any endorser, cosigner or guarantor of the Note;

(c) All reports, certificates, affidavits, statements and other data furnished by Mortgagor to Mortgagee in connection with the loan evidenced by the Note are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading;

(d) Mortgagor is not required to obtain any consent, approval or authorization from or to file any declaration or statement with, any Governmental Authority or the agency in connection with or as a condition to the execution, delivery or performance of this Mortgage, the Note or the other Loan Documents which has not been so obtained or filed;

(e) The Real Estate and the Improvements and the intended use thereof by Mortgagor comply with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property. The Real Estate and Improvements constitute a separate tax parcel for purposes of ad valorem taxation. The Real Estate and Improvements do not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements;

(f) The Property is free from delinquent water charges, sewer rents, taxes and assessments;

(g) As of the date of this Mortgage, no part of the Real Estate or the Improvements has been taken in condemnation, eminent domain or like proceeding nor is any such proceeding pending or to Mortgagor's knowledge and belief, threatened or contemplated;

(h) Mortgagor and the Property are free from any past due obligations for sales and payroll taxes; and

(i) Mortgagor is in possession of all material licenses, permits and authorizations required by applicable law for the ownership and operation of the Property.



1.2. Performance of Obligations.

Mortgagor shall pay when due the principal of and the interest on the indebtedness evidenced by the Note. Mortgagor shall also pay all charges, fees and other sums required to be paid by Mortgagor as provided in the Loan Documents, and shall observe, perform and discharge all obligations, covenants and agreements to be observed, performed or discharged by Mortgagor set forth in the Loan Documents in accordance with their terms. Further, Mortgagor shall promptly and strictly perform and comply with all covenants, conditions, obligations and prohibitions required of Mortgagor in connection with any other document or instrument affecting title to the Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Mortgage. In the event that Mortgagee determines that Mortgagor is not adequately performing its obligations under this Section, Mortgagee may, without limiting or waiving any other rights or remedies of Mortgagee hereunder, take such steps with respect thereto as Mortgagee shall deem necessary or proper and any and all costs and expenses incurred by Mortgagee in connection therewith, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and 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.

1.3. Insurance.

Mortgagor shall, at Mortgagor's expense, maintain in force and effect on the Property at all times while this Mortgage continues in effect "All-risk" coverage insurance against loss or damage by fire and against loss or damage by other risks and hazards covered by a standard extended coverage policy satisfactory to Mortgagee. Such insurance shall be in an amount equal to not less than 100% of the full replacement cost of the Improvements and Equipment, without deduction for depreciation, and shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions. Mortgagor shall also maintain such other insurance as may be reasonably required by Mortgagee, including, without limitation (i) flood insurance if any part of the Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards or if reasonably required by Mortgagee in an amount satisfactory to Mortgagee, (ii) comprehensive commercial general liability insurance, including broad form property damage, blanket contractual and personal injuries coverages in amounts not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, (iii) law and ordinance coverage in an amount satisfactory to Mortgagee if the Property, or any part thereof, shall constitute a nonconforming use under applicable zoning ordinances, sub-division and building codes or other laws, ordinances and requirements, and (iv) rental loss insurance to cover rental losses for a period of at least one year after the date of the fire or casualty in question with dollar limits of not less than six (6) months of gross income.

All such insurance shall (i) be with insurers authorized to do business in the state within which the Real Estate is located and who have and maintain an A.M. Best Company rating acceptable to Mortgagee in all respects and, if required by Mortgagee, a Standard and Poor's rating acceptable to the Mortgagee in all respects, (ii) be delivered to Mortgagee with evidence that said insurance policies have been paid current as of the date hereof, (iii) provide that proceeds thereunder shall be payable to Mortgagee, its successors and assigns, pursuant and subject to a mortgagee clause (without contribution) of standard form attached to, or otherwise made a part of, the applicable policy and that Mortgagee, its successors and assigns, shall be named as an additional insured under all liability insurance policies, (iv) be maintained throughout the term of this Mortgage at Mortgagor's expense, and shall not be cancelled, modified or terminated on less than thirty (30) days' notice to Mortgagee, and (v) shall be satisfactory in form, amounts and substance to Mortgagee. Mortgagor shall renew all such insurance and deliver to Mortgagee certificates evidencing such renewals at least thirty (30) days before any such insurance shall expire. The delivery to Mortgagee of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies by Mortgagor to Mortgagee as further security for the indebtedness secured hereby.

1.4. Payment of Taxes.

Mortgagor shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 1.5 of this Mortgage, all taxes, assessments, water charges, sewer rents, ground rents, maintenance charges, other governmental impositions and other charges which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Mortgagor shall furnish to Mortgagee receipts for the payment of the all taxes and other charges prior to the date the same shall become delinquent and upon request by Mortgagee.

1.5. Tax and Insurance Impound Account.

Mortgagor shall establish and maintain at all times while this Mortgage continues in effect an impound account (the "Impound Account") with Mortgagee for payment of real estate taxes and assessments and insurance on the Property and as additional security for the indebtedness secured hereby. Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Mortgagor shall pay to Mortgagee, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which

Mortgagor is required to maintain hereunder, each as estimated and determined by Mortgagee. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Impound Account shall be held by Mortgagee in the Impound Account to pay said taxes, assessments and insurance premiums in one installment before the same become delinquent. Mortgagor shall be responsible for ensuring the receipt by Mortgagee, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Account, and so long as no default hereunder or under the other Loan Documents has occurred and is continuing, Mortgagee shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. The Impound Account shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Mortgagee's option and in Mortgagee's discretion, may either be held in a separate account or be commingled by Mortgagee with the general funds of Mortgagee. No interest on funds contained in the Impound Account shall be paid by Mortgagee to Mortgagor. If the total funds in the Impound Account shall exceed the amount of payments actually applied by Mortgagee for the purposes of the Impound Account, such excess may be credited by Mortgagee on subsequent payments to be made hereunder or, at the option of Mortgagee, refunded to Mortgagor. If, however, the Impound Account shall not contain sufficient funds to pay the sums required when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of written notice thereof, deposit with Mortgagee the full amount of any such deficiency. If there is a default under this Mortgage which is not cured within any applicable grace or cure period, Mortgagee may, but shall not be obligated to, apply at any time the balance then remaining in the Impound Account against the indebtedness secured hereby in whatever order Mortgagee shall subjectively determine. No such application of the Impound Account shall be deemed to cure any default hereunder.

1.6. Replacement Reserve.

As additional security for the indebtedness secured hereby, Mortgagor shall establish and maintain at all times while this Mortgage continues in effect a repair reserve (the "Replacement Reserve") with Mortgagee for payment of costs and expenses incurred by Mortgagor in connection with capital repairs, replacements and improvements performed at the Property (collectively the "Repairs") but no disbursements shall be made for replacements which are deemed by Mortgagee to be in the ordinary course of business. Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Mortgagor shall pay to Mortgagee, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, a deposit to the Replacement Reserve in an amount equal to \$1,866.67. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Replacement Reserve shall be held by Mortgagee in the Replacement Reserve to pay the costs and expenses of Repairs. So long



as no default hereunder or under the other Loan Documents has occurred and is continuing, Mortgagee shall, to the extent funds are available for such purpose in the Replacement Reserve, disburse to Mortgagor amounts of not less than \$1,500.00 and not more frequently than once per month, the amount paid or incurred by Mortgagor in performing such Repairs upon receipt by Mortgagee of (a) a written request from Mortgagor for disbursement from the Replacement Reserve and a certification by Mortgagor in form and substance satisfactory to Mortgagee that the applicable item of Repair has been completed and (b) the delivery to Mortgagee of invoices, receipts or other evidence satisfactory to Mortgagee verifying the cost of performing the Repairs. The Replacement Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Mortgagee's option and in Mortgagee's discretion, may either be held in a separate account or be commingled by Mortgagee with the general funds of Mortgagee. A portion of any interest or other earnings on funds contained in the Replacement Reserve shall be credited to Mortgagor as provided in Section 4.13 hereof. In the event that such amounts on deposit or available in the Replacement Reserve are inadequate to pay the costs of Repairs, Mortgagor shall pay the amount of such deficiency.

