

018404

✓ COMPARED

Pottawattamie County, IA 2007-007484
Recorder John Sciortino
Book-Page: 2007-007484
File Time: 05/10/2007 @ 02:32:08 PM

R Fee 125⁰⁰

A Fee _____

T Tax _____



Recorder's Cover Sheet

Prepared By: Jeffrey J. Zissa, Esq.
Company: Akin Gump Strauss Hauer & Feld LLP
Address: 1700 Pacific Avenue
Dallas, TX 75201
Phone: (214) 969-2800

Taxpayer Information: Tierney Properties, LLC
Address: 1325 North 129th Circle
Omaha, NE 68154

X Return Document To: Spence Title Services
Address: 1905 Harney Street Ste 210
Omaha, NE 68102
Telephone Number: (402)345-8844

Legal Description: See attached Exhibit A

TA-53595

COMPARED

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Akin Gump Strauss Hauer & Feld LLP
1700 Pacific Avenue
Suite 4100
Dallas, Texas 75201-4675
ATTN: Jeffrey J. Zissa, Esq.

Space above this line for recorder's use only

CW Loan No. 06-4727/Note ID 9641
SHADOW PARK APARTMENTS

\$1,227,500.00	5/10/2007	6/8/2017	06-4727
Loan Amount	Closing Date	Maturity Date	Loan No.

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage"), dated as of the Closing Date set forth above, is made by TIERNEY PROPERTIES, L.L.C., a Nebraska limited liability company ("Mortgagor"), having an address of 1325 North 129th Circle, Omaha, Nebraska 68154, Facsimile No.: (402) 493-4613, in favor of COUNTRYWIDE COMMERCIAL REAL ESTATE FINANCE, INC., a California corporation (together with its successors and assigns, "Mortgagee") , having an address of 2701 N. Dallas Parkway, Suite 200, Plano, Texas 75093, Attention: CRF Asset Management, Facsimile No.: (972) 312-9576.

NOTICE: This Instrument secures credit in the amount of \$1,227,500.00. Loans and Advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

**ARTICLE 1
GRANT AND ASSIGNMENT**

In consideration of the making of a loan by Mortgagee to Mortgagor in the original principal amount of the Loan Amount set forth above (the "Loan") evidenced by that certain Promissory Note dated as of the date hereof (the "Note"), for the purpose of securing the payment of the principal amount of the Loan from time to time (the "Principal Indebtedness"), all interest thereon, and all other sums due and payable, and the performance of all obligations owing by Mortgagor under, all documents executed in connection with the Loan (as amended, the "Loan Documents") (all such amounts, including the Principal Indebtedness, are referred to as the "Indebtedness"), and all obligations of Mortgagor thereunder (collectively with the Indebtedness, the "Loan Obligations"), Mortgagor hereby irrevocably grants, conveys, assigns, transfers,

mortgages, and pledges (as applicable) to Mortgagee, its successors and assigns, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Mortgagor's right, title and interest in and to the following property, rights, and interests, whether now existing or hereafter coming into existence (collectively, the "Property"): (i) the land described in Exhibit A attached hereto (the "Land"); (ii) the reserve accounts described in Section 3.1 (together with all cash and instruments held therein, and all interest and other property receivable in respect thereof); (iii) all easements, rights-of-way, sewer, water, air, mineral and development rights, and all other appurtenant rights (including reversions and remainders) relating to the Land; (iv) all contract, warranty, and guaranty rights of Mortgagor; (v) all improvements on the Land ("Improvements"); (vi) all licenses, registrations, permits, approvals and certificates relating to the Property; (vii) all leases and other use or occupancy agreements affecting the Property (and any guarantees thereof) ("Leases"); (viii) all rents, receipts, issues, income, royalties, profits, revenues, proceeds, bonuses, deposits, payments, damages, fees and other sums receivable with respect to the Property ("Rents"); (ix) all fixtures, appliances, machinery, furniture, furnishings, decorations, tools, supplies, beds, linens, radios, televisions, carpeting, telephones, cash registers, computers, office equipment, lamps, glassware, restaurant and kitchen equipment, building equipment, heating, lighting, incinerating, waste removal and power equipment, engines, pipes, tanks, motors, conduits, switchboards, security and alarm systems, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, washing machines, dryers, stoves, refrigerators, ventilating, and communications apparatus, air cooling and air conditioning apparatus, escalators, elevators, ducts, and compressors, materials and supplies, and all additions, replacements, parts, fittings, accessions, attachments, accessories, modifications and alterations of any of the foregoing; (x) Mortgagor's accounts, deposit accounts, equipment, instruments (including all writings evidencing a right to the payment of money), inventory, general intangibles (including all intangible personal property, choses in action, settlements, judgments, refunds of real estate taxes and assessments, copyrights, trademarks, and patents, and all applications for any of the foregoing), payment intangibles, supporting obligations, tangible and/or electronic chattel paper, commercial tort claims, documents, goods, investment property, letter of credit rights, and software (each as defined in the UCC); (xi) all cash and non-cash, movable and immovable, tangible and intangible proceeds (as defined in the UCC) from the Property; and (xii) all other rights or property which is or hereafter may become subject to a lien in favor of Mortgagee pursuant to any Loan Document. "UCC" means the Uniform Commercial Code in effect in the jurisdiction in which the Property is located.

TO HAVE AND TO HOLD the Property and all parts thereof unto and to the use and benefit of Mortgagee, its successors and assigns forever.

ARTICLE 2 SECURITY AGREEMENT AND FIXTURE FILING

This Mortgage is intended to be and shall be effective as a security agreement and "fixture filing" under the UCC with respect to any Property as to which a security interest can be created or perfected under the UCC, now existing or hereafter coming into existence, and all substitutions replacements, renewals and additions to and all products and proceeds of the foregoing (collectively, the "Security Interest Property"). This Mortgage shall constitute a financing statement under the UCC with Mortgagor, as debtor, and Mortgagee, as secured party. To the extent permitted by law, Mortgagor hereby authorizes Mortgagee to file financing and continuation statements necessary to continue the lien of and security interest evidenced by this Mortgage with respect to the Security Interest Property (and Mortgagor hereby confirms that Mortgagee is a person entitled to file a record, and that Mortgagor has authorized all such filings, within the meaning of Section 9-509 of the UCC). The principal places of business and mailing addresses of Mortgagor, as debtor, and Mortgagee, as secured party, respectively, are as set forth in Section 9.5 below. Mortgagor's location, for purposes of Section 9-307 of the UCC, is Mortgagor's state of organization as set forth in the first paragraph hereof. Information relative to the security interest created hereby may be obtained by application to Mortgagee. Mortgagor is a "registered organization" within the meaning of the Uniform Commercial Code in effect in the State where Mortgagor is organized, and Mortgagor's organizational identification number issued by such State is set forth under its signature hereto.

