

Doc # 2004155031
Page 1 of 34
Date: 11/01/2004 12:19P
Filed by: SKAMANIA COUNTY TITLE
Filed & Recorded in Official Records
of SKAMANIA COUNTY
J. MICHAEL GARVISON
AUDITOR
Fee: \$53.00

AFTER RECORDING MAIL TO:

Name RBC Centura Bank
Address 11011 Richmond Ave. #850
City/State Houston, TX 77042

Document Title(s): (or transactions contained therein)

1. Master Trust Deed
- 2.
- 3.
- 4.

Reference Number(s) of Documents assigned or released:

☐ Additional numbers on page _____ of document



Grantor(s): (Last name first, then first name and initials)

1. RBC Centura Bank
- 2.
- 3.
- 4.
5. ☐ Additional names on page _____ of document

Grantee(s): (Last name first, then first name and initials)

1. RBC Centura Bank
- 2.
- 3.
- 4.
5. ☐ Additional names on page _____ of document

Abbreviated Legal Description as follows: (i.e. lot/block/plat or section/township/range/quarter/quarter)

☐ Complete legal description is on page _____ of document

Assessor's Property Tax Parcel / Account Number(s):

WA-1

NOTE: The auditor/recorder will rely on the information on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

After recording, return to:

RBC CENTURA BANK
11011 Richmond Ave., Suite 850
Houston, TX 77042

**MASTER TRUST DEED,
(INCLUDING SECURITY AGREEMENT, FIXTURE FILING,
AND ASSIGNMENT OF LEASES AND RENTS)**

The provisions of this Trust Deed, Security Agreement, Fixture Filing, and Assignment of Leases And Rents (this "Mortgage") are incorporated into and will apply to any Short Form Trust Deed that is recorded in Skamania County, Washington, that names **RBC CENTURA BANK**, a North Carolina banking corporation as "Beneficiary" or "Mortgagee", and refers to this Master Trust Deed by date, book, and page number (or instrument number) of recording.

ARTICLE I — DEFINITIONS

- 1.1 Definitions. As used herein, the following terms shall have the following meanings:
- (a) Buildings: Any and all buildings, covered garages, utility sheds, workrooms, air conditioning towers, open parking areas and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land (as defined in Paragraph 1.1(i) hereinbelow) or any part thereof.
 - (b) Debt: Collectively, (i) the unpaid principal balance of and the accrued but unpaid interest on the note(s) described in the Short Form Trust Deed, (ii) all other sums due, payable or reimbursable to Beneficiary for deposit into and any escrows established or required under the Loan Documents (if any), and (iii) any and all other liabilities and obligations of Mortgagor under the Notes, this Mortgage or the other Loan Documents.
 - (c) Event of Default: Any happening or occurrence described in Paragraph 6.1 hereinbelow.
 - (d) Fixtures: All materials, supplies, equipment, machinery, apparatus and other items now or hereafter acquired by Mortgagor and now or hereafter attached or affixed installed in or used in connection with (temporarily or permanently) any of the Buildings or the Land, including but not limited to any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, counter-top units, appliances, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements, together with all accessions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.
 - (e) Governmental Authority: Any and all courts, boards, agencies, departments, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.
 - (f) Impositions: All real estate and personal property taxes; water, gas, sewer, electricity and other utility rates and charges; charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property; and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the Rents (as defined in Paragraph 1.1(f) hereinbelow) or the ownership, use, occupancy or enjoyment thereof.
 - (g) Improvements: Any and all residences, buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements, streets, paved surfaces, parking lots, curbs, gutters, utility lines, water mains, sanitary sewer lines, storm sewer facilities, and all other improvements of any nature now or hereafter located on the Land.
 - (h) Indebtedness: (i) The debts now or hereafter evidenced by the Notes, (ii) any advances made by Beneficiary or Trustee to pay the principal or interest of any prior liens, Impositions, insurance premiums, to comply with Legal Requirements, or any other expenditure to protect the validity or priority of this Mortgage, and (iii) all other debts, of whatever kind or character, now owing or which may hereafter become owing by Mortgagor to Beneficiary, whether such debts are evidenced by

note, open account, overdraft, endorsement, surety agreement, guaranty, any trust agreement or set aside letter issued by Beneficiary in connection with the Improvements (herein defined), and/or any document executed in connection with the issuance of any letter of credit by Beneficiary, or is evidenced by note, open account, overdraft endorsement, surety agreement, guaranty, any trust agreement or set-aside letter executed by Beneficiary in connection with the Improvements, any document executed in connection with the issuance of a letter of credit, or otherwise (it being contemplated that Mortgagor may subsequently become indebted to Beneficiary).. The Indebtedness may include interest at a variable rate.

- (i) Land: The real estate or interest therein described in Exhibit A attached to each Short Form Trust Deed, all Buildings and Fixtures, and all rights, titles and interests appurtenant thereto.
- (j) Leases: Any and all leases, subleases, licenses, concessions, or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, the Mortgaged Property, and all other agreements, such as utility contracts, maintenance agreements and service contracts, which in any way relate to the use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property, including without limitation, any and all security interests, contractual liens and security deposits (if any), save and except any and all leases, subleases or other agreements pursuant to which Mortgagor is granted a possessory interest in the Land.
- (k) Legal Requirements: (i) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Mortgagor or the Mortgaged Property, including the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof; (ii) if Mortgagor is not an individual, Mortgagor's presently or subsequently effective Bylaws, Operating Agreement and Articles or Certificate of Incorporation or Organization of Partnership, Limited Partnership, Joint Venture, Limited Liability Company, Trust or other form of business association agreement; (iii) any and all Leases; and (iv) any and all leases, restrictive covenants and other contracts (written or oral) of any nature to which Mortgagor is or may be bound, including without limitation, any lease or other contract pursuant to which Mortgagor is granted a possessory interest in the Land.
- (l) Loan Documents: This Mortgage, any Incorporating Mortgage, any loan agreement executed by the Mortgagor as borrower in connection with the Indebtedness, including the Note, the Loan Agreement signed by Mortgagor and Beneficiary relating to the Note (the "Loan Agreement" herein) and any and all other instruments executed by Mortgagor or any other person in connection with or as security for the payment or performance of the Note or such Loan Agreement, as such agreements or instruments may be modified, amended or supplemented from time to time.
- (m) Mortgage or "this Mortgage": The Short Form Trust Deed including the provisions of this Master Trust Deed that are incorporated by reference into the Short Form Trust Deed.
- (n) Mortgagor: The Mortgagor or Grantor identified in the Short Form Trust Deed, including any and all subsequent owners of the Mortgaged Property (as defined in Paragraph 1.1(o) below) or any part thereof.
- (o) Mortgaged Property: The Lot described in the Short Form Trust Deed and any Home built thereon and any additional Land or interest in any Property hereafter described on any amendment or supplement to this Mortgage and the Improvements, Appurtenances, Construction Contracts, Contracts, Fixtures, Leases and Rents, Minerals, Personalty, Development Agreements related thereto, including without limitation:
 - (i) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;
 - (ii) any and all contracts, subcontracts, and agreements, written or oral, between Mortgagor and any other party, and between parties other than Mortgagor, in any way relating to the construction of Improvements or the supplying of material (specially fabricated or otherwise), labor, supplies, or other services therefor (collectively called the "Construction Contracts");
 - (iii) all of the right, title, and interest of Mortgagor in, to, and under any and all of the following

(collectively called the "Contracts"): (i) contracts for the purchase and/or sale of all or any portion of the Mortgaged Property, whether such Contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the Contracts, including all amendments and supplements to and renewals and extensions of the Contracts at any time made, and together with all payments, earnings, income, and profits arising from sale of all or any portion of the Mortgaged Property or from the Contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the Contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each governmental authority required: (a) to evidence compliance by Mortgagor and all improvements constructed or to be constructed on the Mortgaged Property with all legal requirements applicable to the Mortgaged Property, (b) for the construction of any improvements on the Mortgaged Property (including, without limitation, the Construction Contracts), and (c) to develop and/or operate the Mortgaged Property as a commercial and/or residential project; (iii) any and all right, title, and interest Mortgagor may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; (iv) all plans, specifications, and drawings prepared for the Mortgaged Property, including all amendments and supplements to and renewals and extensions of such contracts at any time made, and together with all rebates, refunds or deposits, and all other sums due or to become due under and pursuant thereto and together with all powers, privileges, options, and other benefits of Mortgagor under such contracts; and (v) all other contracts which in any way relate to the design, use, enjoyment, occupancy, operation, maintenance, or ownership of the Mortgaged Property (save and except any and all leases, subleases, or other agreements pursuant to which Mortgagor is granted a possessory interest in the Mortgaged Property), including but not limited to engineers contracts, architects contracts, maintenance agreements and service contracts;

(iv) all substances in, on, or under the Mortgaged Property which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the Mortgaged Property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores, upon extraction or removal from the Mortgaged Property;

(v) all of the right, title, and interest of Mortgagor in and to the following: (i) any and all plans, specifications, shop drawings and other technical descriptions prepared for construction of the Improvements, and all supplements thereto and amendments and modifications thereof (the "Plans"); (ii) building and construction materials and equipment, all machinery, furnishings, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature (hereinafter collectively called the "Equipment"), whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Mortgaged Property, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Mortgaged Property and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Mortgaged Property, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Mortgaged Property, including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "Uniform Commercial Code"); (iii) any and all goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (iv) general intangibles, money, proceeds, accounts, contract and subcontract rights, trademarks, tradenames, and inventory, including (but not limited to) all awards or payments (including interest thereon) which may heretofore and hereafter be made with respect to the Mortgaged Property (whether from the exercise of the right of eminent domain or condemnation [including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights], or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property), and all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property

(including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property) (hereinafter collectively called the "Intangibles"); (v) all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Mortgaged Property, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Mortgaged Property and those for municipal utility district or other utility costs incurred or deposits made in connection with the Mortgaged Property; (vi) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Secured Party in the Mortgaged Property; and (vii) all other personal property of any kind or character as defined in and subject to the provisions of the Uniform Commercial Code; any and all of which are now owned or hereafter acquired by Mortgagor, and which are now or hereafter situated in, on, or about the Mortgaged Property, or used in or necessary to the complete and proper planning, design, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Mortgaged Property or stored elsewhere) for use in or on the Mortgaged Property, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof;

- (vi) all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Mortgaged Property as a result of tax certiorari or any application or proceedings for reduction;
- (vii) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;
- (viii) all rights of Mortgagor as developer or declarant (or otherwise), under any covenants, conditions and restrictions, condominium declarations or other planned unit development type documents affecting the Premises and Improvements, or any other part of the Mortgaged Property, and all rights necessary to develop and sell any portion of the Mortgaged Property, including (but not limited to) water rights, sewer rights and the right to tap into public utilities or to create private utilities;
- (ix) any and all proceeds and products of any of the foregoing and any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Debt and the performance of Mortgagor's obligations under the Loan Documents and all escrows established with Beneficiary by Mortgagor;
- (x) all betterments, additions, alterations, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein;
- (xi) all of Mortgagor's right, title and interest in and to any awards, remunerations, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Buildings, Fixtures or Personalty, including those for any vacation of, or change of grade in, any streets affecting the Land or the Buildings;
- (xii) all of Mortgagor's general intangibles of any kind whether now existing or hereafter arising in connection with the Land, Buildings, Fixtures, Personalty, Leases and Rents, including but not limited to all contract rights, plans and specifications relating to the construction of improvements on the Land, and all rights now or hereafter existing in and to all security agreements, leases, and other contracts securing or otherwise relating to any such general intangibles; and
- (xiii) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

As used in this Mortgage, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above, and all or, where the context permits or requires, any interest therein.

- (p) Note and Notes: Individually and collectively, (i) the Promissory Note (Construction Loan) executed by Mortgagor and payable to the order of Beneficiary that is described in the Short Form Trust Deed and (ii) all other promissory notes hereafter executed by Mortgagor pursuant to the Loan Agreement to evidence additional Loans made by Beneficiary under the terms of the Loan Agreement to finance

the purchase of Lots and the construction of Homes thereon as more fully described in the Loan Agreement, and all renewals, amendments, and modifications to any of such Notes.

