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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2011 043037

2011 AUG 11 AM 9:33

MICHAEL J. HAN
RECORDER

This Mortgage was prepared in consultation with counsel in the state in which the Land is located by the attorney named below, and after recording ~~please return to:~~

Shook, Hardy & Bacon L.L.P.
2555 Grand Boulevard
Kansas City, Missouri 64106
Attention: Sandy Hawley, Esq.

Property: Merrillville, Indiana

This document is intended to be recorded in Lake County, Indiana

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NCS-462543-21
1065 200

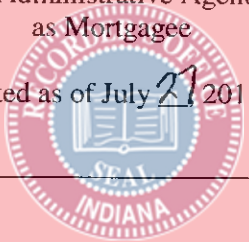
cut # 2011-043038

Document is NOT OFFICIAL!
 MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING
 This Document is the property of the Lake County Recorder!

by
 HENDRICKS COMMERCIAL PROPERTIES, LLC,
 as Mortgagor

to
 U.S. BANK NATIONAL ASSOCIATION,
 as Administrative Agent,
 as Mortgagee

Dated as of July 21 2011



Return to:
First American Title Insurance Company
Attn: Deborah Cross
30 N. LaSalle St, Suite 2700
Chicago, IL 60602

4571915 v1

AMOUNT \$ 74
 CASH _____ CHARGE _____
 CHECK # 021752
 OVERAGE 100
 COPY _____
 NON-COM
 CLERK AD

11/2/11

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

This MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "*Mortgage*") is executed effective as of July 27, 2011 (the "*Effective Date*"), by and from HENDRICKS COMMERCIAL PROPERTIES, LLC, a Wisconsin limited liability company, as mortgagor, debtor and assignor (in such capacities and together with any successors in such capacities, "*Mortgagor*"), with a mailing address/office at 655 Third Street, Suite 301, Beloit, Wisconsin 53511, to U.S. BANK NATIONAL ASSOCIATION, as administrative agent for the benefit of the lenders from time to time party to the Credit Agreement referred to below (each, a "*Lender*," and collectively, the "*Lenders*"), as mortgagee, assignee and secured party (in such capacities and, together with its successors and assigns in such capacities, "*Mortgagee*"), with a mailing address/office at 9900 West 87th Street, Overland Park, Kansas 66212.

RECITALS:

WHEREAS, Mortgagor, Mortgagee and the Lenders have entered into a Credit Agreement of even date herewith, pursuant to which the Lenders have agreed, subject to the terms and conditions thereof, to extend credit to the Mortgagor in an aggregate outstanding principal amount not to exceed SEVENTY NINE MILLION FOUR HUNDRED EIGHTY ONE THOUSAND TWO HUNDRED FIFTY AND NO/100THS DOLLARS (\$79,481,250.00) at any time (as amended, renewed, restated, replaced, supplemented, consolidated or otherwise modified from time to time, the "*Credit Agreement*");

WHEREAS, Mortgagor's obligations to the Lenders under the Credit Agreement are evidenced by one or more promissory notes;

WHEREAS, the foregoing promissory notes and any other promissory notes issued on or after the date hereof under the Credit Agreement, as any of the foregoing may be amended, renewed, restated, replaced, supplemented, consolidated or otherwise modified from time to time, are collectively referred to herein as the "*Notes*" and are individually referred to herein as a "*Note*";

WHEREAS, it is a condition precedent to the obligations of the Lenders to make a Loan to Mortgagor under the Credit Agreement that the Mortgagor shall have executed and delivered this Mortgage to Mortgagee for the benefit of the Lenders; and

WHEREAS, this Mortgage secures the maximum principal amount of SEVENTY NINE MILLION FOUR HUNDRED EIGHTY ONE THOUSAND TWO HUNDRED FIFTY AND NO/100THS DOLLARS (\$79,481,250.00) in accordance with and as further defined in Section 2.4 of this Mortgage. Notwithstanding anything herein to the contrary, no reduction in the principal balance outstanding on the Notes or the Secured Obligations shall reduce the amount of the Maximum Secured Amount secured hereby except to the extent that the outstanding principal balance on the Notes or Secured Obligations is reduced below the amount of the Maximum Secured Amount.

WHEREAS, capitalized terms used but not otherwise defined in this Mortgage shall have the meanings given to them in the Credit Agreement.

NOW, THEREFORE, to induce Mortgagee and the Lenders to enter into the Credit Agreement and to induce the Lenders to make the Loan to the Mortgagor under the Credit Agreement, the Mortgagor hereby agrees with Mortgagee, for the benefit of the Lenders, as follows:

ARTICLE 1 GRANT

1.1 **GRANT.** Upon the terms and conditions of this Mortgage, Mortgagor absolutely and irrevocably BARGAINS, WARRANTS, SELLS, MORTGAGES, GRANTS, CONVEYS and ASSIGNS to Mortgagee, for the benefit of the Lenders, with right of entry and possession as provided for herein and in the other Loan Documents, all of Mortgagor's estate, right, title and interest in, to, under or derived from any or all of the following property, whether such property or interest therein is now owned or existing or hereafter acquired or arising:

a. The tract(s) or parcel(s) of real property (whether one or more tracts or parcels, the "**Land**") located in Lake County, Indiana, and more particularly described on Exhibit A attached hereto and incorporated by reference herein;

b. All buildings, structures, facilities and other improvements now or hereafter located on the Land, together with any alterations, additions and improvements thereto and all restorations and replacements thereof made from time to time (collectively, the "**Improvements**");

c. All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land or Improvements;

d. All easements, rights of access, sewer rights, waters, water courses, water and flowage rights, pumps, pipes, water stock, ditch and/or reservoir stock, rights or interests, royalties, development rights and credits, air rights, minerals, oil rights, and gas rights, now or later used or useful in connection with, appurtenant to or related to the Land, if any, and all estates, rights, titles, interests, privileges, licenses, tenements, hereditaments, appurtenances and rights belonging, relating or appertaining to the Land or Improvements, and any reversions, remainders, rents, issues, profits and revenue thereof;

e. All fixtures and all machinery, equipment, apparatus, furnishings, appliances, fittings and articles of personal property of every kind and nature whatsoever, and all appurtenances, accessions and additions thereto and renewals and replacements thereof and substitutions therefor (together with, in each case, attachments, components, parts and accessories) currently owned or subsequently acquired by Mortgagor and now or subsequently located in, on or about the Improvements or upon the Land, or attached to or used or usable in connection with the operation, occupancy or maintenance of the Land or Improvements, it being intended by the parties that all such items shall, to the fullest extent permitted by law, be deemed to constitute fixtures and be considered to be a part of the real property encumbered by this Mortgage;

f. All insurance proceeds and any judgments, settlements, awards and other payments, including interest thereon, which may be made in respect of the items described in this Section 1.1 as a result of damage to or destruction of any such items, the exercise of the right of condemnation or eminent domain over any interest in such items, the closing of, or the alteration of the grade of, any street on or adjoining the Land, or any other injury to or decrease in the value of the Land, Improvements or other items described in this Section 1.1;

g. All licenses, authorizations, certificates, variances, consents, approvals and other permits and other rights now or hereafter pertaining to the Land or Improvements, and all estate, right, title and interest of Mortgagor in, to, under or derived from all trade names or business names relating to the Land or Improvements, or the present or future development, construction, operation or use of the Land or Improvements;

h. All rents, revenues, income, profits, accounts receivable and other benefits arising out of or otherwise related to any of the items described in this Section 1.1 and all leases on or affecting such items, and any security deposits, contract rights, general intangibles, actions, rights of action, and unearned insurance premiums relating to such leases or such items; and

i. All accessions to, substitutes for, and all modifications, replacements, renewals, products and proceeds of any of the foregoing;

all of the property described in this Section 1.1 being hereinafter collectively defined as the "**Property**" (the listing of specific rights or property shall not be interpreted as a limitation of general terms);

TO HAVE AND TO HOLD the Property to secure the full and timely payment and performance of the Secured Obligations (as defined below).