1.7. Casualty and Condemnation.

(A) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give Mortgagee prompt written notice of the occurrence. All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Mortgagee. Mortgagee shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

(a) In the event that (i) the proceeds of insurance does not exceed fifty (50%) percent of the then outstanding secured indebtedness and (ii) not more than fifty (50%) percent of the Improvements located on the Real Estate has been destroyed, then if:

(1) no default is then continuing hereunder or under any of the other Loan Documents and no event has occurred which, with the giving of notice or the passage of time or both, would constitute a default hereunder or under any of the other Loan Documents, and

(2) the Property can, in Mortgagee's judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage within the earlier to occur of (i) six (6) months after the receipt of insurance proceeds or condemnation

awards by either Mortgagor or Mortgagee, and (ii) six (6) months prior to the stated maturity date of the Note, and

(3) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property, and

(4) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by Mortgagor, the full amount of which shall at Mortgagee's option have been deposited with Mortgagee) for such restoration or repair (including, without limitation, for any costs and expenses of Mortgagee to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Note during such restoration or repair, and

(5) the economic feasibility of the Improvements after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Property and debt service on the indebtedness secured hereby in full with the same coverage ratio considered by Mortgagee in its determination to make the loan secured hereby, and

(6) Mortgagor shall have delivered to Mortgagee, at Mortgagor's sole cost and expense, an appraisal report in form and substance satisfactory to Mortgagee appraising the value of the Property as so restored or repaired to be not less than the appraised value of the Property considered by Mortgagee in its determination to make the loan secured hereby, and

(7) Mortgagor so elects by written notice delivered to Mortgagee within five (5) days after settlement of the aforesaid insurance or condemnation claim,

then, Mortgagee shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required for such restoration or repair, and any funds deposited by Mortgagor therefor, to Mortgagor in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Mortgagee of plans and specifications contractors and form of construction contracts and the furnishing to Mortgagee of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors in form and substance satisfactory to Mortgagee in its discretion, with any remainder being applied by Mortgagee for payment of the indebtedness secured hereby in whatever order Mortgagee directs in its absolute discretion.

(b) In all other cases, Mortgagee shall elect, in Mortgagee's absolute discretion and without regard to the adequacy of Mortgagee's security, sums paid to Mortgagee by an insurer may be retained and applied by Mortgagee, after deduction of Mortgagee's reasonable costs and expenses of collection, toward payment of the secured



indebtedness in such priority and proportions as Mortgagee in its discretion shall deem proper (such application to be without payment of any prepayment fees due under Section 1.02 of the Note, except that if a default has occurred, or an event with notice and/or the passage of time, or both, would constitute a default, then such application shall be subject to payment of the prepayment fees computed in accordance with the Note).

(B) Mortgagor shall promptly give Mortgagee notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the indebtedness secured hereby at the time and in the manner provided for its payment in the Note and in this Mortgage and the secured indebtedness shall not be reduced until any award or payment therefor shall have been actually received and applied by Mortgagee, after the deduction of expenses of collection, to the reduction or discharge of the secured indebtedness. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award, interest at the rate or rates provided herein and in the Note. All awards and proceeds of condemnation shall be assigned to Mortgagee to be applied in the same manner as insurance proceeds pursuant to subparagraph (A) above.

(C) Mortgagee may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Mortgagee is hereby authorized, in its own name or in Mortgagor's name, to adjust any loss covered by insurance or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Mortgagor agrees to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the assignment to Mortgagee of any award, damage, insurance proceeds, payment or other compensation. Mortgagee is hereby irrevocably constituted and appointed the attorney-in-fact of Mortgagor (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Mortgagor and shall not be affected by any disability or incapacity suffered by Mortgagor subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

1.8. Assignment of Leases and Rents.

Mortgagor hereby absolutely, presently and unconditionally assigns to Mortgagee all existing and future Leases, Rents and Profits, it being intended by Mortgagor that this assignment constitutes a present, absolute and unconditional

assignment and not an assignment for additional or collateral security only. Mortgagor hereby grants to Mortgagee the sole, exclusive and immediate right, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Leases, Rents and Profits, for which purpose Mortgagor does hereby irrevocably make, constitute and appoint Mortgagee its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Mortgagor and shall not be affected by any disability or incapacity suffered by Mortgagor subsequent to the date hereof). Mortgagee shall be without liability for any loss which may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of a default under this Mortgage which has not been cured within any applicable grace or cure period, Mortgagor shall have a revocable license to collect and receive the Rents and Profits when due and prepayments thereof for not more than one month prior to due date thereof. Upon the occurrence of a default hereunder which has not been cured within any applicable grace or cure period, Mortgagor's license shall automatically terminate without notice to Mortgagor and Mortgagee may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Mortgagor shall be the agent of Mortgagee in collection of the Rents and Profits and all of the Rents and Profits so collected by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Mortgagee and Mortgagor shall, within one (1) business day after receipt of any Rents and Profits, pay the same to Mortgagee to be applied by Mortgagee as hereinafter set forth. Neither the demand for or collection of Rents and Profits by Mortgagee shall constitute any assumption by Mortgagee of any obligations under any agreement relating thereto. Mortgagee is obligated to account only for such Rents and Profits as are actually collected or received by Mortgagee.

1.9. Leases and Licenses.

Except with the prior written consent of Mortgagee (i) all Leases shall be written on the standard form of lease (without material changes) which has been approved by Mortgagee and shall be arm's-length, market rate leases and (ii) all Leases for residential purposes only shall be for a term of no more than one (1) year. Upon request, Mortgagor shall furnish Mortgagee with executed copies of all Leases. In addition, all renewals of Leases shall provide for rental rates comparable to existing local market rates and shall be arm's-length transactions. All commercial, non-residential Leases shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Mortgagee. Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the secured indebtedness; (ii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iii)

shall not collect any of the Rents more than one (1) month in advance (in addition to the last month's rent and security deposit, if any); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (v) shall not materially alter, modify or change the terms of the Leases without the prior written consent of Mortgagee, or, except if a tenant is in default, cancel or terminate the Leases or accept a surrender thereof (unless a replacement Lease at a higher rent shall have been executed); and (vi) shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Mortgagee.

1.10. Alienation and Further Encumbrances.

(a) In the event of the sale, transfer, conveyance, mortgage, encumbrance, pledge or otherwise (collectively, a "Sale") of either (i) all or any part of the Property, or any interest therein or (ii) beneficial interests in Mortgagor (if Mortgagor is not a natural person or persons but is a corporation, limited liability company, partnership, trust or other legal entity), without Mortgagee's prior written consent, Mortgagee may, at Mortgagee's option, declare the secured indebtedness immediately due and payable, and Mortgagee may invoke any remedies permitted by this Mortgage.

(b) Notwithstanding the foregoing (i) Mortgagor may, subject to the Mortgagee's prior written consent and satisfaction of, among other things, the terms of this paragraph, transfer the Property subject to this Mortgage; provided, however, Mortgagee reserves the right to condition the consent required hereunder upon a modification of the terms hereof and an assumption of this Mortgage as so modified by the proposed transferee, and payment of the Application Fee and the Assumption Fee set forth in paragraph (c) below, and (ii) the following transfers shall not be deemed to be a Sale: (A) transfer by devise or descent or by operation of law upon the death of any individual Mortgagor or owner of a direct or indirect beneficial interest in Mortgagor, or (B) a sale or transfer of any direct or indirect beneficial interest in Mortgagor, outright or in trust, to immediate family members of the transferring party.

(c) In connection with any Sale approved by Mortgagee, Mortgagor shall pay to Mortgagee (i) a non-refundable application fee in the amount of \$5,000.00 (the "Application Fee"), and (ii) concurrently with the closing of such Sale, a non-refundable assumption fee (the "Assumption Fee") equal to one percent (1.0%) of the then outstanding principal balance of the Note. The Application Fee shall be used to pay the reasonable and customary out-of-pocket costs, expenses and attorneys' fees of Mortgagee in connection with such Sale. Mortgagor's obligation to pay such out-of-pocket costs, expenses and attorneys' fees of Mortgagee in connection with such Sale shall not exceed the Application Fee.