- (q) Obligations: Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor, or others to Beneficiary, Trustee or others as set forth in the Loan Documents or any lease, sublease or other agreement pursuant to which Mortgagor is granted a possessory interest in the Land, including without limitation the following:
- (i) the payment of the indebtedness (the "Loan") with interest according to the Note described in any Short Form Trust Deed (together with all extensions, renewals or modifications thereof), and all other sums, liabilities and obligations constituting the Debt secured by this Mortgage and any Short Form Trust Deed.
 - (ii) performance of all obligations of Mortgagor under any loan agreement (the "Loan Agreement") between Mortgagor and Beneficiary pertaining to the use of the proceeds of the Note,
 - (iii) the payment of all sums advanced or incurred by Mortgagor contemplated hereby or in the other Loan Documents (as defined in the Loan Agreement), and the performance of the obligations and covenants herein contained or therein, including but not limited to the performance of the covenants contained in this Mortgage and in any Short Form Trust Deed and in any related instruments or agreements; and
 - (iv) the payment of all other indebtedness, of whatever kind or character, now owing or which may hereafter become owing by Mortgagor to Beneficiary, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, any trust agreement or set aside letter issued by Beneficiary in connection with the Improvements (herein defined), and/or any document executed in connection with the issuance of any letter of credit by Beneficiary, or is evidenced by note, open account, overdraft endorsement, surety agreement, guaranty, any trust agreement or set-aside letter executed by Beneficiary in connection with the Improvements, any document executed in connection with the issuance of a letter of credit, or otherwise (it being contemplated that Mortgagor may subsequently become indebted to Beneficiary).
- (r) Permitted Encumbrances: The outstanding liens, easements, building lines, restrictions, security interests and other matters (if any) as reflected on those exceptions shown in a Beneficiary Title Policy Binder on Interim Construction Loan or a Beneficiary Policy of Title Insurance covering the Land to the extent same are valid and subsisting, in full force and effect and do, in fact, cover or affect the Land described in each Short Form Trust Deed, and the lien and security interests created by the Loan Documents.
- (s) Personalty: All of the right, title and interest of Mortgagor in and to all furniture, furnishings, equipment, machinery, goods, general intangibles, money, insurance proceeds, accounts, contract rights, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and all other personal property (other than the Fixtures) of any kind or character as defined in and subject to the provisions of the Uniform Commercial Code (Secured Transactions) as adopted in the State in which the Land is situated, which are now or hereafter located or to be located upon, within or about the Land and the Buildings, or which are or may be used in or related to the planning, development, financing or operation of the Mortgaged Property, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof.
- (t) Rents: All income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses), proceeds payable under any policy of insurance covering loss of rents and all damages following any lease defaults from or with respect to the Mortgaged Property whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt
- (u) Trustee: The Trustee identified in the Short Form Trust Deed and any successor Trustee duly appointed in accordance with the provisions of Paragraph 10.3 hereof, and any additional Trustee identified in any amendment or supplement to this Mortgage.

ARTICLE 2 — GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor grants, bargains, sells and conveys to Trustee the Mortgaged Property in

trust, with power of sale and right of entry and possession, subject to the Permitted Encumbrances, to have and to hold the Mortgaged Property unto Trustee, forever, and Mortgagor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Mortgaged Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the enforceable claims, if any, of third parties in connection with the Permitted Encumbrances; provided, however, that if Mortgagor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) the Obligations on or before the date same are to be performed and discharged, then in that case only the liens, security interests, estates and rights granted by the Loan Documents shall terminate and be released by Beneficiary at Mortgagor's expense; otherwise same shall remain in full force and effect. A certificate or statement from Beneficiary confirming that the Indebtedness has not been paid in full or that the Obligations have not been fully performed and discharged shall be sufficient evidence thereof for the purposes of reliance by third parties on that fact. Mortgagor also grants to Beneficiary a security interest in the Personalty to secure payment of the Indebtedness and performance of the Obligations when such payment and performance are due.

ARTICLE 3 — WARRANTIES AND REPRESENTATIONS

Mortgagor hereby unconditionally warrants and represents to Beneficiary as follows:

3.1 Authority, Organization and Power: Mortgagor

- (a) is a corporation, general partnership, limited partnership, joint venture, trust, or other type of business association, as the case may be, duly organized, validly existing and in good standing under the laws of the State of its formation, organization or incorporation; and
- (b) is duly qualified to transact business and is in good standing in the state of Washington; and
- (c) has all requisite power and authority and all governmental certificates of authority, licenses, permits, qualifications and documentation to own, lease and operate its properties and to carry on its business as now being, and as proposed to be conducted; and
- (d) is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations; and
- (e) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage and the other Loan Documents on Mortgagor's part to be performed.

3.2. Validity of Loan Instruments. The execution, delivery and performance by Mortgagor of the Loan Documents, and the borrowing evidenced by the Notes, (a) are within Mortgagor's powers and have been duly authorized by Mortgagor's directors, and all other requisite action for such authorization has been taken; (b) have received all (if any) requisite prior governmental approval in order to be legally binding and enforceable in accordance with the terms thereof; and (c) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property or assets, except as contemplated by the provisions of the Loan Documents. The Loan Documents constitute the legal, valid and binding obligations of Mortgagor, and others obligated under the terms of the Loan Documents, in accordance with their respective terms.

3.3. Information. All information, reports, papers and data given to Beneficiary with respect to Mortgagor or others obligated under the terms of the Loan Documents or with respect to the Mortgaged Property are accurate, complete and correct in all material respects and do not omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading.

3.4. Title to Mortgaged Property and Lien of This Instrument. Mortgagor is the sole owner of and has good, legal, marketable and insurable fee simple title to the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for the Permitted Encumbrances, and this Mortgage is and will remain a valid and enforceable first lien on and security interest in the Mortgaged Property subject only to said exceptions. This Mortgage constitutes a valid, and subsisting first security interest in and to, and a valid first assignment of, the Personalty, Plans, Leases and Rents, all in accordance with the terms hereof. The Land and Improvements are not Mortgagor's homestead or residence (or the homestead or residence of any of Mortgagor's partners, shareholders, or members, as applicable), and are not and will not be claimed, used, occupied or enjoyed by Mortgagor (or such partners, shareholders or members) as such. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Beneficiary and/or Trustee against the claims of all persons whomsoever.

3.5. Impositions. Mortgagor has filed all federal, state, county, municipal and city income and other tax returns required to have been filed by Mortgagor and has paid all Impositions which have become due pursuant to such returns or pursuant to any assessments received by Mortgagor, and Mortgagor does not know of any basis for any additional assessment in respect of any such Impositions.

3.6. Litigation. Except as heretofore disclosed in writing by Mortgagor to Beneficiary, there are no actions, suits or proceedings pending, or to the knowledge of Mortgagor threatened, against or affecting the Mortgagor or the Mortgaged Property, or involving the validity or enforceability of this Mortgage or the priority of the liens and security interests created by the Loan Documents, and no event has occurred (including specifically Mortgagor's execution of the Loan Documents and its consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of, or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property other than the liens and security interests created by the Loan Documents.

3.7. Loan Documents.

- (a) Neither Mortgagor nor any guarantor of the Indebtedness or any part thereof (a "Guarantor") has any defense to the payment in full of the Indebtedness that arises from applicable local, state or federal laws, regulations or other requirements. None of the Loan Documents are subject to any right of rescission, set-off, abatement, diminution, counterclaim or defense, including the defense of usury, nor will the operation of any of the terms of any such Loan Documents, or the exercise of any right thereunder, render any Loan Documents unenforceable, in whole or in part, or subject to any right of rescission, set-off, abatement, diminution, counterclaim or defense, including the defense of usury, and no such right of rescission, set-off, abatement, diminution, counterclaim or defense has been, or will be, asserted with respect thereto.
- (b) There are no proceedings pending or threatened for the partial or total condemnation of the Mortgaged Property.
- (c) There is no action, suit or proceeding, judicial administrative or otherwise pending or, to the best of Mortgagor's knowledge threatened or contemplated against Mortgagor, or Guarantor or against or affecting the Mortgaged Property that (i) has not been disclosed to Beneficiary and has a material, adverse effect on the Mortgaged Property or Mortgagor's and Guarantor's ability to perform their obligations under any Loan Document or (ii) is not adequately covered by insurance, each as determined by Beneficiary in its sole and absolute discretion.
- (d) The Mortgaged Property is not subject to any Leases, Contracts or other agreements (except as expressly consented to in writing by Beneficiary), and no person has any possessory interest in the Mortgaged Property or right to occupy the same (except as expressly consented to in writing by Beneficiary).
- (e) All financial data, including, without limitation, statements of cash flow and income and operating expenses, delivered to Beneficiary by, or on behalf of Mortgagor and Guarantor are (i) true and correct in all material respects; (ii) accurately represent the financial condition of Mortgagor or the Mortgaged Property and of Guarantor as of the date thereof in all material respects; and (iii) with respect to the statements relating to Mortgagor, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered.
- (f) Any survey of the Mortgaged Property delivered to Beneficiary in connection with this Mortgage, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Mortgaged Property is situated, and to the best of Mortgagor's knowledge, does not fail to reflect any material matter affecting the Mortgaged Property or the title thereto.
- (g) Each loan evidenced by the Loan Documents complies with, or is exempt from, applicable state or federal laws, regulations and other requirements pertaining to usury and any and all other requirements of any federal, state or local law.
- (h) The Mortgaged Property is (or shall be) served by public utilities and services in the surrounding community, including police and fire protection, public transportation, refuse removal, public education, and enforcement of safety codes which are adequate in relation to the Mortgaged Property and location on which the Mortgaged Property is located.
- (i) The Mortgaged Property is (or shall be) serviced by public water and sewer systems which are adequate in relation to the Mortgaged Property and location on which the Mortgaged Property is located.
- (j) The Mortgaged Property is a separate tax parcel, and there are no delinquent Taxes or other outstanding charges adversely affecting the Mortgaged Property.
- (k) The Mortgaged Property is not relied upon by, and does not rely upon, any building or improvement not part of the Mortgaged Property to fulfill any zoning, building code or other governmental or municipal requirement for structural support or the furnishing of any essential building systems or utilities, except to the extent of any valid and existing reciprocal easement agreements shown in the title insurance policy insuring the lien of this Mortgage.

- (l) No action, omission, misrepresentation, negligence, fraud or similar occurrence has taken place on the part of any person that would reasonably be expected to result in the failure or impairment of full and timely coverage under any insurance policies providing coverage for the Mortgaged Property.
- (m) There are no defaults by Mortgagor beyond any applicable grace period under any Contract or agreement (other than this Mortgage and the other Loan Documents) that binds Mortgagor and/or the Mortgaged Property, including any management, service, supply, security, maintenance or similar contracts; and Mortgagor has no knowledge of any such default for which notice has not yet been given; and no such agreement is in effect with respect to the Mortgaged Property that is not capable of being terminated by Mortgagor on less than thirty (30) days notice except as previously disclosed to Beneficiary by a delivery of a copy of all such agreements.

3.8. ERISA.

- (a) Mortgagor shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Beneficiary of any of its rights under the Notes, this Mortgage and the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").
- (b) As of the date hereof and throughout the term of this Mortgage, (i) Mortgagor is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and (ii) the assets of Mortgagor do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA.
- (c) As of the date hereof and throughout the term of this Mortgage, (i) Mortgagor is not and will not be a "governmental plan" within the meaning of Section 3(3) of ERISA, and (ii) transactions by or with Mortgagor are not and will not be subject to state statutes applicable to Mortgagor regulating investments of and fiduciary obligations with respect to governmental plans.
- (d) Mortgagor will deliver to Beneficiary such certifications or other evidence from time to time throughout the term of the Mortgage, as requested by Beneficiary in its sole discretion, that (i) Mortgagor is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (ii) Mortgagor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true: (A) equity interests in Mortgagor are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2); (B) less than 25 percent of each outstanding class of equity interests in Mortgagor are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or (C) Mortgagor qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

3.9. Separateness. Mortgagor represents, warrants, and covenants that:

- (a) Intentionally deleted.
- (b) Intentionally deleted.
- (c) Mortgagor will not enter into any contract or agreement with any Guarantor or any party which is directly or indirectly controlling, controlled by, or under common control with Mortgagor or any Guarantor (and "Affiliate"), without the prior written consent of Beneficiary.
- (d) Intentionally deleted.
- (e) Mortgagor has not made and will not make any loans or advances to any third party, nor to any Guarantor, Affiliate, or constituent party of Mortgagor.
- (f) Mortgagor is and will remain solvent and Mortgagor will pay its debts from its assets as the same shall become due.
- (g) Mortgagor has done or caused to be done and will do all things necessary to preserve its existence, and Mortgagor will not, nor will Mortgagor permit any Guarantor to, amend, modify, or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, trust, certificate of organization, operating agreement, or other organizational documents of Mortgagor or any Guarantor in a manner which would adversely affect Mortgagor's existence.
- (h) Mortgagor will maintain books and records and bank accounts separate from those of its Affiliates and any constituent party of Mortgagor, and Mortgagor will file its own tax returns.