ARTICLE 2 OBLIGATIONS SECURED

2.1 **OBLIGATIONS SECURED.** Mortgagor makes the foregoing grant and assignment described in Section 1.1, above, and those set forth in Articles 3 and 4 and elsewhere in this Mortgage for the purpose of securing the following obligations (collectively, the "**Secured Obligations**"):

a. Full and punctual payment to the Lenders of all sums at any time owing under the Credit Agreement, the Notes, this Mortgage and/or any other Loan Documents, whether direct, indirect, acquired, joint, several, joint and several, existing, future, contingent or otherwise, including without limitation principal, interest, premium, prepayment charges, late charges, loan fees, and other fees, expenses, amounts and charges on or relating to all obligations secured hereby, and including any amounts expended by or on behalf of Mortgagee or any Lender for the protection and preservation of the Property or of the lien and security interest granted herein;

b. Payment and performance of all covenants and obligations of Mortgagor under this Mortgage including, without limitation, indemnification obligations;

c. Payment and performance of all additional covenants and obligations of Mortgagor under any of the Loan Documents;

d. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly, and modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes; and

e. Payment and performance of any other obligations which are defined as "Obligations" in the Credit Agreement.

2.2 **MATURITY DATE; VARIABLE RATE OF INTEREST.** The maturity date of the Revolving Credit Loans under the Credit Agreement is July ~~21~~, 2014, subject to extension as set out in the Credit Agreement, and the maturity date of the Term Loan under the Credit Agreement is July ~~22~~, 2016. The rate of interest on one or more Secured Obligations may vary from time to time in accordance with the terms of the Credit Agreement.

2.3 **FUTURE ADVANCES.** Subject to Section 2.4, this Mortgage shall secure all Secured Obligations including, without limitation, future advances whenever hereafter made with respect to or under the Credit Agreement or the other Loan Documents and shall secure not only Secured Obligations with respect to presently existing indebtedness under the Credit Agreement or the other Loan Documents, but also any and all other indebtedness which may hereafter be owing to the Lenders under the Credit Agreement or the other Loan Documents, however incurred, whether the same shall be deferred, accrued or capitalized, including future advances and re-advances, pursuant to the Credit Agreement or the other Loan Documents, whether such advances are obligatory or are to be made at the option of the Lenders, or otherwise, and any extensions, refinancings, modifications or renewals of all such Secured Obligations whether or not Mortgagor executes any extension agreement or renewal instrument and, in each case, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The priority of the lien hereunder securing such future advances and future obligations shall relate back to the date this Mortgage was recorded.

2.4 **MAXIMUM AMOUNT OF INDEBTEDNESS.** The maximum aggregate amount of all principal indebtedness that is, or under any contingency may be secured at the date hereof or at any time hereafter by this Mortgage is \$79,481,250.00 (the "***Maximum Secured Amount***"), plus interest thereon, plus, to the extent permitted by applicable law, collection costs, sums advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien hereof, and expenses incurred by or on behalf of Mortgagee by reason of any default by Mortgagor under the terms hereof, together with interest thereon, all of which amount shall be secured hereby.

2.5 **LAST DOLLAR SECURED; PRIORITY.** To the extent this Mortgage secures only a portion of the Secured Obligations, the parties agree that any payments or repayments of such Secured Obligations shall be and be deemed to be applied first to the portion of the Secured Obligations that is not secured hereby, it being the parties' intent that the portion of the Secured Obligations last remaining unpaid shall be secured hereby. If at any time this Mortgage shall secure less than all of the principal amount of the Secured Obligations, it is expressly agreed that any repayments of the principal amount of the Secured Obligations shall not reduce the amount of the lien of this Mortgage until the lien amount shall equal the principal amount of the Secured Obligations outstanding.

2.6 **REVOLVING CREDIT LOANS.** A portion of the Secured Obligations secured hereby is one or more revolving credit loans, the principal of which may be advanced, repaid and readvanced at any time and from time to time in accordance with the terms of the Credit Agreement. Accordingly, if the outstanding principal balance under the Credit Agreement is ever reduced to a zero balance, the lien and security of this Mortgage shall not be released or extinguished by operation of law or implied intent of the parties. This Mortgage, the Credit Agreement and the other Loan Documents shall remain in full force and effect as to any further advances under the Credit Agreement made after any such zero balance until the indebtedness secured by this Mortgage is paid in full and satisfied, all agreements of Lenders to make further advances have been terminated and this Mortgage has been cancelled/released of record.

2.7 **MORTGAGE REMAINS IN EFFECT.** This Mortgage shall remain in full force and effect with respect to all of the Property until all Secured Obligations shall have been indefeasibly paid and performed in full or in the event of a disposition of the Property pursuant to Section 2.8(c)(1)(i) of the Credit Agreement, the applicable Appraised Value of Qualifying Mortgage Property shall have been indefeasibly paid in full. If the Secured Obligations are indefeasibly paid and performed in full in accordance with the terms of the applicable Loan Documents, including, without limitation, the observance of all the agreements contained in this Mortgage, or if the Property is disposed of pursuant to Section 2.8(c)(1)(i) of the Credit Agreement, and the applicable Appraised Value of Qualifying Mortgage

Property is indefeasibly paid in full, then this Mortgage and the Assignment of Leases and Rents, UCC fixture filing and Subordination, Nondisturbance and Attornment Agreement dated of even date herewith and relating to the Property (the "**Property Security Documents**") shall become void and shall be released at the expense of the Mortgagor. In addition, this Mortgage and the Property Security Documents shall become void and shall be released at the expense of the Mortgagor in the event that a "Substitution" for this particular Mortgage is made pursuant to the terms, and upon the conditions, set out in Section 2.28 of the Credit Agreement. For the avoidance of doubt, unknown or unasserted claims for indemnification under the Loan Documents shall not serve as a basis for precluding release of this Mortgage.

ARTICLE 3 ASSIGNMENT OF LEASES AND RENTS

3.1 **PRESENT AND ABSOLUTE ASSIGNMENT.** Mortgagor hereby presently, absolutely and irrevocably assigns to Mortgagee, for the benefit of the Lenders, all of the Mortgagor's right, title and interest in, to and under any Leases, as defined hereinafter, with respect to the Property, and all rents, issues and profits of the Property. As used in this Mortgage, "**Lease**" means every lease or occupancy agreement for the use or hire of all or any portion of the Property which shall be in effect on the date hereof, or which shall hereafter be entered into, and by which Mortgagor is a lessor or the like, and any renewals, extensions or other modifications thereof. The term "Lease" includes that certain lease agreement currently in effect with regard to the Property between Mortgagor, as landlord, and Mortgagor's affiliate, American Builders & Contractors Supply Co., Inc., as tenant, which lease is described on Schedule I attached hereto and incorporated by reference herein and which lease is the only "Lease" affecting the Property as of the date of this Mortgage. Mortgagor has provided to Mortgagee a true, accurate and complete copy of such lease, including all amendments thereto. To the fullest extent permitted by applicable law, Mortgagor grants to Mortgagee, with or without Mortgagee or any other Person (including, without limitation, a receiver) taking possession of the Property, the right to give notice to the tenants of this assignment, and upon the occurrence of an Event of Default, the right to collect rents, issues and profits from the tenants and to enter onto the Property for the purpose of collecting the same and to let the Property and to apply such rents, issues and profits, after payment of all charges and expenses relating to the Property, to the Secured Obligations. It is the intent of Mortgagor that this assignment constitute a present and absolute assignment, and not an assignment for security purposes only, subject to the license herein granted to Mortgagor and Mortgagor's obligations hereunder, and that this assignment shall continue in effect until the Secured Obligations are fully paid and performed. Mortgagee hereby confers upon Mortgagor a revocable license to collect and use such rents, issues and profits; *provided, however*, that the foregoing license shall be automatically revoked, without any action on Mortgagee's part, upon the occurrence of an Event of Default. Notwithstanding any law to the contrary, if there is an Event of Default, and if there is any applicable law requiring Mortgagee to take possession of the Property (or some action equivalent thereto, such as securing the appointment of a receiver) in order for Mortgagee to "perfect" or otherwise "activate" its rights and remedies as set forth herein, then Mortgagor waives all benefits of such laws and agrees that such laws shall be fully satisfied, without any action on Mortgagee's part, solely by the occurrence of such Event of Default. If, notwithstanding such waiver by Mortgagor, such laws require the undertaking of some affirmative act by Mortgagee, Mortgagor agrees that such laws shall be fully satisfied solely by Mortgagee giving Mortgagor notice, written or oral, that such Event of Default has occurred and that Mortgagee intends to enforce its rights in any Leases and/or any rents, issues and profits assigned herein. Mortgagee may exercise its rights from time to time under this Section 3.1 without first commencing foreclosure proceedings against the Property if it so elects. Any such election by Mortgagee to exercise its rights from time to time under this Section 3.1 shall not prohibit Mortgagee from simultaneously or thereafter foreclosing upon the Property or exercising any other rights available to Mortgagee hereunder or at law.