ARTICLE 3
RESERVE ACCOUNTS

3.1. Establishment. On the date hereof, Mortgagee shall establish the following accounts:

(a) an account into which Mortgagor shall deposit the following: (i) on the date hereof, with respect to property taxes and assessments, an amount sufficient after consideration of the applicable monthly payments required in clause (ii) hereof, to enable payment of property taxes and assessments thirty (30) days prior to their due date and with respect to insurance premiums, an amount sufficient, after consideration of the applicable monthly payments required in clause (ii) hereof, to enable payment of insurance premiums thirty (30) days prior to their due date; and (ii) beginning on the first Payment Date (as defined in the Note) and on each Payment Date thereafter, the amount reasonably estimated by Mortgagee to be one-twelfth (1/12th) of the annual amount of property taxes and assessments, and insurance premiums for policies required pursuant to this Mortgage. Mortgagee may re-calculate the foregoing monthly amounts from time to time to assure that funds are reserved in amounts sufficient to enable the payment of property taxes and assessments and insurance premiums thirty (30) days prior to their respective due dates). Mortgagee shall make payments of property taxes and assessments and insurance premiums out of such account before the same shall be delinquent to the extent that there are funds available therein and Mortgagee has received appropriate documentation to establish the amount(s) due and the due date(s) as and when provided above;

(b) an account into which Mortgagor shall deposit **\$0.00** on the date hereof, which amounts shall be used for payment of costs incurred by Mortgagor in connection with any deferred maintenance or remediation required pursuant to Section 4.13;

(c) an account into which Mortgagor shall deposit **\$600.00** beginning on the first Payment Date and on each Payment Date thereafter (which amount shall be increased by two percent (2%) on each anniversary of the date hereof), which amounts shall be used for payment of costs incurred by Mortgagor in connection with capital improvements to the Property approved by Mortgagee. Notwithstanding anything hereinabove to the contrary, at such time as the deposits made by Mortgagor to cover the costs incurred by Mortgagor in connection with capital improvements to the Property approved by Mortgagee have accumulated such that Mortgagee holds an amount directly allocated to cover such costs equal to or exceeding **\$28,800.00** (hereinafter the "Replacement Reserves Capped Amount") then, so long as no Event of Default has occurred under any of the Loan Documents, Mortgagor's obligation to deposit and pay to Mortgagee the monthly amount of **\$600.00** shall be temporarily suspended. At such time as the balance of the escrowed funds held by Mortgagee specifically allocated to capital improvements to the Property approved by Mortgagee falls below the Replacement Reserves Capped Amount, Mortgagor's obligation to make said monthly deposits shall be reinstated beginning with the Payment Date specified in the Note which immediately succeeds the reduction of the escrowed funds below the Replacement Reserves Capped Amount. This process shall be repeated anytime the balance reaches or falls below the Replacement Reserves Capped Amount; and

(d) an account into which Mortgagor shall deposit **\$0.00** beginning on the first Payment Date and on each Payment Date thereafter, and any lease termination or similar payment paid pursuant to any Lease within two (2) business days after Mortgagor receives the same. All sums in such account shall be used for payment of tenant improvement expenses and leasing commissions incurred by Mortgagor in connection with replacing tenants at the Property pursuant to Leases approved (or deemed approved) pursuant to this Mortgage.

3.2. Reserve Accounts Generally. Each of the reserve accounts described in Section 3.1 shall be a custodial account established by Mortgagee, shall not constitute a trust fund, and may be commingled with other money held by Mortgagee or its servicer. Mortgagor acknowledges and agrees that such accounts are subject to the sole dominion, control and discretion of Mortgagee, its authorized agents or designees, subject to the terms hereof. Mortgagor shall not have the right to make any withdrawal from any such account. Notwithstanding anything to the contrary contained herein, if an Event of Default has

occurred and is continuing, any amounts deposited into or remaining in any such account may be applied in any manner as Mortgagee may elect in Mortgagee's discretion. Mortgagor shall not be entitled to any earnings or interest on funds deposited into any of such accounts.

3.3. Disbursements. Not more frequently than once in any 30-day period, and provided that no Event of Default has occurred and is continuing, Mortgagor may request in writing that Mortgagee release to Mortgagor funds from one or more of the accounts described in Sections 3.1(b), (c) or (d) to the extent funds are available therein, for payment of costs incurred by Mortgagor in connection with the expenses for which such account is maintained. Together with each such request, Mortgagor shall furnish Mortgagee with copies of bills and other documentation reasonably required by Mortgagee to establish that such costs are reasonable and are substantially in accordance with market rates, that the work relating thereto has been completed and that such amounts are then due or have been paid. Mortgagee shall approve or disapprove such request within ten (10) Business Days after Mortgagee's receipt of such request and, if approved, Mortgagee shall release the funds to Mortgagor or Mortgagor's designee within ten (10) Business Days after Mortgagee's approval.

ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS OF MORTGAGOR

4.1. Mortgagor and the Loan Documents. Mortgagor is duly organized and validly existing in good standing under the laws of the State of its formation, and is duly qualified to do business in the State where the Property is located. The execution and delivery by Mortgagor of the Loan Documents have been duly authorized by all requisite action on the part of Mortgagor. There are no actions, suits or proceedings at law or in equity by or before any governmental authority or other agency now pending and served or, to Mortgagor's knowledge, threatened, involving or concerning Mortgagor, any person or entity executing a guaranty or indemnity in connection with the Loan (collectively, "Guarantor"), or the Property.

4.2. The Property. Except as disclosed in the engineering report(s) and survey(s) delivered to Mortgagee in connection with the Loan, or in Mortgagee's title insurance policy, to Mortgagor's knowledge, the Property (a) and the present use thereof comply in all material respects with all applicable laws, (b) is not the subject of a pending or proposed condemnation or special or other assessments for public improvements or otherwise, (c) has adequate rights of access to public ways and is served by all utilities required for the current use thereof, (d) is comprised of one or more parcels which constitute separate tax lot(s) and none of which constitutes a portion of any other tax lot, (e) is not located in a flood hazard area as designated by the Federal Emergency Management Agency, and (f) is free of material structural defects, and all building systems contained therein are in good working order in all material respects (subject to ordinary wear and tear).

4.3. Liens. Mortgagor owns good, indefeasible, marketable and insurable title to the Property, free and clear of all liens and encumbrances, other than (a) the lien created by the Loan Documents, (b) all liens, encumbrances, and other matters disclosed in the title insurance policy insuring this Mortgage, or any part thereof which have been approved by Mortgagee, and (c) liens, if any, for taxes not yet due or delinquent. The Mortgage creates a valid and enforceable first lien on and first priority security interest in the Property, subject only to the foregoing permitted liens and encumbrances.

4.4. Compliance with Anti-Terrorism Laws. Mortgagor, Guarantor, Mortgagor's property manager, and to the best of Mortgagor's knowledge, after having made reasonable inquiry, each person or entity owning a direct or indirect interest in Mortgagor, Guarantor, such property manager (if an affiliate of Mortgagor) is not currently identified on the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control (currently is accessible through the internet website at www.treas.gov/ofac/t11sdn.pdf.) or any other similar restricted list and is not a person or entity subject to any other trade restriction or prohibition.

4.5. ERISA. Neither Mortgagor nor any affiliate thereof nor any holder of direct or indirect equity interest therein is, maintains, has any obligation to contribute to, has any direct or indirect liability with respect to, or has any assets the constitute, any "employee benefit plan," "multiemployer plan," "governmental plan," any other "plan" (within the meaning of Employee Retirement Income Security Act of 1974, as amended or re-codified from time to time, and the regulations promulgated thereunder, or the Internal Revenue Code of 1986, as amended, and any successor statutes thereto) or "plan assets" (within the meaning of 29 C.F.R. Section 2510.3-101 or otherwise). Mortgagor shall take or refrain from taking, as the case may be, such actions as may be necessary to cause the representations and warranties in this Section 4.5 to remain true and accurate throughout the term of the Loan.

4.6. Foreign Person. Mortgagor is not a "foreign person" within the meaning of § 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and any successor statutes thereto.

4.7. Full and Accurate Disclosure. No statement of fact made by or on behalf of Mortgagor in the Loan Documents or in any other document or certificate delivered to Mortgagee by Mortgagor contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading.

