



MTG 2007064255



JUN 07 2007 13:34 P 64

[RECORDER'S USE ONLY]

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
6/7/2007 13:34:29.91



2007064255

KILBY PLACE LLC
("Borrower"/"Trustor")

to

FIRST AMERICAN TITLE INSURANCE COMPANY
("Trustee")

to

COLUMN FINANCIAL, INC.
("Lender"/"Beneficiary")

**DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF
LEASES AND RENTS**

Dated: As of June 6, 2007
Location: 101 North 40th Street,
Omaha, Nebraska 68131
Maturity Date: August 11, 2017
Loan No: 4361648

**PREPARED BY AND
UPON RECORDATION RETURN TO:**

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

{00039317.DOC;3}

mkly
64
5-4

FEE 300.00 P.S. 15-20340
BXP _____ C.O. _____ COMP. *[Signature]*
DEL. _____ C.O. _____ FV. _____

751277-

35 *293082*

INDEX OF CONTENTS

GRANTING CLAUSE

FOR PURPOSE OF SECURING CLAUSE

ARTICLE I	-	COVENANTS OF BORROWER
Section 1.1	-	<i>Warranties of Borrower</i>
Section 1.2	-	<i>Performance of Obligations</i>
Section 1.3	-	<i>Insurance</i>
Section 1.4	-	<i>Payment of Taxes</i>
Section 1.5	-	<i>Tax and Insurance Impound Account</i>
Section 1.6	-	<i>Replacement Reserve</i>
Section 1.7	-	<i>Casualty and Condemnation</i>
Section 1.8	-	<i>Assignment of Leases and Rents</i>
Section 1.9	-	<i>Leases and Licenses</i>
Section 1.10	-	<i>Alienation and Further Encumbrance</i>
Section 1.11	-	<i>Maintenance of Property</i>
Section 1.12	-	<i>Access Privileges and Inspections</i>
Section 1.13	-	<i>Financial Statements and Books and Records</i>
Section 1.14	-	<i>Further Documentation</i>
Section 1.15	-	<i>Security Interest</i>
Section 1.16	-	<i>Security Agreement</i>
Section 1.17	-	<i>Compliance with Laws</i>
Section 1.18	-	<i>Additional Taxes</i>
Section 1.19	-	<i>Secured Indebtedness</i>
Section 1.20	-	<i>Borrower's Waivers</i>
Section 1.21	-	<i>Waiver of Jury Trial</i>
Section 1.22	-	<i>Management</i>
Section 1.23	-	<i>Hazardous Waste and Other Substances</i>
Section 1.24	-	<i>Indemnification; Subrogation</i>
Section 1.25	-	<i>Investment Earnings</i>
Section 1.26	-	<i>Defeasance</i>
Section 1.27	-	<i>Broker Fee Provisions</i>

ARTICLE II	–	EVENTS OF DEFAULT
Section 2.1	–	Events of Default
ARTICLE III	–	REMEDIES
Section 3.1	–	Remedies Available
Section 3.2	–	Application of Proceeds
Section 3.3	–	Right and Authority of Receiver or Lender in the Event of Default; Power of Attorney
Section 3.4	–	Occupancy After Foreclosure
Section 3.5	–	Cumulative Remedies
Section 3.6	–	Payment of Expenses
ARTICLE IV	–	MISCELLANEOUS TERMS AND CONDITIONS
Section 4.1	–	Certain Rights of Lender
Section 4.2	–	Notices
Section 4.3	–	Successors and Assigns
Section 4.4	–	Severability
Section 4.5	–	Waiver; Discontinuance of Proceedings
Section 4.6	–	Section Headings
Section 4.7	–	Governing Law
Section 4.8	–	Construction of this Document
Section 4.9	–	No Merger
Section 4.10	–	Personal Liability
Section 4.11	–	Entire Agreement and Modifications
Section 4.12	–	Maximum Interest
Section 4.13	–	Interest Payable by Lender
Section 4.14	–	Cooperation with Rating Agencies and Investors
Section 4.15	–	Sale of Note and Security Instrument
Section 4.16	–	Waiver of Homestead, Dower, Redemption, and Appraisement
Section 4.17	–	Community Property
Section 4.18	–	Further Stipulations
ARTICLE V	–	CONCERNING THE TRUSTEE
Section 5.1	–	No Required Action
Section 5.2	–	Certain Rights

- Section 5.3** – **Retention of Money**
- Section 5.4** – **Successor Trustee**
- Section 5.5** – **Perfection of Appointment**
- Section 5.6** – **Succession Instruments**
- Section 5.7** – **No Representation by Trustee**

- EXHIBIT A** – **LEGAL DESCRIPTION**
- EXHIBIT B** – **RESERVES**
- EXHIBIT C** – **MODIFICATIONS TO SECURITY INSTRUMENT**
- EXHIBIT D** – **BANKRUPTCY REMOTE PROVISIONS**

**DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF
LEASES AND RENTS**

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "**Security Instrument**") is made as of June 6, 2007, between **KILBY PLACE LLC**, a Nebraska limited liability company ("**Borrower**"), whose address is 14301 FNB Parkway, Suite 100, Omaha, Nebraska 68154; to and in favor of **FIRST AMERICAN TITLE INSURANCE COMPANY**, as Trustee ("**Trustee**"), whose address is 13924 Gold Circle, Omaha, Nebraska 68144, for the benefit of **COLUMN FINANCIAL, INC.**, a Delaware corporation ("**Lender**"), whose address is Eleven Madison Avenue, 9th Floor, New York, New York 10010, Attention: Edmund Taylor.

WITNESSETH:

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

- (A) All that certain real property situated in the County of Douglas, State of Nebraska, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Real Estate**"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim and demand whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;
- (B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "**Improvements**");
- (C) All personal property owned by Borrower and now or hereafter located on, attached to or used in and about the Real Estate and/or the Improvements and all furniture, furnishings, fixtures, goods, equipment ("**Equipment**"), inventory or personal property owned by the Borrower and now or hereafter located on, attached to or used in and about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting,

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

- (D) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, drainage rights and other emblements now or hereafter located on the Real Estate or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Real Estate or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;
- (E) All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Real Estate or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;
- (F) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Real Estate;
- (G) All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Lender pursuant to this Security Instrument or any other of the Loan Documents (as defined below) including, without limitation, all funds now or hereafter on deposit in the Impound Account, the Replacement Reserve, the Repair and Remediation Reserve, the TILC Reserve, if any, or the Lease Holdback Reserve, if any;
- (H) All leases, licenses, concessions and occupancy agreements of the Real Estate or the Improvements now or hereafter entered into and all rents, royalties, issues, profits, revenue, income and other benefits (collectively, the "**Rents and Profits**") of the Real Estate or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the Contracts (as defined below) or any of the General Intangibles (as defined below) and all cash or securities deposited to secure performance by the tenants, lessees or licensees, as applicable, of their obligations under any such leases, licenses, concessions or occupancy agreements, whether said cash or securities are to be held until the expiration of the terms of said leases, licenses, concessions or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of said terms;

- (I) All contracts and agreements now or hereafter entered into covering any part of the Real Estate or the Improvements (collectively, the “**Contracts**”) and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Real Estate or the Improvements or to the management or operation of any part of the Real Estate or the Improvements;
- (J) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Real Estate or the Improvements;
- (K) All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles, all names by which the Real Estate or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Real Estate or the Improvements and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Real Estate or the Improvements (collectively, the “**General Intangibles**”);
- (L) All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Real Estate or the Improvements (including, without limitation, all such items specifically identified on Exhibit A attached hereto and incorporated herein) and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Real Estate or the Improvements;
- (M) All building materials, supplies and equipment now or hereafter placed on the Real Estate or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Real Estate or the Improvements;
- (N) All right, title and interest of the Borrower in any insurance policies or binders now or hereafter relating to the Real Property or the Improvements including any unearned premiums thereon;
- (O) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

- (P) All other or greater rights and interests of every nature in the Real Estate or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by the Borrower.

FOR THE PURPOSE OF SECURING:

- (1) The debt evidenced by that certain Promissory Note (such Note, together with any and all renewals, modifications, consolidations and extensions thereof, is hereinafter referred to as the "Note") of even date with this Security Instrument, made by Borrower to the order of Lender in the principal face amount of **ONE MILLION FOUR HUNDRED SEVENTY THOUSAND DOLLARS and NO CENTS (\$1,470,000.00)** (the "Loan" or the "Loan Amount"), together with interest as therein provided; and
- (2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the Note, this Security Instrument, and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") and the payment of all other sums therein covenanted to be paid; and
- (3) Any and all future or additional advances (whether or not obligatory) made by Lender for the benefit of Borrower to protect or preserve the Property or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower remains the owner of the Property at the time of such advances); and
- (4) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof.

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

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

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall have been paid and

all other covenants contained in the Loan Documents shall have been performed, then, in such case, this Security Instrument shall be satisfied and the estate, right, title and interest of Lender in the Property shall cease, and upon payment to Lender of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, Lender shall release this Security Instrument and the lien hereof by proper instrument.

ARTICLE I

COVENANTS OF BORROWER

For the purpose of further securing the Debt and for the protection of the security of this Security Instrument, for so long as the Debt or any part thereof remains unpaid, Borrower covenants and agrees as follows:

- 1.1. **Warranties of Borrower.** Borrower, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Lender, its successors and assigns, that:
- (a) Borrower has good and marketable fee simple title to the Property subject only to those exceptions shown in the title insurance policy insuring the lien of this Security Instrument and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer and mortgage its interest in the Property in the manner and form hereby done or intended. Borrower will preserve its interest in and title to the Property and will forever warrant and defend the same to Lender against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever.
 - (b) Borrower is not presently insolvent and the consummation of the transaction contemplated by this Security Instrument, the Note and the other Loan Documents will not render Borrower insolvent. No bankruptcy or insolvency proceedings are pending or contemplated by Borrower or, to the best knowledge of Borrower, against Borrower or by or against any endorser, cosigner or guarantor of the Note.
 - (c) All reports, certificates, affidavits, statements and other data furnished by Borrower to Lender in connection with the loan evidenced by the Note are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading.
 - (d) Borrower is not required to obtain any consent, approval or authorization from or to file any declaration or statement with, any governmental authority or agency in connection with or as a condition to the execution, delivery or performance of this Security Instrument, the Note or the other Loan Documents which has not been so obtained or filed.