3.2 **HOLD HARMLESS.** Mortgagee shall not be obligated to perform any obligation to be performed by Mortgagor under any Lease or other agreement affecting the Property, and Mortgagor agrees to indemnify Mortgagee for, and hold Mortgagee harmless from, any and all liability and expenses arising from any Lease or other agreement or any assignments thereof, and no assignment of any Lease or other agreement shall place the responsibility for the control, care, management or repair of the Property upon Mortgagee, nor make Mortgagee liable for any negligence or other tortious conduct, whether by Mortgagee or any other Person, with respect to the management, operation, upkeep, repair or control of the Property resulting in injury, death, property or other damage or loss of any nature whatsoever.

3.3 **ESTOPPEL CERTIFICATES.** Within thirty (30) days after request by Mortgagee, Mortgagor shall deliver to Mortgagee and to any party designated by Mortgagee, estoppel certificates relating to the Leases, executed by Mortgagor and by each of the tenants, in form and substance acceptable to Mortgagee.

3.4 **RIGHT OF SUBORDINATION.** Mortgagee may at any time and from time to time by specific written instrument intended for such purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other Person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing in this Section shall be construed as subordinating this Mortgage to any Lease.

3.5 **SEPARATE ASSIGNMENT OF LEASES AND RENTS.** Concurrently herewith, Mortgagor is executing and delivering an Assignment of Leases and Rents to Mortgagee (as the same may be amended from time to time, the "*ALR*"). If any conflict or inconsistency exists between the terms and provisions of the ALR and the terms and provisions of this Article 3, the terms and provisions of the ALR shall control.

This Document is the property of
ARTICLE 4 SECURITY AGREEMENT

4.1 **SECURITY INTEREST.** Mortgagor, as debtor, grants and assigns to Mortgagee, for the benefit of the Lenders, as secured party, as further security for the Secured Obligations, a security interest in all personal property of Mortgagor comprising any portion of the Property described in Section 1.1 now or hereafter located on or about the Land or Improvements, or which now or hereafter otherwise relates to the Property or use of the Property in any respect, including, without limitation and in addition thereto, all of the Mortgagor's presently owned or hereafter acquired fixtures, equipment, machinery, goods, accounts, general intangibles, chattel paper, instruments, deposit accounts, investment property and all other property in which a security interest can be granted under applicable law, together with all replacements and proceeds of, and additions and accessions to, any of the foregoing (collectively, the "*Personal Property Collateral*").

4.2 **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents as Mortgagee deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name or the jurisdiction in which it is organized without giving Mortgagee at least thirty (30) days' prior written notice thereof; and (c) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Mortgagee's rights hereunder.

4.3 **FINANCING STATEMENTS.** Mortgagor shall prepare and deliver to Mortgagee such financing statements, and shall execute and deliver to Mortgagee such other documents, instruments and further assurances, in each case in form and substance satisfactory to Mortgagee, as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder. Mortgagor hereby irrevocably authorizes Mortgagee to cause financing statements (and amendments thereto and continuations thereof) and any such documents, instruments and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

4.4 **FIXTURE FILING.** To the extent permitted by applicable law, this Mortgage shall also constitute a "fixture filing" against all of the Property which is or is to become fixtures. The information provided in this Section 4.4 is provided so that this Mortgage shall comply with the requirements of the Indiana Uniform Commercial Code for a mortgage instrument to be filed as a financing statement. Mortgagor is the "Debtor" and its name and mailing address are set forth in the introductory paragraph of this Mortgage. Mortgagee is the "Secured Party" and its name and mailing address from which information concerning the security interest granted herein may be obtained are also set forth in the introductory paragraph of this Mortgage. A statement describing the portion of the Property comprising the fixtures hereby secured is set forth in the definition of "Property" in Section 1.1 of this Mortgage. Mortgagor represents and warrants to Mortgagee that Mortgagor is the record owner of the Land and Property and the organizational identification number of Mortgagor is H033407. Mortgagor represents and warrants to Mortgagee that Mortgagor's jurisdiction of organization is the State of Wisconsin.

4.5 **RIGHTS OF MORTGAGEE.** In addition to Mortgagee's rights as a "Secured Party" under the UCC (as defined below) with respect to the Personal Property Collateral, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any Person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Personal Property Collateral or any rights or interests of Mortgagee therein; and (c) inspect the Personal Property Collateral. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law. As used in this Mortgage, "UCC" shall mean the Uniform Commercial Code of Wisconsin, or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than Wisconsin, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

4.6 **POWER OF ATTORNEY.** Upon and during the continuance of an Event of Default, Mortgagee shall be deemed appointed as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Mortgagee may, without the obligation to do so, in Mortgagee's name or in the name of Mortgagor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to the Personal Property Collateral, and take any other action required of Mortgagor; *provided, however*, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 **REPRESENTATIONS AND WARRANTIES.** Except as set forth on the Disclosure Schedule provided by Mortgagor to Mortgagee in conjunction with this Mortgage, Mortgagor represents and warrants to Mortgagee as follows:

a. **Title; No Liens.** Mortgagor lawfully holds and possesses fee simple title to the Land and Improvements and has good and marketable title to the remainder of the Property subject to the "Permitted Liens" as set forth in the Credit Agreement. This Mortgage is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except liens for real estate taxes and assessments not yet due and payable. There are no mechanics' or similar liens or claims which have been filed for work, labor or material affecting the Property which are or may be prior to or equal to the lien of this Mortgage. There are no rights outstanding that under law could give rise to any liens affecting the Property which are or may be prior to or equal to the lien of this Mortgage.

b. **Condition of Property.** The Property is in good condition and repair and is free from any damage that would materially and adversely affect the value of the Property or the current or intended use of the Property.

c. **Compliance With Laws.** All federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U.S.C. Section 12101 *et seq.*) have been satisfied or complied with in all material respects, and any noncompliance will not materially and adversely affect the value of the Property or the current or intended use of the Property. All certificates of occupancy and other licenses, permits and authorizations regarding the Property are valid and in full force and effect.

d. **Property Taxes and Other Liabilities.** All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid or arrangements, acceptable to Mortgagee, have been made for their payment contemporaneously with the execution of this Mortgage.

e. **Condemnation.** There is no proceeding pending or, to Mortgagor's knowledge, overtly threatened for the total or partial condemnation of the Property.

f. **Separate Tax Parcel(s).** The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.

g. **Utilities; Water; Sewer.** The Property is served by public or private utilities (including water and sewer systems) required and adequate for the current or contemplated use thereof.

ARTICLE 6 RIGHTS AND DUTIES OF THE PARTIES

6.1 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Mortgagor shall (or shall cause any tenant under a Lease) to: (a) keep the Property in good order, condition and repair, reasonable wear and tear excepted; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed and with the right to proceeds to the extent applicable in Section 6.8 hereof; (c) comply or cause the Property to comply with, (i) all laws, ordinances, regulations and standards applicable to the Property, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain

and preserve its value (subject to any requirements of any Lease); (e) promptly after execution, deliver to Mortgagee a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Mortgagee deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Mortgage and perform Mortgagor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Mortgagor shall not, without Mortgagee's prior written consent: (A) construct new Improvements nor remove or demolish all or any part of the Property; (B) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the Improvements in a manner which requires a building permit except for tenant improvements permitted or required under a Lease; (C) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (D) alter the type of occupancy or use of all or any part of the Property; or (E) commit or permit waste of the Property.