- (i) Mortgagor 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 Affiliate, any constituent party of Mortgagor or any Guarantor).
- (j) Mortgagor 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.
- (k) Neither Mortgagor nor any constituent party of Mortgagor will seek the dissolution or winding up, in whole or in part, of Mortgagor, nor will Mortgagor merge with or be consolidated into any other entity without the prior written consent of Beneficiary.
- (l) Mortgagor will not commingle the funds or other assets of Mortgagor with those of any Affiliate, Guarantor, or constituent party of Mortgagor, or any other person.
- (m) Mortgagor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain, or identify its individual assets from those of any constituent party of Mortgagor, Affiliate, Guarantor, or any other person.
- (n) Mortgagor does not and will not hold itself out to be responsible for the debts or obligations of any other person (provided, that the foregoing shall not prevent Mortgagor from being and holding itself responsible for expenses incurred or obligations undertaken by the property manager of the Mortgaged Property in respect of its duties regarding the Mortgaged Property).
- (o) Mortgagor shall obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations, and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the payment of the Indebtedness and the performance of the Obligations.

ARTICLE 4 — AFFIRMATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Beneficiary as follows:

4.1 Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Mortgagor will pay the Indebtedness at the time and in the manner provided in the Notes and will duly and punctually perform all of the Obligations to the same extent and with the same force as if fully set forth herein.

4.2 Existence. Mortgagor will preserve and keep in full force and effect its existence, rights, franchises and trade names.

4.3 Compliance with Legal Requirements. Mortgagor will promptly and faithfully comply with, conform to and obey all present and future Legal Requirements whether or not same shall necessitate structural changes in, improvements to or interfere with the use or enjoyment of, the Mortgaged Property.

4.4 First Lien Status. Mortgagor will protect the first lien and security interest status of this Mortgage and will not, without the prior written consent of Beneficiary, create, place, or permit to be created or placed, or otherwise mortgage, hypothecate or encumber the Mortgaged Property with, any other lien or security interest of any nature whatsoever (statutory, constitutional or contractual) regardless of whether same is allegedly or expressly inferior to the lien and security interest created by this Mortgage, and, if any such lien or security interest is asserted against the Mortgaged Property, Mortgagor will promptly, at its own cost and expense, (a) pay the underlying claim in full or take such other action so as to cause same to be released and (b) within five (5) days from the date such lien or security interest is so asserted, give Beneficiary notice of such lien or security interest; provided, however, that Mortgagor may contest such claim in accordance with the provisions of Paragraph 11.8 hereof. Such notice shall specify who is asserting such lien or security interest and shall detail the origin and nature of the underlying claim giving rise to such asserted lien or security interest.

4.5 Repair. Mortgagor will keep the Mortgaged Property in first-class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements and alterations thereof and thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Mortgagor will also use its best efforts to prevent any act or occurrence which might impair the value or usefulness of the Mortgaged Property for its intended usage as set forth in the Plans or elsewhere in the Loan Documents. In instances where repairs, replacements, renewals, additions, betterments, improvements or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste or destruction thereof, Mortgagor shall proceed to construct same, or cause same to be constructed, notwithstanding anything to the contrary contained in Paragraph 5.2 hereinbelow; provided, however, that in instances where such emergency measures are to be taken, Mortgagor will notify Beneficiary in writing of the commencement of same and the measures to be taken and, when same are completed, the completion date and the measures actually taken. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Paragraph 4.9 hereof and shall complete and pay for any structure at any time

in the process of construction or repair on the Mortgaged Property.

4.6 Insurance.

- (a) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Beneficiary, shall obtain and maintain during the entire term of this Mortgage the insurance required as a condition precedent to the Initial Advance (as defined in the Loan Agreement) under the Loan Agreement, together with such other insurance as may from time to time be reasonably required by Beneficiary in order to protect its interests.
- (b) All policies of insurance (the "Policies") required pursuant to this Paragraph 4.6 (i) shall contain a standard noncontributory Beneficiary clause naming Beneficiary as the person to which all payments made by such insurance company shall be paid, (ii) shall be maintained throughout the term of this Mortgage without cost to Beneficiary, (iii) shall be assigned and delivered to Beneficiary, (iv) shall contain such provisions as Beneficiary deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Beneficiary nor any other party shall be a co-insurer under said Policies and that Beneficiary shall receive at least thirty (30) days prior written notice or, of any modification, reduction or cancellation, (v) shall be for a term of not less than one year, (vi) shall be issued by an insurer licensed in the state in which the Mortgaged Property is located, (vii) shall provide that Beneficiary may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance, and such payments shall be accepted by the insurer to prevent same, (viii) shall be satisfactory in form and substance to Beneficiary and shall be approved by Beneficiary as to amounts, form, risk coverage, deductibles, loss payees and insureds, and (ix) shall provide that all claims shall be allowable on events as they occur. Upon demand therefor, Mortgagor shall reimburse Beneficiary for all of Beneficiary's (or its servicer's) reasonable costs and expenses incurred in obtaining any or all of the Policies or otherwise causing the compliance with the terms and provisions of this Paragraph 4.6, including (without limitation) obtaining updated flood hazard certificates and replacement or any so-called "forced placed" insurance coverages. All Policies required pursuant to Paragraph 4.6(a) shall be issued by an insurer with a claims paying ability rating of A:VI or better by A.M. Best as published in Best's Key Rating Guide. Mortgagor shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable (unless such Insurance Premiums have been paid by Beneficiary pursuant to Paragraph 4.8 hereof). Not later than fifteen (15) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Beneficiary satisfactory evidence of the renewal of each Policy. If Mortgagor receives from any insurer any written notification or threat of any actions or proceedings regarding the non-compliance or non-conformity of the Mortgaged Property with any insurance requirements, Mortgagor shall give prompt notice thereof to Beneficiary.
- (c) In the event of the entry of a judgment of foreclosure, sale of the Mortgaged Property by non-judicial foreclosure sale, or delivery of a deed in lieu of foreclosure, Beneficiary hereby is authorized (without the consent of Mortgagor) to assign any and all Policies to the purchaser or transferee thereunder, or to take such other steps as Beneficiary may deem advisable to cause the interest of such transferee or purchaser to be protected by any of the Policies without credit or allowance to Mortgagor for prepaid premiums thereon.
- (d) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Beneficiary.
 - (i) In case of loss covered by Policies, Beneficiary may either (1) settle and adjust any claim without the consent of Mortgagor, or (2) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that Mortgagor may adjust losses for any single family residence aggregating not in excess of \$25,000.00 if such adjustment is carried out in a competent and timely manner, and provided that in any case Beneficiary shall and is hereby authorized to collect and receipt for any such insurance proceeds; and the expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Mortgagor to Beneficiary upon demand (unless deducted by and reimbursed to Beneficiary from such proceeds).
 - (ii) In the event of any insured damage to or destruction of the Mortgaged Property or any part thereof (herein called an "Insured Casualty"), if (A) in the reasonable judgment of Beneficiary, within the earlier of the applicable Initial Due Date (as defined in the Loan Agreement) or six (6) months after insurance proceeds are made available, the Mortgaged Property can be restored to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Insured Casualty) and not less useful than the same was prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Debt, and (B) no Event of Default (hereinafter defined) shall have occurred and be then continuing, then the proceeds of insurance shall be applied to reimburse Mortgagor for the cost of restoring, repairing,

replacing or rebuilding the Mortgaged Property or part thereof subject to Insured Casualty, as provided for below; and Mortgagor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided, however, in any event Mortgagor shall pay all costs (and if required by Beneficiary, Mortgagor shall deposit the total thereof with Beneficiary in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

- (iii) Except as provided above, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Beneficiary in its sole discretion, be applied to the payment of the Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Debt shall not reduce or postpone any payments otherwise required pursuant to the Note, other than the final payment on the Note.
- (iv) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoring, repairing, replacing or rebuilding of the Mortgaged Property, Mortgagor hereby covenants to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law and plans and specifications approved in advance by Beneficiary.
- (v) In the event Mortgagor is entitled to reimbursement out of insurance proceeds held by Beneficiary, such proceeds shall be disbursed from time to time upon Beneficiary being furnished with (1) evidence satisfactory to it (which evidence may include inspection[s] of the work performed) that the restoration, repair, replacement and rebuilding covered by the disbursement has been completed in accordance with plans and specifications approved by Beneficiary, (2) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (3) funds, or, at Beneficiary's option, assurances satisfactory to Beneficiary that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (4) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Beneficiary may reasonably require and approve; and Beneficiary may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Beneficiary prior to commencement of work. With respect to disbursements to be made by Beneficiary: (A) no payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; (B) funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and (C) at all times, the undisbursed balance of such proceeds remaining in the hands of Beneficiary, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Beneficiary by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Beneficiary to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien and the costs described in subparagraph 4.6(d)(vi) below. Any surplus which may remain out of insurance proceeds held by Beneficiary after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to any party entitled thereto. In no event shall Beneficiary assume any duty or obligation for the adequacy, form or content of any such plans and specifications, nor for the performance, quality or workmanship of any restoration, repair, replacement and rebuilding.
- (vi) Notwithstanding anything to the contrary contained herein, the proceeds of insurance reimbursed to Mortgagor in accordance with the terms and provisions of this Mortgage shall be reduced by the reasonable costs (if any) incurred by Beneficiary in the adjustment and collection thereof and in the reasonable costs incurred by Beneficiary of paying out such proceeds (including, without limitation, reasonable attorneys' fees and costs paid to third parties for inspecting the restoration, repair, replacement and rebuilding and reviewing the plans and specifications therefor).

4.7. Payment of Impositions and Other Charges. Mortgagor shall pay all assessments, water rates and sewer rents, ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Mortgaged Property, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as the same become due and payable. Mortgagor will deliver to Beneficiary evidence satisfactory to Beneficiary that the Taxes (hereinafter defined) and the Other Charges have been so paid or are not then delinquent no later than thirty (30) days following the date on which the Taxes and/or the Other Charges would otherwise be delinquent if not paid. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all

utility services provided to the Mortgaged Property. If any law is amended, enacted or adopted after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Beneficiary's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Beneficiary is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Beneficiary or unenforceable or provide the basis for a defense of usury, then in any such event, Beneficiary shall have the option, by written notice of not less than forty-five (45) days, to declare the Debt immediately due and payable.

4.8. Tax and Insurance Escrow Fund. If initially or subsequently required by Beneficiary, Mortgagor shall make an initial deposit to the Tax and Insurance Escrow Fund (hereinafter defined) of an amount which, when added to the monthly amounts to be deposited as specified below, will be sufficient in the estimation of Beneficiary to satisfy the next due taxes, assessments, insurance premiums and other similar charges. Mortgagor shall pay to Beneficiary on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay all the taxes, assessments and other similar governmental impositions (the "Taxes") payable, or estimated by Beneficiary to be payable, during the next ensuing twelve (12) months, and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (said amounts in subparagraphs [a] and [b] above hereinafter called the "Tax and Insurance Escrow Fund"). Beneficiary may, in its sole discretion, retain a third-party tax consultant to obtain tax certificates or other evidence or estimates of tax due or to become due or to verify the payment of taxes and Mortgagor will promptly reimburse Beneficiary for the reasonable cost of retaining any such third-parties or obtaining such certificates. Any unpaid reimbursements for the aforesaid shall be added to the Debt. The Tax and Insurance Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Mortgagor to Beneficiary. Mortgagor hereby pledges (and grants a lien and security interest) to Beneficiary any and all monies now or hereafter deposited in the Tax and Insurance Escrow Fund as additional security for the payment of the Debt. Beneficiary will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Paragraphs 4.6 and 4.7 hereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Paragraphs 4.6 and 4.7 hereof, Beneficiary shall, in its discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. In allocating such excess, Beneficiary may deal with the person shown on the records of Beneficiary to be the owner of the Mortgaged Property. If the Tax and Insurance Escrow Fund is not sufficient to pay the items set forth in subparagraphs (a) and (b) above, Mortgagor shall promptly pay to Beneficiary, upon demand, an amount which Beneficiary shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Beneficiary shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Mortgagor in the Tax and Insurance Escrow Fund to the full extent of the outstanding balance of the Debt, application of any such sums to the Debt to be in any order in its sole discretion. Until expended or applied as above provided, any amounts in the Tax and Insurance Escrow Fund shall constitute additional security for the Debt. The Tax and Insurance Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Beneficiary. Unless otherwise required by applicable law, no earnings or interest on the Tax and Insurance Escrow Fund shall be payable to Mortgagor even if Beneficiary or its servicer is paid a fee and/or receives interest or other income in connection with the deposit or placement of such fund (in which event such income shall be reported under Beneficiary's or its servicer's tax identification number, as applicable). Upon payment of the Debt and performance by Mortgagor of all its obligations under this Mortgage and the other Loan Documents, any amounts remaining in the Tax and Insurance Escrow Fund shall be refunded to Mortgagor.