1.11. Maintenance of Property.

Mortgagor shall cause the Property to be used, operated, occupied and maintained in a good and safe condition and repair and in accordance with all applicable



laws and regulations, and shall neither commit nor suffer any waste. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee.

1.12. Access Privileges and Inspections.

Mortgagee and the agents, representatives and employees of Mortgagee shall, subject to the rights of tenants, have full and free access to the Real Estate and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Mortgagor relating to the Property. Mortgagor shall lend assistance to all such agents, representatives and employees of Mortgagee.

1.13. Financial Statements and Books and Records.

Mortgagor shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. So long as this Mortgage continues in effect, Mortgagor shall provide to Mortgagee, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which must be certified by Mortgagor to Mortgagee as being true and correct or the entity to which they pertain, as applicable, be prepared in accordance with generally accepted accounting principles consistently applied and be in form and substance acceptable to Mortgagee:

- (a) copies of all tax returns filed by Mortgagor, within thirty (30) days after the date of filing;
- (b) quarterly operating statements for the Property, within fifteen (15) days after the end of each calendar quarter;
- (c) current rent rolls for the Property, within fifteen (15) days after the end of each March, June, September and December, provided, rent rolls shall be delivered monthly for the first twelve (12) calendar months of the Note;
- (d) annual balance sheets for the Property and annual financial statements for Mortgagor, each principal or general partner in Mortgagor, and each

indemnitor and guarantor under any indemnity or guaranty executed in connection with the loan secured hereby within ninety (90) days after the end of each calendar year; and

(e) such other information with respect to the Property, Mortgagor, the principals or general partners in Mortgagor, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the loan secured hereby, which may be requested from time to time by Mortgagee, within a reasonable time after the applicable request.

If any of the aforementioned materials are not furnished to Mortgagee within the applicable time periods or Mortgagee is dissatisfied with the contents of any of the foregoing, in addition to any other rights and remedies of Mortgagee contained herein, Mortgagee shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Mortgagee, in which event Mortgagor agrees to pay, or to reimburse Mortgagee for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit. Mortgagor agrees that any and all materials furnished hereunder are the property of Mortgagee (and Mortgagee's servicer) and may be released to such parties as Mortgagee or its servicer deems appropriate, including FNMA, FHLMC, and its designees and any affiliates, any issuer, underwriter, certificateholder or trustee with respect to securities issued in connection with the sale of this Mortgage, or any rating agency responsible for rating such securities from time to time.

1.14. Further Documentation.

Mortgagor shall, on the request of Mortgagee and at the expense of Mortgagor: (a) promptly execute, acknowledge, deliver and record or file such further instruments and promptly do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby; and (b) promptly furnish to Mortgagee, upon Mortgagee's request, a duly acknowledged written statement and estoppel certificate addressed to such party or parties as directed by Mortgagee and in form and substance supplied by Mortgagee, setting forth all amounts due under the Note, stating whether any event has occurred which, with the passage of time or the giving of notice or both, would constitute an event of default hereunder, stating whether any offsets or defenses exist against the indebtedness secured hereby and containing such other matters as Mortgagee may reasonably require.

1.15. Security Interest.

This Mortgage is also intended to encumber and create a security interest in, and Mortgagor hereby grants to Mortgagee a security interest in all sums on deposit with Mortgagee or its servicer and all fixtures, chattels, accounts, equipment, inventory,



contract rights, general intangibles and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Real Estate or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Real Estate and the Improvements. The foregoing security interest shall also cover Mortgagor's leasehold interest in any of the foregoing property which is leased by Mortgagor. Notwithstanding the foregoing, all of the foregoing property shall be owned by Mortgagor and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Mortgagee. Mortgagor shall promptly replace all of the Collateral subject to the lien or security interest of this Mortgage when worn or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Mortgagee, remove from the Real Estate or the Improvements any of the Collateral subject to the lien or security interest of this Mortgage except such as is replaced by an article of equal suitability and value as above provided, owned by Mortgagor free and clear of any lien or security interest except that created by this Mortgage and the other Loan Documents and except as otherwise expressly permitted by the terms of Section 1.10 of this Mortgage. All of the Collateral shall be kept at the location of the Real Estate except as otherwise required by the terms of the Loan Documents. Mortgagor shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

1.16. Security Agreement.

This Mortgage constitutes a security agreement between Mortgagor and Mortgagee with respect to the Collateral in which Mortgagee is granted a security interest hereunder, and, cumulative of all other rights and remedies of Mortgagee hereunder, Mortgagee shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Mortgagor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Mortgagee may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Mortgagee's reasonable attorneys' fees and legal expenses), together with interest thereon at the Default Interest Rate from the date incurred by Mortgagee until actually paid by Mortgagor, shall be paid by Mortgagor on demand and 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. Mortgagee shall have the right to enter upon the Real Estate and the Improvements or any real property where any of the property which is the subject of the security interest granted herein is located to take possession of,

assemble and collect the same or to render it unusable, or Mortgagor, upon demand of Mortgagee, shall assemble such property and make it available to Mortgagee at the Real Estate, a place which is hereby deemed to be reasonably convenient to Mortgagee and Mortgagor.

1.17. Compliance with Laws.

(a) Mortgagor shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property, and (b) Mortgagor agrees that it shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto.

1.18. Additional Taxes.

In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Mortgage or the indebtedness secured hereby or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable in full ninety (90) days from the giving of such notice.

1.19. Secured Indebtedness.

It is understood and agreed that this Mortgage shall secure payment of not only the indebtedness evidenced by the Note but also any and all substitutions, replacements, renewals and extensions of the Note, any and all indebtedness and

obligations arising pursuant to the terms hereof and any and all indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents.

1.20. Mortgagor's Waivers.

To the full extent permitted by law, Mortgagor agrees that Mortgagor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the indebtedness secured hereby prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. Mortgagor, for Mortgagor and Mortgagor's successors and assigns, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the secured indebtedness (except such notices as are specifically provided for herein); (b) waives, releases, relinquishes and forever forgoes all right to a marshalling of the assets of Mortgagor, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; and (c) waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under applicable law. Further, Mortgagor hereby knowingly, intentionally and voluntarily, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Mortgage or to collect any of the indebtedness secured hereby to the fullest extent permitted by law.

1.21. WAIVER OF JURY TRIAL.

**MORTGAGOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE INDEBTEDNESS SECURED HEREBY OR ANY CONDUCT, ACT OR OMISSION OF MORTGAGEE OR MORTGAGOR, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH MORTGAGEE OR MORTGAGOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.**



1.22. Management.

The management of the Property shall be by either: (a) Mortgagor or an entity affiliated with Mortgagor approved by Mortgagee for so long as Mortgagor or said affiliated entity is managing the Property in a first class manner; or (b) a professional property management company approved by Mortgagee. Such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Mortgagee.

1.23. Hazardous Waste and Other Substances.

(a) Mortgagor hereby represents and warrants to Mortgagee that, as of the date hereof: (i) to the best of Mortgagor's knowledge, information and belief, the Property is not in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up (collectively, "Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq. and 40 CFR §302.1 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), The Federal Water Pollution Control Act (33 U.S.C. §1251 et seq. and 40 CFR §116.1 et seq.), and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), and the regulations promulgated pursuant to said laws, all as amended; (ii) no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, generated, stored, processed or disposed of on or released or discharged from the Property (including underground contamination) except for those substances used by Mortgagor in the ordinary course of its business and in compliance with all Environmental Laws; (iii) the Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances; (iv) there are no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances on the Property; (v) Mortgagor has received no notice of, and to the best of Mortgagor's knowledge and belief, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property nor does Mortgagor know of any basis for such a claim; and (vi) Mortgagor has received no notice of and, to the best of Mortgagor's knowledge and belief, there has been no claim by any party that any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property nor does Mortgagor know of any basis for such a claim.

(b) Mortgagor shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Mortgagor in the ordinary course

of its business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws.