6.2 **COMPLIANCE WITH LAWS AND REQUIREMENTS.** Mortgagor shall comply, or cause compliance with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*), as amended from time to time, and Mortgagor shall comply, or cause compliance with, all terms, covenants and conditions of instruments of record affecting the Property. Mortgagor shall possess and maintain or cause Mortgagor's tenant to possess and maintain in full force and effect at all times all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of, and operation of business at, the Property.

6.3 **RIGHT OF INSPECTION.** Mortgagee and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time for the purpose of inspecting the Property and ascertaining Mortgagor's compliance with the terms of this Mortgage and the other Loan Documents. Mortgagee shall use reasonable efforts to assure that Mortgagee's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Mortgagor or Mortgagor's tenants on the Property.

6.4 **COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor shall pay to Mortgagee the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by Mortgagee in connection with: (a) appraisals and inspections of the Property required by Mortgagee as a result of an Event of Default; (b) appraisals and inspections of the Property required by applicable law, including, without limitation, federal or state regulatory reporting requirements; (c) any acts performed by Mortgagee at Mortgagor's request or wholly or partially for the benefit of Mortgagor (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation); and (d) the enforcement of the terms and conditions of this Mortgage. Such amounts shall be Secured Obligations hereunder, and Mortgagor shall pay all indebtedness arising under this Section immediately upon demand by Mortgagee.

6.5 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of this Mortgage or the other Loan Documents. Mortgagor shall pay when due or cause to be paid when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of

or upon the Property, except such as Mortgagor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Mortgagee for eventual payment thereof in the event that Mortgagor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise). So long as it complies with the provisions of this Section 6.5 and any other relevant provisions of a Lease, a tenant under a Lease shall have the right to perform the Mortgagor's obligations under this Section 6.5.

6.6 TAXES AND OTHER LIABILITIES.

a. **Payment.** Subject to Section 6.6.b, below, Mortgagor shall pay and discharge or cause to be paid and discharged when due any and all indebtedness, obligations, assessments and taxes, water and sewer rates and charges, license fees and all other governmental fees, levies and charges, both real and personal and including federal and state income taxes and state and local property taxes and assessments, relating to the Property (collectively, "**Impositions**"). Mortgagor shall promptly provide to Mortgagee evidence of payment of Impositions. Mortgagor hereby authorizes Mortgagee to obtain, at Mortgagor's expense, a tax service contract which shall provide tax information on the Property to Mortgagee for the term of the Loan and any extensions or renewals of the Loan.

b. **Right To Contest Taxes.** Notwithstanding the foregoing, Mortgagor may, in good faith and with diligence, contest the validity or amount of any Impositions in the manner provided by law, in which event, Mortgagor shall:

i. pay such Impositions in full under protest in the manner provided by law, or

ii. withhold the payment thereof, if contest of such Impositions may be made without the payment thereof, *provided, however*, that:

(i) such contest shall have the effect of preventing the sale or forfeiture of the Property or any part thereof, or any interest therein, to satisfy any such Impositions;

(ii) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same;

(iii) Mortgagor shall have furnished Mortgagee, from time to time as Mortgagee may request, such security or bond satisfactory to Mortgagee for the final payment and discharge thereof; and

(iv) in the event of a ruling or adjudication adverse to Mortgagor, Mortgagor shall promptly pay any such Impositions plus any interest, penalty or additional charge thereon.

All costs and expenses incidental to any such contest shall be paid by Mortgagor.

6.7 **INSURANCE COVERAGE.** Mortgagor shall at all times keep the Property insured in accordance with the terms, coverages and provisions required in the Credit Agreement.

6.8 CONDEMNATION AND INSURANCE PROCEEDS.

a. **Assignment of Claims.** Mortgagor absolutely and irrevocably assigns to Mortgagee, for the benefit of the Lenders, all of the following rights, claims and amounts of Mortgagor (collectively, "**Claims**"), all of which shall be paid to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or

private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing; any such awards, proceeds, interest and other sums of the Claims herein collectively called, "**Proceeds.**" Mortgagor shall give Mortgagee prompt written notice of the occurrence of any casualty affecting, or receipt of notice regarding, or the institution of any proceedings for, eminent domain or for the condemnation of, the Property or any portion thereof. Mortgagor hereby irrevocably empowers Mortgagee, in the name of Mortgagor, as Mortgagor's true and lawful attorney in fact, to commence, appear in, defend, prosecute, adjust, compromise and settle all Claims; *provided, however*, Mortgagee shall not be responsible for any failure to undertake any or all of such actions regardless of the cause of the failure. All Proceeds shall be payable to Mortgagee.

b. **Application of Proceeds; No Default.** So long as no Default or Event of Default has occurred and is continuing at the time of Mortgagee's receipt of the Proceeds and no Default or Event of Default occurs thereafter, the following provisions shall apply:

(i) **Condemnation; Diminution in Value.** Subject to the terms of Section 6.8b(iii) below, if the Proceeds are the result of Claims described in clauses 6.8a(i) or (ii) above, or interest accrued thereon, Mortgagee shall apply the Proceeds in the following order of priority: First, to Mortgagee's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the portion of the Property, if any, not condemned or proposed for condemnation and not otherwise the subject of a claim or award; and Third, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make payments of principal, interest and other sums in accordance with the terms of the Credit Agreement.

(ii) **Casualty and Other Insurance.** If the Proceeds are the result of Claims described in clause 6.8a(iii) above or interest accrued thereon, Mortgagee shall apply the Proceeds in the following order of priority: First, to Mortgagee's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make payments of principal, interest and other sums in accordance with the terms of the Credit Agreement.

(iii) **Restoration.** Notwithstanding the foregoing, Mortgagee shall have no obligation to make any Proceeds available for the repair or restoration of all or any portion of the Property unless and until all the following conditions have been satisfied: (aa) delivery to Mortgagee of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration; (bb) establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee; (cc) delivery to Mortgagee in form and content acceptable to Mortgagee of all of the following: (1) plans and specifications for the work; (2) a contract for the work, signed by a contractor acceptable to Mortgagee; (3) a cost breakdown for the work; (4) a payment and performance bond for the work; (5) evidence of the continuation of all Leases regarding the Property; (6) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; (7) evidence that the work can reasonably be completed on or before that date which is 6 months following the date of damage or condemnation; and (8) evidence of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect Mortgagee's security. Mortgagor acknowledges that the specific conditions described above are reasonable.

c. **Application of Proceeds; Default or Event of Default.** If a Default or Event of Default has occurred and is continuing at the time of Mortgagee's receipt of the Proceeds or if a Default or Event of

Default occurs at any time thereafter, Mortgagee may, at Mortgagee's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any: (i) apply all or any of the Proceeds to Mortgagee's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make payments of principal, interest and other sums in accordance with the terms of the Credit Agreement, and (ii) release all or any part of the Proceeds to Mortgagor upon any conditions Mortgagee chooses.

6.9 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** Except with respect to Permitted Liens, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Mortgage and the rights and powers of Mortgagee hereunder at Mortgagor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Mortgagor's or Mortgagee's rights. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.

6.10 **DUE ON SALE/ENCUMBRANCE.** The Loan is subject to the due on sale, transfer and encumbrance limitations and provisions contained in the Credit Agreement, which limitations and provisions are incorporated herein by reference, and any sale, transfer or encumbrance in violation of such provisions shall be an Event of Default under this Mortgage.

6.11 **EXCULPATION.** Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Mortgagee in this Mortgage; (b) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under any Lease or other agreement related to the Property or under this Mortgage; (c) any loss, claim, cause of action, liability, indebtedness, damage or injury to any Person or property arising from the occupancy or use of the Property by Mortgagor or any other Person; or (d) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property after an Event of Default or from any other act or omission of Mortgagee in managing the Property after an Event of Default; and no such liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor, unless in each case such liability is caused by the gross negligence or willful misconduct of Mortgagee.