4.9. Condemnation. Mortgagor shall promptly give Beneficiary written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Beneficiary copies of any and all papers served in connection with such proceedings. Beneficiary is hereby irrevocably appointed as Mortgagor's attorney-in-fact, with full power of substitution and coupled with an interest, with exclusive power to collect, receive and retain any award or payment for said condemnation or eminent domain and to make any compromise or settlement in connection with such proceeding, subject to the provisions of this Mortgage. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, in this Mortgage and the other Loan Documents and the Debt shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Beneficiary to the discharge of the Debt. Beneficiary 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 in the Note. Mortgagor shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Mortgagor, to be paid directly to Beneficiary. Beneficiary may apply any such award or payment to the reduction or discharge of the Debt whether or not then due and payable (such application to be without the prepayment consideration provided in the Note, except that if an Event of Default, or an event which with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the full prepayment consideration computed in accordance with the Note, if applicable). If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Beneficiary of such award or payment, Beneficiary shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt.

4.10. Maintenance of Mortgaged Property. Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair and in keeping with the condition and repair of properties of a similar use, value, age, nature and construction. Except as contemplated in the Plans and Specifications (as defined in the Loan Agreement) and the Loan Documents, the Improvements and the Equipment shall not be removed,

demolished or materially altered (except for normal replacement of the Equipment) without the consent of Beneficiary. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof.

4.11. Use of Mortgaged Property. Without Beneficiary's prior written consent, Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof, nor shall Mortgagor initiate, join in, acquiesce in, or consent to any zoning change or zoning matter affecting the Mortgaged Property. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Beneficiary. Mortgagor shall not permit or suffer to occur any waste on or to the Mortgaged Property or to any portion thereof and shall not take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of management. Mortgagor will not install or permit to be installed on the Mortgaged Property any underground storage tank or above-ground storage tank without the written consent of Beneficiary. Mortgagor shall not use, maintain or operate the Mortgaged Property in any manner which constitutes a public or private nuisance or which makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect to the Mortgaged Property.

4.12. Estoppel Certificates and No Default Affidavits.

- (a) After request by Beneficiary, Mortgagor shall within ten (10) days furnish Beneficiary with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.
- (b) After request by Beneficiary, Mortgagor shall within ten (10) days furnish Beneficiary with a certificate reaffirming all representations and warranties of Mortgagor set forth herein and in the other Loan Documents as of the date requested by Beneficiary or, to the extent of any changes to any such representations and warranties, so stating such changes.

4.13. Performance of Leases: Mortgagor covenants: (a) duly and punctually to perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon it under each of the Leases, (b) not to do or permit to be done anything to impair the security of any of the Leases, (c) except for tenant deposits, not to collect any of the Rent more than thirty (30) days in advance of the time when the same becomes due under the terms of such Leases, (d) not to discount any future accruing Rent, (e) to maintain each of the Leases in full force and effect during the full term thereof (except as otherwise provided in (g) below), (f) to appear in and defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of it or the other party or parties thereto, (g) not to amend, modify, or terminate any of the Leases or accept a surrender of the leased Mortgaged Property thereunder in any respect or enter into any new Leases without the prior written consent of Beneficiary, (h) not to assign or grant a security interest in and to any of the Leases to any party other than Beneficiary without the prior written consent of Beneficiary, (i) at the request of Beneficiary, to collaterally assign and transfer to Beneficiary any specific Leases (said collateral assignment to be in form and substance satisfactory to Beneficiary), but no such assignment shall be construed as a consent by Beneficiary to any Lease so assigned, or to impose upon Beneficiary any obligation with respect thereto, (j) at the request of Beneficiary, to execute and deliver all such further assurances and assignments in and to the Mortgaged Property as Beneficiary shall from time to time reasonably require, and (k) to deliver to Beneficiary executed counterparts of all Leases regardless of whether such Leases were or are executed before or after the date hereof.

4.14. Inspection: Mortgagor will permit Trustee and Beneficiary, and their agents, representatives and employees, to inspect the Mortgaged Property at all reasonable times.

4.15. Hold Harmless: Mortgagor will defend, at its own cost and expense, and hold Beneficiary harmless from, any action, proceeding or claim affecting the Mortgaged Property or the Loan Documents, or resulting from or arising out of the failure of Mortgagor to perform or discharge the Obligations or otherwise to comply with the provisions of the Loan Documents, and all costs and expenses incurred by Beneficiary in protecting its interests hereunder in such an event (including all court costs and attorneys' fees) shall be borne by Mortgagor.

4.16. Books and Records: Mortgagor will maintain full and accurate books of account and other records reflecting the results of its operations of the Mortgaged Property, and will furnish or cause to be furnished to Beneficiary, such financial data as Beneficiary shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property, and Beneficiary shall have the right, at reasonable times and upon reasonable notice, to audit, examine and make copies or extracts of Mortgagor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Beneficiary and Beneficiary's representatives for such purpose on the Mortgaged Property or at such other location as Beneficiary may approve.

4.17. Maintenance of Rights of Way, Easements, and Licenses: Mortgagor will maintain, preserve and renew all rights of way, easements, grants, privileges, licenses and franchises reasonably necessary for the use of the

Mortgaged Property from time to time and will not, without the prior consent of Beneficiary, initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Property. Mortgagor shall, however, comply with all restrictive covenants which may at any time affect the Mortgaged Property, zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

4.18. Compliance with Anti-Forfeiture Laws: Mortgagor will not commit, permit, or suffer to exist any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any money paid in performance of Mortgagor's obligations under the Note or under any of the Security Documents. In furtherance thereof, Mortgagor hereby agrees to indemnify Beneficiary and Trustee and agrees to defend and hold Beneficiary and Trustee harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements set forth in this Paragraph 4.18. Without limiting the generality of the foregoing, the filing of formal charges for the commencement of proceedings against Mortgagor, or against all of any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in the performance of Mortgagor's obligations under the Security Documents is a potential result shall, at the election of the Beneficiary, constitute an Event of Default hereunder without notice or opportunity to cure.

4.19. No Credits on Account of the Debt. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Beneficiary shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

4.20. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

4.21. Performance of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

4.22. Reporting Requirements. Mortgagor agrees to give prompt notice to Beneficiary of the insolvency or bankruptcy filing of Mortgagor or the death, insolvency or bankruptcy filing of any Guarantor.

ARTICLE 5 — NEGATIVE COVENANTS

Mortgagor hereby covenants and agrees with Beneficiary that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1. Use Violations. Mortgagor will not commit, permit, or suffer to exist any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any money paid in performance of Mortgagor's obligations under the Note or under any of the Loan Documents. In furtherance thereof, Mortgagor hereby agrees to indemnify Beneficiary and Trustee and agrees to defend and hold Beneficiary and Trustee harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements set forth in this Paragraph 5.1. Without limiting the generality of the foregoing, the filing of formal charges for the commencement of proceedings against Mortgagor, or against all of any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in the performance of Mortgagor's obligations under the Security Documents is a potential result shall, at the election of the Beneficiary, constitute an Event of Default hereunder without notice or opportunity to cure.

5.2. Alterations. Mortgagor will not commit or permit any waste of the Mortgaged Property and will not (subject to the provisions of Paragraphs 4.10 hereinabove), without the prior written consent of Beneficiary make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.

5.3. Replacement of Fixtures and Personalty. Mortgagor will not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Land or Buildings unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest except such as may be first approved in writing by Beneficiary.

5.4 Transfer or Encumbrance of the Mortgaged Property. Subject to the provisions of Paragraph 11.32 hereof regarding permitted sales of Homes (as defined in the Loan Agreement) and the payment of Release Prices (as defined in the Loan Agreement):

- (A) Mortgagor acknowledges that Beneficiary has examined and relied on the creditworthiness and experience of Mortgagor in developing, constructing, owning and operating properties such as the Mortgaged Property in agreeing to make the loan secured hereby, and that Beneficiary will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of

the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Beneficiary has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Beneficiary can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Beneficiary, sell, convey, lease, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit the Mortgaged Property or any part thereof to be sold, conveyed, leased, alienated, mortgaged, encumbered, pledged or otherwise transferred; provided, however, Beneficiary may, in its sole discretion, give such written consent (but shall have no obligation to do so) to any such sale, conveyance, lease, alienation, mortgage, encumbrance, pledge or other transfer, and any such consent may be conditioned upon the satisfaction of such conditions precedent as Beneficiary may require; provided, further, in no event shall this Paragraph 5.4 include nor prohibit a Lease.

- (b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Paragraph 5.4 shall not include (x) transfers made by devise or descent or by operation of law upon the death of a joint tenant, partner, shareholder or member, subject, however, to all of the following requirements: (1) written notice of any transfer under this subparagraph (b)(x), whether by will, trust or other written instrument, operation of law or otherwise, is provided to Beneficiary or its servicer, together with copies of such documents relating to the transfer as Beneficiary or its servicer may reasonably request, (2) control over the management and operation of the Mortgaged Property and of Mortgagor is retained by one or more individuals at all times prior to the death or legal incapacity of all the joint tenants, partners, shareholders or members of Mortgagor or any Guarantor (the "Original Principals") and is thereafter assumed by persons who are acceptable in all respects to Beneficiary (in its sole and absolute discretion), (3) no such transfer by any of the Original Principals will release the respective estate from any liability as a Guarantor, and (4) no such transfer, death or other event has any adverse effect either on the bankruptcy-remote status of Mortgagor under the requirements of any national rating agency for the Certificates (defined in Paragraph 11.4 hereinbelow) or on the status of Mortgagor as a continuing legal entity liable for the payment of the Note and the performance of all other obligations secured hereby, or (y) transfers otherwise by operation of law in the event of a bankruptcy, but shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, Guarantor, or any general partner of Mortgagor or Guarantor is a corporation, any merger, consolidation or the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders (provided, however, in no event shall this subpart [iii] apply to any Guarantor whose stock, shares or partnership interests are traded on a nationally recognized stock exchange); (iv) if Mortgagor, Guarantor, or any general partner of Mortgagor or Guarantor is a limited liability company or limited partnership, the voluntary or involuntary sale, conveyance or transfer by which an aggregate of more than fifty percent (50%) of the ownership interest in such limited liability company or more than fifty percent (50%) of the limited partnership interests in such limited partnership shall be vested in parties not having an ownership interest as of the date of this Mortgage; and (v) if Mortgagor, any Guarantor or any general partner of Mortgagor or any Guarantor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner, managing partner or joint venturer or the transfer of all or any portion of the ownership interest of any general partner, managing partner or joint venturer.
- (c) Beneficiary may predicate its decision to grant or withhold consent to any subsequent sale, conveyance, lease, alienation, mortgage, encumbrance, pledge or other transfer upon the satisfaction (in the sole determination of Beneficiary) with such conditions as may be imposed by Beneficiary, which may include, but shall not be limited to, the following matters: (i) the delivery to Beneficiary of an endorsement (at Mortgagor's sole cost and expense) to the Beneficiary policy of title insurance then insuring the lien created by this Mortgage in a form and substance acceptable to Beneficiary, in its sole judgment; (ii) the grantee's integrity, reputation, character, creditworthiness and development ability being satisfactory to Beneficiary, in its sole judgment; (iii) the grantee executing (prior to such sale or transfer) a written assumption agreement containing such terms as Beneficiary may require; (iv) an adjustment to the term of the Note, a principal pay down on the Note or an increase in the rate of interest payable on the Note; (v) payment by Mortgagor of a transfer and assumption fee determined by Beneficiary; and (vi) payment by Mortgagor of the expenses described in subparagraph 5.4(e) below; Beneficiary shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon any sale, conveyance, lease, alienation, mortgage, encumbrance, pledge or transfer by Mortgagor of the Mortgaged Property without Beneficiary's consent.
- (d) Beneficiary's consent to any one sale, conveyance, lease, alienation, mortgage, encumbrance, pledge

or transfer of the Mortgaged Property shall not be deemed to be a waiver of Beneficiary's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property made in contravention of this Paragraph 5.4 shall be null and void and of no force and effect.