4.8. Taxes. Except to the extent that Mortgagee is obligated to pay taxes, assessments and insurance premiums pursuant to the terms of Section 3.1(a), Mortgagor shall pay all taxes, assessments, charges, excises, levies, duties, imposts, dues, common area charges, and fees of every character imposed by any governmental authority or other person or entity in respect of the Property, Mortgagor, this Mortgage or any other Document, and all premiums for insurance required hereunder in accordance with the terms hereof, including taxes arising from the passage of any laws governing the taxation of mortgages or notes or the manner of collecting such taxes so as to adversely affect Mortgagee, this Mortgage, or the lien hereof. If Mortgagor fails to make such prompt payment or if, in the reasonable opinion of Mortgagee, any such law prohibits Mortgagor from making such payment or would penalize Mortgagee if Mortgagor makes such payment or if, in the reasonable opinion of Mortgagee, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the entire balance of the Loan Obligations shall, at the option of Mortgagee, become due and payable on the date that is one hundred twenty (120) days after the later of the passage of such law or the date Mortgagee provides written notice to Mortgagor of its exercise of its option to accelerate the due date as provided herein; provided, however, that any such prepayment made under this Section 4.8 shall be made without the payment of any Yield Maintenance Premium (as defined in the Note).

4.9. Compliance with Laws. Mortgagor shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises necessary for the conduct of its business and comply in all respects with all applicable laws and private covenants, conditions and restrictions that at any time apply to Mortgagor or the Property.

4.10. Maintenance; Alterations. Mortgagor shall at all times keep the Property in good repair, working order and condition, except for reasonable wear and use. Mortgagor shall not permit the Property to be removed or demolished or otherwise altered. Mortgagor may not, without Mortgagee's approval (which approval shall not be unreasonably withheld), perform alterations to the Property that exceed \$25,000.

4.11. Fundamental Changes. Without Mortgagee's prior written consent (which shall not be unreasonably withheld), Mortgagor will not change (a) the current property manager for the Property, (b) its chief executive office or the jurisdiction in which it is organized, or (c) the Property's use or zoning. Either (i) there is no management agreement in effect with respect to, and no property management fee is or will be payable in connection with, the management of the Property, the Property is managed solely by at will employees of Mortgagor or by the tenant under the Lease, as applicable, and no manager shall be retained or appointed without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld), or (ii) Mortgagor has caused any such manager of the property to execute Mortgagee's form of consent and subordination agreement.

4.12. Financial and Other Reporting; Inspections. Mortgagor shall furnish to Mortgagee the following reports: (a) within ninety (90) days following the end of each fiscal year of Mortgagor, and (b) within twenty (20) days following the end of each calendar quarter, a true, complete, correct and accurate copy of Mortgagor's unaudited financial statement for such period, including a statement of and a balance sheet and rent roll/occupancy report. Mortgagor shall furnish to Mortgagee, within ten (10) Business Days after request, such further information with respect to Mortgagor and the operation of the Property as may be reasonably requested by Mortgagee. All financial statements and other documents to be delivered pursuant to this Mortgage shall (i) be in form and substance acceptable to Mortgagee in Mortgagee's reasonable discretion, and (ii) be certified by Mortgagor as being complete and accurate in all material respects. Mortgagor shall permit agents, representatives and employees of Mortgagee (at Mortgagee's cost and expense if no Event of Default has occurred), to inspect (y) the Property or any part thereof, and (z) such books, records and accounts of Mortgagor and to make such copies or extracts thereof as Mortgagee shall desire, in each case at such reasonable times as may be requested by Mortgagee upon reasonable advance notice, subject to the rights of tenants under Leases.

4.13. Deferred Maintenance and Environmental Remediation. Mortgagor shall perform the deferred maintenance work and environmental remediation to the Property itemized on Exhibit B hereto within the time periods set forth on said Exhibit B.

4.14. Single-Purpose Entity. Mortgagor shall (a) not engage in any business unrelated to the ownership, management, leasing, financing and operation of the Property, (b) not own any asset or property other than the Property and incidental personal property necessary for the ownership, management, leasing, financing and operation thereof, (c) not incur, create, assume, allow to exist, become or be liable in any manner with respect to any other indebtedness or monetary obligations, except for the Indebtedness and unsecured trade payables in the ordinary course of business relating to the ownership and operation of the Property which (i) do not exceed, at any time, a maximum amount of two percent (2%) of the Principal Indebtedness and (ii) are paid within sixty (60) days of the date incurred, (d) maintain its books, records, financial statements, accounting records, bank accounts and other entity documents in its own name and separate from any other person or entity, and (e) hold itself out to the public as a legal entity under its own name separate and distinct from any other person or entity.

4.15. Transfer. Mortgagor will not allow any Transfer of the Property or any direct or indirect equity interest in Mortgagor to occur other than the following Transfers (in each case provided that no Event of Default then exists): (a) Transfers of direct or indirect equity interests in Mortgagor which in the aggregate during the term of the Loan do not exceed forty-nine percent (49%) of the total direct or indirect legal or beneficial ownership interests in Mortgagor, and (ii) do not result in a change in control of Mortgagor; (b) Transfers of (i) more than forty-nine percent (49%) of the total direct or indirect equity interests in Mortgagor, or (ii) all or substantially all of the Property, in each case to another party, provided that in each case with respect to clauses (i) and (ii), (A) Mortgagor shall pay to Mortgagee a transfer fee in the amount of one percent (1%) of the Principal Indebtedness, (B) the transferee and replacement guarantors shall be reasonably approved by Mortgagee, (C) Mortgagor, Guarantor, and the transferee and replacement guarantors shall execute and deliver any and all documentation as may be reasonably required by Mortgagee (including assumption documents, opinions, and title endorsements) in form and substance reasonably satisfactory to Mortgagee, and (D) Mortgagor pays all reasonable expenses incurred by Mortgagee in connection with such Transfer, including Mortgagee's reasonable attorneys fees and expenses; (c) Transfers of a direct or indirect ownership interest in Mortgagor by devise or bequest, operation of law upon the death of a natural person, or directly or in trust or conservatorship, in each case to or for the benefit of immediate family members of such interest holder, provided that if such Transfer would result in a change of control of Mortgagor, Mortgagor shall have obtained Mortgagee's consent to such transfer within thirty (30) days after such Transfer, which consent shall not be unreasonably withheld. For purposes hereof, (A) "Transfer" means any conveyance, transfer, sale, Lease, assignment, pledge, mortgage, grant in trust, security interest, easement, lien or encumbrance, whether by operation of law or otherwise, (B) "control" means the power to direct the management and policies of a person or entity, and (C) "immediate family members" means the spouse, children and grandchildren and any lineal descendants.

ARTICLE 5
INSURANCE, CASUALTY, CONDEMNATION AND RESTORATION

5.1. Types of Insurance. At all times during the term of the Loan, Mortgagor shall maintain, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, the following policies of insurance: (a) Insurance against any peril included within the classification "All Risks of Physical Loss" with extended coverage in amounts at all times sufficient to prevent Mortgagor from becoming a co-insurer within the terms of the applicable policies, but in any event such insurance shall be maintained in an amount equal to the full insurable value of the Property (and in all cases where any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses under applicable laws, the policy referred to in this Section 5.1(a) must include "Ordinance and Law Coverage" in form and amount of coverage reasonably acceptable to Mortgagee); (b) comprehensive general liability insurance with a combined limit of not less than \$2,000,000 in the aggregate and \$1,000,000 per occurrence, plus \$1,000,000 umbrella coverage, plus motor vehicle liability coverage for all owned and non-owned vehicles (including rented and leased vehicles) containing minimum limits per occurrence, including umbrella coverage, of \$1,000,000; (c) statutory workers' compensation insurance; (d) business interruption and/or loss of "rental value" insurance for the Property in an amount equal to twelve (12) months estimated gross Rents attributable to the Property and based on gross Rents for the immediately preceding year and otherwise sufficient to avoid any co-insurance penalty, together with an extended period of indemnity endorsement which provides that after the physical loss to the Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; (e) If all or any portion of the Property is located within a federally designated flood hazard zone, flood insurance in an amount equal to the maximum allowed under the related federal flood insurance program; and (f) such other insurance with respect to the Property against loss or damage as requested by Mortgagee provided such insurance is of the kind for risks from time to time customarily insured against and in such amounts as are generally required by institutional lenders for properties comparable to the Property or which Mortgagee may deem necessary in its reasonable discretion.