6.12 **INDEMNITY.** Without in any way limiting any other indemnity contained in this Mortgage or in any of the other Loan Documents, Mortgagor agrees to defend, indemnify and hold harmless the Mortgagee Group (hereinafter defined) from and against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor (including reasonable fees, charges and disbursements of outside counsel) whether or not any member of the Mortgagee Group is a party thereto) which any of them may pay or incur arising out of or relating to: (a) this Mortgage, including, without limitation, all recording costs, taxes, documentary stamp taxes, intangible taxes, and costs of title insurance; (b) the execution of this trust or the performance of any act required or permitted hereunder or by law; (c) any failure of Mortgagor to perform Mortgagor's obligations under this Mortgage or the other Loan Documents; (d) any alleged obligation or undertaking on the Mortgagee Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any Lease or other agreement related to the Property; or (e) any act or omission with respect to the Property by Mortgagor or any tenant of the Property, or any contractor, agent, employee or representative of Mortgagor or any tenant of the Property. "***Mortgagee Group***," as used herein, shall mean (1) Mortgagee (including, without limitation, any participant in any Loan), (2) any entity controlling, controlled by or under common control with Mortgagee, (3) the

directors, officers, employees and agents of Mortgagee and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Mortgagor shall pay within five (5) business days after Mortgagee's demand any amounts owing under this indemnity together with interest from the date the indebtedness is due until paid at the Default Rate set out in the Credit Agreement. Mortgagor agrees to use legal counsel reasonably acceptable to the Mortgagee Group in any action or proceeding arising under this indemnity (except in an action or proceeding between any of the Mortgagee Group and Mortgagor). THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE SATISFACTION AND RELEASE OF THIS MORTGAGE WITHOUT LIMITATION AS TO TIME; PROVIDED, HOWEVER, UNASSERTED OR UNKNOWN CLAIMS HEREUNDER SHALL NOT SERVE AS A BASIS TO PRECLUDE THE RELEASE OF THIS MORTGAGE.

6.13 RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.

Without notice to or the consent, approval or agreement of any Person having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("*Interested Parties*"), Mortgagee may, from time to time: (a) fully or partially release any Person from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Mortgagor increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property and/or other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Mortgage upon the Property.

6.14 **SUBROGATION.** Mortgagee shall be and is hereby subrogated to any mortgage, encumbrance, or other lien, whether released of record or not, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any loan secured by this Mortgage.

ARTICLE 7 DEFAULT; REMEDIES

7.1 **DEFAULT.** The occurrence of an "Event of Default" under the Credit Agreement shall be an "Event of Default" under this Mortgage ("*Event of Default*").

7.2 **RIGHTS AND REMEDIES.** In addition to the rights and remedies set forth in the Credit Agreement and any other Loan Document (including without limitation the right of Beneficiary to declare sums owing under the Loan immediately due and payable as set forth in the Credit Agreement), at any time after the occurrence of an Event of Default, Mortgagee shall have, to the fullest extent permitted by applicable law, all of the following rights and remedies:

- a. **Entry on Property.** With or without notice, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Mortgagee deems necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Event of Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Mortgagee deems proper and in compliance with the terms and conditions set out in any subordination, attornment or nondisturbance agreement executed by Mortgagee and the applicable tenant with regard to the Property; (iii) to make repairs, alterations and improvements to the Property necessary, in Mortgagee's sole judgment, to protect or enhance the security hereof; (iv) to hold, lease, develop, manage, operate, carry on the business thereof or otherwise use the Property upon such terms and conditions as Mortgagee may deem reasonable under the

circumstances; (v) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; (vi) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien affecting the Property; (vii) to obtain insurance; (viii) to pay any premiums or charges with respect to insurance required to be carried hereunder, under the Credit Agreement or under any other Loan Document; and/or (ix) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them;

b. **Appointment of Receiver.** With or without notice or hearing, to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, for any purpose, including, without limitation, to enforce Mortgagee's right to collect payments, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the issuance or filing of a notice of default; or (iv) the solvency of Mortgagor or any guarantor or other Person in any manner obligated to Mortgagee under the Loan Documents; and Mortgagor irrevocably consents to such appointment. Any such receiver, trustee, liquidator or conservator shall have all the usual powers and duties of such Persons in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court;

c. **Judicial Foreclosure; Injunction.** To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;

d. **Power of Sale; Nonjudicial Foreclosure.** As permitted by applicable law, to exercise the power of sale or other right to foreclose on the Property by nonjudicial procedure, and in such regard, to execute any notice required by applicable law of the election to cause the Property to be sold to satisfy the Secured Obligations. Mortgagee shall give and record such notice as the law then requires as a condition precedent to a power of sale or other nonjudicial procedure. When the minimum period of time required by law after such notice has elapsed, Mortgagee, without notice to or demand upon Mortgagor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Mortgagee in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Mortgagor nor any other Person other than Mortgagee shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Mortgagee may, from time to time postpone the sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement at the time and place fixed by the preceding postponement. A sale of less than the whole of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein. Mortgagee shall cause to be delivered to the purchaser at such sale a sheriff's, trustee's or comparable deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person, including Mortgagor or Mortgagee, may purchase at the sale.

Upon sale of the Property at any judicial or nonjudicial foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all

or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any) for the Secured Obligations; and (vii) such other factors or matters that Mortgagee (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (A) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this paragraph does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Mortgagee; and (D) Mortgagee's credit bid may be (at Mortgagee's sole and absolute discretion) higher or lower than any appraised value of the Property;

e. **Multiple Foreclosures.** To resort to and realize upon the security hereunder and any other security now or subsequently held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee determines in its sole discretion;

f. **Uniform Commercial Code.** Without limitation of Mortgagee's rights of enforcement with respect to the Property or any part thereof in accordance with the procedures for foreclosure of real estate, Mortgagee may exercise its rights of enforcement with respect to the Personal Property Collateral or any part thereof under the UCC and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Mortgagee, without prior notice, may enter upon Mortgagor's premises or other place to take possession of, assemble, collect, sell, lease, license or otherwise dispose of and store the Personal Property Collateral at locations acceptable to Mortgagee at Mortgagor's expense, or, to the extent and for those items of the Personal Property Collateral permitted under applicable law, to render it unusable; (2) Mortgagee may require Mortgagor to assemble the Personal Property Collateral and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Personal Property Collateral; (3) written notice mailed to Mortgagor as provided herein at least twenty (20) days prior to the date of public sale of the Personal Property Collateral or prior to the date after which private sale of the Personal Property Collateral will be made shall constitute reasonable notice; (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided elsewhere in this Mortgage; (5) in the event of a foreclosure sale, whether made by a trustee under the terms hereof, or under judgment of a court, the Personal Property Collateral and the other Property may, at the option of Mortgagee, be sold as a whole; (6) it shall not be necessary that Mortgagee take possession of the Personal Property Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Personal Property Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds from disposition of the Personal Property Collateral, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or

lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Obligations or as to the occurrence of any Event of Default, or as to Mortgagee having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (9) Mortgagee may appoint or delegate any one or more Persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee.

In connection with any sale or sales hereunder, Mortgagee may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any Improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property; and

g. **Other Rights.** To exercise such other rights as Mortgagee may have at law or in equity or pursuant to the terms and conditions of this Mortgage or any of the other Loan Documents.

7.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** If any foreclosure sale is effected, subject to the provisions of applicable law, Mortgagee may apply the proceeds of such sale in the following order of priority: *First*, to the costs, fees and expenses of exercising the power of sale and of sale, including, without limitation, the payment of the Mortgagee's fees and attorneys' fees; *Second*, to the payment of the Secured Obligations which are secured by this Mortgage, in such order as Mortgagee shall determine in its sole discretion; *Third*, to satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority; and *Fourth*, to the Mortgagor or the Mortgagor's successor in interest, or in the event the Property has been sold or transferred to another, to the vested owner of record at the time of the sale.