(c) Mortgagor shall promptly notify Mortgagee if Mortgagor shall become aware of the possible existence of any Hazardous Substances on the Property or if Mortgagor shall become aware that the Property is or may be in direct or indirect violation of any Environmental Laws. Further, immediately upon receipt of the same, Mortgagor shall deliver to Mortgagee copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential presence or existence of any Hazardous Substances at, on, about, under, within, near or in connection with the Property. Mortgagor shall, promptly and when and as required, at Mortgagor's sole cost and expense, take all actions as shall be necessary or advisable for the clean-up of any and all portions of the Property or other affected property in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Mortgagee). In the event Mortgagor fails to do so, Mortgagee may, but shall not be obligated to, cause the Property or other affected property to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws and any and all costs and expenses incurred by Mortgagee in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage. Mortgagor covenants and agrees, at Mortgagor's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Mortgagee), and hold Mortgagee harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee or the Property, and arising directly or indirectly from or out of: (i) the presence, release or threat of release of any Hazardous Substances on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Mortgagor; (ii) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Mortgagor; (iii) the failure by Mortgagor to comply fully with the terms and conditions of this Section; (iv) the breach of any representation or warranty contained in this Section; or (v) the enforcement of this Section, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Substances from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances on, in, under or affecting any portion of the Property, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas.



(d) Upon Mortgagee's request, at any time after the occurrence of a default hereunder or at such other time as Mortgagee has reasonable grounds to believe that Hazardous Substances are or have been released, stored or disposed of on or around the Property or that the Property may be in violation of the Environmental Laws, Mortgagor shall provide, at Mortgagor's sole cost and expense, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Mortgagee. If Mortgagor fails to provide such inspection or audit within thirty (30) days after such request, Mortgagee may order the same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Property and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Interest Rate from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage.

(e) Without limiting the foregoing, where recommended by a "Phase I" or "Phase II" assessment or otherwise required by Mortgagee, Mortgagor shall establish and comply with an operations and maintenance program relative to the Property, in form and substance acceptable to Mortgagee, prepared by an environmental consultant acceptable to Mortgagee, which program shall address any Hazardous Substances (including asbestos containing material or lead based paint) that may now or in the future be detected on the Property.

1.24. Indemnification; Subrogation.

(a) Mortgagor shall protect, defend, indemnify, and hold Mortgagee harmless against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including without limitation, Mortgagee's reasonable attorneys' fees and expenses) of whatever kind or nature which may be asserted against, imposed on or incurred by Mortgagee, whether before or after an action in foreclosure, sale of the Property, discharge of this Mortgage and/or cancellation of the Note, by reason of (i) ownership of this Mortgage, the Property or any interest therein or receipt of the Rents and Profits; (ii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iv) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (v) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (vi) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (vii) the presence, disposal, escape,

seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, from, or affecting the Property or any other property or the presence of Asbestos or Lead-Based Material on the Property; (viii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, Asbestos or Lead-Based Material; (ix) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, Asbestos or Lead-Based Material; (x) any acts or omissions relating to Mortgagee's exercise of any of its rights or remedies pursuant to Section 1.8 of this Mortgage; or (xi) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or any way related to such Hazardous Materials, Asbestos or Lead-Based Material including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. Any amounts payable to Mortgagee by reason of the application of this Section shall be secured by this Mortgage and Other Security Documents and shall become immediately due and payable and shall bear interest at the Default Interest Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this Section shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure, delivery of a deed in a non-judicial foreclosure or delivery of a deed in lieu of foreclosure of this Mortgage.

(b) A waiver of subrogation shall be obtained by Mortgagor from its insurance carrier and, consequently, Mortgagor waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, for loss of or damage to Mortgagor, the Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

1.25. Investment Earnings.

Any amounts received by Mortgagee from Mortgagor may be invested by Mortgagee (or its servicing agent) for its benefit and Mortgagee shall not be obligated to pay, or credit, any interest earned thereon to Mortgagor except as may be otherwise specifically provided in this Mortgage.

1.26. Defeasance.

(a) Notwithstanding anything to the contrary contained in the Note, this Mortgage or the other Loan Documents, at any time after the second (2nd) anniversary of the date that is the "startup day," within the meaning of Section 860G(a)(9) of the Internal Revenue Code of 1986, as amended from time to time or any successor statute (the "Code"), of a "real estate mortgage investment conduit," (a "REMIC") within the meaning of Section 860D of the Code, that holds the Note and this Mortgage and provided (unless Mortgagee shall otherwise consent, in its sole discretion) no default or Event of Default has occurred and is continuing hereunder or under any of

the other Loan Documents, Mortgagor shall have the right to obtain the release of the Property from the lien of this Mortgage and the other Loan Documents (the "Defeasance") upon the satisfaction of each of the following conditions precedent:

- (i) not less than thirty (30) days' prior written notice to Mortgagee specifying a regular Payment Date under the Note (the "Defeasance Election Date") on which the Defeasance Deposit (hereinafter defined) is to be made;
- (ii) the remittance to Mortgagee on the related Defeasance Election Date of interest accrued and unpaid on the outstanding principal amount of the Note to and including the Defeasance Election Date and the scheduled amortization payment due on such Defeasance Election Date, together with all other amounts then due and payable under the Note, this Mortgage and the other Loan Documents;
- (iii) the irrevocable deposit with Mortgagee of an amount (the "Defeasance Deposit") of U.S. Government Securities (hereinafter defined) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, cash in an amount sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to Mortgagee, to pay and discharge the Scheduled Defeasance Payments (hereinafter defined);
- (iv) the delivery on or prior to the Defeasance Election Date to Mortgagee of:
  - (A) a security agreement, in form and substance satisfactory to Mortgagee, creating a first priority lien on the Defeasance Deposit (the "Defeasance Security Agreement"), which Defeasance Security Agreement shall be included within the definition of "Mortgage" for purposes of each Loan Document from and after the date of its execution;
  - (B) a release of the Property from this Mortgage, the Assignment and any UCC Financing Statements relating thereto (for execution by Mortgagee) in a

form appropriate for cancellation of such documents in the jurisdiction in which the Property is located;

(C) a certificate of an authorized representative of Mortgagor certifying that the requirements set forth in this subparagraph (a) have been satisfied;

(D) an opinion of counsel for Mortgagor in form and substance satisfactory to Mortgagee to the effect that the Mortgagee has a perfected first priority security interest in the Defeasance Deposit;

(E) an opinion of counsel for Mortgagee, prepared and delivered by the servicer at Mortgagor's reasonable expense, stating that the trust formed as a REMIC in connection with any Secondary Market Transaction will not fail to maintain its status as a REMIC as a result of such Defeasance;

(F) such other certificates, documents or instruments as Mortgagee may reasonably request; and

(v) the payment by Mortgagor to Mortgagee of all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred or anticipated to be incurred by Mortgagee in connection with the release of the Property from the lien of this Mortgage and the other Loan Documents pursuant to this Section 1.26 including, without limitation, Mortgagee's determination of whether Mortgagor has satisfied all of the related conditions and requirements set forth in this Section 1.26.

(b) Upon compliance with the requirements of subparagraph (a) above, the Property shall be released from the lien of this Mortgage, the Assignment and any UCC Financing Statements related thereto, the obligations hereunder and under the other Loan Documents with respect to the Property shall no longer be applicable and the Defeasance Deposit shall be the sole source of collateral securing the Note. Mortgagee shall apply the Defeasance Deposit and the payments received therefrom to the payment of all scheduled principal and interest payments due on all successive Payment Dates under the Note after the Defeasance Election Date and the payment due on the final maturity date of the Note (the "Scheduled Defeasance Payments"). Mortgagor, pursuant to the Defeasance Security Agreement or other appropriate document, shall direct that the payments received from the Defeasance Deposit shall be made directly to Mortgagee and applied to satisfy the obligations of Mortgagor under the Note. In connection with such



release, if Mortgagor shall continue to own any assets other than the Defeasance Deposit, Mortgagor shall establish or designate a single-purpose, bankruptcy-remote successor entity acceptable to Mortgagee (the "Successor Trustor"), with respect to which a nonconsolidation opinion satisfactory in form and substance to Mortgagee has been delivered to Mortgagee (if such a nonconsolidation opinion was required of Mortgagor in connection with the origination of the indebtedness secured hereby) in which case Mortgagor shall transfer and assign to the Successor Trustor all obligations, rights and duties under the Note and the Defeasance Security Agreement, together with the pledged Defeasance Deposit. The Successor Trustor shall assume the obligations of Mortgagor under the Note and the Defeasance Security Agreement, and Mortgagor shall be relieved of its obligations hereunder and thereunder. Mortgagor shall pay One Thousand and No/100 Dollars (\$1,000.00) to the Successor Trustor as consideration for assuming such Mortgagor obligations.