5.2. General Insurance Requirements. Mortgagor agrees that all insurance policies shall: (a) be in such form and with such endorsements and in such amounts as may be satisfactory to Mortgagee; (b) name Mortgagee as an additional insured/loss payee and provide that all insurance proceeds be payable to Mortgagee; (c) contain a "Non Contributory Standard Mortgagee Clause," (d) shall provide for an aggregate deductible per loss for all policies not in excess of \$10,000.00; (e) contain a provision that such policies shall not be canceled or amended in any adverse manner, including any amendment reducing the scope or limits of coverage, without at least thirty (30) days prior notice to Mortgagee in each instance; and (f) be issued by companies acceptable to Mortgagee and with a claims paying ability of not less than "BBB" or its equivalent by Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., or "A : VIII" or its equivalent by A.M. Best, and that are authorized to issue insurance in the state where the Property is located. The insurance coverage required under Section 5.1 may be effected under a blanket policy or policies covering the Property and other property and assets not constituting a part of the Property; provided that any such blanket policy shall provide coverage in an amount and scope which is at least equal to what would be provided if the required coverage was purchased on an individual basis and which shall in any case comply in all other respects with the requirements of this Article 5. The insurance required under Sections 5.1(a) and (d) above shall cover perils of terrorism and acts of terrorism and Mortgagor shall maintain commercial property insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under said Sections at all times during the term of the Loan. Notwithstanding the foregoing, for so long as the Terrorism Risk Insurance Act of 2002 is in effect (including any extensions), Mortgagee shall accept terrorism insurance which covers against "covered acts" as defined therein. In the event of foreclosure of the lien of this Mortgage or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Indebtedness, all right, title and interest of Mortgagor in and to all policies of casualty insurance covering all or any part of the Property shall inure to the benefit of and

pass to the successors in interest to Mortgagee or the purchaser or grantee of the Property or any part thereof.

5.3. Certificates of Insurance and Delivery of Policies. Upon Mortgagee's request, certified copies of all insurance policies required pursuant to this Article 5 shall be promptly delivered to Mortgagee (except for blanket policies as to which certificates of same only need to be provided). Certificates of insurance with respect to all renewal and replacement policies shall be delivered to Mortgagee not less than ten (10) days prior to the expiration thereof, which certificates shall bear notations evidencing payment of applicable premiums. If Mortgagor fails to maintain and deliver to Mortgagee the certificates of insurance required by this Mortgage, Mortgagee may, at its option, after notice to Mortgagor, procure such insurance, and Mortgagor shall reimburse Mortgagee for the amount of all premiums paid by Mortgagee thereon promptly, after demand by Mortgagee, with interest thereon at the Default Rate from the date paid by Mortgagee to the date of repayment, and such sum shall be a part of the Indebtedness secured by the Loan Documents. Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or the carriers' or Mortgagor's payment or defense of lawsuits, and Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto. Mortgagor represents that no claims have been made under any of such insurance policies, and no party, including Mortgagor, has done, by act or omission, anything which would impair the coverage of any of such insurance policies.

5.4. Proceeds. Mortgagee shall be entitled to receive and collect, and to participate in any adjustment or settlement of, all awards, compensation, reimbursement, damages, proceeds, settlements, and other payments or relief arising from (a) insurance policies maintained by or on behalf of Mortgagor, or (b) any temporary or permanent taking/condemnation of all or part of the Property. Mortgagor shall not adjust or settle any such claims without the prior written approval of Mortgagee. Mortgagor shall instruct and cause the issuer of each insurance policy and any applicable governmental authority to deliver all such sums to Mortgagee. Notwithstanding the foregoing, if such proceeds, less the amount of Mortgagee's costs (including reasonable attorneys' fees) incurred in collecting the same, are \$25,000 or less, provided no Event of Default then exists, Mortgagee shall disburse such proceeds to Mortgagor. Provided no Event of Default then exists, all business interruption insurance proceeds and temporary condemnation proceeds (less such Mortgagee costs) shall be disbursed monthly to Mortgagor based on Mortgagee's good faith estimate of the number of months required for Mortgagor to restore the damage caused such casualty or replace the cash flow interrupted by such temporary condemnation, as applicable. Unless Mortgagor satisfies (or Mortgagee waives, in its sole discretion) the conditions set forth in Section 5.5, Mortgagee may, at its option, apply all insurance or condemnation proceeds to the full or partial payment or prepayment of the Indebtedness (provided, so long as no Event of Default then exists, no Yield Maintenance Premium shall be due in connection therewith).

5.5. Restoration and Repair. Mortgagor shall restore and repair the Property or any part thereof now or hereafter damaged or destroyed by any casualty or affected by any condemnation regardless as to whether insurance or condemnation proceeds are available. Mortgagee agrees to make insurance and condemnation proceeds (other than business interruption insurance and temporary taking proceeds, which shall be held and disbursed as provided in Section 5.4) available to Mortgagor for Mortgagor's restoration and repair of the Property affected by the casualty or condemnation on the following terms and conditions (provided that Mortgagee shall have the right to waive any of the following conditions in its sole discretion): (a) no Event of Default shall then exist; (b) the Property shall be capable of being restored (including replacements) to substantially the same condition, utility, quality and character as existed immediately prior to such casualty or condemnation in all material respects with a fair market value and projected cash flow equal to or greater than prior to such casualty or condemnation; (c) Mortgagor shall demonstrate to Mortgagee's reasonable satisfaction Mortgagor's ability to pay the Indebtedness coming due during such repair or restoration period (including from business interruption insurance proceeds); (d) the actual or constructive loss to the fair market value of the Property is less than fifty percent (50%) from a casualty or ten percent (10%) from a condemnation (and less than ten

percent (10%) of the Land is condemned, such condemned Land is located along the perimeter or periphery of the Property, and no portion of the Improvements is the subject of such condemnation); (e) If requested by Mortgagee, Mortgagor shall deliver and collaterally assign to Mortgagee (pursuant to documents acceptable to Mortgagee): (i) an architect's contract with an architect reasonable acceptable to Mortgagee and complete plans and specifications for the restoration or repair of the Property lost or damaged; (ii) fixed-price or guaranteed maximum cost construction contracts with contractors reasonable acceptable to Mortgagee for completion of the restoration or repair work in accordance with the aforementioned plans and specifications; (iii) such additional funds (if any) as are necessary from time to time, in Mortgagee's reasonable opinion, to complete the restoration or repair (which funds shall be held by Mortgagee as additional collateral securing the Indebtedness and shall be disbursed, if at all, pursuant to this Article 5); and (iv) copies of all permits and licenses necessary to complete the restoration or repair in accordance with the plans and specifications and all applicable laws; (f) Mortgagor shall commence such work within one hundred twenty (120) days after such casualty or condemnation and shall diligently pursue such work to completion; (g) the restoration or repair can be completed on or before the earliest to occur of (i) six (6) months prior to the Maturity Date, (ii) such time as may be required under applicable law in order to repair and restore the Property to the condition it was in immediately prior to such casualty or such condemnation, and (iii) six (6) months prior to the expiration of any business insurance coverage; and (h) the Property and the use thereof after the restoration or repair will be in compliance with all applicable laws. Provided no Event of Default then exists, and the restoration or repair of the Property has been completed in accordance with this Mortgage, the balance of any insurance or condemnation proceeds available to Mortgagor not used for such restoration or repair shall be paid to Mortgagor.

5.6. Disbursement. Each disbursement by Mortgagee of such insurance and condemnation proceeds shall be funded subject to conditions and in accordance with disbursement procedures which a commercial construction lender would typically establish in the exercise of sound banking practices, including requiring lien waivers and any other documents, instruments or items which may be reasonably required by Mortgagee.