7.4 **APPEARANCE, WAIVER, NOTICE AND MARSHALLING OF ASSETS; WAIVER OF REDEMPTION.** After the occurrence and during the continuance of any Event of Default and immediately upon the commencement of any action, suit or legal proceedings to obtain judgment for the payment or performance of the Secured Obligations or any part thereof, or of any proceedings to foreclose the lien and security interest created and evidenced hereby or otherwise enforce the provisions hereof or of any other proceedings in aid of the enforcement hereof, Mortgagor shall enter its voluntary appearance in such action, suit or proceeding. To the fullest extent permitted by law, Mortgagor hereby expressly irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Mortgagee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation or to have the Property and/or any other property which is now or later may be security for Secured Obligations marshaled upon any foreclosure of this Mortgage or on a foreclosure of any other security for any of the Secured Obligations. Mortgagor shall not claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales of the Property which may be made pursuant to this Mortgage, or pursuant to any decree, judgment or order of any court of competent jurisdiction. Mortgagor covenants not to hinder, delay or impede the execution of any power granted or delegated to Mortgagee by this

Mortgage but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

7.5 **DISCONTINUANCE OF PROCEEDINGS.** If Mortgagee or any other Lender shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee or such Lender shall have the unqualified right to do so and, in such an event, Mortgagor, Mortgagee and the Lenders shall be restored to their former positions with respect to the Secured Obligations, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee and the Lenders shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or any other Lender thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

7.6 **OCCUPANCY AFTER FORECLOSURE.** Any sale of the Property or any part thereof in accordance with this Mortgage will divest all right, title and interest of Mortgagor in and to the Property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the Property purchased, subject however, to the terms and conditions of any subordination, nondisturbance and attornment agreement entered into with regard to the Property by Mortgagee and any tenant of the Property. If Mortgagor retains possession of such Property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

7.7 **NO WAIVER.** Mortgagee's acceptance of late payment or performance of any Secured Obligation shall not be construed to waive Mortgagee's right to require prompt payment or performance in the future. Mortgagee's failure to exercise any right or remedy hereunder after a Default or Event of Default shall not be construed to prejudice Mortgagee's rights or remedies after any other Default or Event of Default. No delay by Mortgagee in exercising any such right or remedy shall preclude Mortgagee from the exercise thereof at any time while that Default or Event of Default is continuing. Mortgagee's delivery of any notice or demand to Mortgagor shall not of itself entitle Mortgagor to any notice or demand in similar circumstances.

7.8 **ATTORNEY IN FACT; MORTGAGEE CAN PERFORM.** Mortgagor hereby appoints, which appointment is irrevocable and coupled with an interest, effective upon the occurrence and during the continuance of an Event of Default, the Mortgagee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Mortgagor and in the name of Mortgagor or otherwise, for the purpose of carrying out the terms of this Mortgage, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Mortgage. If Mortgagor fails to perform or comply with any of its agreements contained herein, the Mortgagee, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement. The expenses of the Mortgagee incurred in connection with actions undertaken as provided in this Section 7.8 shall be payable by Mortgagor to the Mortgagee upon demand. Mortgagor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Mortgage are coupled with an interest and are irrevocable until this Mortgage is terminated and the lien and security interests created hereby are released.

7.9 **ADDITIONAL ADVANCES AND DISBURSEMENTS; COSTS OF ENFORCEMENT.** Upon the occurrence and during the continuance of any Event of Default, Mortgagee and each of the other Lenders shall have the right, but not the obligation, to cure such Event of Default in the name and

on behalf of Mortgagor. All reasonable sums advanced and expenses incurred at any time by Mortgagee or any other Lender under this Section 7.9, or otherwise under this Mortgage or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate set forth in the Credit Agreement and all such sums, together with interest thereon, shall be secured by this Mortgage. Mortgagor shall pay all out-of-pocket expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage or the enforcement, compromise or settlement of the Secured Obligations or any claim under this Mortgage, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

7.10 NO MORTGAGEE IN POSSESSION. Neither the enforcement of any of the remedies under this Article 7, the assignment of the leases and rents under Article 3, the security interests under Article 4, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee or any other Lender to be deemed or construed to be a mortgagee in possession of the Property, to obligate Mortgagee or any other Lender to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

7.11 REMEDIES CUMULATIVE. All rights and remedies of Mortgagee under this Mortgage and the other Loan Documents are cumulative and are in addition to all rights and remedies provided by applicable law. Mortgagee may enforce any one or more remedies or rights under the Loan Documents either successively or concurrently.

7.12 OTHER MULTISTATE MORTGAGES. The indebtedness secured in part by this Mortgage is secured by mortgages and/or deeds of trust encumbering and conveying lands and other property and/or leasehold interests therein in other states as more particularly described in the Credit Agreement, all of which mortgages and/or deeds of trust, including this instrument, being hereafter referred to as "the mortgage instruments."

It is understood and agreed that all of the properties of all kinds conveyed or encumbered by the mortgage instruments are security for the Secured Obligations without allocation of any one or more of the parcels or portions thereof to any portion of the Secured Obligations less than the whole amount thereof unless so stated in said mortgage instruments.

It is specifically covenanted and agreed that Mortgagee may proceed, at the same or at different times, to foreclose said mortgage instruments, or any of them, by any proceedings appropriate in the state where any of the land lies, and that no event of enforcement taking place in any state including, without limiting the generality of the foregoing, any pending foreclosure, judgment or decree of the foreclosure, foreclosure sale, rents received, possession taken, deficiency judgment or decree, or judgment taken on the Secured Obligations, shall in any way stay, preclude or bar enforcement of the mortgage instruments or any of them in any other state, and that Mortgagee may pursue any or all its remedies to the maximum extent permitted by state law until all of the Secured Obligations now or hereafter secured by any or all of the mortgage instruments has been paid and discharged in full.

Neither Mortgagor, nor any person claiming under Mortgagor, shall have or enjoy any right to marshaling of assets, all such right being hereby expressly waived as to Mortgagor and all persons claiming under it, including junior lienors. No release of personal liability of any person whatever and no release of any portion of the property now or hereafter subject to the lien of any of the mortgage instruments shall have any effect whatever by way of impairment or disturbance of the lien or priority of any of said mortgage instruments. Any foreclosure or other appropriate remedy brought in any of the states aforesaid may be brought and prosecuted as to any part of the mortgaged security, wherever

located, without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other land subject to the lien of said mortgage instruments or any of them.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 **FURTHER ASSURANCES.** Mortgagor shall, upon demand by Mortgagee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the purposes of this Mortgage and to perfect any assignments contained herein.

8.2 **COSTS OF RECORDING; TAXES.** Mortgagor agrees to pay, and to save the Mortgagee and the Lenders harmless from, any and all costs and liabilities with respect to recordation of this Mortgage and payment of all mortgage registration, intangibles and other taxes that may be payable or determined to be payable with respect to the Mortgage, the Property or in connection with any of the transactions contemplated by this Mortgage.

8.3 **COVENANTS RUNNING WITH THE LAND.** All grants, covenants, terms, provisions and conditions contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Land. As used herein, "Mortgagor" shall refer to the party named in the introductory paragraph of this Mortgage and to any subsequent owner of all or any portion of the Property. All Persons who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; *provided, however,* that no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

8.4 **ADDITIONS TO PROPERTY.** All right, title and interest of Mortgagor in and to all extensions, amendments, relocations, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Property hereafter acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagor upon the Land, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien and security interest of this Mortgage as fully and completely and with the same effect as though now owned by Mortgagor and specifically described in the grant of the Property above, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien and security interest of this Mortgage.

8.5 **REINSTATEMENT.** Mortgagor agrees that, if any payment made by any Person and applied to the Secured Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or the proceeds of Property are required to be returned to such Person, its estate, trustee, receiver or any other Person, including Mortgagor, under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, any lien and security interest securing such liability shall be and remain in full force and effect, as fully as if such payment had never been made or, if prior thereto the lien and security interest granted hereby securing such liability hereunder shall have been released or terminated by virtue of such cancellation or surrender), such lien or security interest shall be reinstated in full force and effect, and such prior cancellation or surrender shall not diminish, release, discharge, impair

or otherwise affect any lien or security interest securing the obligations of Mortgagor in respect of the amount of such payment.