- (e) The Real Estate and the Improvements and the intended use thereof by Borrower comply with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property. The Real Estate and Improvements constitute a separate tax parcel or parcels for purposes of ad valorem taxation. The Real Estate and Improvements do not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements.
- (f) The Property is free from delinquent water charges, sewer rents, taxes and assessments.
- (g) As of the date of this Security Instrument, no part of the Real Estate or the Improvements has been taken in condemnation, eminent domain or like proceeding nor is any such proceeding pending or to Borrower's knowledge and belief, threatened or contemplated.
- (h) Borrower and the Property are free from any past due obligations for sales and payroll taxes.
- (i) Borrower is in possession of all material licenses, permits and authorizations required by applicable law for the ownership and operation of the Property.
- (j) The Property is free from damage caused by fire or other casualty.
- (k) The Property is free of all mechanics' and materialmen's liens, whether subordinate or superior to the lien of this Security Instrument, including, inchoate mechanics' and materialmen's liens.
- (l) All federal, state and local taxes have been paid (or will be paid at the closing of the Loan) and there are no assessments pending which are due and payable.
- (m) At all times throughout the term of the Loan (including after giving effect to any Sale permitted pursuant to Section 1.10(b) hereof), (a) none of the funds or other assets of Borrower, any guarantor or indemnitor of any portion of the Loan or other indebtedness secured hereby, or any principal of any of them, constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. Sects. 1701 et seq., the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001 (Public Law 107-56), The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated

under any such legislation with the result that the investment in Borrower, or any such guarantor, indemnitor or principal, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (any such person, entity or government being referred to herein as an "**Embargoed Person**"); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, or any such guarantor, indemnitor or principal, as applicable, with the result that the investment in Borrower, or any such guarantor, indemnitor or principal, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, or any such guarantor, indemnitor or principal, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, or any such guarantor, indemnitor or principal, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

- (n) Borrower has delivered a true, correct and complete schedule (the "**Rent Roll**") of all leases affecting the Property (collectively, "**Leases**") as of the date hereof, which accurately and completely sets forth in all material respects for each such Lease, the following: the name of the tenant, the lease expiration date, extension and renewal provisions, the base rent payable, and the security deposit held thereunder.
- (o) Each Lease constitutes the legal, valid and binding obligation of Borrower and, to the best of Borrower's knowledge and belief, is enforceable against the tenant thereof. No default exists, or with the passing of time or the giving of notice would exist, under any Lease which would, in the aggregate, have a material adverse effect on Borrower or the Property.
- (p) No tenant under any Lease has, as of the date hereof, paid rent more than thirty (30) days in advance, and the rents under such Leases have not been waived, released, or otherwise discharged or compromised.
- (q) All work to be performed by Borrower under the Leases has been substantially performed, all contributions to be made by Borrower to the tenants thereunder have been made and all other conditions precedent to each such tenant's obligations thereunder have been satisfied.
- (r) Each tenant under a Lease has entered into occupancy of the leased premises.
- (s) To the best of Borrower's knowledge and belief, each tenant is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors.
- (t) Except as previously disclosed to Lender in writing, there are no brokerage fees or commissions payable by Borrower with respect to the leasing of space at the

Property and there are no management fees payable by Borrower with respect to the management of the Property.

- (u) Borrower is in compliance with all Lease requirements and legal requirements relating to security deposits.

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

1.3. **Insurance.** Borrower shall, at Borrower's expense, maintain in force and effect on the Property at all times while this Security Instrument continues in effect "All-risk" coverage insurance against loss or damage by fire and against loss or damage by other risks and hazards covered by a standard extended coverage policy satisfactory to Lender including, without limitation, acts of terrorism. If such policy contains an exclusion for acts of terrorism, Borrower shall obtain separate insurance against damage resulting from acts of terrorism on terms consistent with a comprehensive "all-risk" policy. Such insurance shall be in an amount equal to not less than 100% of the full replacement cost of the Improvements and Equipment, without deduction for depreciation, and shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions. Borrower shall also maintain such other insurance as may be reasonably required, from time to time, by Lender, including, without limitation (i) flood insurance if any part of the Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards or if reasonably required by Lender in an amount satisfactory to Lender, (ii) comprehensive commercial general liability insurance, including broad form property damage, blanket contractual and personal injuries coverages in the following amounts: (1) if the Loan is less than \$10,000,000.00 and if the Property is without elevators, not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate, (2) if the Loan is \$10,000,000.00 or more but

less than \$20,000,000.00 and if the Property is without elevators, not less than \$2,000,000 per occurrence, \$4,000,000 in the aggregate, (3) if the Loan is \$20,000,000.00 or more but less than \$50,000,000.00 or if the Property has elevators, not less than \$5,000,000 per occurrence, \$6,000,000 in the aggregate, and (4) if the Loan is more than \$50,000,000.00, not less than \$10,000,000 per occurrence, \$11,000,000 in the aggregate, (iii) law and ordinance coverage in an amount satisfactory to Lender if the Property, or any part thereof, shall constitute a nonconforming use under applicable zoning ordinances, sub-division and building codes or other laws, ordinances and requirements, and (iv) rental loss insurance INCLUDING EXTRA EXPENSE to cover rental losses and extra expenses for a period of at least one year after the date of the fire or casualty in question with dollar limits of not less than twelve (12) months of gross income.

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

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

1.5. Tax and Insurance Impound Account. Borrower shall establish and maintain at all times while this Security Instrument continues in effect an impound account (the "**Impound Account**") with Lender for payment of real estate taxes and assessments and insurance on the Property and as additional security for the Debt. Commencing on the

first monthly Payment Date under the Note and continuing thereafter on each monthly Payment Date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other Debt is fully paid and performed, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which Borrower is required to maintain hereunder, each as estimated and determined by Lender. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Impound Account shall be held by Lender in the Impound Account to pay said taxes, assessments and insurance premiums in one installment before the same become delinquent. Borrower shall be responsible for ensuring the receipt by Lender, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Account, and so long as no default hereunder or under the other Loan Documents has occurred and is continuing, Lender shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. The Impound Account shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Lender's option and in Lender's discretion, may either be held in a separate account or be commingled by Lender with the general funds of Lender. No interest on funds contained in the Impound Account shall be paid by Lender to Borrower. If the total funds in the Impound Account shall exceed the amount of payments actually applied by Lender for the purposes of the Impound Account, such excess may be credited by Lender on subsequent payments to be made hereunder or, at the option of Lender, refunded to Borrower. If, however, the Impound Account shall not contain sufficient funds to pay the sums required when the same shall become due and payable, Borrower shall, within ten (10) days after receipt of written notice thereof, deposit with Lender the full amount of any such deficiency. If there is a default under this Security Instrument which is not cured within any applicable grace or cure period, Lender may, but shall not be obligated to, apply at any time the balance then remaining in the Impound Account against the Debt in whatever order Lender shall subjectively determine. No such application of the Impound Account shall be deemed to cure any default hereunder.

- 1.6. **Replacement Reserve.** As additional security for the Debt, Borrower shall establish and maintain at all times while this Security Instrument continues in effect a repair reserve (the "**Replacement Reserve**") with Lender for payment of costs and expenses incurred by Borrower in connection with capital repairs, replacements and improvements performed at the Property (collectively the "**Repairs**") but no disbursements shall be made for replacements which are deemed by Lender to be in the ordinary course of business. Commencing on the first monthly Payment Date under the Note and continuing thereafter on each monthly Payment Date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other Debt is fully paid and performed, a deposit to the Replacement Reserve in an amount equal to **\$70.50**. So long as no default hereunder or under the other

Loan Documents has occurred and is continuing, all sums in the Replacement Reserve shall be held by Lender in the Replacement Reserve to pay the costs and expenses of Repairs. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, Lender shall, to the extent funds are available for such purpose in the Replacement Reserve, disburse to Borrower amounts of not less than \$1,500.00 and not more frequently than once per month, the amount paid or incurred by Borrower in performing such Repairs upon receipt by Lender of (a) a written request from Borrower for disbursement from the Replacement Reserve and a certification by Borrower in form and substance satisfactory to Lender that the applicable item of Repair has been completed and (b) the delivery to Lender of invoices, receipts or other evidence satisfactory to Lender verifying the cost of performing the Repairs, and (c) if requested by Lender, delivery to Lender of affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished materials or labor to the Property have been paid all amounts due for such labor and materials furnished to the Property. The Replacement Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Lender's option and in Lender's discretion, may either be held in a separate account or be commingled by Lender with the general funds of Lender. A portion of any interest or other earnings on funds contained in the Replacement Reserve shall be credited to Borrower as provided in Section 4.13 hereof. In the event that such amounts on deposit or available in the Replacement Reserve are inadequate to pay the costs of Repairs, Borrower shall pay the amount of such deficiency.

1.7. Casualty and Condemnation.

- (A) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give Lender prompt written notice of the occurrence. All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Lender. Lender shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, legal fees and disbursements) incurred in obtaining those sums, and then, as follows:
- (a) In the event that (i) the proceeds of insurance does not exceed fifty (50%) percent of the then outstanding secured indebtedness and (ii) not more than fifty (50%) percent of the Improvements located on the Real Estate has been destroyed, then if:
- (1) no default is then continuing hereunder or under any of the other Loan Documents and no event has occurred which, with the giving of notice or the passage of time or both, would constitute a default hereunder or under any of the other Loan Documents, and

- (2) the Property can, in Lender's judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage within the earlier to occur of (i) six (6) months after the receipt of insurance proceeds or condemnation awards by either Borrower or Lender, and (ii) twelve (12) months prior to the stated maturity date of the Note, and
- (3) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property, and
- (4) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by Borrower, the full amount of which shall at Lender's option have been deposited with Lender) for such restoration or repair (including, without limitation, for any costs and expenses of Lender to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Note during such restoration or repair, and
- (5) the economic feasibility of the Improvements after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Property and debt service on the Debt in full with the same coverage ratio considered by Lender in its determination to make the loan secured hereby, and
- (6) Borrower shall have delivered to Lender, at Borrower's sole cost and expense, an appraisal report in form and substance satisfactory to Lender appraising the value of the Property as so restored or repaired to be not less than the appraised value of the Property considered by Lender in its determination to make the loan secured hereby, and
- (7) Borrower so elects by written notice delivered to Lender within five (5) days after settlement of the aforesaid insurance or condemnation claim,

then, Lender shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required for such restoration or repair, and any funds deposited by Borrower therefor, to Borrower in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Lender of plans and specifications, contractors and form of construction contracts and the furnishing to

Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors in form and substance satisfactory to Lender in its discretion, with any remainder being applied by Lender for payment of the Debt in whatever order Lender directs in its absolute discretion.