(c) As used herein, the term "U.S. Government Securities" shall mean securities that are direct obligations of the United States of America for the full and timely payment of which its full faith and credit is pledged.

## ARTICLE II

### EVENTS OF DEFAULT

#### 2.1. Events of Default.

The occurrence of any of the following events shall be an Event of Default hereunder:

- (a) Mortgagor fails to punctually perform any covenant, agreement, obligation, term or condition hereof which requires payment of any money to Mortgagee.
- (b) Mortgagor fails to provide insurance as required by Section 1.3 hereof or fails to perform any covenant, agreement obligation, term or condition set forth in Sections 1.9, 1.10, 1.13 or 1.23 hereof.
- (c) Mortgagor fails to perform any other covenant, agreement, obligation, term or condition set forth herein other than those otherwise described in this Section 2.1 and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Mortgagee to Mortgagor; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Mortgagor commences to cure such default promptly after receipt of notice thereof from Mortgagee, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as



may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.

(d) Any representation or warranty made herein, in or in connection with any application or commitment relating to the loan evidenced by the Note, or in any of the other Loan Documents to Mortgagee by Mortgagor, by any principal, member or general partner in Mortgagor or by any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby is determined by Mortgagee to have been false or misleading in any material respect at the time made.

(e) Mortgagor, any principal, member or general partner in Mortgagor or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer for Mortgagor, for any such principal, member or general partner of Mortgagor or for any such indemnitor or guarantor or for a substantial part of the assets of Mortgagor, of any such principal or general partner of Mortgagor or of any such indemnitor or guarantor, or shall commence any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

(f) A petition is filed or any case, proceeding or other action is commenced against Mortgagor, against any principal, member or general partner of Mortgagor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or an order, judgment or decree is entered appointing, with or without the consent of Mortgagor, of any such principal, member or general partner of Mortgagor or of any such indemnitor or guarantor, a receiver, trustee, custodian or similar officer for Mortgagor, for any such principal, member or general partner of Mortgagor or for any such indemnitor or guarantor, or for any substantial part of any of the properties of Mortgagor, of any such principal, member or general partner of Mortgagor or of any such indemnitor or guarantor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree shall not be dismissed within sixty (60) days after being commenced.

(g) The holder of any lien or security interest on the Property (without implying the consent of Mortgagee to the existence or creation of any such lien or

security interest), whether superior or subordinate to this Mortgage or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(h) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Mortgagor, any of its principals, members or any general partner.

(i) Mortgagor fails to cure promptly any violation of laws or ordinances affecting or which may be interpreted to affect the Property.

### ARTICLE III

#### REMEDIES

##### 3.1. Remedies Available.

If there shall occur a default under this Mortgage, and such default has not been cured within any applicable grace or cure period, then this Mortgage is subject to foreclosure as provided by law and Mortgagee may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Mortgagor), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.

(b) Entry on the Property. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law unless such notice and process is waivable, in which case Mortgagor hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Mortgagee's judgment to complete any unfinished construction on the Real Estate, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof

and all sums expended by Mortgagee therefor, together with interest thereon at the Default Interest Rate, shall be immediately due and payable to Mortgagee by Mortgagor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue or otherwise collect the Rents and Profits, including those past due and unpaid.

(d) Appointment of Receiver. Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Mortgagor and without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Mortgagor or any person or persons liable for the payment of the indebtedness secured hereby, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Mortgagee, but nothing herein is to be construed to deprive Mortgagee of any other right, remedy or privilege Mortgagee may now have under the law to have a receiver appointed, provided, however, that, the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 3.3 below. Such receivership shall, at the option of Mortgagee, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Mortgage or deed in lieu of foreclosure.

(e) Foreclosure. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the indebtedness secured hereby pursuant to the statutes in such case made and provided and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Mortgagee. In the event foreclosure proceedings are filed by Mortgagee, all expenses incident to such proceeding, including, but not limited to, attorneys' fees and costs, shall be paid by Mortgagor and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Mortgage, including,

without limitation, interest at the Default Interest Rate (as defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), attorneys' fees and any other amounts due and unpaid to Mortgagee under the Loan Documents, may be bid by Mortgagee in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Mortgagee or its assigns may become the purchaser of the Property or any part thereof.

(f) Other. Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

### 3.2. Application of Proceeds.

To the fullest extent permitted by law, the proceeds of any sale under this Mortgage shall be applied to the extent funds are so available to the following items in such order as Mortgagee in its discretion may determine:

(a) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Mortgagee's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

(b) To payment of all sums expended by Mortgagee under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Interest Rate.

(c) To payment of the secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Mortgagee chooses in its sole discretion.

The remainder, if any, of such funds shall be disbursed to Mortgagor or to the person or persons legally entitled thereto.

### 3.3. Right and Authority of Receiver or Mortgagee in the Event of Default: Power of Attorney.

Upon the occurrence of a default hereunder, which default is not cured within any applicable grace or cure period, and entry upon the Property pursuant to Section 3.1(b) hereof or appointment of a receiver pursuant to Section 3.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Mortgagee's or the receiver's sole discretion, all at Mortgagor's



expense, Mortgagee or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Property; (b) manage and operate the Property; (c) execute and deliver, in the name of Mortgagor as attorney-in-fact and agent of Mortgagor or in its own name as Mortgagee, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (d) enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Mortgagee may in its sole discretion deem appropriate or desirable; (e) collect and receive the Rents and Profits from the Property; and (f) do any acts which Mortgagee in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Mortgagee may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Mortgage. Mortgagor hereby constitutes and appoints Mortgagee, its assignees, successors, transferees and nominees, as Mortgagor's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Mortgagor's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any indebtedness secured hereby is outstanding.

3.4. Occupancy After Foreclosure.

In the event there is a foreclosure sale hereunder and at the time of such sale, Mortgagor or Mortgagor's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Mortgagor (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Mortgagee 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 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 Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Real Estate is located.

3.5. Cumulative Remedies.

All remedies contained in this Mortgage are cumulative and Mortgagee shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Mortgagee and may be exercised in any order and as often as occasion therefor shall arise. No delay or failure by Mortgagee to exercise any right or

remedy under this Mortgage shall be construed to be a waiver of that right or remedy or of any default hereunder.

3.6. Payment of Expenses.

Mortgagor shall pay on demand all of Mortgagee's reasonable 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 Mortgagee until actually paid by Mortgagor at the Default Interest 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.

**ARTICLE IV**

**MISCELLANEOUS TERMS AND CONDITIONS**

4.1. Certain Rights of Mortgagee.

Without affecting Mortgagor's liability for the payment of any of the indebtedness secured hereby, Mortgagee may from time to time and without notice to Mortgagor: (a) release any person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of the indebtedness secured hereby; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby; (d) recover any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Mortgage or any agreement subordinating the lien hereof.

4.2. Notices.

All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page of this Mortgage or at such other address as may be designated by such party as herein provided.

4.3. Successors and Assigns.

The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Mortgagor, its successors and assigns, and shall inure to the benefit of Mortgagee, its successors and assigns and shall constitute covenants running with the land.

4.4. Severability.

A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision.

4.5. Waiver; Discontinuance of Proceedings.

Mortgagee may waive any single default by Mortgagor hereunder without waiving any other prior or subsequent default and may remedy any default by Mortgagor hereunder without waiving the default remedied. Neither the failure or delay by Mortgagee in exercising, any right, power or remedy upon any default by Mortgagor hereunder shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances.

4.6. Section Headings.

The headings of the sections and paragraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

4.7. Governing Law.

This Mortgage will be governed by and construed in accordance with the laws of the State of Indiana, provided that to the extent that any of such laws may now or hereafter be preempted by Federal law, such Federal law shall so govern and be controlling.

4.8. Construction of this Document.

This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

4.9. No Merger.

It is the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Property.