- (e) Mortgagor agrees to bear and shall pay or reimburse Beneficiary on demand for all reasonable expenses (including, without limitation, all recording costs, taxes, reasonable attorney's fees and disbursements and title search costs) incurred by Beneficiary in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

5.5 Impair Integrity; Community Facilities District. Mortgagor shall not by act or omission impair the integrity of the Mortgaged Property as a single-family residential lot. Without the prior written consent of Beneficiary (i) Mortgagor shall not initiate or acquiesce in any change in zoning affecting the Mortgaged Property and (ii) Mortgagor shall not consent to, or vote in favor of, the inclusion of all or any part of the Mortgaged Property to become subject to any additional improvement district.

ARTICLE 6 — DEFAULT AND REMEDIES

6.1 The term "Event of Default", as used herein, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

- (a) if any portion of the Debt is not paid within fifteen (15) days from the date when the same is due;
- (b) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Beneficiary upon request;
- (c) if Mortgagor fails to timely provide any financial or accounting report required under any of the Loan Documents;
- (d) if Mortgagor sells, conveys, leases, alienates, mortgages, encumbers, pledges or otherwise transfers any portion of the Mortgaged Property or permits the Mortgaged Property or any part thereof to be sold, conveyed, leased, alienated, mortgaged, encumbered, levied, pledged or otherwise transferred (other than in connection with the sale of a Lot or Home for which a Release Price has been paid as provided for in Paragraph 11.32 hereof) without Beneficiary's prior written consent;
- (e) if any representation or warranty of Mortgagor, or of any Guarantor, made herein, in any Loan Document, any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Beneficiary shall have been false or misleading in any material respect when made;
- (f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor or any Guarantor shall admit in writing its inability to pay, or Mortgagor's or any Guarantor's failure to pay, debts generally as the debts become due;
- (g) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a 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, or acquiesced in by, Mortgagor or any Guarantor or if Mortgagor or any Guarantor shall admit in writing its insolvency or bankruptcy or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;
- (h) subject to Mortgagor's right to contest as provided herein, if the Mortgaged Property becomes subject to any mechanic's, materialman's, mortgage or other lien except a lien for local real estate taxes and assessments not then due and payable;
- (i) if Mortgagor fails to cure properly any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property;
- (j) except as permitted in this Mortgage or contemplated under the Loan Documents, the actual or threatened alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Beneficiary;
- (k) damage to the Mortgaged Property in any manner which is not covered by insurance solely as a result of Mortgagor's failure to maintain insurance required in accordance with this Mortgage;
- (l) if all or a substantial part of Mortgagor's assets (other than the Mortgaged Property) are attached,

seized, subjected to a writ or distress warrant or are levied upon (unless such attachment, seizure, writ, distress warrant or levy is vacated within sixty [60] days following the date of the same);

- (m) entry of a judgment in excess of \$10,000.00 and the expiration of any appeal rights or the dismissal or final adjudication of appeals against Mortgagor (unless such judgment is vacated within sixty [60] days following the date of the same);
- (n) this Mortgage shall cease to constitute a first-priority lien on the Mortgaged Property (other than in accordance with its terms);
- (o) seizure or forfeiture of the Mortgaged Property, or any portion thereof, or Mortgagor's interest therein, resulting from criminal wrongdoing or other unlawful action of Mortgagor, its affiliates or any tenant in the Mortgaged Property under any federal, state or local law;
- (p) if Mortgagor, or any Guarantor, shall die, dissolve, terminate or liquidate, or merge with or be consolidated with any other entity, or become permanently disabled;
- (q) if Mortgagor discontinues its homebuilding business;
- (r) if Mortgagor shall take any action to or shall otherwise begin the process of winding up its business or affairs, or dissolving, liquidating or terminating;
- (s) there shall be a change in "control" of Mortgagor (as used in this subparagraph "control" shall mean the possession, directly or indirectly, of power to direct or cause the direction of management or policies of Mortgagor, whether through ownership of securities or other ownership interests, by contract or otherwise); and
- (t) if Mortgagor shall default under any term, covenant, or condition of this Mortgage or any of the Notes or any other Loan Documents other than as specified in any of the above subparagraphs.
- (u) if the holder of any lien or security interest on the Mortgaged Property (without hereby implying Beneficiary's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.
- (v) if any Event of Default occurs and is continuing under any Loan Documents or other documents relating to or evidencing any loan from Beneficiary to Mortgagor.
- (w) if Mortgagor, without the prior written consent of Beneficiary, creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge on, or conditional sale or other title retention agreement, regardless of whether same is expressly subordinate to the liens of the Loan Documents, with respect to, the Mortgaged Property, the Leases, the Plans or the Rents, other than the Permitted Encumbrances.

6.2. Notice and Cure. Notwithstanding the foregoing, Beneficiary agrees to give to Mortgagor written notice as described below of (a) Mortgagor's failure to pay any part of the Debt when due (a "Monetary Default"), (b) a default referred to in subparagraph 6.1(n) above (a "First Lien Default"), (c) a default referred to in subparagraphs 6.1(c), (i) or (l) above (a "Nonmonetary Default") and (d) a default referred to in subparagraphs 6.1(e), (h) or (i) that arise solely with respect to a particular Lot (as defined in the Loan Agreement) or Home (as defined in the Loan Agreement) (a "Limited Scope Default"). With respect to a Limited Scope Default, Mortgagor shall have a period of five (5) days from its receipt of notice in which to prepay the entire Release Price, together with accrued interest, for the Lot and Home which is the subject of such default. Mortgagor shall have a period of ten (10) days from its receipt of notice in which to cure a Monetary Default (which written notice period may run concurrently with the ten [10] day period referred to in subparagraph 6.1[a]), shall have a period of twenty (20) days from its receipt of notice to cure a First Lien Default and shall have a period of twenty (20) days from its receipt of notice in which to cure a Nonmonetary Default unless such Nonmonetary Default is not susceptible to cure within such twenty (20) day period, in which case Mortgagor shall commence to cure such Nonmonetary Default within twenty (20) days following notice and diligently prosecute such cure to completion; provided, however, that Mortgagor will provide Beneficiary with such information as Beneficiary may reasonably request concerning the status of any attempted cure of any such Nonmonetary Default and the cure of any such Nonmonetary Default must be completed to the satisfaction of Beneficiary within thirty (30) days of notice in any case. Notwithstanding the foregoing, Beneficiary may, but shall not be required, to give notice of a Monetary Default or a recurrence of the same Nonmonetary Default more frequently than two times in any calendar year. A Limited Scope Default and/or Monetary Default and/or First Lien Default and/or Nonmonetary Default shall nevertheless be an Event of Default for all purposes under the Loan Documents (including, without limitation, Beneficiary's right to collect Default Interest and any other administrative charge set forth in the Note) except that the acceleration of the Debt or other exercise of remedies shall not be prior to the expiration of the applicable cure and/or grace periods provided in Paragraph 6.1 or in this Paragraph.

6.3. Remedies. Upon the occurrence of an Event of Default and subject to any applicable cure period, Beneficiary may, at Beneficiary's option, and by or through Trustee, by Beneficiary itself or otherwise, do any one or

more of the following:

- (a) Right to Perform Mortgagor's Covenants. If Mortgagor has failed to keep or perform any covenant whatsoever contained in this Mortgage or the other Loan Documents, Beneficiary may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant; and any payment made or expense incurred in the performance or attempted performance of any such covenant, together with any sum expended by Beneficiary that is chargeable to Mortgagor or subject to reimbursement by Mortgagor under the Loan Documents, shall be and become a part of the "Debt," and Mortgagor promises, upon demand, to pay to Beneficiary, at the place where the Note is payable, all sums so incurred, paid or expended by Beneficiary, with interest from the date when paid, incurred or expended by Beneficiary at the Default Rate as specified in the Note.
- (b) Right of Entry. Beneficiary may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to rent the same for the account of Mortgagor and to deduct from such Rents all costs, expenses, and liabilities of every character incurred by Beneficiary in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property and to apply the remainder of such Rents on the Debt in such manner as Beneficiary may elect. All such costs, expenses, and liabilities incurred by Beneficiary in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Mortgagor and shall bear interest from the date of expenditure until paid at the Default Rate as specified in the Notes, all of which shall constitute a portion of the Debt. If necessary to obtain the possession provided for above, Beneficiary may invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Beneficiary pursuant to this subparagraph, Beneficiary shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Mortgaged Property unless such loss is caused by the willful misconduct of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. Mortgagor shall and does hereby agree to indemnify Beneficiary for, and to hold Beneficiary harmless from, any and all liability, loss, or damage, which may or might be incurred by Beneficiary under any such Lease or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any such Lease. Should Beneficiary incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate as specified in the Notes, shall be secured hereby, and Mortgagor shall reimburse Beneficiary therefor immediately upon demand. Nothing in this subparagraph shall impose any duty, obligation, or responsibility upon Beneficiary for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, or for any hazardous substances or environmental conditions on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Mortgagor hereby assents to, ratifies, and confirms any and all actions of Beneficiary with respect to the Mortgaged Property taken under this subparagraph.
- (c) Right to Accelerate. Beneficiary may, without notice (except as provided in Paragraph 6.2 above), demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Mortgagor and all other parties obligated in any manner whatsoever on the Debt, declare the entire unpaid balance of the Debt immediately due and payable; and upon such declaration, the entire unpaid balance of the Debt shall be immediately due and payable. Notwithstanding anything to the contrary contained in or inferable from any provision hereof, upon the occurrence of an Event of Default as defined in subparagraph 6.1(u) herein, the principal balance, the unpaid accrued interest under the Notes and any other accrued but unpaid portion of the Indebtedness shall be automatically and immediately due and payable in full without the necessity of any action on the part of Trustee or Beneficiary.
- (d) Foreclosure-Power of Sale. Beneficiary may institute a proceeding or proceedings, judicial, or nonjudicial, by advertisement or otherwise, for the complete or partial foreclosure of this Mortgage or the complete or partial sale of the Mortgaged Property under the power of sale contained herein or under any applicable provision of law. Beneficiary may sell the Mortgaged Property, and all estate,

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

(e) Rights Pertaining to Sales. Subject to the requirements of applicable law and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the Mortgaged Property under or by virtue of subparagraph (d) above, whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

- (i) Trustee or Beneficiary may conduct any number of sales from time to time. The power of sale set forth above shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Beneficiary's opinion, until the Debt shall have been paid in full.
- (ii) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice.
- (iii) After each sale, Beneficiary, Trustee or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Mortgagor in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as specified in the Notes. Each of Trustee and Beneficiary is hereby appointed the true and lawful attorney-in-fact of Mortgagor, which appointment is irrevocable and shall be deemed to be coupled with an interest and with full power of substitution, in Mortgagor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, Mortgagor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Mortgagor, if requested by Trustee or Beneficiary, shall ratify and confirm any such sale or sales by executing and delivering to Trustee, Beneficiary or such purchaser or purchasers all such instruments as may be advisable, in Trustee's or Beneficiary's judgment, for the purposes as may be designated in such request.
- (iv) Any and all statements of fact or other recitals made in any of the instruments referred to in subparagraph (iii) of this subparagraph (e) given by Trustee or Beneficiary shall be taken as conclusive and binding against all persons as to evidence of the truth of the facts so stated and recited.
- (v) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Mortgagor to the fullest extent permitted by applicable law. The purchaser at any foreclosure sale pursuant to Paragraph 6.3(d) shall become the legal owner of the Mortgaged Property, and all occupants of the Mortgaged Property or any part thereof shall become tenants at sufferance of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any Justice Court having jurisdiction over the Mortgaged Property.
- (vi) Upon any such sale or sales, any person, including without limitation Beneficiary, may bid for and acquire the Mortgaged Property and Mortgagor hereby covenants to warrant and defend or cause to defend the title to such purchaser or purchasers and to cooperate as necessary in any lawsuit affecting such title. If Beneficiary bids for and acquires the Mortgaged Property at such sale or sales, in lieu of paying cash therefor, Beneficiary may make settlement for the purchase price by crediting against the Debt the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder, and any other sums which Trustee or Beneficiary is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.
- (vii) Upon any such sale, it shall not be necessary for Trustee, Beneficiary or any public officer acting under execution or order of court to have present or constructively in its possession any of the Mortgaged Property.