- (b) In all other cases, Lender shall elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security, sums paid to Lender by an insurer may be retained and applied by Lender, after deduction of Lender's reasonable costs and expenses of collection, toward payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper (such application to be without prepayment fee or premium, as otherwise required under Section 1.02 of the Note), except that if a default has occurred, or an event with notice and/or the passage of time, or both, would constitute a default, then such application shall be subject to payment of the prepayment fee or premium computed in accordance with the Note).
- (B) Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award, interest at the rate or rates provided herein and in the Note. All awards and proceeds of condemnation shall be assigned to Lender to be applied in the same manner as insurance proceeds pursuant to subparagraph (A) above.
- (C) Lender may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Lender is hereby authorized, in its own name or in Borrower's name, to adjust any loss covered by insurance or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm the assignment to Lender of any award, damage, insurance proceeds, payment or other compensation. Lender is hereby irrevocably constituted and appointed the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any Debt is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be

affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

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

1.9 Leases and Licenses. Borrower covenants and agrees that it shall not enter into any lease (or renewal thereof) affecting 1,000 square feet or more of the Improvements or having a term of more than five (5) years (the "**Lease Consent Threshold**") without the prior written approval of Lender, which approval shall not be unreasonably withheld. It is acknowledged that Lender intends to include among its criteria for approval of any such proposed lease the following: (i) such lease shall be with a bona-fide arm's-length tenant; (ii) such lease shall not contain any rental or other concessions which are not then

customary and reasonable for similar properties and leases in the market area of the Real Estate; (iii) such lease shall provide that the tenant pays for its expenses; (iv) the rental shall be at least at the market rate then prevailing for similar properties and leases in the market areas of the Real Estate; and (v) such lease shall contain subordination and attornment provisions in form and content acceptable to Lender. Failure of Lender to approve or disapprove any such proposed lease within ten (10) business days after receipt of such written request and all the documents and information required to be furnished to Lender with such request shall be deemed approval, provided that the written request for approval specifically mentioned the same. Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iii) shall not collect any of the Rents more than one (1) month in advance (in addition to the last month's rent and security deposit, if any); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (v) shall not materially alter, modify or change the terms of the Leases without the prior written consent of Lender, or, except if a tenant is in default, cancel or terminate the Leases or accept a surrender thereof (unless a replacement Lease at a higher rent shall have been executed); and (vi) shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Lender.

1.10. Alienation and Further Encumbrances.

- (a) Borrower acknowledges that Lender has relied upon the principals of Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except as specifically allowed hereinbelow in this Section and notwithstanding anything to the contrary contained in Section 4.3 hereof, in the event that the Property or any part thereof or interest therein shall be sold (including any installment sales agreement), conveyed, disposed of, alienated, hypothecated, leased (except to tenants of space in the Improvements in accordance with the provisions of Section 1.9 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Borrower shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily (any of the foregoing, a "Sale"), without the prior written consent of Lender being first obtained, which consent may be withheld in Lender's sole discretion, then the same shall constitute an Event of Default and Lender shall have the right, at its option, to declare any or all of the indebtedness secured hereby, irrespective of the Maturity Date, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article III hereof. If such acceleration is during any period when a prepayment fee is payable pursuant to the provisions set forth in the Note, then, in addition to all of the foregoing, such prepayment fee shall also then be immediately due and payable to the same end as though Borrower were prepaying the entire indebtedness secured hereby on the date of such

acceleration. For the purposes of this Section, the sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering (whether voluntarily or involuntarily) of all or any portion of the ownership interest in (or, directly or indirectly through constituent parties, any of the ultimate beneficial ownership interest in) Borrower shall be deemed to be a transfer of an interest in the Property. Notwithstanding the foregoing, however, transfers or assignments of ownership interests in Borrower (or its constituent parties) may be undertaken without the consent of Lender in the following circumstances (the "**Permitted Transfers**"):

- (1) In the case of a Borrower which is a limited partnership, up to 49% of the limited partnership interests in Borrower shall be freely transferable so long as those persons responsible for the management and control of Borrower and the Property remain unchanged following such transfer.
- (2) In the case of a Borrower which constitutes a limited liability company, up to 49% of the non-managing membership interests in Borrower shall be freely transferable so long as those persons responsible for the management and control of Borrower and the Property remain unchanged following such transfer.
- (3) In the case of a Borrower which constitutes a corporation, up to 49% of the aggregate of the issued and outstanding capital stock of Borrower may be sold or assigned, taking into account (i) any prior sales or assignments, and (ii) the effective change in ownership resulting from any issuance of new shares of capital stock in Borrower or its constituent party so long as those persons responsible for the management and control of Borrower and the Property remain unchanged following such transfer.
- (4) Gifts for estate planning purposes of any individual's interests in Borrower or in any of Borrower's general partners, members or joint venturers to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, shall not be deemed to violate this Section 1.10(a) so long as Borrower is reconstituted, if required, following such gift and so long as those persons responsible for the management of the Property and Borrower remain unchanged following such gift or any replacement management is approved by Lender.
- (5) Involuntary assignments or transfers caused by the death, incompetence or dissolution of Borrower, one of its constituent parties or the owner of one of its constituent parties are permitted if: (i) Borrower is reconstituted, if required, following such death, incompetence or dissolution, and (ii) those persons responsible for the management and control of Borrower and the

Property remain unchanged as a result of such death, incompetence or dissolution or any replacement management is approved by Lender.

In all cases where assignment of ownership interests is allowed pursuant to this Section 1.10(a), the proportionate ownership which is proposed to be transferred shall be calculated so as to take into account prior transfers or assignments. Furthermore, the sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering (whether voluntarily or involuntarily) of all or any portion of the ownership interest in (or, directly or indirectly through constituent parties, any of the ultimate beneficial ownership interest in) any guarantor of Borrower's obligation hereunder or under any of the other Loan Documents shall constitute a violation of this Section 1.10(a) and Lender shall have the right to exercise its various remedies described hereinabove; provided, however, ownership interests in any such guarantor may be transferred in a manner consistent with the allowable transfers of ownership interests in Borrower described hereinabove.

- (b) Notwithstanding the foregoing provisions of this Section, Lender shall consent to a sale, conveyance or transfer of the Property in its entirety (hereinafter, a "**Property Sale**") to any person or entity provided that:
- (1) No Event of Default is then continuing and no circumstance exists, which with the giving of notice, or passage of time, or both, would constitute an Event of Default;
 - (2) Borrower gives Lender written notice of the terms of such prospective Property Sale not less than sixty (60) days before the date on which such Property Sale is scheduled to close and, concurrently therewith, gives Lender all reasonable information concerning the proposed transferee of the Property (hereinafter, a "**Buyer**") as Lender would require in evaluating an initial extension of credit to a borrower and pays to Lender a non-refundable application fee in the amount of \$5,000.00 (the "**Application Fee**"). In addition, Borrower shall reimburse Lender for all of Lender's reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and Rating Agency fees and expenses) incurred or anticipated to be incurred by Lender in connection with a Property Sale including, without limitation, Lender's determination of whether Borrower has satisfied all of the conditions and requirements set forth in this Section 1.10, but only to the extent such aggregate costs and expenses exceed the Application Fee paid by Borrower to Lender. Lender shall have the right, in its reasonable discretion, to approve or disapprove the proposed Buyer. In determining whether to give or withhold its approval of the proposed Buyer, Lender shall consider, among other things, the Buyer's experience and track record in owning and operating facilities similar to the Property, the

Buyer's entity structure, the Buyer's compliance with Section 1.1(m) hereof, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities;

- (3) Borrower pays Lender, concurrently with the closing of such Property Sale, a non-refundable assumption fee (the "**Assumption Fee**") in an amount equal to one percent (1%) of the then outstanding principal balance of the Note; and
- (4) any and all other requirements of Lender, as determined by Lender in its sole discretion, are met.

- 1.11. Maintenance of Property.** Borrower shall cause the Property to be used, operated, occupied and maintained in a good and safe condition and repair and in accordance with all applicable laws and regulations, and shall neither commit nor suffer any waste. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Lender. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Lender.
- 1.12. Access Privileges and Inspections.** Lender and the agents, representatives and employees of Lender shall, subject to the rights of tenants, have full and free access to the Real Estate and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Borrower relating to the Property. Borrower shall lend assistance to all such agents, representatives and employees of Lender.
- 1.13. Financial Statements and Books and Records.** Borrower shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. So long as this Security Instrument continues in effect, Borrower shall provide to Lender, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which must be certified to Lender as being true and correct by Borrower or the entity to which they pertain, as applicable, be prepared in accordance with generally accepted accounting principles consistently applied and be in form and substance acceptable to Lender:

- (a) copies of all tax returns filed by Borrower, within thirty (30) days after the date of filing;
- (b) quarterly operating statements for the Property, within fifteen (15) days after the end of each March, June, September and December, provided operating statements shall be delivered monthly for the first twelve (12) full calendar months of the Note;
- (c) current rent rolls for the Property, within fifteen (15) days after the end of each March, June, September and December, provided, rent rolls shall be delivered monthly for the first twelve (12) full calendar months of the Note;
- (d) annual balance sheets for the Property and annual financial statements for Borrower, each principal or general partner in Borrower, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the loan secured hereby within ninety (90) days after the end of each calendar year; and
- (e) such other information with respect to the Property, Borrower, the principals or general partners in Borrower, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the loan secured hereby, which may be requested from time to time by Lender, within a reasonable time after the applicable request.

If any of the aforementioned materials are not furnished to Lender within the applicable time periods or Lender is dissatisfied with the form and/or scope of information of any of the foregoing, in addition to any other rights and remedies of Lender contained herein, Lender shall have the right, but not the obligation, (i) to impose a late charge of \$25.00 per day for each day after the due date until the date that such missing aforementioned materials are furnished to Lender in the form and containing the scope of information satisfactory to Lender and/or (ii) to obtain the same by means of an audit by an independent certified public accountant selected by Lender, in which event Borrower agrees to pay, or to reimburse Lender for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit. Borrower agrees that any and all materials furnished hereunder are the property of Lender, its designee (and Lender's servicer) and may be released to such parties as Lender, its designee or its servicer deems appropriate, including FNMA, FHLMC, and any affiliates, any issuer, underwriter, certificate-holder or trustee with respect to securities issued in connection with the sale of this Security Instrument, or any rating agency responsible for rating such securities from time to time.

LENDER MAY FURNISH INFORMATION REGARDING BORROWER OR THE PROPERTY TO THIRD PARTIES WITH AN EXISTING OR PROSPECTIVE INTEREST IN THE SERVICING, ENFORCEMENT, EVALUATION, PERFORMANCE, PURCHASE OR SECURITIZATION OF THE DEBT, INCLUDING TRUSTEES, MASTER SERVICERS, SPECIAL

SERVICERS, RATING AGENCIES, AND ORGANIZATIONS MAINTAINING DATABASES ON THE UNDERWRITING AND PERFORMANCE OF MORTGAGE LOANS. BORROWER IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE UNDER APPLICABLE LAW TO PROHIBIT SUCH DISCLOSURE, INCLUDING ANY RIGHT OF PRIVACY.