4.10. Personal Liability.

Notwithstanding anything to the contrary contained in this Mortgage, the liability of Mortgagor and its general partners for the indebtedness secured hereby and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in Section 1.05 of the Note; provided however that nothing herein shall be deemed to be a waiver of any right which Mortgagee may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured hereby or to require that all collateral shall continue to secure all indebtedness owing to Mortgagee in accordance with the Note, this Mortgage and the other Loan Documents.

4.11. Entire Agreement and Modifications.

This Mortgage and the other Loan Documents (a) contain the entire agreements between the parties, and (b) may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted.

4.12. Maximum Interest.

The provisions of this Mortgage and of all agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of demand or acceleration of the maturity of the Note or otherwise, shall the amount paid, or agreed to be paid ("Interest"), to Mortgagee for the use, forbearance or retention of the money loaned under the Note exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, performance or fulfillment of any provision hereof or of any agreement between Mortgagor and Mortgagee shall, at the time performance or fulfillment of such provision shall be due, exceed the limit for Interest prescribed by law or otherwise transcend the limit of validity prescribed by



applicable law, then ipso facto the obligation to be performed or fulfilled shall be reduced to such limit and if, from any circumstance whatsoever, Mortgagee shall ever receive anything of value deemed Interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive Interest shall be applied to the reduction of the principal balance owing under the Note in the inverse order of its maturity (whether or not then due) or at the option of Mortgagee be paid over to Mortgagor, and not to the payment of Interest. All Interest (including any amounts or payments deemed to be Interest) paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal balance of the Note so that the Interest thereon for such full period will not exceed the maximum amount permitted by applicable law. This paragraph will control all agreements between Mortgagor and Mortgagee.

4.13. Interest Payable by Mortgagee.

Mortgagee shall cause funds in the Replacement Reserve (the “Funds”) to be deposited into interest bearing accounts of the type customarily maintained by Mortgagee or its servicing agent for the investment of similar reserves, which accounts may not yield the highest interest rate then available. The Funds shall be held in an account in Mortgagee’s name (or such other account name as Mortgagee may elect) at a financial institution or other depository selected by Mortgagee (or its servicer) in its sole discretion (collectively, the “Depository Institution”). Mortgagor shall earn no more than an amount of interest on the Funds equal to an amount determined by applying to the average monthly balance of such Funds the quoted interest rate for the Depository Institution’s money market savings account, as such rate is determined from time to time (such allocated amount being referred to as “Mortgagor’s Interest”). Mortgagee or its Depository Institution shall be entitled to report under Mortgagor’s Federal tax identification number, the Mortgagor’s Interest on the Funds. If the Depository Institution does not have an established money market savings account (or if an interest rate for such account cannot otherwise be determined in connection with the deposit of such Funds), a comparable interest rate quoted by the Depository Institution and acceptable to Mortgagee (or its servicer) in its reasonable discretion shall be used. The amount of Mortgagor’s Interest allocated to Funds shall be added to the balance in the Replacement Reserve to be disbursed.

4.14. Brokers and Financial Advisors.

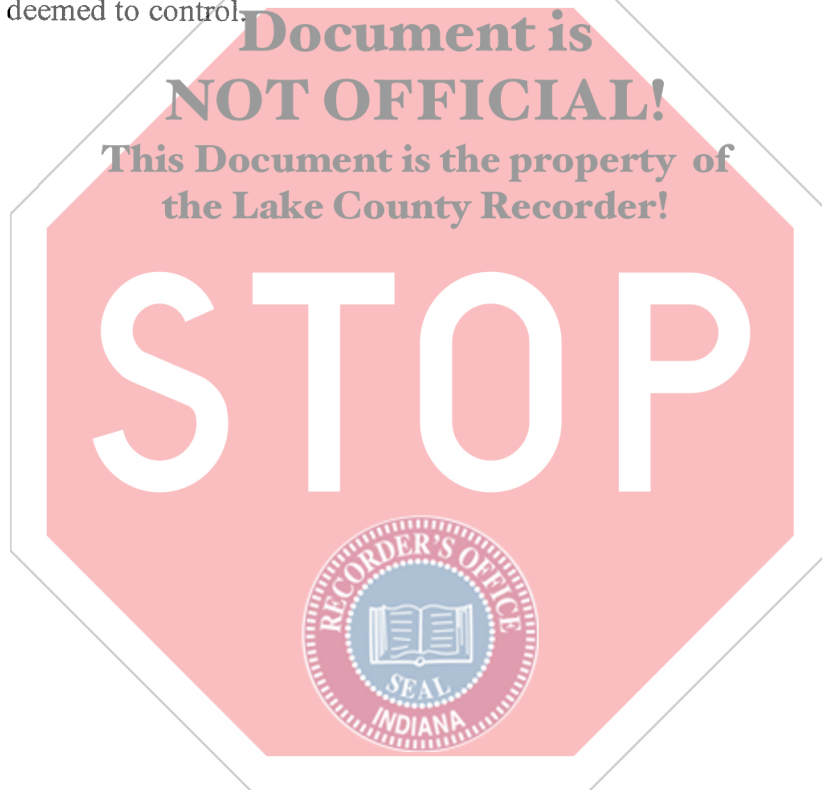
(a) Hasiak Realty Investors (“Broker”) has acted as a finder or broker in the proposed transaction, and may be paid a brokerage fee by Mortgagee or Mortgagor upon funding of the indebtedness secured hereby pursuant to an agreement with Mortgagee or Mortgagor. Additionally, at Mortgagee’s sole discretion Broker may receive further consideration from Mortgagee relating to any other matters for which Mortgagee may elect to compensate Broker, pursuant to a separate agreement between

Mortgagee and Broker. Mortgagee shall have no obligation to disclose the existence of any such agreement or the amount of any such additional consideration paid to Broker.

(b) Mortgagor hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Mortgage other than Broker. Mortgagor hereby agrees to indemnify, defend and hold Mortgagee harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Mortgagee's attorneys' fees and expenses) in any way relating to or arising from a claim that any person or entity acted on behalf of Mortgagor or Mortgagee in connection with the transactions contemplated herein, other than fees or consideration which Mortgagee has agreed in writing to pay Broker. The provisions of this section shall survive any release or termination of this Mortgage whether occasioned by a repayment of the indebtedness secured hereby or otherwise.

4.15. Further Stipulations.

The additional covenants, agreements and provisions set forth in Exhibit B attached hereto, if any, shall be a part of this Mortgage and shall, in the event of any conflict between such further stipulations and any of the other provisions of this Mortgage, be deemed to control.



**ATTACHED EXHIBITS.** The following Exhibits are attached to this Security Instrument:

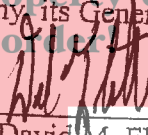
- Exhibit A Description of the Land
- Exhibit B Intentionally Omitted
- Exhibit C Modifications to Mortgage
- Exhibit D Bankruptcy Remote Rider