ARTICLE 6 EVENTS OF DEFAULT; REMEDIES

6.1. Event of Default. The occurrence of one or more of the following events shall be an "Event of Default" hereunder: (a) if Mortgagor fails to (i) make any scheduled payment of principal, interest, or amounts due under Article 3 on any Payment Date, or (ii) pay any other amount payable pursuant to the Loan Documents within five (5) days after written notice from Mortgagee; (b) if Mortgagor fails to pay the outstanding Indebtedness on the Maturity Date; (c) the occurrence of the events identified elsewhere in this Mortgage or the other Loan Documents as constituting an "Event of Default" hereunder or thereunder; (d) the occurrence of a non-permitted Transfer (as defined in Section 4.15); (e) if any representation or warranty made herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished by Mortgagor in connection with this Mortgage or any other Loan Document shall be false in any material respect as of the date such representation or warranty was made or remade; (f) if Mortgagor or Guarantor (i) makes an assignment for the benefit of creditors, (ii) has a receiver, liquidator or trustee appointed for it, (iii) is adjudicated as bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law or any similar federal or state law shall be filed by or against, consented to, solicited by, or acquiesced in by it, or (iv) has any proceeding for its insolvency, dissolution or liquidation instituted against it; provided, however, that if such action described in clauses (f)(i) through (f)(iv) was involuntary and not consented to by Mortgagor or Guarantor, as applicable, the same shall not be an Event of Default unless the same is not discharged, stayed or dismissed within ninety (90) days after the filing or commencement thereof; (g) the failure of Mortgagor to maintain the insurance required pursuant to Article 5; (h) if any guaranty given in connection with the Loan shall cease to be in full force and effect or any guarantor shall deny or disaffirm its obligations thereunder; or (i) a default shall be continuing under any of the other obligations, agreements, undertakings, terms, covenants, provisions or conditions of this Mortgage not otherwise referred to in this Section 6.1, or under any other Loan Document, for thirty (30) days after notice to Mortgagor (and Guarantor, if applicable) (unless otherwise provided herein or in such

other Loan Document); provided, however, that if such default under this clause (i) is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Mortgagor (or Guarantor, if applicable) shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Mortgagor (or Guarantor, if applicable) in the exercise of due diligence to cure such default, but in no event shall such period exceed ninety (90) days after the original notice.

6.2. Remedies. If an Event of Default shall have occurred, then:

(a) The entire Indebtedness and all other Loan Obligations shall, at the option of Mortgagee, become due and payable without notice or demand, time being of the essence; and any omission on the part of Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right. Notwithstanding anything contained to the contrary herein, the outstanding Indebtedness shall be accelerated and immediately due and payable, without any election by Mortgagee upon the occurrence of any of the actions described in Section 6.1(f).

(b) This Mortgage may, to the maximum extent permitted by law, be enforced, and Mortgagee may exercise any right, power or remedy permitted to it hereunder or under any of the other Loan Documents or at law or in equity, and, without limiting the generality of the foregoing, Mortgagee may, personally or by its agents, to the maximum extent permitted by law: (i) enter into and take possession of the Property or any part thereof, exclude Mortgagor and all persons or entities claiming under Mortgagor whose claims are junior to this Mortgage, wholly or partly therefrom, and use, operate, manage and control the Property or any part thereof either in the name of Mortgagor or otherwise as Mortgagee shall deem best, and (ii) personally or by agents, with or without entry: (A) invoke the power of sale and pursuant to the procedures prescribed by law as a result thereof, sell the Property (or adjourn such sale) or any part thereof, in such manner as required by law; (B) enforce Mortgagee's rights by suit for specific performance or for the foreclosure of this Mortgage and the sale of the Property or any part thereof under the judgment or decree of a court (provided that in the event of a sale of less than all of the Property this Mortgage shall continue as a lien on, and security interest in, the remaining Property; or (C) exercise any or all of the remedies available to a secured party under the UCC, including: (1) either personally or by means of a court appointed receiver, take possession of all or any of the Security Interest Property (as defined in Article 2) and exclude therefrom Mortgagor and all persons or entities claiming under Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to the Security Interest Property; (2) without further notice to or demand upon Mortgagor, make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Security Interest Property (and all expenses incurred in connection therewith shall become part of the Loan Obligations); (3) require Mortgagor to assemble and deliver the Security Interest Property to Mortgagee or its agent; (4) sell, lease or otherwise dispose of the Security Interest Property (and Mortgagee may be a purchaser at any such sale), provided, however, that Mortgagee may dispose of the Security Interest Property in accordance with Mortgagee's rights and remedies in respect of the Property pursuant to the provisions of this Mortgage in lieu of proceeding under the UCC; and (5) unless the Security Interest Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee, as the case may be, shall give Mortgagor at least ten (10) days prior notice of the time and place of any sale of the Security Interest Property or other intended disposition thereof, which notice Mortgagor agrees is commercially reasonable.

(c) Mortgagee, to the maximum extent permitted by law, shall be entitled, as a matter of right, to the appointment of a receiver of the Property, without notice or demand, and without regard to the adequacy of the security for the Loan Obligations or the solvency of Mortgagor. Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry and shall continue as such and exercise all such

powers until the date of confirmation of sale of the Property, unless such receivership is sooner terminated.

(d) In any sale under any provision of this Mortgage or pursuant to any judgment or decree of court, the Property, to the maximum extent permitted by law, may be sold in one or more parcels or as an entirety and in such order as Mortgagee may elect, without regard to the right of Mortgagor or any person or entity claiming under Mortgagor to the marshalling of assets.

6.3. Application of Proceeds. All proceeds of any repayment of or recoveries on the Loan shall be applied to pay the indebtedness in such order and in such manner as Mortgagee shall elect in Mortgagee's discretion. No sale or other disposition of all or any part of the Property pursuant to this Section 6.3 shall be deemed to relieve Mortgagor of its obligations under any Loan Document except to the extent the proceeds thereof are applied to the payment of such obligations. If the proceeds of sale, collection or other realization of or upon the Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Loan Obligations, Mortgagor shall remain liable for any deficiency, subject to Section 9.23.

6.4. Right to Sue. Mortgagee shall have the right from time to time to sue for any sums required to be paid by Mortgagor under the terms of this Mortgage as the same become due, without regard to whether or not the entire Loan Obligations shall be, or have become, due and without prejudice to the right of Mortgagee thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Event of Default existing at the time such earlier action was commenced.

6.5. Powers of Mortgagee. Mortgagee may at any time or from time to time renew or extend this Mortgage or (with the agreement of Mortgagor) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release or reconvey any portion of the Property or any other security, and grant such extensions and indulgences in relation to the Loan Obligations, or release any person or entity liable therefor as Mortgagee may determine without the consent of any junior lienor or encumbrancer, without any obligation to give notice of any kind thereto, without in any manner affecting the priority of the lien and estate of this Mortgage on or in any part of the Property, and without affecting the liability of any other person or entity liable for any of the Loan Obligations.

6.6. Remedies Cumulative. No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Mortgage, or under applicable law, whether now or hereafter existing; the failure of Mortgagee to insist at any time upon the strict observance or performance of any of the provisions of this Mortgage or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof. To the maximum extent permitted by law, Mortgagee shall be entitled to enforce payment and performance of any of the obligations of Mortgagor and to exercise all rights and powers under this Mortgage or under any Loan Document or any laws now or hereafter in force, notwithstanding that some or all of the Loan Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise.