- 1.14. Further Documentation.** Borrower shall, on the request of Lender and at the expense of Borrower: (a) promptly execute, acknowledge, deliver and record or file such further instruments and promptly do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Security Instrument and the other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby; and (b) promptly furnish to Lender, upon Lender's request, a duly acknowledged written statement and estoppel certificate addressed to such party or parties as directed by Lender and in form and substance supplied by Lender, setting forth all amounts due under the Note, stating whether any event has occurred which, with the passage of time or the giving of notice or both, would constitute an event of default hereunder, stating whether any offsets or defenses exist against the Debt and containing such other matters as Lender may reasonably require.
- 1.15. Security Interest.** This Security Instrument is also intended to encumber and create a security interest in, and Borrower hereby grants to Lender a security interest in all sums on deposit with Lender or its servicer and all fixtures, chattels, accounts, equipment, inventory, contract rights, general intangibles and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "**Collateral**"), whether or not the same shall be attached to the Real Estate or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Real Estate and the Improvements. The foregoing security interest shall also cover Borrower's leasehold interest in any of the foregoing property which is leased by Borrower. Notwithstanding the foregoing, all of the foregoing property shall be owned by Borrower and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Lender. Borrower shall promptly replace all of the Collateral subject to the lien or security interest of this Security Instrument when worn or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Lender, remove from the Real Estate or the Improvements any of the Collateral subject to the lien or security interest of this Security Instrument except such as is replaced by an article of equal suitability and value as above provided, owned by Borrower free and clear of any lien or security interest except that created by this Security Instrument and the other Loan Documents and except as otherwise expressly permitted by the terms of Section 1.10 of this Security Instrument. All of the Collateral shall be kept at the location of the Real Estate except as otherwise

required by the terms of the Loan Documents. Borrower shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

- 1.16. Security Agreement.** This Security Instrument constitutes a security agreement between Borrower and Lender with respect to the Collateral in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower (such appointment being coupled with an interest) to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Lender's reasonable attorneys' fees and legal expenses), together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Lender shall have the right to enter upon the Real Estate and the Improvements or any real property where any of the property which is the subject of the security interest granted herein is located to take possession of, assemble and collect the same or to render it unusable, or Borrower, upon demand of Lender, shall assemble such property and make it available to Lender at the Real Estate, a place which is hereby deemed to be reasonably convenient to Lender and Borrower.
- 1.17. Compliance with Laws.** (a) Borrower shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property; and (b) Borrower agrees that it shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto.
- 1.18. Additional Taxes.** In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages, deeds of trust or security agreements or debts secured by mortgages, deeds of trust or security agreements or the interest of the

mortgagee, beneficiary or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Security Instrument or the Debt or Lender, then, and in any such event, Borrower, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if in the opinion of counsel for Lender (a) it might be unlawful to require Borrower to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Lender may elect, by notice in writing given to Borrower, to declare all of the Debt to be and become due and payable in full ninety (90) days from the giving of such notice.

- 1.19. **Secured Indebtedness.** It is understood and agreed that this Security Instrument shall secure payment of not only the indebtedness evidenced by the Note but also any and all substitutions, replacements, renewals and extensions of the Note, any and all indebtedness and obligations arising pursuant to the terms hereof and any and all indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents.
- 1.20. **Borrower's Waivers.** To the full extent permitted by law, Borrower agrees that Borrower shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the Debt prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. Borrower, for Borrower and Borrower's successors and assigns, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the Debt (except such notices as are specifically provided for herein); (b) waives, releases, relinquishes and forever forgoes all right to a marshalling of the assets of Borrower, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; and (c) waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under applicable law. Further, Borrower hereby knowingly, intentionally and voluntarily, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Security Instrument or to collect any of the Debt to the fullest extent permitted by law.
- 1.21. **WAIVER OF JURY TRIAL.** **BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE**

RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE DEBT OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

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

1.23. **Hazardous Waste and Other Substances.**

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

Borrower's knowledge and belief, there has been no claim by any party that any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property nor does Borrower know of any basis for such a claim.

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

Borrower to comply fully with the terms and conditions of this Section; (iv) the breach of any representation or warranty contained in this Section; or (v) the enforcement of this Section, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Substances from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances on, in, under or affecting any portion of the Property, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas.

- (d) Upon Lender's request, at any time after the occurrence of a default hereunder or at such other time as Lender has reasonable grounds to believe that Hazardous Substances are or have been released, stored or disposed of on or around the Property or that the Property may be in violation of the Environmental Laws, Borrower shall provide, at Borrower's sole cost and expense, an inspection or audit of the Property prepared by a hydro-geologist or environmental engineer or other appropriate consultant approved by Lender. If Borrower fails to provide such inspection or audit within thirty (30) days after such request, Lender may order the same, and Borrower hereby grants to Lender and its employees and agents access to the Property and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Security Instrument.
- (e) Without limiting the foregoing, where recommended by a "Phase I" or "Phase II" assessment or otherwise required by Lender, Borrower shall establish and comply with an operations and maintenance program relative to the Property, in form and substance acceptable to Lender, prepared by an environmental consultant acceptable to Lender, which program shall address any Hazardous Substances (including asbestos containing material or lead based paint) that may now or in the future be detected on the Property.

1.24. Indemnification; Subrogation.

- (a) Borrower shall protect, defend, indemnify, and hold Lender harmless against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including without limitation, Lender's reasonable attorneys' fees and expenses) of whatever kind or nature which may be asserted against, imposed on or incurred by Lender, whether before or after an action in foreclosure, sale of the Property, discharge of this Security Instrument and/or cancellation of the Note, by reason of (i) ownership of this Security Instrument, the Property or any interest therein or receipt of the Rents and Profits; (ii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks,

curbs, adjacent property or adjacent parking areas, streets or ways; (iii) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iv) any failure on the part of Borrower to perform or comply with any of the terms of this Security Instrument; (v) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (vi) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (vii) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, from, or affecting the Property or any other property or the presence of Asbestos or Lead-Based Material on the Property; (viii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, Asbestos or Lead-Based Material; (ix) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, Asbestos or Lead-Based Material; (x) any acts or omissions relating to Lender's exercise of any of its rights or remedies pursuant to Section 1.8 of this Security Instrument; or (xi) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or any way related to such Hazardous Materials, Asbestos or Lead-Based Material including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. Any amounts payable to Lender by reason of the application of this Section shall be secured by this Security Instrument and other Loan Documents and shall become immediately due and payable and shall bear interest at the Default Interest Rate from the date loss or damage is sustained by Lender until paid. The obligations and liabilities of Borrower under this Section shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure, delivery of a deed in a non-judicial foreclosure or delivery of a deed in lieu of foreclosure of this Security Instrument.

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

1.25. Investment Earnings. Any amounts received by Lender from Borrower may be invested by Lender (or its servicing agent) for its benefit and Lender shall not be

obligated to pay, or credit, any interest earned thereon to Borrower except as may be otherwise specifically provided in this Security Instrument.

1.26. Defeasance.

- (a) Notwithstanding anything to the contrary contained in the Note, this Security Instrument or the other Loan Documents, at any time after the second (2nd) anniversary of the date that is the “startup day,” within the meaning of Section 860G(a)(9) of the Internal Revenue Code of 1986, as amended from time to time or any successor statute (the “**Code**”), of a “real estate mortgage investment conduit” (“**REMIC**”) within the meaning of Section 860D of the Code, that holds the Note and this Security Instrument and provided (unless Lender shall otherwise consent, in its sole discretion) no Event of Default has occurred and is continuing and no circumstance exists, which with the giving of notice, or passage of time, or both, would constitute an Event of Default, Borrower shall have the right to obtain the release of the Property from the lien of this Security Instrument and the other Loan Documents upon the satisfaction of each of the following conditions precedent (such transaction being referred to herein as a “**Defeasance**”):
- (1) not less than thirty (30) days’ prior written notice to Lender and Column Financial, Inc. (“**Column**”) at 3414 Peachtree Road, N.E., Suite 1140, Atlanta, Georgia 30326-1113, Attention: Robert A. Barnes, Esq. (to the extent Column is not then the holder of the Note evidencing the indebtedness secured hereby), specifying the date (the “**Release Date**”) on which the Defeasance Collateral (hereinafter defined) is to be delivered;
 - (2) the remittance to Lender on the related Release Date of all amounts then due and payable under the Note, this Security Instrument and the other Loan Documents;
 - (3) the delivery on or prior to the Release Date to Lender of:
 - (A) U.S. Government Securities (hereinafter defined) that provide for payments prior, but as close as possible, to all successive monthly Payment Dates occurring after the Release Date including the payment made on the Maturity Date, with each such payment being equal to or greater than the amount of the corresponding installment of principal, interest and, if applicable, the fee of the Servicer required to be paid hereunder and/or under the Note (the “**Defeasance Collateral**”), each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender (including, without limitation, such instruments as may be required by the depository institution

holding such securities to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to create a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing granting of such security interests;

- (B) a pledge and security agreement, in form and substance satisfactory to Lender, creating a first priority security interest in favor of Lender in the Defeasance Collateral (the "**Defeasance Security Agreement**");
- (C) a certificate of the Borrower, executed by an authorized representative of Borrower certifying that the requirements set forth in this Section 1.26(a) have been satisfied;
- (D) an opinion of counsel delivered at the cost and direction of Borrower but for the benefit of Lender in form and substance satisfactory to Lender to the effect that (i) Lender has a perfected first priority security interest in the Defeasance Collateral and the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms, (ii) the Defeasance Security Agreement and other defeasance documents are enforceable against Borrower in accordance with their respective terms, (iii) the Borrower is duly organized, validly existing and in good standing under the laws of the state of its formation, and (iv) the Borrower has the power and authority to execute the defeasance documents and performs its obligations thereunder;
- (E) an opinion of counsel for Lender, prepared and delivered by counsel for the Servicer at Borrower's reasonable expense, stating that any trust formed as a REMIC in connection with any Secondary Market Transaction (as defined below) will not fail to maintain its status as a REMIC as a result of such Defeasance;
- (F) a certificate from a firm of independent public accountants acceptable to Lender certifying that the Defeasance Collateral is sufficient to satisfy the requirements of subclause (A) hereinabove;
- (G) a proposed release of the Property from this Security Instrument and any UCC Financing Statements relating thereto (for execution by Lender) in a form appropriate for cancellation of such documents in the jurisdiction in which the Property is located;
- (H) evidence in writing from the applicable Rating Agency to the effect that the defeasance of the Loan and substitution of collateral

will not result in a downgrading, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance for any securities issued in connection with the Secondary Market Transaction which are then outstanding; and

- (I) such other certificates, documents or instruments as Lender may reasonably request;
 - (4) the payment by Borrower to Lender of all reasonable out-of-pocket costs and expenses (including, without limitation, attorneys' and accountant's fees and disbursements, and Rating Agency fees and expenses, if any) incurred or anticipated to be incurred by Lender in connection with the satisfaction of the conditions and requirements described in this Section.
- (b) Upon compliance with the requirements of this Section, the Property shall be released from the lien of this Security Instrument and any UCC Financing Statements related thereto, the obligations hereunder and under the other Loan Documents with respect to the Property from and after the Release Date shall no longer be applicable and, subject to the terms of the applicable defeasance documents, the Defeasance Collateral shall be the sole source of collateral securing the Note and all other obligations under the Loan Documents. Lender shall apply the Defeasance Collateral and the payments received therefrom to the payment of all scheduled principal and interest payments (the "**Scheduled Defeasance Payments**") due on all successive Payment Dates after the Release Date including the payment due on the Maturity Date. Borrower, pursuant to the Defeasance Security Agreement or other appropriate document, shall direct that the payments received from the Defeasance Collateral shall be made directly to Lender and applied to satisfy the obligations of Borrower under the Note and the Defeasance Security Agreement.
- (c) In connection with the release of the Property in accordance with this Section, Borrower shall assign the Loan to another entity (the "**Successor Borrower**") in connection with the Defeasance and the following provisions shall apply:
- (1) Column, whether or not it is then the holder of the Note evidencing the indebtedness secured hereby, shall have the right (but not the obligation) to establish or designate such a Successor Borrower. Such right shall be retained by Column notwithstanding the sale or transfer of this Security Instrument unless such obligation is specifically assigned by Column to the transferee. If Column elects not to designate the Successor Borrower, Column Financial, Inc. shall so notify Borrower within ten (10) days of receipt of the notice required in Subparagraph (a)(1) above, in which event Borrower shall be required to establish or designate a Successor Borrower acceptable to Lender. Borrower shall pay any fees charged by Successor Borrower as consideration for assuming the obligations under the Note

and the Security Agreement; provided that such fees shall not exceed \$5,000.00 for any Successor Borrower designated by Column. Borrower shall additionally pay all costs and expenses incurred by Lender or Successor Borrower, including their respective attorneys' fees and expenses, incurred in connection with the Defeasance. Successor Borrower shall satisfy the single purpose entity requirements set forth in Exhibit D hereof; provided, however, that Successor Borrower may, subject to Lender's approval and, if applicable, Rating Agency approval, act as the successor borrower under more than one Loan in the same REMIC pool.