8.6 **ATTORNEYS' FEES.** If any legal action, suit or proceeding is commenced between Mortgagor and Mortgagee regarding their respective rights and obligations under this Mortgage, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise, settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

8.7 **RELATIONSHIP OF MORTGAGOR AND MORTGAGEE.** The relationship of Mortgagee to Mortgagor hereunder is strictly and solely that of lender and borrower and mortgagor and mortgagee and nothing contained in the Credit Agreement, this Mortgage or any other document or instrument now existing and delivered in connection therewith or otherwise in connection with the Secured Obligations is intended to create, or shall in any event or under any circumstance be construed as creating a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between Mortgagee and Mortgagor other than as lender and borrower and mortgagor and mortgagee.

8.8 **SEVERABILITY.** If any term of this Mortgage, or the application thereof to any Person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

8.9 **RELATIONSHIP OF ARTICLES.** The rights, remedies and interests of Mortgagee under this Mortgage established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by this Mortgage with any security interest created by the security agreement. Mortgagee may elect to exercise or enforce any of its rights, remedies or interests under either or both this Mortgage or the security agreement as Mortgagee may from time to time deem appropriate. The assignment of rents and leases established by Article 3 and the ALR is similarly independent of and separate from the Mortgage and the security agreement.

8.10 **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing.

8.11 **INTEGRATION; INTERPRETATION; SURVIVAL.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Personal Property Collateral shall include all or any part of the Property or Personal Property Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Mortgagee in writing. When the identity of the parties or other circumstances makes it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The terms of Sections 3.2, 6.11, 6.12, 7.4, 7.9, 8.2, 8.5, 8.6, 8.14, 8.17 and this Section 8.11 of this Mortgage shall survive repayment of the Secured Obligations and termination of this Mortgage provided, however, the survival of the provisions hereunder or any unasserted or unknown claims with respect thereto shall not serve as a basis to preclude the release of this Mortgage pursuant to Section 2.7 hereof.

8.12 **SUCCESSORS AND ASSIGNS.** The terms, covenants and conditions contained herein and in the other Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of Mortgagor and Mortgagee. The foregoing sentence shall not be construed to permit Mortgagor to assign the Loan except as may otherwise be expressly permitted under the Loan Documents.

8.13 **MORTGAGEE AS ADMINISTRATIVE AGENT.** The Mortgagee shall at all times be the same Person that is the Administrative Agent under the Credit Agreement. Mortgagee shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including the release or substitution of Property), in accordance with this Mortgage and the Credit Agreement. Written notice of resignation by the Administrative Agent pursuant to the Credit Agreement shall also constitute notice of resignation as Mortgagee under this Mortgage; removal of the Administrative Agent shall also constitute removal under this Mortgage; and appointment of a Administrative Agent pursuant to the Credit Agreement shall also constitute appointment of a successor Mortgagee under this Mortgage. Upon the acceptance of any appointment as Administrative Agent under the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Mortgagee under this Mortgage, and the retiring or removed Administrative Agent under this Mortgage shall promptly take such actions, as may be necessary or appropriate in connection with the assignment to such successor Mortgagee of the security interest and lien created hereunder. After any retiring or removed Administrative Agent's resignation or removal under the Credit Agreement, the provisions of this Mortgage shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was Mortgagee hereunder.

8.14 **GOVERNING LAW.** The laws of the State of Kansas shall govern the interpretation, construction, and enforcement of, and all aspects of the rights, obligations and duties created under, this Mortgage, except that the laws of the State where the Property is located shall govern the creation, perfection and enforcement of the liens and security interests set forth herein.

8.15 **CONSENT TO JURISDICTION.** Mortgagor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the State of Kansas over any suit, action, or proceeding, arising out of or relating to this Mortgage; and (b) any state court sitting in the county of the state where the Land is located over any suit, action, or proceeding, brought by Mortgagee to enforce its rights with respect to the Collateral. Mortgagor irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

8.16 **NOTICES.** All notices and other communications that are required or permitted to be given to Mortgagor or Mortgagee under this Mortgage shall be in writing and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested or otherwise (including by facsimile) as set forth in the Credit Agreement, to the address for such party as set in the introductory paragraph of this Mortgage. All such notices and communications shall be effective upon receipt of such delivery or by facsimile or otherwise as set forth in the Credit Agreement.

8.17 **WAIVER OF JURY TRIAL.** MORTGAGEE AND MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF MORTGAGEE OR MORTGAGOR. THIS

PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO ENTER INTO THIS MORTGAGE.

8.18 SPECIAL INDIANA STATE PROVISIONS.

a. **Effect.** The provisions of this Section 8.18 shall for all purposes be deemed supplemental to and in amplification of all other provisions of this Mortgage and shall not limit or impair any other right or power afforded Mortgagee in this Mortgage. If any conflict or inconsistency exists or arises between this Section 8.18 and the preceding Articles of this Mortgage, or the terms of any other Loan Documents, except as specifically provided to the contrary in this Section 8.18, the terms of this Section 8.18 shall govern and control this Mortgage or the other Loan Documents.

b. **Grant.** For the purposes of and upon the terms and conditions of this Mortgage, in addition to irrevocably granting, mortgaging, bargaining, selling, conveying and assigning, Mortgagor also warrants to Mortgagee all estate, right, title and interest which Mortgagor now has or may hereafter acquire in, to, under or derived from any or all of the Property.

c. **IRPTL Disclosure.** Mortgagor covenants that to the extent any of the Property is or becomes "property" as defined in Indiana Code §13-11-2-174, and a "disclosure document" as used in Indiana Code §13-25-3-2 is required in connection with the execution, delivery or recording of this Mortgage for purposes of the Indiana Responsible Property Transfer Law ("IRPTL" or the "Act") (Indiana Code §13-25-3-1 et seq.), Mortgagor agrees to provide such "disclosure document" and Mortgagor will otherwise comply with the IRPTL requirements as to such Property.

d. **Rights and Remedies Under Applicable Law.** Notwithstanding anything in this Mortgage, the Credit Agreement, the Notes or the other Loan Documents to the contrary, Mortgagee shall be entitled to all rights and remedies that a lender would have under Applicable Law. For purposes of this Section 8.18, "Applicable Law" means statutory and case law in the state of Indiana (the "State"), including, but not by way of limitation, Mortgage Foreclosure Actions, Ind. Code 32-30-10, Receiverships, Ind. Code 32-30-5, and the UCC; **provided, however**, if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection, and the priority of a security interests in any Property are governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to perfection, effect of perfection or non-perfection, and the priority of the security interests in any such Property. In the event of any inconsistency between the provisions of this Mortgage and the provisions of Applicable Law, the provisions of Applicable Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with Applicable Law. Notwithstanding any provisions in this Mortgage relating to a power of sale or other provision for sale of the Property upon a Default other than under a judicial proceeding, any sale of the Property pursuant to this Mortgage will be made through a judicial proceeding, except as otherwise may be permitted under the UCC.

e. **Unenforceable Remedies.** To the extent Applicable Law limits: (i) the availability of the exercise of any of the remedies set forth in this Mortgage, including without limitation the remedies involving a power of sale on the part of 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 whether such remedies, waivers or indemnities were enforceable at the time of the execution and delivery of this Mortgage.