6.7. Waivers. Mortgagor, for itself and all who may claim under it, hereby waives, to the maximum extent permitted by law, all (a) rights and equities of redemption from sale under the power of sale created hereunder or from sale under any foreclosure of this Mortgage, (b) notices of seizure, (c) rights to have the Property marshaled, to a sale in inverse order of alienation, or to require Mortgagee to pursue or exhaust its rights or remedies as against any other part of the Property or to have Mortgagee proceed in any particular order, (d) homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Loan Obligations, (e) rights to plead, or in any manner whatsoever claim or take any benefit or advantage of, any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Mortgage, and (f) rights to take or insist upon any benefit or

advantage of any present or future law providing for the valuation or appraisal of the Property or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 6.2.

6.8. No Assumption by Mortgagee. Except as otherwise expressly set forth in any Loan Document, Mortgagee will not be deemed in any manner to have assumed any liabilities or obligations relating to the Property or any portion thereof. Mortgagor agrees that the exercise by Mortgagee of one or more of its rights and remedies under this Mortgage shall in no way be deemed or construed to make Mortgagee a mortgagee-in-possession.

6.9. Discontinuance of Proceedings. If Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, power of sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred.

6.10. Mortgagee Appointed Attorney-In-Fact. Mortgagor hereby irrevocably and unconditionally constitutes and appoints Mortgagee as Mortgagor's true and lawful attorney-in-fact, with full power of substitution, at any time after the occurrence and during the continuance of an Event of Default to execute, acknowledge and deliver any documents, agreements or instruments and to exercise and enforce every right, power, remedy, option and privilege of Mortgagor under all Loan Documents, and do in the name, place and stead of Mortgagor, all such acts, things and deeds for and on behalf of and in the name of Mortgagor under any Loan Document, which Mortgagor could or might do or which Mortgagee may deem necessary or desirable to more fully vest in Mortgagee the rights and remedies provided for under the Loan Documents and to accomplish the purposes thereof. The foregoing powers of attorney are irrevocable and coupled with an interest.

6.11. Mortgagee's Right to Perform. If Mortgagor fails to perform any covenant or obligation contained herein for a period of five (5) Business Days after Mortgagor's receipt of notice thereof from Mortgagee, without in any way limiting Section 6.1, Mortgagee may, but shall have no obligation to, perform, or cause performance of, such covenant or obligation, and the expenses of Mortgagee incurred in connection therewith shall be payable by Mortgagor to Mortgagee upon demand, together with interest thereon at the Default Rate. Notwithstanding the foregoing, Mortgagee shall have no obligation to send notice to Mortgagor of any such failure.

ARTICLE 7 ENVIRONMENTAL PROVISIONS

7.1. Environmental Representations and Warranties. Mortgagor represents, warrants and covenants, as to itself and the Property, other than as disclosed to Mortgagee in the environmental report(s) delivered to Mortgagee in connection with the Loan, to Mortgagor's knowledge: (a) there are no hazardous substances or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with all environmental laws and with permits issued pursuant thereto and (ii) which do not require remediation; (b) there are no past, present or threatened releases of hazardous substances in, on, under, from or affecting the Property which have not been fully Remediated in accordance with environmental law; (c) there is no release or threat of any release of hazardous substances which has or is migrating to the Property; (d) there is no past or present non-compliance with environmental laws, or with permits issued pursuant thereto, in connection with the Property which has not been fully Remediated in accordance with environmental law; (e) Mortgagor does not know of, and has not received, any written or oral notice or other communication from any person or entity (including a governmental authority) relating to hazardous substances or the remediation thereof, of possible liability of any person or entity pursuant to any environmental law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Mortgagor has truthfully and fully provided to Mortgagee, in writing, any and all information relating to conditions in, on, under or from the Property that is known to Mortgagor and that is

contained in files and records of Mortgagor, including any reports relating to hazardous substances in, on, under or from the Property and/or to the environmental condition of the Property.

For purposes hereof, (A) "hazardous substance" means, without limitation, any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, toxic or hazardous wastes, toxic or hazardous substances, toxic or hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future environmental laws or that may have a negative impact on human health or the environment, including petroleum and petroleum products, mold or fungus, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives; (B) "environmental law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to hazardous substances, relating to liability for or costs of other actual or threatened danger to human health or the environment, including the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act; (C) "release", with respect to any hazardous substance, includes but is not limited to any presence, release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of hazardous substances; and (D) "remediation" includes but is not limited to any activity to (i) clean up, detoxify, decontaminate, disinfect, contain, treat, remove, respond to, correct, dispose of, transport, or otherwise remediate, prevent, cure or mitigate any release of any hazardous substance; any action to comply with any environmental laws or with any permits issued pursuant thereto; or (ii) inspect, investigate, study, monitor, assess, audit, sample, test, or evaluate any actual, potential or threatened release of hazardous substances.

7.2. Environmental Covenants. Mortgagor covenants and agrees that: (a) all uses and operations on or of the Property, whether by Mortgagor or any other person or entity, shall be in compliance with all environmental laws and permits issued pursuant thereto; (b) there shall be no hazardous substances used, present or released in, on, under or from the Property, except those that are (i) in compliance with all environmental laws and with permits issued pursuant thereto; (ii) fully disclosed to Mortgagee in writing; and (iii) which do not require remediation; (c) Mortgagor shall, at its sole cost and expense, (i) fully and expeditiously cooperate in all activities pursuant to Section 7.3, including providing all relevant information and making knowledgeable persons available for interviews, and (ii) effectuate remediation of any condition (including a release of a hazardous substance or violation of environmental laws) in, on, under or from the Property for which remediation is legally required; and (d) Mortgagor shall immediately upon Mortgagor becoming aware notify Mortgagee in writing of (A) any unlawful releases or threatened releases of hazardous substances in, on, under, from or migrating towards the Property; (B) any non-compliance with any environmental laws related in any way to the Property; (C) any actual or potential lien or encumbrance imposed on Mortgagor or the Property pursuant to any environmental law, whether due to any act or omission of Mortgagor or any other person; (D) any required remediation of environmental conditions relating to the Property; and (E) any written notice or other communication of which any Mortgagor becomes aware from any source whatsoever relating in any way to an actual or threatened release of hazardous substances in violation of environmental laws or the remediation thereof.

7.3. Environmental Cooperation and Access. In the event any indemnified party has a reasonable basis for believing that an environmental condition exists on the Property in violation of environmental laws, upon reasonable notice from Mortgagee, Mortgagor shall, at Mortgagor's sole cost and expense, promptly cause an engineer or consultant reasonably satisfactory to Mortgagee to conduct any environmental assessment or audit (the scope of which shall be determined in the sole and absolute

discretion of Mortgagee) and take any samples of soil, groundwater or other water, air, or building materials or any other invasive testing reasonably requested by Mortgagee and promptly deliver the results of any such assessment, audit, sampling or other testing; and provided, further, that the indemnified parties and any other person or entity designated by the indemnified parties, may at its option, enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use. For purposes hereof, "indemnified party" means each of Mortgagee, each of its affiliates and their respective successors and assigns, any person or entity who is or will have been involved with the servicing of the Loan, persons or entities who may hold or acquire or will have held a full or partial interest in the Loan (including the persons and entities described in Section 8.3 below, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), and the respective officers, directors, and employees, agents, affiliates, successors and assigns of any and all of the foregoing.