- (2) Borrower shall transfer and assign to Successor Borrower (and Successor Borrower shall assume) all rights, duties and obligations under the Note and the Defeasance Security Agreement arising from and after the Release Date pursuant to an assignment and assumption agreement satisfactory to Lender in its sole discretion. As a condition to such assignment and assumption, Successor Borrower shall deliver to Lender one or more opinions of counsel in form and substance and delivered by counsel satisfactory to Lender in its sole discretion stating among other things, (i) that such assumption agreement and related documents are enforceable against Successor Borrower in accordance with their respective terms, (ii) Successor Borrower is duly organized, validly existing and in good standing under the laws of the state of its formation, (iii) Successor Borrower has the power and authority to execute the assumption documents and perform its obligations thereunder, and (iv) if required by Lender or the Rating Agencies, a non-consolidation opinion. Borrower shall pay all costs and expenses incurred by Lender or its agents in connection with such assignment and assumption (including, without limitation, the review of the proposed transferee and the preparation of the assumption agreement and related documentation). Upon such assumption, Borrower shall be relieved of its obligations hereunder, under the other Loan Documents and under the Defeasance Security Agreement from and after the Release Date, other than those obligations which are specifically intended to survive the termination, satisfaction or assignment of this Security Instrument or the exercise of Lender's rights and remedies hereunder.
- (d) As used herein, the term "U.S. Government Securities" shall mean non-redeemable, fixed rate securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are direct obligations of the United States of America for the full and timely payment of which its full faith and credit is pledged.

1.27 Broker Fees Provisions.

(a) **Brokerage Fees/Sub-Servicing Fees/Role of Correspondent.** Midwest Commercial Mortgage, LLC ("**Correspondent**") has acted as both Borrower and Lender's broker in the proposed transaction and Borrower agrees that no fiduciary or other special relationship exists or shall exist between Borrower and Lender or Borrower and Correspondent. Borrower understands that Correspondent does not have the authority to and cannot bind Lender in any respect, including without limitation, the authority to issue a commitment with respect to the loan evidenced by the Note (the "**Loan**") or to make any agreement regarding the Loan terms or conditions or the terms and conditions of the Note, this Security Instrument or the other Loan Documents. Borrower agrees that Lender is not responsible for any recommendation or advice given to Borrower by Correspondent, and that Lender and Borrower are dealing at arms' length with each other in a commercial lending transaction. Borrower acknowledges and agrees that Correspondent shall be paid the following fees in connection with or arising out of the closing and funding of the Loan:

(1) **Brokerage Fees Paid by Borrower.** Upon closing (and only upon closing) of the Loan, Borrower shall have paid Correspondent a brokerage fee in the amount of one percent (1.00%) of the Loan amount. Lender is authorized by Borrower to pay such fees out of any Application, Commitment or Rate Lock Fees deposited by Borrower with Lender or out of Loan proceeds at closing. Borrower represents and warrants that it has not dealt with any finder or broker in connection with the Loan other than Correspondent. Borrower shall pay any and all commissions and fees and hereby agrees to indemnify and hold Lender harmless from any claim for commissions or fees, other than fees due Correspondent. Such indemnity shall survive the expiration or termination of this application, or the closing of the Loan.

ARTICLE II

EVENTS OF DEFAULT

2.1. **Events of Default.** The occurrence of any of the following events shall be an "**Event of Default**" hereunder:

- (a) Borrower fails to (i) make any payment under the Note when due, or (ii) make any regularly scheduled monthly deposit into any reserve established under this Security Instrument or the other Loan Documents when due.
- (b) Borrower fails to provide insurance as required by Section 1.3 hereof or fails to perform any covenant, agreement obligation, term or condition set forth in Sections 1.10 or 1.23 hereof.

- (c) Borrower fails to perform any other covenant, agreement, obligation, term or condition set forth herein other than those otherwise described in this Section 2.1 and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Lender to Borrower; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Borrower commences to cure such default promptly after receipt of notice thereof from Lender, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.
- (d) Any representation or warranty made herein, in or in connection with any application or commitment relating to the loan evidenced by the Note, or in any of the other Loan Documents to Lender by Borrower, by any principal, member or general partner in Borrower or by any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby is determined by Lender to have been false or misleading in any material respect at the time made.
- (e) Borrower, any principal, member or general partner in Borrower or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer for Borrower, for any such principal, member or general partner of Borrower or for any such indemnitor or guarantor or for a substantial part of the assets of Borrower, of any such principal or general partner of Borrower or of any such indemnitor or guarantor, or shall commence any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.
- (f) A petition is filed or any case, proceeding or other action is commenced against Borrower, against any principal, member or general partner of Borrower or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or an order, judgment or decree is entered appointing, with or without the consent of Borrower, of any such principal, member or general

partner of Borrower or of any such indemnitor or guarantor, a receiver, trustee, custodian or similar officer for Borrower, for any such principal, member or general partner of Borrower or for any such indemnitor or guarantor, or for any substantial part of any of the properties of Borrower, of any such principal, member or general partner of Borrower or of any such indemnitor or guarantor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree shall not be dismissed within sixty (60) days after being commenced.

- (g) The holder of any lien or security interest on the Property (without implying the consent of Lender to the existence or creation of any such lien or security interest), whether superior or subordinate to this Security Instrument or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.
- (h) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Borrower, any of its principals, members or any general partner.
- (i) Borrower fails to cure promptly any violation of laws or ordinances affecting or which may be interpreted to affect the Property.

ARTICLE III

REMEDIES

3.1. Remedies Available. If there shall occur an Event of Default under this Security Instrument, then this Security Instrument is subject to foreclosure as provided by law and Lender may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

- (a) **Acceleration.** Accelerate the maturity date of the Note and declare any or all of the Debt to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.
- (b) **Entry on the Property.** Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or

any part thereof, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law unless such notice and process is waivable, in which case Borrower hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Lender's judgment to complete any unfinished construction on the Real Estate, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and all sums expended by Lender therefor, together with interest thereon at the Default Interest Rate, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

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

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

- (e) **Foreclosure.** Immediately commence an action to foreclose this Security Instrument or to specifically enforce its provisions or any of the Debt pursuant to the statutes in such case made and provided and sell the Property or cause the

Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Lender. In the event foreclosure proceedings are filed by Lender, all expenses incident to such proceeding, including, but not limited to, attorneys' fees and costs, shall be paid by Borrower and secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The Debt and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Interest Rate (as defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), attorneys' fees and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Lender or its assigns may become the purchaser of the Property or any part thereof.

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

3.2. **Application of Proceeds.** To the fullest extent permitted by law, the proceeds of any sale under this Security Instrument shall be applied to the extent funds are so available to the following items in such order as Lender in its discretion may determine:

- (a) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Lender's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.
- (b) To payment of all sums expended by Lender under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Interest Rate.
- (c) To payment of the Debt and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Interest Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Lender chooses in its sole discretion.

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

3.3. **Right and Authority of Receiver or Lender in the Event of Default; Power of Attorney.** Upon the occurrence of an Event of Default hereunder, and entry upon the

Property pursuant to Section 3.1(b) hereof or appointment of a receiver pursuant to Section 3.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Lender's or the receiver's sole discretion, all at Borrower's expense, Lender or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Property; (b) manage and operate the Property; (c) execute and deliver, in the name of Borrower as attorney-in-fact and agent of Borrower or in its own name as Lender, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (d) enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (e) collect and receive the Rents and Profits from the Property; and (f) do any acts which Lender in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Security Instrument. Borrower hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Borrower's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any Debt is outstanding.

- 3.4. Occupancy After Foreclosure.** In the event there is a foreclosure sale hereunder and at the time of such sale, Borrower or Borrower's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Borrower (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Lender or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Real Estate is located.
- 3.5. Cumulative Remedies.** All remedies contained in this Security Instrument are cumulative and Lender shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Lender and may be exercised in any order and as often as occasion therefor shall arise. No delay or failure by Lender to exercise any right or remedy under this Security Instrument shall be construed to be a waiver of that right or remedy or of any default hereunder.

- 3.6. **Payment of Expenses.** Borrower shall pay on demand all of Lender's reasonable expenses incurred in any efforts to enforce any terms of this Security Instrument, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Lender until actually paid by Borrower at the Default Interest Rate, and the same shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

ARTICLE IV

MISCELLANEOUS TERMS AND CONDITIONS

- 4.1. **Certain Rights of Lender.** Without affecting Borrower's liability for the payment of any of the Debt, Lender may from time to time and without notice to Borrower: (a) release any person liable for the payment of the Debt; (b) extend or modify the terms of payment of the Debt; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the Debt; (d) recover any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Security Instrument or any agreement subordinating the lien hereof.
- 4.2. **Notices.** All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page of this Security Instrument or at such other address as may be designated by such party as herein provided.
- 4.3. **Successors and Assigns.** The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Borrower, its successors and assigns, and shall inure to the benefit of Lender, its successors and assigns and shall constitute covenants running with the land.
- 4.4. **Severability.** A determination that any provision of this Security Instrument is unenforceable or invalid shall not affect the enforceability or validity of any other provision.
- 4.5. **Waiver; Discontinuance of Proceedings.** Lender may waive any single default by Borrower hereunder without waiving any other prior or subsequent default and may remedy any default by Borrower hereunder without waiving the default remedied. Neither the failure or delay by Lender in exercising, any right, power or remedy upon any

default by Borrower hereunder shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Lender of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

- 4.6. **Section Headings.** The headings of the sections and paragraphs of this Security Instrument are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.
- 4.7. **Governing Law.** This Security Instrument will be governed by and construed in accordance with the laws of the State of Nebraska, provided that to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.
- 4.8. **Construction of this Document.** This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.
- 4.9. **No Merger.** It is the desire and intention of the parties hereto that this Security Instrument and the lien hereof do not merge in fee simple title to the Property.
- 4.10. **Personal Liability.** Notwithstanding anything to the contrary contained in this Security Instrument, the liability of Borrower and its general partners, if any, for the Debt and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in Section 1.05 of the Note; provided however that nothing herein shall be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all indebtedness owing to Lender in accordance with the Note, this Security Instrument and the other Loan Documents.
- 4.11. **Entire Agreement and Modifications.** This Security Instrument and the other Loan Documents (a) contain the entire agreements between the parties, and (b) may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted.