(f) Beneficiary's Judicial Remedies. Beneficiary, or Trustee upon written request of Beneficiary, may

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

- (g) Beneficiary's Right to Appointment of Receiver. Beneficiary, as a matter of right and (i) without regard to the sufficiency of the security for repayment of the Debt, (ii) without notice to Mortgagor, (iii) without any showing of insolvency, fraud, or mismanagement on the part of Mortgagor, (iv) without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, and (v) without regard to the then value of the Mortgaged Property, shall be entitled to the appointment of a receiver or receivers for the protection, possession, control, management and operation of the Mortgaged Property, including (without limitation), the power to collect and apply the Rents, pay the expenses incurred in collecting the Rents and in managing, operating, maintaining, protecting or preserving the Mortgaged Property, enforce this Mortgage and, in case of a sale and deficiency, during the full statutory period of redemption (if any), whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such Rents. Mortgagor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subparagraph shall have the usual powers and duties of receivers in such matters. For the avoidance of doubt, Mortgagor agrees that Beneficiary shall have the absolute and unconditional right to the appointment of a receiver in any independent and/or separate action brought by Beneficiary regardless of whether Beneficiary seeks any relief in such action other than the appointment of a receiver. In that respect, Mortgagor waives any express or implied requirement under common law or statute that a receiver may be appointed only ancillary to other judicial or non-judicial relief.
- (h) Beneficiary's Uniform Commercial Code Remedies. Beneficiary may exercise its rights of enforcement under the Uniform Commercial Code in effect in the state in which the Mortgaged Property is located, including without limitation, the right and power to sell, or otherwise dispose of, the "Collateral" (as defined in Section 9.1), or any part thereof, pursuant to the Uniform Commercial Code as in effect in the State of Washington (or any successor statute), in such order as Beneficiary may choose, and for that purpose may take immediate and exclusive possession of the Collateral, or any part thereof, and with or without judicial process, enter upon any Mortgaged Property on which the Collateral, or any part thereof, may be situated and remove the same therefrom without being deemed guilty of trespass and without liability for damages thereby occasioned, or, at Beneficiary's option, Mortgagor shall assemble the Collateral and make it available to Beneficiary at the place and at the time designated in any written demand from Beneficiary to Mortgagor.
- (i) Other Rights. Beneficiary (i) may surrender the Policies maintained pursuant to this Mortgage or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Debt, and, in connection therewith, Mortgagor hereby appoints Beneficiary as agent and attorney-in-fact with full power of substitution (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such premiums; (ii) may apply any escrow (if any) and any other funds held by Beneficiary toward payment of the Debt; and (iii) shall have and may exercise any and all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any of the Loan Documents, or otherwise.
- (j) Discontinuance of Remedies. In case Beneficiary shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Beneficiary shall have the unqualified right so to do and, in such event, Mortgagor and Beneficiary shall be restored to their former positions with respect to the Debt, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if same had never been invoked.
- (k) Remedies Cumulative. All rights, remedies, and recourses of Beneficiary granted in the Notes, this Mortgage and the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Mortgagor, the Mortgaged Property, or any one or more of them, at the sole discretion of Beneficiary; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Beneficiary exercising or pursuing any remedy in relation to the Mortgaged Property prior to Beneficiary bringing suit to recover the Debt; and (vi) in the event Beneficiary elects to bring suit on the Debt and obtains a judgment against Mortgagor prior to exercising any remedies in relation to the Mortgaged Property, all liens and security interests, including the lien of this Mortgage, shall remain in full force and effect and may be exercised thereafter at Beneficiary's option.

- (l) Election of Remedies. Beneficiary may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Mortgagor or any other party to pay the Debt. For payment of the Debt, Beneficiary may resort to any collateral securing the payment of the Debt in such order and manner as Beneficiary may elect. No collateral taken by Beneficiary shall in any manner impair or affect the lien or security interests given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.
- (m) Waivers. Mortgagor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default except as expressly provided herein or of Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshalling of assets, a sale in inverse order of alienation or any other right to direct in any manner, the order of sale of any of the Mortgaged Property.
- (n) Statute of Limitations. To the extent permitted by applicable law, Beneficiary's rights hereunder shall continue even to the extent that a suit for collection of the Debt, or part thereof, is barred by a statute of limitations. Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt.
- (o) Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against Mortgagor (other than an involuntary petition filed by or joined in by Beneficiary), Mortgagor shall not assert, or request any other party to assert, that the automatic stay under § 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Beneficiary to enforce any rights it has by virtue of this Mortgage, or any other rights that Beneficiary has, whether now or hereafter acquired, against any guarantor of the Debt. Further, Mortgagor shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to § 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Beneficiary to enforce any rights it has by virtue of this Mortgage against any guarantor of the Debt. The waivers contained in this subparagraph are a material inducement to Beneficiary's willingness to enter into this Mortgage and Mortgagor acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Beneficiary of Beneficiary's rights and remedies against Mortgagor or any guarantor of the Debt.
- (p) Bankruptcy Acknowledgment. In the event the Mortgaged Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then Beneficiary shall immediately become entitled, in addition to all other relief to which Beneficiary may be entitled under this Mortgage, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to § 362 of the Bankruptcy Code so as to permit Beneficiary to pursue its rights and remedies against Mortgagor as provided under this Mortgage and all other rights and remedies of Beneficiary at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting Mortgagor's use of all "cash collateral" as defined under § 363 of the Bankruptcy Code. In connection with such Bankruptcy Court orders, Mortgagor shall not contend or allege in any pleading or petition filed in any court proceeding that Beneficiary does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by Mortgagor to stay, condition, or inhibit Beneficiary from exercising its remedies are hereby admitted by Mortgagor to be in bad faith and Mortgagor further admits that Beneficiary would have just cause for relief from the automatic stay in order to take such actions authorized under state law.
- (q) Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Mortgage, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Rents collected by Beneficiary from the Mortgaged Property, or any escrow hereunder (if any) or sums received pursuant to Paragraph 4.9 hereof, or proceeds from insurance which Beneficiary elects to apply to the Debt pursuant to Paragraph 4.6 hereof, shall be applied by Trustee, or by Beneficiary, as the case may be, to the Debt in the following order and priority: (1) to the payment of all expenses of advertising, operating, repairing, holding, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums or other sums including reasonable attorneys' fees and a reasonable fee or commission to Trustee (including payment of all expenses, liabilities and advances of Trustee), not to exceed five percent of the proceeds thereof or sums so received; (2) to the full and final payment of the Debt as follows: first, to accrued but unpaid interest, second, to the matured portion of principal of the Debt, and third, to prepayment of the unmatured portion, if any, of principal of the Debt applied to installments of principal in inverse order of maturity; (3) after the full and final payment of the Debt, to the full performance and discharge of any other obligations of Mortgagor under the Loan Documents; (4) the

balance, if any or to the extent applicable, to the holder or beneficiary of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Trustee and Beneficiary shall hereby be entitled to rely exclusively on a commitment for title insurance issued to determine such priority); and (5) the cash balance, if any, to Mortgagor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Debt like any other payment. The balance of the Debt remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Notes and the other Loan Documents.

- (r) Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Mortgagor or Mortgagor's representatives, successors or assigns, or any other persons claiming any interest in the Mortgaged Property by, through or under Mortgagor (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Mortgaged Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Beneficiary or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Mortgaged Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Mortgaged Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Mortgaged Property in the appropriate court of the county in which the Land is located.
- (s) Notice to Account Debtors. Beneficiary may, at any time after a default hereunder, which default is not cured within any applicable grace or cure period, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Mortgagor included in the Mortgaged Property to pay Beneficiary directly. Mortgagor shall at any time or from time to time upon the request of Beneficiary provide to Beneficiary a current list of all such account debtors and obligors and their addresses.
- (t) Payment of Expenses. Mortgagor shall pay on demand all of Beneficiary's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Beneficiary until actually paid by Mortgagor at the Default Rate, and the same shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Notes.
- (u) Successful Bid Constitutes Fair Market Value. In any action by Beneficiary to recover a deficiency judgment for any balance due under the Notes upon the foreclosure of this Mortgage or in any action to recover the obligations secured hereby, and as a material inducement to making the loan(s) evidenced by the Notes, Mortgagor acknowledges and agrees that the successful bid amount made at any judicial or non-judicial foreclosure sale, if any, shall conclusively be deemed to constitute the fair market value of the Mortgaged Property, that such bid shall be binding against the Mortgagor in any proceeding seeking to determine or contest the fair market value of the Mortgaged Property, and that such bid amount shall be the preferred alternative means of determining and establishing the fair market value of the Mortgaged Property. Mortgagor hereby waives and relinquishes any right to have the fair market value of the Mortgaged Property determined by a judge or jury in any action seeking a deficiency judgment or any action on the obligations secured hereby.

ARTICLE 7 — INDEMNIFICATION AND DUTY TO DEFEND

7.1. Indemnification. In addition to any other indemnifications provided in any of the Loan Documents, Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and save harmless Beneficiary, Trustee, or any person or entity who is or will have been involved in the servicing of the Loan, any person or entity whose name the encumbrance created by this Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan (including but not limited to investors or prospective investors, 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) as well as the respective affiliates, subsidiaries, persons controlling or under common control, directors, officers, shareholders, members, partners, employees, agents, servants, representatives, contractors, subcontractors, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Mortgaged Property, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to any successors by merger, consolidation or acquisition of all or a substantial portion of Beneficiary's assets and business) (collectively, the "Indemnified Parties"), for, from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against any of the Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) management, development and ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, and the Notes, this Mortgage or any other Loan Documents; (c) any and all lawful action that may be taken by Beneficiary in connection

with the enforcement of the provisions of this Mortgage or the Notes or any other Loan Documents; (d) any and all lawful action that may be taken by Beneficiary in connection with the enforcement of the provisions of this Mortgage or the Notes or any other Loan Documents, whether or not suit is filed in connection with same, or in connection with Mortgagor, any Guarantor and/or any member, partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (e) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (g) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (h) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (i) any failure of the Mortgaged Property to comply with any laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property, including, without limitation, the Access Laws; (j) any representation or warranty made in the Notes, this Mortgage or the other Loan Documents being false or misleading in any respect as of the date such representation or warranty was made; (k) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Mortgaged Property or any part thereof under any legal requirement or any liability asserted against Beneficiary with respect thereto; (l) the claims of any lessee to any portion of the Mortgaged Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease; (m) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (n) the enforcement by any Indemnified Party of the provisions of this Paragraph 7.1; (o) any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (p) any investigation, defense, and settlement incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Beneficiary's sole discretion. The obligations and liabilities of Mortgagor under this Paragraph 7.1 (A) shall survive for a period of one (1) year following any release of this Mortgage executed by Beneficiary and satisfaction of the Loan evidenced by the Loan Documents, and (B) shall survive the transfer or assignment of this Mortgage, the entry of a judgment of foreclosure, sale of the Mortgaged Property by nonjudicial foreclosure sale, or delivery of a deed in lieu of foreclosure (including, without limitation, any transfer by Mortgagor of any of its rights, title and interest in and to the Mortgaged Property to any party, whether or not affiliated with Mortgagor).