7.4. Environmental Indemnity. Mortgagor covenants and agrees, at its sole cost and expense, to protect, defend, indemnify, release and hold indemnified parties (as defined in Section 7.3) harmless from and against any and all Losses (as defined below) imposed upon or incurred by or asserted against any indemnified parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any past, present or threatened release of hazardous substances in, on, above, under, from or affecting the Property, or any remediation thereof; (b) the imposition, recording or filing or the threatened imposition, recording or filing of any lien or encumbrance encumbering the Property; (c) any misrepresentation or inaccuracy in any representation or warranty concerning hazardous substances; and (d) any breach of Sections 7.1 or 7.2 of this Mortgage. Upon request by any indemnified party, Mortgagor shall defend same (if requested by any indemnified party, in the name of the indemnified party) by attorneys and other professionals reasonably approved by the indemnified parties. For purposes hereof, "Losses" means any losses, actual damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, costs of remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, reasonable attorneys' fees, engineers' fees, environmental consultants' fees, and investigation costs (including costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

ARTICLE 8 SECONDARY MARKET TRANSACTIONS

8.1. General. Mortgagor hereby acknowledges that Mortgagee may in one or more transactions (a) sell or securitize the Loan or portions thereof in one or more transactions through the issuance of securities, which securities may be rated by one or more rating agencies, (b) sell or otherwise transfer the Loan or any portion thereof one or more times (including selling or assigning its duties, rights or obligations hereunder or under any Loan Document in whole, or in part, to a servicer and/or a trustee), (c) sell participation interests in the Loan one or more times, and/or (d) re-securitize the securities issued in connection with any securitization (the transactions referred to in clauses (a) through (d) above, each a "Secondary Market Transaction").

8.2. Mortgagor Cooperation. Mortgagor shall execute and deliver to Mortgagee such documents, instruments, certificates, financial statements, assignments and other writings, do such other acts and provide such information, and participate in such meetings and discussions, in each case that are necessary to facilitate the consummation of each Secondary Market Transaction, so long as Mortgagor's obligations and liabilities are not materially altered.

8.3. Dissemination of Information. If Mortgagee determines at any time to participate in a Secondary Market Transaction, Mortgagee may forward to each purchaser, transferee, assignee, servicer, participant or investor in such securities, any rating agency rating such securities, any organization maintaining databases on the underwriting and performance of commercial loans, trustee, counsel, accountant, and

each prospective Investor, all documents and information which Mortgagee now has or may hereafter acquire relating to the Loan, Mortgagor, any direct or indirect equity owner of Mortgagor, any guarantor, any indemnitor and the Property, which shall have been furnished by Mortgagor any affiliate of Mortgagor, any guarantor, any indemnitor, or any party to any Loan Document, or otherwise furnished in connection with the Loan, as Mortgagee in its discretion determines necessary or desirable. For purposes of this Agreement and the other Loan Documents, "affiliate" of any specified person or entity means any other person or entity controlling, controlled by or under common control with such specified person or entity.

ARTICLE 9 MISCELLANEOUS

9.1. Survival. All covenants, agreements, representations and warranties made in the Loan Documents shall continue in full force and effect so long as any portion of the Indebtedness is unpaid; provided, however, that the representations, warranties and covenants set forth in Sections 4.4 and 7.1 shall survive in perpetuity and shall not be subject to Section 9.23. All covenants, promises and agreements in the Loan Documents shall inure to the benefit of the respective successors and assigns of Mortgagee. Nothing in the Loan Documents, express or implied, shall give to any person or entity other than the parties and the holder(s) of the Note and the other Loan Documents, and their legal representatives, successors and assigns, any benefit or any legal or equitable right, remedy or claim hereunder.

9.2. Governing Law. The Loan Documents shall be interpreted and enforced according to the laws of the state where the Property is located (without giving effect to rules regarding conflict of laws).

9.3. Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of any Loan Document, or consent to any departure by Mortgagor therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Mortgagor shall entitle Mortgagor to any other or future notice or demand in the same, similar or other circumstances.

9.4. Delay Not a Waiver. Neither any failure nor any delay on the part of Mortgagee in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege under any Loan Document shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege.

9.5. Notices. All notices required under any Loan Document shall be given in writing and shall be effective for all purposes (a) in the case of hand delivery, at the time of delivery (with proof of attempted delivery); (b) in the case of registered or certified mail, postage prepaid, when delivered or the first attempted delivery on a Business Day (with proof of attempted delivery); (c) in the case of expedited prepaid delivery upon the first attempted delivery on a Business Day (with proof of attempted delivery); or (d) in the case of telecopier, upon receipt of answerback confirmation, provided that such telecopied notice must also be delivered by one of the means set forth in (a), (b) or (c) above, addressed to the parties as follows: (1) If to Mortgagee, to the address set forth on the first page hereto; and (2) of to Mortgagor, to the address set forth on the first page hereto. A party receiving a notice which does not comply with the technical requirements for notice under this Section 9.5 may elect to waive any deficiencies and treat the notice as having been properly given. A party may change its address for notices by delivering notice thereof in accordance with the provisions of this Section 9.5.

9.6. TRIAL BY JURY. MORTGAGOR AND MORTGAGEE, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING ANY TORT ACTION, BROUGHT BY ANY PARTY HERETO WITH RESPECT TO THE LOAN DOCUMENTS.

9.7. Severability. If any term or provision of any Loan Document or the application thereof shall to any extent be invalid or unenforceable, the remainder of such Loan Document, or the application of such term or provision other than as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of such Loan Document shall be valid and enforceable to the maximum extent permitted by law.

9.8. Remedies of Mortgagor. In the event that a claim or adjudication is made that Mortgagee or its agents, has acted unreasonably or unreasonably delayed acting in any case where by law or under any Loan Document, Mortgagee or such agent, as the case may be, has an obligation to act reasonably or promptly, Mortgagor agrees that neither Mortgagee nor its agents, shall be liable for any monetary damages, and Mortgagor's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Mortgagee has acted reasonably shall be determined by an action seeking declaratory judgment.

9.9. Offsets, Counterclaims and Defenses. Any assignee of Mortgagee's interest in and to the Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to the Loan, and the Loan Documents which Mortgagor may otherwise have against any assignor.

9.10. No Joint Venture or Partnership. Mortgagor and Mortgagee intend that the relationship created hereunder be solely that of borrower and lender. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship among any of Mortgagor, any contractor or governmental authority, and Mortgagee, nor to grant Mortgagee any interest in the Property other than that of mortgagee or lender.

9.11. Construction of Documents. The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Loan Documents and that the Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

9.12. Brokers and Financial Advisors. Mortgagor and Mortgagee hereby represent that they have dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Mortgage except as disclosed to Mortgagee. Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from and against any and all Losses (as defined in Section 7.4) relating to or arising from a claim by any person or entity that such person or entity acted on behalf of Mortgagor in connection with the transactions contemplated herein. If Mortgagor has dealt with one or more of foregoing described persons or entities, Mortgagor acknowledges and agrees that such persons or entities may receive additional compensation and/or fees from Mortgagee. The provisions of this Section 9.12 shall survive the expiration and termination of this Mortgage and the repayment of the Indebtedness.

9.13. Counterparts. This Mortgage may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

9.14. Estoppel Certificate. Mortgagor agrees upon not less than fifteen (15) days prior written notice by Mortgagor to execute and deliver to the party specified in such notice, a statement certifying that this Mortgage is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications hereto), and such other matters as Mortgagee may reasonably request.

9.15. Bankruptcy Waiver. Mortgagor hereby agrees that, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, if Mortgagor (a) files with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended, (b) is the subject of any

order for relief issued under Title 11 of the U.S. Code, as amended, (c) files or is the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or law relating to bankruptcy, insolvency or other relief of debtors, (d) has sought or consents to or acquiesces in the appointment of any trustee, receiver, conservator or liquidator or (e) is the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency or other relief for debtors, the automatic stay provided by the U.S. Bankruptcy Code shall be modified and annulled as to Mortgagee, so as to permit Mortgagee to exercise any and all of its rights and remedies, upon request of Mortgagee made on notice to Mortgagor and any other party in interest but without the need of further proof or hearing. Neither Mortgagor nor any affiliate of Mortgagor shall contest the enforceability of this Section 9.15.

9.16. Entire Agreement. This Loan Documents and exhibits thereto constitute the entire agreement among the parties hereto with respect to the subject matter contained therein and supersedes all prior agreements, understandings and negotiations between the parties. There are no oral agreements between the parties.