4.12. **Maximum Interest.** The provisions of this Security Instrument and of all agreements between Borrower and Lender, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of demand or acceleration of the maturity of the Note or otherwise, shall the amount paid, or agreed to be paid ("**Interest**"), to Lender for the use, forbearance or retention of the money loaned under the Note exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, performance or fulfillment of any provision hereof or of any agreement between Borrower and Lender shall, at the time performance or fulfillment of such provision shall be due, exceed the limit for Interest prescribed by law or otherwise transcend the limit of validity prescribed by applicable law, then ipso facto the obligation to be performed or fulfilled shall be reduced to such limit and if, from any circumstance whatsoever, Lender shall ever receive anything of value deemed Interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive Interest shall be applied to the reduction of the principal balance owing under the Note in the inverse order of its maturity (whether or not then due) or at the option of Lender be paid over to Borrower, and not to the payment of Interest. All Interest (including any amounts or payments deemed to be Interest) paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal balance of the Note so that the Interest thereon for such full period will not exceed the maximum amount permitted by applicable law. This paragraph will control all agreements between Borrower and Lender.

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

- 4.14. Cooperation with Rating Agencies and Investors.** Borrower covenants and agrees that in the event Lender decides to include the Loan as an asset of a Secondary Market Transaction, Borrower shall (a) at Lender's request, meet with representatives of the Rating Agencies and/or investors to discuss the business and operations of the Property, and (b) permit Lender or its representatives to provide related information to the Rating Agencies and/or investors, and (c) cooperate with the reasonable requests of the Rating Agencies and/or investors in connection with all of the foregoing. For purposes of this Security Instrument, a "**Secondary Market Transaction**" shall be (a) any sale or assignment of this Security Instrument, the Note and the other Loan Documents to one or more investors as a whole loan; (b) a participation of the Loan to one or more investors; (c) any deposit of this Security Instrument, the Note and the other Loan Documents with a trust or other entity which may sell certificates or other instruments to investors evidencing an ownership interest in the assets of such trust or other entity; or (d) any other sale, assignment or transfer of the Loan or any interest therein to one or more investors. At any time during which the Loan is an asset of a securitization or is otherwise an asset of any rated transaction, "**Rating Agency**" shall mean the rating agency or rating agencies that from time to time rate the securities, certificates or other instruments issued in connection with such securitization or other transaction.
- 4.15. Sales of Note and Security Instrument.** The Note or a partial interest in the Note (together with this Security Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change. For purposes of this Security Instrument, the term "**Loan Servicer**" means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, this Security Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender.
- 4.16. Waiver of Homestead, Dower, Redemption, and Appraisement.** Borrower waives all right of homestead exemption in and statutory redemption of the Property and all right of appraisement of the Property and relinquishes all rights of dower and curtesy in the Property.
- 4.17. Community Property.** In the event community property laws apply, each Borrower who is a married person expressly agrees that recourse may be had against his or her community property and separate property.
- 4.18. Further Stipulations.** The additional covenants, agreements and provisions set forth in Exhibit B and Exhibit C and Exhibit D attached hereto, if any, shall be a part of this Security Instrument and shall, in the event of any conflict between such further stipulations and any of the other provisions of this Security Instrument, be deemed to control.

ARTICLE V

CONCERNING THE TRUSTEE

- 5.1. **No Required Action.** Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Lender and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Lender.
- 5.2. **Certain Rights.** With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and consult with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (iv) any and all other lawful action that Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Borrower will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.
- 5.3. **Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need

not be segregated in any manner from any other moneys (except to the extent required by applicable law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

- 5.4. Successor Trustees.** Trustee may resign by the giving of notice of such resignation in writing or verbally to Lender. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Lender shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Lender shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the forenamed Trustee. Such appointment may be executed by any authorized agent of Lender, and if such Lender be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Borrower hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Security Instrument or applicable law.
- 5.5. Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.
- 5.6. Succession Instruments.** Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.
- 5.7. No Representation by Trustee.** By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee (on its own behalf or on behalf of Lender) pursuant to the Loan Documents, including, without limitation, any officer's

certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee, either on its own behalf or on behalf of Lender.

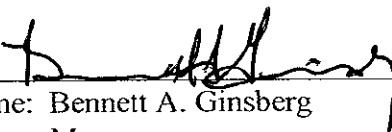
ATTACHED EXHIBITS. The following Exhibits are attached to this Security Instrument and by this reference are made a part hereof:

- | | | |
|-------------------------------------|-----------|--------------------------------------|
| <input checked="" type="checkbox"/> | Exhibit A | Description of the Land |
| <input checked="" type="checkbox"/> | Exhibit B | Reserves |
| <input checked="" type="checkbox"/> | Exhibit C | Modifications to Security Instrument |
| <input checked="" type="checkbox"/> | Exhibit D | Bankruptcy Remote Provisions |

IN WITNESS WHEREOF, Borrower has executed this Security Instrument as of the day and year first above written.

BORROWER:

KILBY PLACE LLC, a Nebraska limited liability company

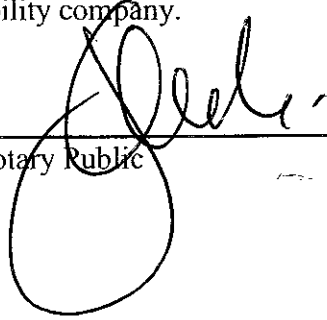
By: 
Name: Bennett A. Ginsberg
Title: Manager

STATE OF NEBRASKA)

COUNTY OF Dawson)

The foregoing instrument was acknowledged before me this 23rd day of Nov, 2007, by BENNETT A. GINSBERG, the Manager of **KILBY PLACE LLC**, a Nebraska limited liability company, on behalf of said limited liability company.





Notary Public

EXHIBIT A

(Description of the Land)

Lots 11, 12, 13 and 14, Block 4, Kilby Place, an addition to the City of Omaha, Douglas County, Nebraska, except that part granted to the City of Omaha by Warranty Deed filed December 10, 2004, as Instrument No. 200416071, Records, Douglas County, Nebraska.

EXHIBIT B

(Reserves)

- B-1. Tenant Improvements and Leasing Commissions Reserve.** As additional security for the Debt, Borrower shall establish and maintain at all times while this Security Instrument continues in effect a reserve (the "**TILC Reserve**") with Lender for the payment of costs and expenses incurred by Borrower for Tenant Improvements and Leasing Commissions. All such sums, together with any interest thereon, are hereinafter collectively referred to as the "**Funds**". As used herein, the term "**Tenant Improvements**" shall mean construction or modification of improvements on or installation of fixtures or equipment in the Property as required to be performed by Borrower pursuant to the terms of any lease which is hereafter approved or, if such lease does not require approval by Lender, is hereafter entered into by Borrower and tenant pursuant to Section 1.9 of this Security Instrument ("**Approved Lease**"). As used herein, the term "**Leasing Commissions**" shall mean reasonable and customary commissions paid to a real estate broker licensed in the state where the Property is located in connection with an Approved Lease, pursuant to commission agreements containing such terms and provisions including, without limitation, as to the timing of the payment of the commission, as are then prevailing between third party, unaffiliated owners and brokers for comparable leases of space at properties similar to the Property in the market area in which the Property is located.
- (a) **Deposits Into the TILC Reserve/Interest on Funds.** Commencing with the first monthly payment due under the Note and continuing thereafter on each monthly Payment Date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other Debt is fully paid and performed, a monthly deposit to the TILC Reserve in an amount equal to **\$529.00**; provided, however, such monthly payments shall cease at such time as the then outstanding balance in the TILC Reserve shall equal or exceed **\$25,000.00**. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the TILC Reserve shall be held by Lender in the TILC Reserve to pay and/or reimburse Borrower for the costs and expenses of Tenant Improvements and for paying Leasing Commissions as herein set forth. Interest on the funds contained in the TILC Reserve shall be credited to Borrower as provided in Section 4.13 of this Security Instrument.
- (b) **Disbursements from the TILC Reserve.** So long as no default hereunder or under the other Loan Documents has occurred and is continuing, and to the extent Funds are available for such purpose, Lender shall, within ten (10) days after receipt of a written request from Borrower specifying the amount requested and the applicable Tenant Improvements or Leasing Commissions to be paid for with the requested Funds ("**Disbursement Request**"), release to Borrower Funds in the amount of the Disbursement Request; subject, however, to the following conditions precedent. Lender shall not be required to make advances from the

TILC Reserve more frequently than once in any thirty (30) day period. In making any payment from the TILC Reserve, Lender shall be entitled to rely on such request from Borrower, and on any bill, statement, or estimate from any third party, without any inquiry into the accuracy, validity or contestability of any such amount.

- (i) With respect to a Disbursement Request to pay for Tenant Improvements, Borrower shall provide evidence reasonably satisfactory to Lender (including, if requested by Lender, access to the Property by Lender and/or an architect and/or an engineer specified by Lender for the purpose of inspecting the work done, at Borrower's expense) that the Tenant Improvements, or such portion thereof, for which the Funds are being requested have been completed in accordance with subparagraph (c) below. Borrower shall submit to Lender copies of invoices for which Funds are being requested, and if required by Lender, shall also submit waivers of lien. Borrower shall execute and deliver to Lender a certificate (in form and substance reasonably satisfactory to Lender) that the Tenant Improvements covered by the applicable Disbursement Request comply with, and have fully satisfied, the terms and provisions of paragraph (c) below. Borrower shall provide Lender with a copy of any and all applicable permanent certificates of occupancy and other governmental permits, if any be required, issued by applicable governmental authorities with respect to the Tenant Improvements, which certificates and permits allow the tenant to open for business as contemplated under such lease. Borrower shall provide such additional documents, certificates and affidavits as Lender may reasonably request.
- (ii) With respect to the final Disbursement Request relative to any Approved Lease, Borrower shall provide Lender with an original estoppel certificate executed by the tenant under the Approved Lease for which such request relates, stating that such tenant has accepted the Tenant Improvements, and has occupied the space covered by the Tenant Improvements and that there are no defaults under such lease (nor does there exist any event or conditions, which with the passage of time or the giving of notice, or both, could result in such a default).
- (iii) With respect to a Disbursement Request to pay any portion of the Leasing Commissions, Borrower shall provide evidence as reasonably requested by Lender that such Leasing Commissions are then due and payable or have been properly paid, and such additional documents, certificates and affidavits as Lender may reasonably request.
- (iv) Notwithstanding any provision of this Section to the contrary, Funds disbursed with respect to any Approved Lease (i) for Tenant Improvements shall be an amount not to exceed, under any circumstances,

the reasonable costs and expenses actually incurred by Borrower therefor; and (ii) for Leasing Commissions shall be an amount not to exceed, under any circumstances, the commission actually incurred by Borrower therefor which is reasonable and customary for a licensed real estate broker in the market area in which the Property is located.