f. **Secured Obligations.** The term "**Secured Obligations**" as defined in this Mortgage shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligations of Mortgagor to Mortgagee under this Mortgage or any or all of the other Loan Documents. The obtaining of any judgment by Mortgagee (other than a judgment foreclosing this Mortgage) and any levy of any execution under any such judgment upon the Property shall not affect in any manner or to any extent the lien of this Mortgage upon the Property or any part thereof, or any liens, powers, right and remedies of Mortgagee as before until the judgment or levy is satisfied. Furthermore, Mortgagor acknowledges and agrees that the Secured Obligations are secured by the Property and various other collateral at the time of execution of this Mortgage. Mortgagor specifically acknowledges and agrees that the Property, in and of itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Secured Obligations. Accordingly, Mortgagor acknowledges that it is in Mortgagor's contemplation that the other collateral pledged to secure the Secured Obligations may be pursued by Mortgagee against other mortgagors in separate proceedings in the various states and counties where such collateral may be located and additionally that Mortgagor will remain liable for any deficiency judgments, subject to any applicable exculpation provisions in the Loan Documents, in addition to any amounts Mortgagee may realize on sales of other property or any other collateral given as security for the Secured Obligations. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Mortgage, that the obligations evidencing the Secured Obligations shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding to the fullest extent permitted by Applicable Law.

g. **No Waiver of Right to Seek Deficiency.** Anything contained in Ind. Code 32-29-7-5 to the contrary notwithstanding, no waiver made by Mortgagor in this Mortgage, the Credit Agreement, the Notes or in any of the other terms and provisions of the Loan Documents shall constitute the consideration for or be deemed to be a waiver or release by Mortgagee or any judgment holder of the indebtedness secured by this Mortgage of the right to seek a deficiency judgment against the Mortgagor or any other person or entity who may be personally liable for the Notes hereby secured, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Mortgagee for its own behalf and its successors and assigns, subject to any applicable exculpation provisions in the Loan Documents.

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

i. **Receiver.** Subject to the terms and provisions of this Mortgage, any receiver of the Property, when duly appointed, shall have all the powers and duties of receivers pursuant to Applicable Law.

j. **Future Advances.** Pursuant to Ind. Code 32-29-1-10, the lien of this Mortgage with respect to modifications, extensions, renewals and any future advances up to the maximum principal amount of \$79,481,250.00 and made from time to time shall have the same priority to which this Mortgage otherwise would be entitled as of the date this Mortgage is executed and recorded and without regard to the fact that any such modification, extension, renewals or future advances may occur after the Mortgage is executed and recorded.

k. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Property shall be distributed and applied pursuant to the Loan Documents, subject to Applicable Law.

l. **Fixture Filing.** It is intended that as to the fixtures that are part of the Property hereby mortgaged, this Mortgage shall be effective as a continuously perfected financing statement filed as a fixture filing from the date of the filing of this Mortgage for record with the Recorder of the County, pursuant to Ind. Code 26-1-9.1-502 and 26-1-9.1-515. This information is provided in order that this Mortgage shall comply with the requirements of the UCC, for a mortgage instrument to be filed as a continually perfected financing statement.

Name of Debtor/Record Owner: HENDRICKS COMMERCIAL PROPERTIES,
LLC

Address of Debtor: 655 Third Street, Suite 301
Beloit, Wisconsin 53511

Type/State of Organization: Limited Liability Company

Organization Identification Number: H033407

Name of Secured Party: U.S. BANK NATIONAL ASSOCIATION

Address of Secured Party: 9900 West 87th Street
Overland Park, Kansas 66212

m. **Mortgagor Acknowledgment.** Mortgagor hereby acknowledges receipt of a copy of this Mortgage in compliance with Mortgagee's obligation to deliver a copy of the financing statement to Mortgagor pursuant to Section 9.1-502(f) of the UCC.

n. **Survival.** Any of the terms and provisions of this Mortgage that are intended to survive, shall nevertheless survive the release or satisfaction of this Mortgage whether voluntarily granted by Mortgagee, as a result of a judgment upon judicial foreclosure of this Mortgage or in the event a deed in lieu of foreclosure is granted by Mortgagee to Mortgagee.

o. **No Lender-In-Possession.** It is understood and agreed that neither this Mortgage nor the exercise by Mortgagee of any of its rights or remedies under this Mortgage shall be deemed to make Mortgagee a "lender-in-possession" or otherwise responsible or liable in any manner with respect to the leases or rents or the use, occupancy, enjoyment or any portion of the Property, unless and until Mortgagee, in person or by agent, assumes actual possession thereof; provided, however, no appointment of a receiver for the Property by any court at the request of Mortgagee or by agreement with the Mortgagor, or the entering into possession of any part of the Property by such receiver, shall be deemed to make Mortgagee a "lender-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

p. **State Action.** If Mortgagee brings an action against Mortgagor in the State of Indiana to recover judgment under this Mortgage and any other Loan Document to which Mortgagor is a party, and during the pendency of such action brings a separate action in the State of Indiana under this Mortgage, such actions shall be consolidated if and to the extent required pursuant to Applicable Law. Mortgagor

expressly waives all other benefits and advantages of Section 32-30-10-10 of the Indiana Code to the fullest extent permitted by law.

q. **Additional Property.** If, after the date of this Mortgage, Mortgagor acquires any property located on and used in connection with the Property and that by the terms of this Mortgage is required or intended to be encumbered by this Mortgage, the property shall become subject to the lien and security interest of this Mortgage immediately upon its acquisition by Mortgagor and without any further mortgage, conveyance, assignment or transfer. Nevertheless, upon Mortgagee's request at any time Mortgagor will execute, acknowledge and deliver any additional instruments and assurances of title and will do or cause to be done anything further that is reasonable necessary for carrying out the intent of this Mortgage.

r. **Enforcement Expenses.** This Mortgage shall secure, and Mortgagee shall be entitled to collect from Mortgagor and add to the Secured Obligations, including, without limitation, in any proceeding to enforce this Mortgage or to foreclose upon the Property, (i) cost of collection, including without limitation, reasonable attorneys' fees which shall specifically include support staff costs, computerized research, telephone and telefax expenses, mileage, depositions, postage, photocopies, process service, videotapes and similar expenses; (ii) all expenses of any environmental site assessments, environmental audits, environmental remediation costs, appraisals, surveys, engineering studies, wetlands delineations, flood plain studies, and any other similar testing or investigation deemed necessary or advisable by Mortgagee incurred in preparation for, contemplation of or in connection with the enforcement of this Mortgage and/or the collection of the Secured Obligations.

s. **Conflict.** If any conflict or inconsistency exists or arises between this **Section 8.18** and the preceding Articles of this Mortgage, or the terms of any other Loan Documents, except as specifically provided to the contrary in this **Section 8.18**, the terms of this **Section 8.18** shall govern and control this Mortgage or the other Loan Documents.

t. **Limitation on Insurance.** Notwithstanding the provisions of **Section 6.7** above, Mortgagee shall not require the Mortgagor, as a condition of receiving or maintaining this Mortgage, to obtain hazard insurance coverage against risks to improvements on the Property in an amount exceeding the replacement value of the improvements.

8.19 **TIME IS OF THE ESSENCE.** Time is of the essence with respect to all provisions of this Mortgage.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]



Exhibit "A"

Description of Land

Property Address: 6501 Broadway, Merrillville, IN

Legal Description: See attached legal description



Exhibit "A"

Legal Description

Real property in the City of Merrillville, County of Lake, State of Indiana, described as follows:

A PARCEL OF LAND IN THE WEST HALF OF THE WEST HALF OF SECTION 10, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND PRINCIPAL MERIDIAN, IN LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT OF THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF THE GRAND TRUNK RAILWAY AND THE WEST LINE OF SAID SECTION 10, AND RUNNING THENCE NORTH ALONG THE WEST LINE OF SAID SECTION 10 A DISTANCE OF 315.88 FEET; THENCE EAST AT RIGHT ANGLES TO THE WEST LINE OF SAID SECTION 10 A DISTANCE OF 580.25 FEET; THENCE SOUTH AND PARALLEL TO THE WEST LINE OF SAID SECTION 10 A DISTANCE OF 434.82 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF SAID GRAND TRUNK RAILWAY; THENCE WEST ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID GRAND TRUNK RAILWAY A DISTANCE OF 592.13 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

APN:



SCHEDULE I

LEASE

Industrial Building Lease dated March 1, 2004, executed by Hendricks Commercial Properties, LLC, as Landlord, and American Builders & Contractors Supply Co., Inc., as Tenant, as renewed, extended, modified and amended from time to time, regarding premises located at 6501 Broadway, Merrillville, Indiana.