9.17. Indemnification. Mortgagor shall indemnify and hold the indemnified parties (as defined in Section 7.3) harmless against any and all Losses (as defined in Section 7.4), and reimburse them for any costs and expenses incurred, in connection with, arising out of or as a result of (a) Mortgagee's reasonable out-of-pocket costs and expenses (including attorneys fees and costs) in connection with (i) the preparation, execution and delivery of the Loan Documents (and any subsequent modifications thereof) and the closing of the Loan, and (ii) the creation, perfection or protection of Mortgagee's liens in the Property, (b) the exercise of any of Mortgagee's remedies under any Loan Document, and (c) any alleged obligations or undertakings to perform or discharge any obligation, duty or liability with respect to the ownership, operation and/or maintenance of the Property, except to the extent that it is finally judicially determined that any such Loss resulted directly and solely from the fraud, gross negligence or willful misconduct of such indemnified party. If any indemnified party becomes involved in any action, proceeding or investigation in connection with any matter described in clauses (a) through (c) above, Mortgagor shall periodically reimburse any indemnified party upon demand therefor in an amount equal to its reasonable legal and other expenses (including the costs of any investigation and preparation) incurred in connection therewith to the extent such legal or other expenses are the subject of indemnification hereunder.

9.18. Publicity. Mortgagee shall have the right to issue press releases, advertisements and other promotional materials describing the Loan and Mortgagee's participation there and the Loan's inclusion in any Secondary Market Transaction (as defined in Section 8.1).

9.19. Time of the Essence. Time shall be of the essence in the performance of all obligations of Mortgagor under each of the other Loan Documents.

9.20. Taxes. All payments made under the Loan Documents shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, and all liabilities with respect thereto, now or hereafter imposed, levied, collected, withheld or assessed by any governmental authority. If Mortgagor is required by law to deduct any of the foregoing from any sum payable under the Loan Document, such sum shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 9.20), Mortgagee receives an amount equal to the sum Mortgagee would have received had no such deductions been made.

9.21. Further Assurances. Mortgagor shall execute and deliver to Mortgagee such documents, instruments, certificates, assignments and other writings, and do such other acts necessary, to (a) evidence, preserve and/or protect the Property at any time securing or intended to secure the Indebtedness, and/or (b) enable Mortgagee to perfect, exercise and enforce Mortgagee's rights and

remedies under any Loan Document, as Mortgagee shall require from time to time in its discretion. Mortgagor hereby irrevocably authorizes and appoints Mortgagee as its attorney-in-fact, coupled with an interest, for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including such rights and remedies available to Mortgagee pursuant to this Mortgage.

9.22. Reconveyance by Mortgagee. Upon payment in full of the Loan Obligations or a complete defeasance with respect to the Property which complies with the Note (if the Note provides for defeasance), Mortgagee shall release the lien of this Mortgage, or upon the request of Mortgagor, and at Mortgagor's expense, assign this Mortgage without recourse to Mortgagor's designee, or to the person(s) or entity(ies) legally entitled thereto, by an instrument duly acknowledged in proper form for recording.

9.23. Limitation of Interest; Exculpation. This Mortgage is subject to the limitations on the payment of interest set forth in Section 8 of the Note, and the limitations on liability set forth in Section 10 of the Note.

9.24. Definitions; Principles of Constructions. Capitalized terms used herein but not defined shall have the meanings set forth in the Note. All uses of the word "including" shall mean "including, without limitation" unless the context shall indicate otherwise. The use of the term "applicable law" includes all laws, regulations, rules, and ordinances of every type.

ARTICLE 10 SPECIAL PROVISIONS

10.1. State Specific Provisions. The terms and conditions set forth on Exhibit C (if any) are hereby incorporated herein by this reference. In the event of any inconsistencies between the terms and conditions of said Exhibit C and the other terms and conditions of this Mortgage or the other Loan Documents, the terms and conditions of said Exhibit C shall control and be binding.

10.2. Additional Provisions. The terms and conditions set forth on Exhibit D (if any) are hereby incorporated herein by this reference.

[Signature on the following page]

IN WITNESS WHEREOF, this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing has been duly executed by Mortgagor as of the day and year first above written.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS MORTGAGE MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

Mortgagor acknowledges receipt of a copy of this Mortgage, the Note and all other Loan Documents.

MORTGAGOR:

TIERNEY PROPERTIES, L.L.C.,
a Nebraska limited liability company

By: Dennis P. Tierney
Name: Dennis P. Tierney
Title: Manager

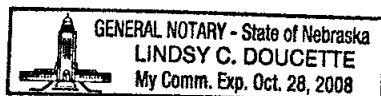
STATE OF NEBRASKA

§
§
§

COUNTY OF DOUGLAS

This instrument was ACKNOWLEDGED before me on May 4, 2007, by Dennis P. Tierney, as Manager of TIERNEY PROPERTIES, L.L.C., a Nebraska limited liability company, on behalf of said limited liability company.

[S E A L]



My Commission Expires:

10/28/08

Lindsay C. Doucette
Notary Public, State of Nebraska
Lindsay C. Doucette
Printed Name of Notary Public

Exhibit A

DESCRIPTION OF PROPERTY

(See attached)

EXHIBIT "A"

Lots 1, 2 and 3, Block 9, and Lots 1 to 5, Block 18, all in BROWN'S SUBDIVISION, Council Bluffs, Pottawattamie County, Iowa, and all of Railroad Street adjoining subject property that was vacated by City Ordinance No. 4954; including the area within the intersection of Railroad Street with South 34th Street and is all in Brown's Subdivision, City of Council Bluffs, Pottawattamie County, Iowa; also all of South 34th Street adjoining subject property, that was vacated by Ordinance No. 4954 all in Brown's Subdivision, City of Council Bluffs, Pottawattamie County, Iowa.

Exhibit B

DEFERRED MAINTENANCE AND ENVIRONMENTAL REMEDIATION

NONE

Exhibit C

STATE-SPECIFIC PROVISIONS

The following terms and conditions shall control and be binding over any conflicting terms set forth in this Deed of Trust.

1. ACCELERATION; REMEDIES. At any time during the existence of an Event of Default, Mortgagee, at Mortgagee's option, may declare the Indebtedness to be immediately due and payable without further demand, and may foreclose this Mortgage by judicial proceeding and may invoke any one or more other remedies permitted by applicable law or provided in this Mortgage or in any other Loan Document. At any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall, at Mortgagee's request, appoint a receiver to take immediate possession of the Rents and the other Property, and to rent the Property as such receiver may deem best for the interest of all interested parties. For purposes of this Mortgage, the term "Rent" also includes "profits" and "issues." Such receiver shall be liable to account to Mortgagor only for the net profits, after application of Rents to the costs and expenses of the receivership and foreclosure and to the Indebtedness. Mortgagee shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports.

2. WAIVER OF WAIVER OF DOWER, HOMESTEAD AND DISTRIBUTIVE SHARE. Mortgagor relinquishes all right of dower and waives all right of homestead and distributive share in and to the Property. Mortgagor waives any right of exemption as to the Property.

3. REDEMPTION PERIOD. Mortgagor represents and warrants to Mortgagee that the Land and Improvements will be used solely for the purpose of carrying on a business or commercial enterprise (not including agriculture), and not for agricultural purposes or as Mortgagor's residence. If (i) the Land is less than 10 acres in size, and (ii) the court finds affirmatively that the Property has been abandoned by Mortgagor and those persons (if any) personally liable under the Note, and (iii) Mortgagee waives any right to a deficiency judgment against Mortgagor or Mortgagor's successor in interest in the foreclosure action, then the period of redemption shall be reduced to 60 days. The provisions of this Section shall be construed to conform to the provisions of Sections 628.26 and 628.27 of the 1975 Code of Iowa.

Exhibit D

ADDITIONAL PROVISIONS

NONE