**IN WITNESS WHEREOF,** Mortgagor has executed this Mortgage [under seal] as of the day and year first above written.

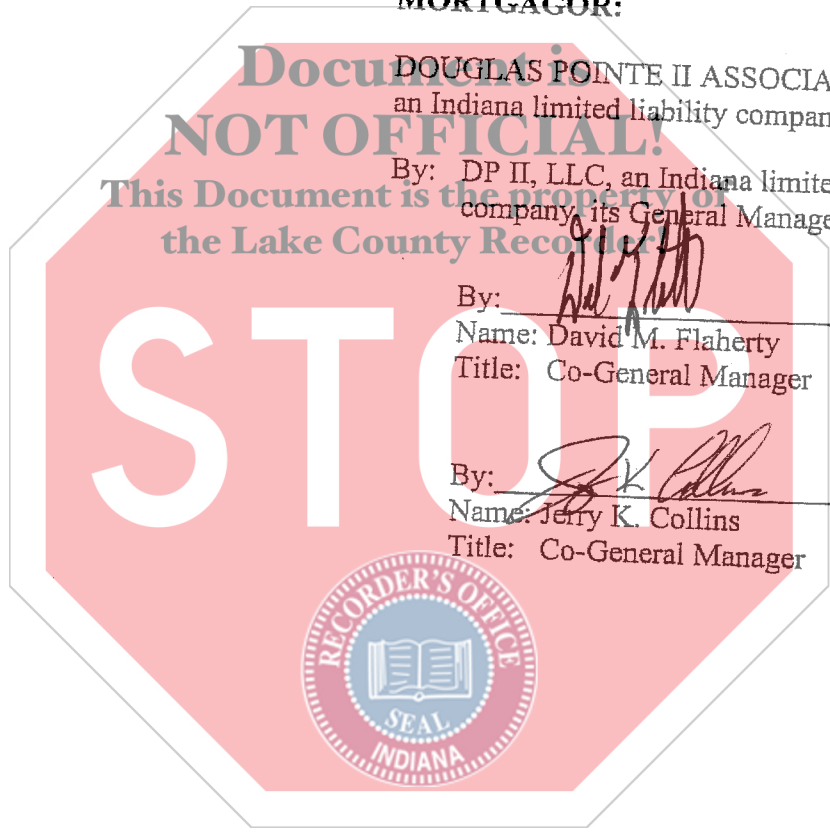
**MORTGAGOR:**

DOUGLAS POINTE II ASSOCIATES, LLC,  
an Indiana limited liability company

By: DP II, LLC, an Indiana limited liability  
company, its General Manager

By:   
Name: David M. Flaherty  
Title: Co-General Manager

By:   
Name: Jerry K. Collins  
Title: Co-General Manager



STATE OF INDIANA )

COUNTY OF Hamilton )

Before me a Notary Public in and for said county and state personally appeared DAVID M. FLAHERTY, known to me to be the Co-General Manager of DP II, LLC, an Indiana limited liability company, in its capacity as the General Manager of DOUGLAS POINTE II ASSOCIATES, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Mortgage, Security Agreement and Assignment of Leases and Rents as his voluntary act and deed for and on behalf of said entity.

(Authority: IC 32-1-2-23)

Patricia Ann Newsom  
Notary Public



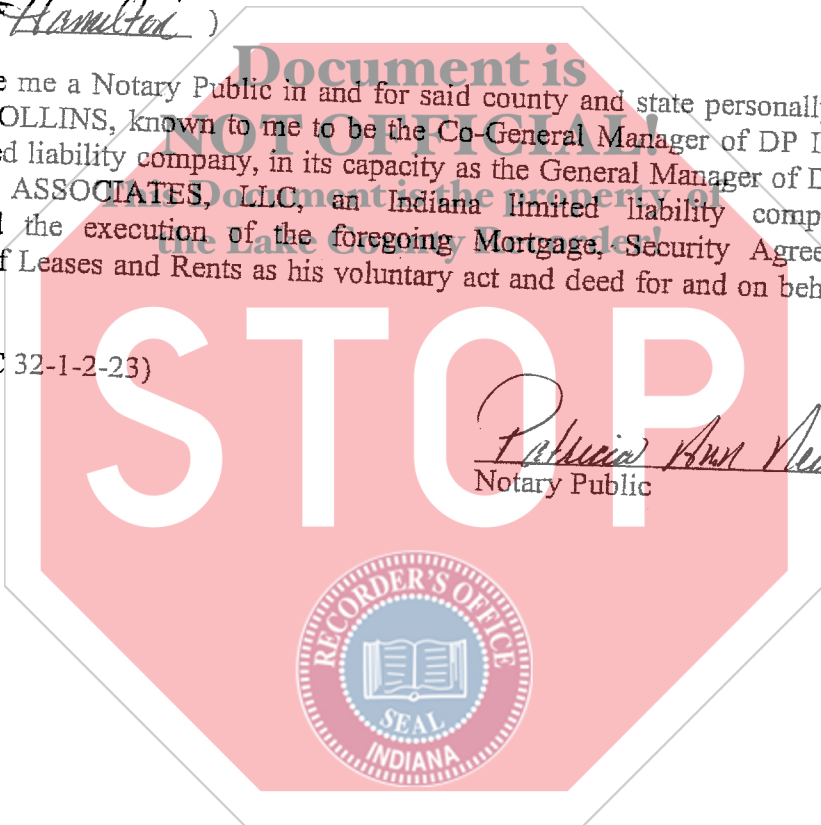
STATE OF INDIANA )

COUNTY OF Hamilton )

Before me a Notary Public in and for said county and state personally appeared JERRY K. COLLINS, known to me to be the Co-General Manager of DP II, LLC, an Indiana limited liability company, in its capacity as the General Manager of DOUGLAS POINTE II ASSOCIATES, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Mortgage, Security Agreement and Assignment of Leases and Rents as his voluntary act and deed for and on behalf of said entity.

(Authority: IC 32-1-2-23)

Patricia Ann Newsom  
Notary Public





**EXHIBIT A**

Legal Description

Parcel 1:

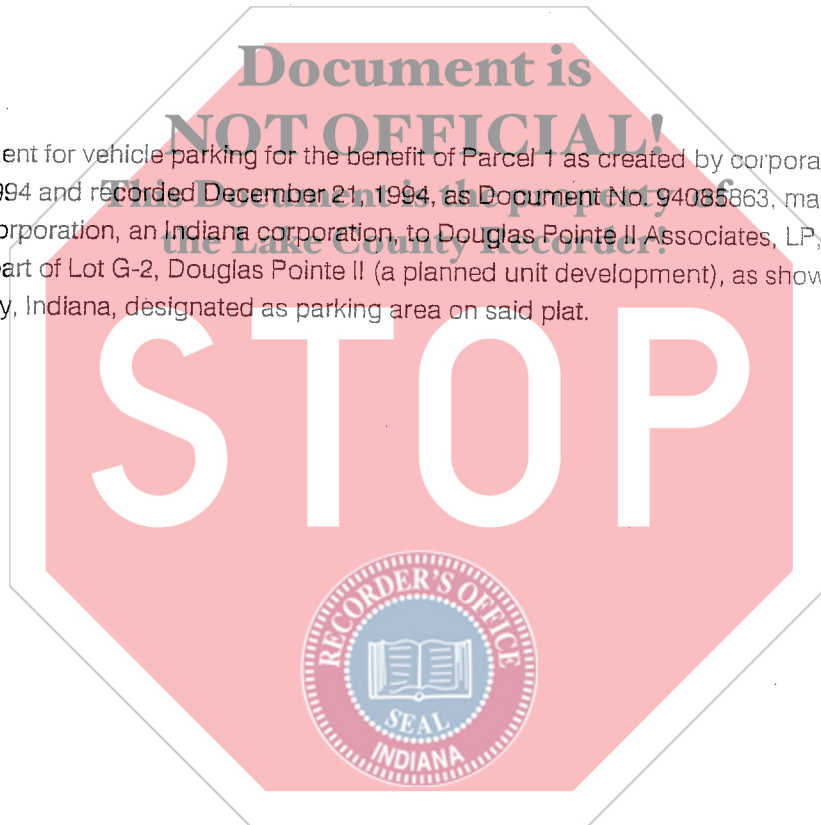
Lot G-1, Douglas Pointe II (a planned unit development), as per plat thereof, recorded in Plat Book 77, page 75, in the Office of the Recorder of Lake County, Indiana.

Parcel 2:

A non-exclusive easement for vehicle and pedestrian ingress and egress for the benefit of Parcel 1 as created by corporate warranty deed dated December 19, 1994 and recorded December 21, 1994, as Document No. 94085863, made by Douglas Pointe Development Corporation, an Indiana Corporation, to Douglas Pointe II Associates, LP, an Indiana limited partnership, over that part of Lot G-2, Douglas Pointe II (a planned unit development), as shown in Plat Book 77, page 75, in Lake County, Indiana, designated as ingress/egress on said plat.

Parcel 3:

A non-exclusive easement for vehicle parking for the benefit of Parcel 1 as created by corporate warranty deed dated December 19, 1994 and recorded December 21, 1994, as Document No. 94085863, made by Douglas Pointe Development Corporation, an Indiana corporation, to Douglas Pointe II Associates, LP, an Indiana limited partnership, over that part of Lot G-2, Douglas Pointe II (a planned unit development), as shown in Plat Book 77, page 75, in Lake County, Indiana, designated as parking area on said plat.