- (v) In the event Borrower receives any disbursement of funds in the TILC Reserve, then in addition and commencing with the next monthly payment due under the Note thereafter and continuing thereafter on each monthly Payment Date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and in addition to any other monthly deposit to the TILC Reserve then on-going a deposit to the TILC Reserve in an amount equal to the amount of such disbursement divided by twelve (12) until such time as the amount of such additional monthly payments equals or exceeds the amount of such disbursement.
- (c) Borrower shall construct and complete all Tenant Improvements within the time periods and as required by, and in accordance with, the Approved Leases. Borrower or tenant shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by all applicable laws with regard to the Tenant Improvements, whether necessary for commencement, completion, use or otherwise. Borrower shall perform or cause to be performed all work in connection with the Tenant Improvements in a good and workmanlike manner, in compliance with all applicable laws (including, without limitation, any and all applicable life safety laws, environmental laws and laws for the handicapped and/or disabled) and, with respect only to those leases requiring Lender approval, with the plans and specifications approved (in writing) by Lender covering the same, which performance by Borrower shall be without regard to the sufficiency of the Funds. Borrower covenants and agrees that Tenant Improvements shall be constructed, installed or completed, as applicable, free and clear of any and all liens (including mechanic's, materialman's or other liens), claims and encumbrances whatsoever.
- (d) In the event of a default hereunder or under any of the other Loan Documents, Lender in its sole discretion may do one of the following:
 - (i) apply the funds in the TILC Reserve to pay down the principal balance of the Loan subject to a pre-payment penalty equal to "Required Yield Maintenance" as defined in the Note, or
 - (ii) continue to hold the TILC Reserve as additional security for the Loan throughout the remaining loan term, with any interest accruing thereon remaining in and becoming part of the TILC Reserve.

B-2. Dodge Family Dentistry, P.C. Tenant Improvements Reserve. As additional security for the indebtedness secured hereby, Borrower has established a reserve (the "**Dodge Family TI Reserve**") with Lender for the payment of costs and expenses incurred by Dodge Family Dentistry, P.C. ("**Dodge Family**") for Tenant Improvements. On the date hereof Borrower has deposited the sum of **\$70,752.00** into the Dodge Family TI Reserve. Borrower shall be entitled to the release of funds from the Dodge Family TI Reserve provided that the following conditions are satisfied: (a) there shall not be a default under this Security Instrument or any of the other Loan Documents on the date Borrower requests such disbursement from the Dodge Family TI Reserve through and including the date such disbursement is made by Lender, and (b) Borrower provides to Lender an original estoppel certificate executed by Dodge Family stating the rent amount under its lease ("**Dodge Family Lease**"), that Dodge Family has entered into occupancy of the space and opened for business, that all tenant improvements have been completed and paid for, and that there are no defaults under the Dodge Family Lease (nor does there exist any event or conditions, which with the passage of time or the giving of notice, or both, could result in such a default) and which estoppel shall cover such other matters as the Lender shall request and shall be in form and substance acceptable to the Lender. Lender shall, within thirty (30) days after receipt of a written request by Borrower, and which request shall include evidence satisfactory to Lender of the satisfaction of the requirement contained in clause (b) above, release to Dodge Family all of the funds then on deposit in the Dodge Family TI Reserve.

B-3. Dodge Family Dentistry, P.C. Concrete Allowance Reserve. As additional security for the indebtedness secured hereby, Borrower has established a reserve (the "**Dodge Family Concrete Allowance Reserve**") with Lender for the payment of concrete incurred by Dodge Family. On the date hereof Borrower has deposited the sum of **\$4,090.35** into the Dodge Family Concrete Allowance Reserve. Borrower shall be entitled to the release of funds from the Dodge Family Concrete Allowance Reserve provided that the following conditions are satisfied: (a) there shall not be a default under this Security Instrument or any of the other Loan Documents on the date Borrower requests such disbursement from the Dodge Family Concrete Allowance Reserve through and including the date such disbursement is made by Lender, and (b) Borrower provides to Lender an original estoppel certificate executed by Dodge Family stating the rent amount under the Dodge Family Lease, that Dodge Family has entered into occupancy of the space and opened for business, that all concrete reimbursement required under the Dodge Family Lease has been completed and paid for, and that there are no defaults under the Dodge Family Lease (nor does there exist any event or conditions, which with the passage of time or the giving of notice, or both, could result in such a default) and which estoppel shall cover such other matters as the Lender shall request and shall be in form and substance acceptable to the Lender. Lender shall, within thirty (30) days after receipt of a written request by Borrower, and which request shall include evidence satisfactory to Lender of the satisfaction of the requirement contained in clause (b) above, release to Dodge Family all of the funds then on deposit in the Dodge Family Concrete Allowance Reserve.

B-4. Lease Holdback Reserve.

- (a) As additional security for the Debt, Borrower shall establish and maintain at all times while this Security Instrument continues in effect a reserve (together with interest thereon, the "**Lease Holdback Reserve**") with Lender regarding the renewal or replacement of certain Leases. All such sums, together with any interest thereon, are hereinafter collectively referred to as the "**Lease Holdback Funds**". Simultaneous with the closing of the transaction contemplated hereby, Borrower shall pay to Lender a deposit to the Lease Holdback Reserve in an amount equal to **\$8,704.62**. The Lease Holdback Reserve shall be held in an interest bearing account controlled by Lender's servicer. All interest earned on said funds shall become part of the Lease Holdback Reserve. In order to qualify for the release of funds or a portion thereof from the Lease Holdback Reserve, Borrower must provide evidence satisfactory to Lender that the following conditions have been satisfied:
- (1) **Dodge Family Dentistry, P.C.** shall have commenced paying rent, taken occupancy and opened for business at the Property pursuant to its lease (the "**Dodge Family Lease**") for space at the Property which provides for a free rent period for the first three (3) months of the lease term;
 - (2) no defaults shall have occurred and be continuing under the Dodge Family Lease or under any other leases for space at the Property on either the Disbursement Request Date (as hereinafter defined) or the Disbursement Date (as hereinafter defined); and
 - (3) no default under this Security Instrument or any of the other Loan Documents shall have occurred and be continuing as of either the Disbursement Request Date or the Disbursement Date.
- (b) Lender shall, within thirty (30) days after receipt of a written request by Borrower (the date of any such request(s) by Borrower shall be referred to as the "**Disbursement Request Date**") and which request shall include evidence satisfactory to Lender of the satisfaction of all of the requirements contained in subparagraphs (1) through (3) above, release to Borrower all remaining funds in the Lease Holdback Reserve (the date of any such release by Lender shall be referred to as the "**Disbursement Date**").
- (c) In the event of a default hereunder or under any of the other Loan Documents, Lender in its sole discretion may do one of the following:
- (i) apply the funds in the Lease Holdback Reserve to pay down the principal balance of the Loan subject to a pre-payment penalty equal to "Required Yield Maintenance" as defined in the Note, or

- (ii) continue to hold the Lease Holdback Reserve as additional security for the Loan throughout the remaining loan term, with any interest accruing thereon remaining in and becoming part of the Lease Holdback Reserve.

B-5. Cash Management Stipulations. Borrower, Lender and any Manager have, of even date herewith, entered into that certain Cash Management Agreement (the “Cash Management Agreement”) of even date herewith which, among other things, provides for the disposition of Rents and Profits from the Property. It is specifically agreed that (i) the Cash Management Agreement is one of the Loan Documents (as defined in this Security Instrument), and (ii) during any Sweep Period, the Clearing Account, the Cash Collateral Account and all other Accounts and Sub-Accounts (as such terms are described or defined in the Cash Management Agreement) shall be included within the Reserves (as defined in this Security Instrument). The Reserves and any disbursement therefrom shall be subject to this Security Instrument, the Cash Management Agreement and the other Loan Documents. During any Sweep Period (as defined in the Cash Management Agreement), all references in this Security Instrument to the Impound Account and to the other Reserves shall be deemed to refer to the Sub-Account of the Cash Collateral Account (as defined in the Cash Management Agreement) into which the proceeds of each such Reserve have been deposited pursuant to the Cash Management Agreement. During any Sweep Period, all payments from Borrower to Lender with respect to Reserves shall be made by disbursement from the Clearing Account or as otherwise provided in the Cash Management Agreement. All sums held in the Cash Collateral Account prior to being allocated into the Sub-Accounts shall also be considered “Funds” for purposes of Section 4.13 hereof and shall bear interest to be added to the Cash Collateral Account in accordance with that provision; provided, however, once such monies in the Cash Collateral Account have been allocated to Sub-Accounts pursuant to the terms of the Cash Management Agreement, such Sub-Accounts shall bear interest for the ultimate benefit of Borrower only to the extent required by Section 4.13 hereof or by the Cash Management Agreement.

B-6. Lease Termination Payment Reserve.

- (a) For purposes of this Security Instrument, the capitalized terms defined in this Section shall have the meanings ascribed to them as follows:
 - (i) “**Lease Termination Expenditure**” shall mean the costs and expenses incurred by Borrower for payment of leasing commissions, lease buy-outs and expenditures related to repairs, replacements and improvements to Lease Termination Space in connection with releasing such Lease Termination Space.
 - (ii) “**Lease Termination Payment**” shall mean any amounts paid in consideration of an early lease termination including, without limitation, payments made under leases containing early lease termination options in favor of tenants thereunder, in connection with the exercise of such tenant’s lease termination rights. Amounts paid for rent and other charges

in respect of periods prior to the lease termination date shall be excluded from the Lease Termination Payment.