7.2. Duty to Defend. Upon written request by an Indemnified Party, Mortgagor shall defend such Indemnified Party (if requested by an Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of the Indemnified Parties, their attorneys shall control the resolution of claim or proceeding. Upon demand, Mortgagor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, and other professionals in connection therewith. Any amounts payable to any of the Indemnified Parties by reason of the application of Paragraph 7.1 or this Paragraph shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate specified in the Notes from the date loss or damage is sustained by any of the Indemnified Parties until paid.

ARTICLE 8 — HAZARDOUS MATERIALS

8.1. Definitions. For purposes of this article only, the following terms shall have the meaning specified in this subparagraph:

- (a) "Environmental Laws" shall mean all laws, ordinances, orders, interpretations, rules and regulations of any governmental authority applicable to Mortgagor or the Mortgaged Property relating to human health or the environment, including, without limitation, RCRA and CERCLA (as hereinafter defined), the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., and any similar or related state laws or local ordinances, all as now or hereafter amended, as well as any common law or any other rule of law of any governmental authority applicable to the Mortgagor or the Mortgaged Property and relating to human health or the environment.
- (b) "Hazardous Materials" shall mean any of the following: (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder ("RCRA"); (ii) any "hazardous substance", "pollutant" or "contaminant", as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder ("CERCLA"); (iii) asbestos (whether or not friable) and asbestos-containing materials; (iv) any volatile organic compounds, including oil and petroleum products; (v) any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides,

herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; (vi) any other substance the presence of which on the Mortgaged Property is prohibited by any Environmental Laws; and (vii) any other substance which by any Environmental Laws requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal.

- (c) "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Buildings, facilities, soil, groundwater, air or other elements on or of the Mortgaged Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Mortgaged Property.

8.2. Mortgagor's Representations and Warranties. Mortgagor hereby represents and warrants that:

- (a) Mortgagor has performed reasonable investigations, studies and tests as to any possible environmental contamination, remedial obligation, liabilities or problems with respect to the Mortgaged Property and such investigations, studies and tests have disclosed no Hazardous Materials or violations of Environmental Laws.
- (b) To the best of Mortgagor's knowledge, there have been no releases of Hazardous Materials either at, upon, under or within the Mortgaged Property, and no Hazardous Materials have migrated to the Mortgaged Property from neighboring properties.
- (c) No Hazardous Materials are located on or have been stored, processed or disposed of on, or released or discharged from (including discharges to groundwater), the Mortgaged Property or any other adjoining property currently owned or operated by Mortgagor or any affiliate of Mortgagor, and no above or underground storage tanks exist on the Mortgaged Property.
- (d) Mortgagor has not received notice from any governmental authority or other occupant or from any other person with respect to any release of Hazardous Materials at, upon, under or within the Mortgaged Property, and to the best of Mortgagor's knowledge no investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Mortgaged Property. The Mortgaged Property is not currently on, and to Mortgagor's knowledge, after diligent investigation and inquiry, has never been on, any federal or state "Superfund" or "Superlien" list.
- (e) To the best of Mortgagor's knowledge, there is no asbestos or asbestos-containing materials, PCBs, radon gas, or urea formaldehyde foam insulation at or within the Mortgaged Property.
- (f) Mortgagor possesses all permits, licenses, registrations, and similar authorizations required to operate the Mortgaged Property under Environmental Laws, and the Mortgaged Property and all operations conducted thereon are currently in compliance with all Environmental Laws.

8.3. Mortgagor's Covenants. Mortgagor hereby covenants and agrees as follows:

- (a) Mortgagor has not been, is not, and will not become involved in operations at the Mortgaged Property which could lead to the imposition on Mortgagor or any subsequent owner of the Mortgaged Property of liability under any Environmental Laws.
- (b) Mortgagor will strictly comply with all Environmental Laws, and will notify Beneficiary of the presence of or any release of Hazardous Materials at, upon, under or within the Mortgaged Property, or of the receipt by Mortgagor of any notice from any governmental authority or from any tenant or other occupant or from any other person with respect to any alleged such release or presence, promptly upon discovery of such release or presence or receipt of such notice, and will send to Beneficiary copies of all results of tests of underground storage tanks at the Mortgaged Property. Without limiting the generality of the foregoing, Mortgagor will give to Beneficiary prompt notice of the commencement of any litigation or threat of litigation relating to any alleged release of any Hazardous Materials at, upon, under or within the Mortgaged Property. Mortgagor will deliver to Beneficiary any documentation or records Beneficiary may reasonably request and which are susceptible of being obtained by Mortgagor without undue cost or expense and without the necessity for initiating legal proceedings to obtain the same in connection with all such notices, inquiries, and communications, and shall endeavor to advise Beneficiary of any subsequent developments.
- (c) Mortgagor shall, at its own cost and expense, take all actions as shall be necessary or advisable for the clean-up of the Mortgaged Property or any other property currently, previously or subsequently owned or operated by Mortgagor or any affiliate of Mortgagor, including all removal, containment and remedial action in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Beneficiary), and shall further pay or cause to be paid at no expense to Beneficiary all clean-up, administrative, and enforcement costs of all governmental authorities or the

parties protected by Environmental Laws which may be asserted against the Mortgaged Property or any other property previously or subsequently owned or operated by Mortgagor or any affiliate of Mortgagor, the owner or operator thereof or a lienholder secured thereby. All costs (including, without limitation, those costs described above), damages, liabilities, losses, claims, expenses (including, without limitation, attorneys' fees and disbursements) which are incurred by Beneficiary, without the requirement that Beneficiary wait for the ultimate outcome of any litigation, claim or other proceeding, shall be paid by Mortgagor to Beneficiary within ten (10) days after notice to Mortgagor from Beneficiary itemizing the amounts incurred to the effective date of such notice, with interest thereon from the date of payment by Beneficiary at the default or post-maturity rate of interest provided for in the Notes. Until such amounts shall be paid by Mortgagor, they shall be added to and become a part of the indebtedness secured hereby.

8.4. Site Assessments. Beneficiary (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Mortgaged Property for the purpose of determining whether there exists on the Mortgaged Property any environmental condition which could reasonably be expected to result in any liability, cost or expense to the owner, occupier or operator of such Mortgaged Property arising under any Environmental Laws. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Mortgagor (including, without limitation, those designed to prevent unreasonable interference with use of the Mortgaged Property) which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Mortgaged Property for such purposes. The Site Reviewers are further authorized to perform both above and below ground testing for environmental damage or the presence of Hazardous Materials on the Mortgaged Property and such other tests on the Mortgaged Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Mortgagor will supply to the Site Reviewers such historical and operational information regarding the Mortgaged Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Beneficiary shall make the results of such Site Assessments fully available to Mortgagor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction to such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Mortgagor to Beneficiary within ten (10) days after notice to Mortgagor from Beneficiary itemizing the amounts incurred to the effective date of such notice, with interest thereon from the date of payment by Beneficiary at the default or post-maturity rate of interest provided for in the Notes. Until such amounts shall be paid by Mortgagor, they shall be added to and become a part of the indebtedness secured hereby.

8.5. Indemnification. Mortgagor shall defend, indemnify and hold harmless Beneficiary and Trustee for, from and against any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, attorneys' fees and expenses, and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release of this Mortgage) be paid, incurred or suffered by or asserted against Beneficiary or Trustee by any person or entity or governmental authority for, with respect to, or as a direct or indirect result of, or otherwise arising from (a) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Mortgaged Property of any Hazardous Materials or any Hazardous Materials contamination; (b) the environmental condition of the Mortgaged Property or the applicability of any Environmental Laws, (c) any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, cleanup, transport or disposal of any hazardous materials present on the mortgaged property; (d) the breach of any representation, warranty, covenant or agreement contained in this Paragraph 8.5; (e) any claim that Beneficiary or Trustee or any director or agent of either thereof encouraged or assisted Mortgagor in violating any Environmental Laws; or (f) the enforcement of the provisions of Paragraph 8.5 or the assertion by Mortgagor of any defense to its obligations (except the successful defense of actual performance not subject to further appeal) regardless of whether or not caused by or within the control of Mortgagor, Beneficiary or Trustee and regardless of any negligence or other fault of Beneficiary or Trustee or any director or agent of either thereof. The indemnification obligations and other covenants, warranties and representations contained in this Paragraph 8.5 are in addition to, and not in lieu of, the indemnification obligations and other covenants, warranties and representations contained in any indemnification agreement which may be executed by Mortgagor. The representations, covenants, warranties and indemnifications contained in this Paragraph 8.5 shall survive the foreclosure or release of this Mortgage.

8.6. Cure of Violations of Environmental Laws. If Mortgagor fails to comply with the requirements of any Environmental Laws, Beneficiary shall have the right (but not the obligation) prior or subsequent to an Event of Default, to give such notices or cause such work to be performed at, upon, under or within the Mortgaged Property, or to take any and all other actions as Beneficiary deems necessary, to cure said failure of compliance. All amounts paid or incurred by Beneficiary in the exercise of any such rights shall be paid by Mortgagor to Beneficiary within ten (10) days after notice to Mortgagor from Beneficiary itemizing the amounts incurred to the effective date of such notice, with interest thereon from the date of payment by Beneficiary at the default or post-maturity rate of interest provided for in the Notes. Until such amounts shall be paid by Mortgagor, they shall be added to and become a part of the indebtedness secured hereby.

ARTICLE 9 — SECURITY AGREEMENT

9.1. Security Agreement. This Mortgage is both a real property mortgage or deed of trust and a security

agreement within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Beneficiary, as security for the Indebtedness, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this section the "Collateral"). Mortgagor hereby agrees with Beneficiary to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may from time to time, reasonably consider necessary to create, perfect, and preserve Beneficiary's security interest herein granted.

9.2. Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code. All or part of the Mortgaged Property are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in each Short Form Trust Deed.

9.3. Rights and Remedies. If an Event of Default shall occur, Beneficiary, in addition to any other rights and remedies which they may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary, Mortgagor shall at its expense assemble the Collateral and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Mortgagor shall pay to Beneficiary on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Beneficiary in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Beneficiary to the payment of the Debt in such priority and proportions as Beneficiary in its discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Beneficiary thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Beneficiary's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Beneficiary shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Beneficiary shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Notes, this Mortgage and the other Loan Documents. Mortgagor hereby irrevocably appoints Beneficiary as its attorney-in-fact, with full power of substitution and coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Beneficiary, as Mortgagor's attorney-in-fact, in connection with the Collateral covered by this Mortgage. Notwithstanding the foregoing, Mortgagor shall appear and defend in any action or proceeding which affects or purports to affect the Mortgaged Property and any interest or right therein, whether such proceeding affects title or any other rights in the Mortgaged Property (and in conjunction therewith, Mortgagor shall fully cooperate with Beneficiary in the event Beneficiary is a party to such action or proceeding).

9.4. Right of Inspection. Beneficiary and its agents shall have the right to enter and inspect the Mortgaged Property during normal business hours upon reasonable notice.

9.5. Assignment of Rents and Leases.

- (a) For Ten Dollars (\$10.00) and other good and valuable consideration, including the Indebtedness, the receipt and sufficiency of which are hereby acknowledged and confessed, Mortgagor absolutely assigns to Beneficiary the Leases and the Rents subject only to the License (herein defined); to have and to hold the Leases and the Rents unto Beneficiary, forever, and Mortgagor does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Leases and the Rents unto Beneficiary against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Mortgagor shall pay or cause to be paid the Debt as and when same shall become due and payable and shall perform and discharge or cause to be performed and discharged the Debt on or before the date same are to be performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles, and interests conveyed pursuant to this assignment shall become vested in Mortgagor without the necessity of any further act or requirement by Mortgagor, Trustee, or Beneficiary.
- (b) Beneficiary hereby grants to Mortgagor a limited license (the "License") to exercise and enjoy all incidences of the status of a lessor of the Leases and the Rents, including without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents, and to give proper receipts, releases, and acquittances therefor. Mortgagor hereby agrees to receive all Rents and hold the same as a trust fund to be applied, and to apply the Rents so collected, first to the payment of the Debt, and then to the performance and discharge of the Obligations. Thereafter, Mortgagor may use the balance of the Rent collected in any manner not inconsistent with the Loan Documents. From and after the occurrence of an Event of Default and so long as such Event of Default shall be continuing (whether

or not Beneficiary shall have exercised Beneficiary's option to declare the Notes immediately due and payable), the License shall be revoked.