**EXHIBIT B**

INTENTIONALLY OMITTED



## EXHIBIT C

### MODIFICATIONS TO MORTGAGE

#### SPECIAL STATE PROVISIONS

Special Indiana Provisions. Notwithstanding anything contained in this Mortgage to the contrary:

(a) Mortgagee shall be entitled to all rights and remedies that a mortgagee would have under Indiana law or in equity in addition to all rights and remedies it may have hereunder. Where any provision of this Mortgage is inconsistent with any provision of Indiana law regulating the creation, perfection or enforcement of a lien or security interest in real or personal property including, but not by way of limitation, IC 34-1-53 Foreclosure of Mortgages, the provisions of such Indiana law, as amended from time to time, 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 Indiana law. Should applicable law confer any rights or impose any duties inconsistent with or in addition to any of the provisions of this Mortgage, the affected provisions of this Mortgage shall be considered amended to conform to such applicable law, but all other provisions hereof shall remain in full force and effect without modification. 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 Uniform Commercial Code.

(b) Mortgagor certifies and warrants to Mortgagee that none of the Mortgaged Property is within the definition of the term "property" contained in the Indiana Responsible Property Transfer Law ("IRPTL") (IC 13-25-3) or if the Mortgaged Property is within the definition of the term "property", Mortgagor shall observe, perform and comply with the requirements of IRPTL in connection with the Mortgage.

(c) To the extent the laws of the State of Indiana limit (i) the availability of the exercise of any of the remedies set forth in the Mortgage, including, without limitation, the remedies involving a power of sale on the part of Mortgagee and the right of Mortgagee to exercise self-help in connection with the enforcement of the terms of this Mortgage, or (ii) the enforcement of waivers and indemnities made by Mortgagor, such remedies, waivers or indemnities shall be exercisable or enforceable, any provisions in this Mortgage to the contrary notwithstanding, if, and to the extent, permitted by the laws in force at the time of the exercise of such remedies or the enforcement of such waivers or indemnities without regard to the enforceability of such remedies, waivers or indemnities at the time of the execution and delivery of this Mortgage.

(d) Mortgagor hereby represents and agrees that the Loan evidenced by the Note and secured by this Mortgage is being obtained for business or commercial purposes, and the proceeds thereof will not be used for personal, family, residential, household or agricultural purposes.

(e) Any receiver appointed pursuant to this Mortgage shall have all of the usual powers and duties of receivers pursuant to IC 34-12, as amended from time to time.

(f) In the event a court of competent jurisdiction construes the assignment of the Rents set forth in Section 1.11 hereof to be collateral that secures the obligations of Mortgagor rather than an absolute assignment, the assignment shall constitute an assignment of Rents as set forth in IC 32-1-2-16.3 and thereby creates a security interest in the Rents that will be perfected upon the recording of this Mortgage. The Assignment of the Leases set forth in Section 1.11 hereof shall be in addition to, and not in lieu of, the provisions of the Assignment of Leases and Rents ("Assignment") and, if any conflict or inconsistency exists between the provisions of this Mortgage and the provisions of the Assignment with respect to the Leases, the provisions of the Assignment shall control, except to the extent that this Mortgage shall impose greater burdens upon Mortgagor, shall further restrict rights of Mortgagor or shall give Mortgagee greater rights.

(g) Notwithstanding anything to the contrary contained in this Mortgage, this Mortgage shall secure (i) a maximum amount not exceeding TWO MILLION ONE HUNDRED FIFTY THOUSAND AND 00/100 (\$2,150,000.00) DOLLARS plus recoverable costs, expenses, fees, penalties, premiums and all other amounts payable pursuant to the Note and this Mortgage, exclusive of any items described in (ii) below, including any additional advances or extensions of credit from time to time after the date hereof, pursuant to this Mortgage and other Loan Documents whether made as part of the obligations secured hereby, made at the option of the Mortgagee, made after a reduction to zero (0) or other balance, or made otherwise, (ii) all other amounts payable to Mortgagor, or advanced by Mortgagee for the amount, or on behalf, of Mortgagor, pursuant to this Mortgage and other Loan Documents, including amounts advanced with respect to the Property for the payment of taxes, assessments, insurance premiums and other costs and impositions incurred for the protection of the Property to the same extent as if the future obligations and advances were made on the date of execution of the Mortgage, and (iii) future modifications, extensions and renewals of the Note, this Mortgage and/or the other Loan Documents secured by this Mortgage pursuant to IC 32-8-11-9, the lien of this Mortgage with respect to any future advances, extensions of credit, modifications, extensions and renewals referred to herein and made from time to time shall have the same priority to which this Mortgage otherwise would be entitled as of the date the Mortgage is executed and recorded without regard to the fact that any such future advances, modifications, extensions or renewals may occur after the Mortgage is executed.



(h) The Note, by its terms, shall mature on the 11<sup>th</sup> day of May, 2015.

**(End of Rider)**



EXHIBIT D

BANKRUPTCY REMOTE RIDER

1. Covenants with Respect to Indebtedness; Operations and Fundamental Changes of Mortgagor. Mortgagor represents, warrants and covenants as of the date hereof and until such time as the indebtedness secured hereby is paid in full, that Mortgagor:

(a) does not own and will not own any encumbered asset other than (i) the Property, and (ii) incidental personal property necessary for the operation of the Property;

(b) is not engaged and will not engage in any business other than the ownership, management and operation of the Property;

(c) will not enter into any contract or agreement with any general partner, principal, member or affiliate of Mortgagor or any affiliate of any such general partner, principal, or member of Mortgagor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than an affiliate;

(d) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the secured indebtedness, and (ii) trade payables or accrued expenses incurred in the ordinary course of business of operating the Property; no debt whatsoever may be secured (senior, subordinate or *pari passu*) by the Property;

(e) has not made and will not make any loans or advances to any third party (including any general partner, principal, member or affiliate of Mortgagor, or any guarantor);

(f) is and will be solvent and pay its debts from its assets as the same shall become due;

(g) has done or caused to be done and will do all things necessary to preserve its existence and corporate, limited liability company and partnership formalities (as applicable), and will not, nor will any partner, limited or general, or member or shareholder thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, certificate or articles of incorporation or organization, or by-laws or operating agreement or regulations, in a manner which adversely affects Mortgagor's, or any such partner's, member's or shareholder's existence as a single-purpose, single-asset "bankruptcy remote" entity;

(h) will conduct and operate its business as presently conducted and operated;

(i) will maintain books and records and bank accounts separate from those of its affiliates, including its general partners, principals and members;

(j) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any general partner, principal, member or affiliate);

(k) will file its own tax returns;

(l) will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(m) will not, nor will any shareholder, partner, member or affiliate, seek the dissolution or winding up, in whole or in part, of Mortgagor;

(n) will not enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any entity;

(o) will not commingle the funds and other assets of Mortgagor with those of any general partner, principal, member or affiliate, or any other person;

(p) has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person;

(q) has, and any general partner or operating member of Mortgagor has, at all times since its formation, observed all legal and customary formalities regarding its formation and will continue to observe all legal and customary formalities;

(r) does not and will not hold itself out to be responsible for the debts or obligations of any other person; and

(s) upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Mortgagor, Mortgagor shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. 105 or any other provision of the Act, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Mortgagee to enforce any rights of Mortgagee against any guarantor or indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

2. Sale of the Property. In connection with any transfer of the Security Property and an assumption of Loan by the Buyer

(a) The Buyer and such constituent partners, members or shareholders of Buyer (as the case may be), as Mortgagee may require, shall be single-purpose, single-asset "bankruptcy remote" entities, whose formation documents shall be approved by counsel to Mortgagee.

(b) The Buyer, if required by Mortgagee, shall furnish an opinion of counsel satisfactory to Mortgagee and its counsel (i) that the Buyer's formation documents provide for the matters described in subparagraph (a) of this Section 2 of this Bankruptcy Remote Rider; (ii) that the assets of the Buyer will not be consolidated with the assets of any other entity (including the Buyer's general partner, if any) having an interest in, or affiliation with, the Buyer, in the event of bankruptcy or insolvency of any such entity or such general partner.