- (iii) **“Lease Termination Payment Reserve”** shall have the meaning set forth in subparagraph (b) below.
 - (iv) **“Lease Termination Space”** shall mean any space at the Improvements subject to a lease as to which a Lease Termination Payment is received.
- (b) As additional security for the Debt, Borrower shall establish and maintain at all times while this Security Instrument continues in effect a reserve (the **“Lease Termination Payment Reserve”**) with Lender for payment of Lease Termination Expenditures. Notwithstanding any provision of this Security Instrument or the other Loan Documents to the contrary, Borrower shall, within one (1) business day of receipt thereof, deliver all Lease Termination Payments (or cause the property manager to deliver all such Lease Termination Payments) to Lender for deposit in the Lease Termination Payment Reserve.
- (c) (1) Borrower shall pay all Lease Termination Expenditures without regard to the amount then available in the Lease Termination Payment Reserve. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, and, subject to the provisions of this Security Instrument, Lender shall, to the extent funds are available for such purpose in the Lease Termination Payment Reserve, apply any portion of each Lease Termination Payment held in the Lease Termination Payment Reserve in payment of the Lease Termination Expenditures incurred with respect to the corresponding Lease Termination Space. Lender shall disburse amounts for Lease Termination Expenditures within 10-days of Borrower’s satisfaction of the following conditions and the provision of suitable documentation relative thereto: (i) a new lease has been fully executed and approved by Lender pursuant to the terms hereof with respect to all or any portion of the Lease Termination Space, (ii) Lender has received written notice at least ten (10) days prior to the due date of any payment relating to Lease Termination Expenditures undertaken pursuant to such new lease or, if Borrower makes timely payment therefor, not more than forty-five (45) days after Borrower has made such payment; (iii) Borrower furnishes Lender with a written disbursement request for the payment or reimbursement of such Lease Termination Expenditures; (iv) Borrower shall have theretofore furnished Lender with satisfactory evidence of the progress and/or completion of tenant improvement work, the cost of tenant improvement work, satisfactory evidence that any and all completed tenant improvement work complies with law, lien waivers for lienable work, copies of bills, invoices and other reasonable documentation as may be required by Lender to substantiate the use of such funds and establish that the Lease Termination Expenditures which are the subject of such disbursement request represent completed or

partially completed capital work and improvements performed at all or any portion of the applicable Lease Termination Space; and (v) there are sufficient funds available in the Lease Termination Payment Reserve.

- (2) Notwithstanding anything contained herein to the contrary, Lender shall disburse to Borrower any portion of any Lease Termination Payment remaining on deposit in the Lease Termination Payment Reserve promptly after (i) the related Lease Termination Space has been fully leased pursuant to a lease approved by Lender (if such approval is required hereunder) to an unrelated, third-party tenant for a net effective rent which is at an arm's length competitive market rate; (ii) such tenant has taken possession of such Lease Termination Space and the obligation to pay rent under the related lease shall have commenced; and (iii) such tenant shall have delivered an estoppel certificate confirming that it has accepted such Lease Termination Space, that Borrower has completed any construction obligations under the related lease and that the obligation to pay rent thereunder has commenced; and (iv) Lender shall have been provided evidence that such tenant's actual payment of rental has commenced.
- (3) Borrower shall be entitled to additionally request disbursement from the Lease Termination Payment Reserve to perform capital improvements to the Property which do not otherwise qualify for disbursement hereunder. Any such request for disbursement for other capital improvements may be granted or withheld at Lender's sole discretion and, if granted, shall be conditioned upon such capital improvements being approved by Lender if such approval is so required under this Security Instrument. Provided that (i) Lender has consented to such disbursement, (ii) Lender has received written notice at least ten (10) days prior to the due date of any payment relating to such capital improvement expenditure or if Borrower makes timely payment therefor, not more than forty-five (45) days after Borrower has made such payment; (iii) Borrower furnishes Lender with a written disbursement request for the payment or reimbursement of such capital expenditures; (iv) Borrower shall have theretofore furnished Lender with satisfactory evidence of the progress and/or completion of any capital improvement work, satisfactory evidence that any and all completed capital improvement work complies with law, lien waivers for lienable work, copies of bills, invoices and other reasonable documentation as may be required by Lender to substantiate the use of such funds; and (v) there are sufficient funds available in the Lease Termination Payment Reserve, Lender shall make such disbursement to Borrower for payment of such capital improvement expenditures or reimbursement of Borrower's payment thereof, within ten (10) days after receipt of the documentation required in connection therewith.
- (4) Lender shall not be required to make advances from the Lease Termination Payment Reserve more frequently than once in any thirty (30)

day period. In making any payment from the Lease Termination Payment Reserve, Lender shall be entitled to rely on such request from Borrower without any inquiry into the accuracy, validity or contestability of any such amount. Lender may (but without any obligation to do so), at Borrower's expense, make or cause to be made during the term of this Security Instrument an inspection of the Property to verify the scope, nature and quality of the work for which payment is being requested from the Lease Termination Payment Reserve.

- (d) The Lease Termination Payment Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Lender's option and in Lender's discretion, may either be held in a separate account or be commingled by Lender with the general funds of Lender. The Lease Termination Payment Reserve is solely for the protection of Lender and entails no responsibility on Lender's part beyond the payment of the costs and expenses described in this Section in accordance with the terms hereof and beyond allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the Lease Termination Payment Reserve are inadequate to pay the cost of any Lease Termination Expenditure, Borrower shall pay the amount of such deficiency. Upon assignment of this Security Instrument by Lender, any funds in the Lease Termination Payment Reserve shall be turned over to the assignee and any responsibility of Lender, as assignor, with respect thereto shall terminate. If there is a default under this Security Instrument which is not cured within any applicable grace or cure period, Lender may, but shall not be obligated to, apply at any time the balance then remaining in the Lease Termination Payment Reserve against the Debt in whatever order Lender shall subjectively determine. No such application of the Lease Termination Payment Reserve shall be deemed to cure any default hereunder.
- (e) Notwithstanding anything seemingly to the contrary in this Section B-6, Borrower shall not be entitled to terminate or agree to terminate any existing lease in consideration for a Lease Termination Payment or otherwise without first obtaining Lender's prior written consent.
- (f) In the event of a default hereunder or under any of the other Loan Documents, Lender in its sole discretion may do one of the following:
 - (i) apply the funds in the Lease Termination Payment Reserve to pay down the principal balance of the Loan subject to a pre-payment penalty equal to "Required Yield Maintenance" as defined in the Note, or
 - (ii) continue to hold the Lease Termination Payment Reserve as additional security for the Loan throughout the remaining loan term, with any interest accruing thereon remaining in and becoming part of the Lease Termination Payment Reserve.

EXHIBIT C

(Modifications To Security Instrument)

C-1. Construction of the Security Instrument. In the event of any conflict between and provisions of this Exhibit C to this Security Instrument and any other part of this Security Instrument, the terms and provisions of this Exhibit C to this Security Instrument shall govern and control.

C-2. Borrower Specific Provisions. The following amendments are hereby made to this Security Instrument:

Intentionally Omitted.

C-3. State Specific Provisions. Notwithstanding anything to the contrary elsewhere in this Security Instrument, the following shall apply:

1. The word "W I T N E S S E T H:" on the first page of this Security Instrument shall be deleted:

2. The first paragraph after the word "W I T N E S S E T H:" on the first page of this Security Instrument is hereby deleted and replaced with the following:

"Borrower does hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Lender, all of the following described property, whether now owned or hereafter acquired (collectively the "Property"):"

3. Section 4.2 is hereby amended by adding the following at the end thereof:

"Borrower hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed, by registered or certified mail, to it at the address set forth above in the first paragraph of this Security Instrument."

4. Section 5.4 is hereby amended by adding the following at the end thereof:

"Lender may, from time to time, by written instrument executed and acknowledged by Lender, mailed to Borrower and recorded in the county in which the Land is located, and by otherwise complying with the provisions of the applicable law of the State of Nebraska, substitute a successor or successors to the Trustee named herein or acting hereunder."

5. Section 3.1(e) is hereby amended by adding the following at the end thereof:

"Should Lender elect to foreclose by exercise of the Power of Sale herein contained, Lender shall notify Trustee and shall deposit with Trustee this Security Instrument and the Note and such receipts and evidence of expenditures made and

secured hereby as Trustee may require. Upon receipt of such notice from Lender, Trustee shall cause to be recorded, published, and delivered to Borrower such Notice of Default and Notice of Sale as then required by law and this Security Instrument. Trustee shall, without demand on Borrower, after such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Land at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Borrower, Trustee and Lender, may purchase at such sale and Borrower hereby covenants to warrant and defend the title of such purchaser or purchasers.”

6. The following Section 4.19 is hereby added to this Security Instrument after Section 4.18:

“4.19 Reconveyance by Trustee. Upon written request of Lender stating that all sums secured hereby have been paid, and upon surrender of this Security Instrument and the Note to Trustee for cancellation and retention, and upon payment by Borrower of Trustee’s fees, Trustee shall reconvey to Borrower, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as “the person or persons entitled thereto”.”

EXHIBIT D

(Bankruptcy Remote Provisions)

D-1. Covenants with Respect to Indebtedness; Operations and Fundamental Changes of Borrower. Borrower represents, warrants and covenants as of the date hereof and until such time as the Debt is paid in full, that Borrower:

- (a) does not own and will not own any asset (whether encumbered or not) other than (i) the Property, and (ii) incidental personal property necessary for the operation of the Property;
- (b) is not engaged and will not engage in any business other than the ownership, management and operation of the Property;
- (c) will not enter into any contract or agreement with any general partner, principal, member or affiliate of Borrower or any affiliate of any such general partner, principal, or member of Borrower, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than an affiliate;
- (d) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Debt, and (ii) trade payables or accrued expenses incurred in the ordinary course of business of operating the Property; no debt whatsoever may be secured (senior, subordinate or pari passu) by the Property;
- (e) has not made and will not make any loans or advances to any third party (including any general partner, principal, member or affiliate of Borrower, or any guarantor);
- (f) is and will be solvent and pay its debts from its assets as the same shall become due;
- (g) has done or caused to be done and will do all things necessary to preserve its existence and corporate, limited liability company and partnership formalities (as applicable), and will not, nor will any partner, limited or general, or member or shareholder thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, certificate or articles of incorporation or organization, or by-laws or operating agreement or regulations, in a manner which adversely affects Borrower's, existence as a single-purpose, single-asset "bankruptcy remote" entity;
- (h) will conduct and operate its business as presently conducted and operated;

- (i) will maintain books and records and bank accounts separate from those of its affiliates, including its general partners, principals and members;
- (j) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any general partner, principal, member or affiliate);
- (k) will file its own tax returns;
- (l) will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (m) will not, nor will any shareholder, partner, member or affiliate, seek the dissolution or winding up, in whole or in part, of Borrower;
- (n) will not enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any entity;
- (o) will not commingle the funds and other assets of Borrower with those of any general partner, principal, member or affiliate, or any other person;
- (p) has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person;
- (q) has, and any general partner or operating member of Borrower has, at all times since its formation, observed all legal and customary formalities regarding its formation and will continue to observe all legal and customary formalities;
- (r) does not and will not hold itself out to be responsible for the debts or obligations of any other person;
- (s) upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Borrower shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. 105 or any other provision of the Act, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against any guarantor or indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

D-2. Sale of the Property. In connection with any transfer of the Property and an assumption of Loan by a buyer thereof (the "**Buyer**"):

- (a) The Buyer and such constituent partners, members or shareholders of Buyer (as the case may be), as Lender may require, shall be single-purpose, single-asset "bankruptcy remote" entities, whose formation documents shall be approved by counsel to Lender; and
- (b) The Buyer, if required by Lender, shall furnish an opinion of counsel satisfactory to Lender and its counsel that the Buyer's formation documents provide for the matters described in Section D-2(a) above.