- (c) So long as the License is in effect, Mortgagor shall (i) submit any and all proposed Leases to Beneficiary for approval prior to the execution thereof; (ii) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon the lessor under any Lease; (iii) maintain each of the Leases in full force and effect during the term thereof; (iv) appear in and defend any action or proceeding in any manner connected with any of the Leases; (v) deliver to Beneficiary copies of all Leases; and (vi) deliver to Beneficiary such further information, and execute and deliver to Beneficiary such further assurances and assignments, with respect to the Leases as Beneficiary may from time to time request. Without Beneficiary's prior written consent, Mortgagor shall not (i) do or knowingly permit to be done anything to impair the value of any of the Leases; (ii) except for security or similar deposits, collect any of the Rent more than one month in advance of the time when the same becomes due under the terms of any Lease; (iii) discount any future accruing Rents; (iv) amend, modify, or terminate any of the Leases; or (v) assign or grant a security interest in or to the License or any of the Leases or Rents.
- (d) So long as any part of the Debt secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Beneficiary, any lessee, or any third party purchaser or otherwise.
- (e) So long as the License is in effect, Mortgagor shall indemnify and hold harmless Beneficiary and Trustee for, from and against any and all liability, loss, cost, damage, or expense which Beneficiary or Trustee may incur under or by reason of this assignment, or for any action taken by Beneficiary and/or Trustee hereunder, or by reason of or in defense of any and all claims and demands whatsoever which may be asserted against Beneficiary and/or Trustee arising out of the Leases or with respect to the Rents. In the event Beneficiary and/or Trustee incurs any such liability, loss, cost, damage, or expense, the amount thereof together with all reasonable attorneys' fees and interest thereon at the highest Default Rate specified in the Notes shall be payable by Mortgagor to Beneficiary and/or Trustee immediately, without demand, and shall be deemed a part of the Indebtedness.

ARTICLE 10 — THE TRUSTEE

10.1. No Liability. Trustee shall not be liable 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 negligence or bad faith. Trustee shall not be personally liable in case of entry by him, or anyone entering by virtue of the powers herein granted him, upon the Mortgaged Property for debts contracted or liability or damages incurred in the management or operation of the Mortgaged 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 him hereunder, believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for reasonable expenses incurred by him in the performance of his duties hereunder (including without limitation any amounts payable to attorneys, accountants, engineers or others selected by Trustee to aid Trustee in the performance of his duties hereunder) and to reasonable compensation for such of his services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties. Grantor hereby absolutely ratifies and confirms any and all acts that Trustee or any successor or substitute Trustee may lawfully do by virtue of this Mortgage.

10.2. Retention of Moneys. 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 law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.

10.3. Successor Trustee. Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary 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, Beneficiary 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 aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary 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. Mortgagor 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 Mortgage or applicable law. 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 Beneficiary 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. No fees or expenses shall be payable to Trustee, except in connection with a foreclosure of the Mortgaged Property or any part thereof or in connection with the release of the Mortgaged Property following payment in full of the Debt.

10.4. 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 will be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to him against any and all costs, expenses and liabilities 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 makes no representations in respect thereof or in respect of the rights, remedies and recourses of Beneficiary.

ARTICLE 11 — MISCELLANEOUS

11.1. Controlling Agreement. It is expressly stipulated and agreed to be the intent of Mortgagor, Trustee and Beneficiary at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Beneficiary to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this section shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Notes or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Indebtedness, or if Beneficiary's exercise of the option to accelerate the maturity of the Notes, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's, Trustee's and Beneficiary's express intent that all excess amounts theretofore collected by Beneficiary shall be credited on the principal balance of the Notes and all other Indebtedness (or, if the Notes and all other Indebtedness have been or would thereby be paid in full, refunded to Mortgagor), and the provisions of the Notes and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the maximum rate permitted under applicable law from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Trustee and/or Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

11.2. Further Acts, etc. (a) Mortgagor will, at the cost of Mortgagor, and without expense to Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Beneficiary shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and hereby authorizes Beneficiary to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Beneficiary may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Beneficiary in the Mortgaged Property. Mortgagor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including without limitation such rights and remedies available to Beneficiary pursuant to this subparagraph.

11.3. Permitted Disclosures. Beneficiary (and its mortgage servicer and their respective assigns) shall have the right to disclose in confidence such financial information regarding Mortgagor, any guarantor of the Indebtedness or any part thereof (a "Guarantor") or the Mortgaged Property as may be necessary (i) to complete any sale or attempted sale of the Notes or participations in the loan (or any transfer of the mortgage servicing thereof) evidenced by the Notes and the Loan Documents, (ii) to service the Notes, or (iii) to furnish information concerning the payment status of the Notes to the holder or beneficial owner thereof, including, without limitation, all Loan Documents, financial statements, projections, internal memoranda, audits, reports, payment history, appraisals and any and all other information and documentation in the Beneficiary's files (and such servicer's files) relating to Mortgagor, any Guarantor and the Mortgaged Property. This authorization shall be irrevocable in favor of Beneficiary (and its mortgage servicer and their respective assigns), and Mortgagor and Guarantor waive any claims that they may have against Beneficiary, its mortgage servicer and their respective assigns or the party receiving information from Beneficiary pursuant hereto regarding disclosure of information in such files and further waive any alleged damages

which they may suffer as a result of such disclosure.

11.4. Sale of Notes and Loan. Mortgagor acknowledges that Beneficiary may sell the Loan evidenced by the Notes and the Loan Documents or a participation interest therein to a party who may pool the Loan with a number of other loans and to have the holder of such loans (most likely a special purpose REMIC) issue one or more classes of Mortgage Backed Pass-Through Certificates (the "Certificates"), which may be rated by one or more national rating agencies. Beneficiary (and its mortgage servicer and their respective assigns) shall be permitted to share any of the information referred to in Paragraph 11.3 above, whether obtained before or after the date of the Notes, with the holders or potential holders of the Certificates, investment banking firms, rating agencies, accounting firms, custodians, successor mortgage servicers, law firms and other third-party advisory firms involved with the Loan evidenced by the Notes and the Loan Documents or the Certificates. It is understood that the information provided by Mortgagor to Beneficiary (or its mortgage servicer and their respective assigns) or otherwise received by Beneficiary (or its mortgage servicer and their respective assigns) in connection with the Loan evidenced by the Loan Documents may ultimately be incorporated into the offering documents for the Certificates and thus various prospective investors may also see some or all of the information. Beneficiary (and its mortgage servicer and their respective assigns) and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Mortgagor.

11.5. Recording of Mortgage, etc. Upon the execution and delivery of this Mortgage and thereafter, from time to time, Mortgagor will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Beneficiary in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Beneficiary, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

11.6. Actions and Proceedings. Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Beneficiary, in its discretion, decides should be brought to protect their interest in the Mortgaged Property. Beneficiary shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Indebtedness, and any such subrogation rights shall constitute additional security for the payment of the Indebtedness.

11.7. Waiver of Setoff and Counterclaim. All amounts due under this Mortgage, the Notes and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Mortgagor hereby waives the right to assert a setoff, counterclaim or deduction in any action or proceeding in which Beneficiary is a participant, or arising out of or in any way connected with this Mortgage, the Notes, any of the other Loan Documents, or the Indebtedness.

11.8. Contest of Certain Claims. Notwithstanding the provisions of Paragraph 4.7 and subparagraph 6.1(h) hereof, Mortgagor shall not be in default for failure to pay or discharge Taxes, Other Charges or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Mortgagor shall have notified Beneficiary of same within five (5) days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Mortgagor shall have furnished to Beneficiary a cash deposit, or an indemnity bond satisfactory to Beneficiary with a surety satisfactory to Beneficiary, in the amount of the Taxes, Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Beneficiary pay (and if Mortgagor shall fail so to do, Beneficiary may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Beneficiary, the Mortgaged Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, canceled or lost. Beneficiary may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Beneficiary, the entitlement of such claimant is established.

11.9. Recovery of Sums Required to Be Paid. Beneficiary shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as the same become due, without regard to whether or not the balance of the Indebtedness shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the

time such earlier action was commenced.

11.10. Notices. Unless oral notice is expressly permitted hereunder any notice, demand, statement, request or consent made hereunder shall be in writing and shall be deemed to be received by the addressee on the first (1st) business day after such notice is tendered to a nationally-recognized overnight delivery service or on the third (3rd) day following the day such notice is deposited with the United States postal service first class certified mail, return receipt requested, in either instance, addressed to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as Mortgagor or Beneficiary, as the case may be, shall in like manner designate in writing.

11.11. Authority. (a) Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed; (b) Mortgagor is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (c) Mortgagor is duly qualified to transact business and is in good standing in the state where the Mortgaged Property is located and has all necessary approvals, governmental and otherwise, and full power and authority to own the Mortgaged Property and carry out its business as now conducted and proposed to be conducted; and (d) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations.

11.12. Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Beneficiary except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Beneficiary to Mortgagor and except with respect to matters for which Beneficiary is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Beneficiary with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Beneficiary to Mortgagor.

11.13. Remedies of Mortgagor. In the event that a claim or adjudication is made that Beneficiary has acted unreasonably or unreasonably delayed acting in any case where by law or under the Notes, this Mortgage or the other Loan Documents, it has an obligation to act reasonably or promptly, Beneficiary shall not be liable for any monetary damages, and Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment.

11.14. Sole Discretion of Beneficiary. Wherever pursuant to this Mortgage or the other Loan Documents, Beneficiary exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Beneficiary, the decision of Beneficiary to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Beneficiary and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein or therein.

11.15. Non-Waiver. The failure of Beneficiary to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Beneficiary to comply with any request of Mortgagor or Guarantor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Notes or other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Indebtedness or any portion thereof, or (c) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of the Notes, this Mortgage, or the other Loan Documents. Beneficiary may resort for the payment of the Indebtedness to any other security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary may take action to recover the Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Beneficiary thereafter to foreclose this Mortgage. The rights and remedies of Beneficiary under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Beneficiary shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity. It is agreed that the risk of loss or damage to the Mortgaged Property is on Mortgagor and Beneficiary shall have no liability whatsoever for decline in the value of the Mortgaged Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured.

11.16. No Oral Change. This Mortgage and the other Loan Documents may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Beneficiary, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

11.17. Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. Subject to the provisions hereof requiring Beneficiary's consent to any transfer of the Mortgaged Property, this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Beneficiary and their respective successors and assigns forever.

11.18. Inapplicable Provisions. If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

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

11.20. Counterparts. This Mortgage may be executed in any number of counterparts each of which shall be deemed to be an original but all of which when taken together shall constitute one agreement.

11.21. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein, the word "Beneficiary" shall mean Beneficiary and any subsequent holder of the Notes, the word "Indebtedness" shall mean the Notes and any other debts secured by this Mortgage, the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees, including, but not limited to, fees at the pre-trial, trial and appellate levels incurred or paid by Beneficiary in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11.22. Homestead. Mortgagor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Indebtedness, or any part hereof.

11.23. Assignments. Beneficiary shall have the right to assign or transfer its rights under this Mortgage and the other Loan Documents without limitation, including, without limitation, the right to assign or transfer its rights to a servicing agent. Any assignee or transferee shall be entitled to all the benefits afforded Beneficiary under this Mortgage and the other Loan Documents.

11.24. Survival of Obligations; Survival of Warranties and Representations. Each and all of the covenants and obligations of Mortgagor (other than warranties and representations contained herein) shall survive the execution and delivery of the Loan Documents and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this section shall limit the obligations of Mortgagor except as otherwise set forth herein. In addition, any and all warranties and representations of Mortgagor contained herein shall survive the execution and delivery of the Loan Documents and (i) shall continue for a period of one (1) year following any release of this Mortgage executed by Beneficiary and satisfaction of the loan evidenced by the Loan Documents, and (ii) shall survive the transfer or assignment of this Mortgage, the entry of a judgment of foreclosure, sale of the Mortgaged Property by non-judicial foreclosure or deed in lieu of foreclosure (including, without limitation, any transfer of the Mortgage by Beneficiary of any of its rights, title and interest in and to the Mortgaged Property to any party, whether or not affiliated with Beneficiary).

11.25. Covenants Running with the Land. All covenants, conditions, warranties, representations and other obligations contained in this Mortgage and the other Loan Documents are intended by Mortgagor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Mortgage has been fully released by Beneficiary.

11.26. Governing Law; Jurisdiction. This Mortgage shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Mortgaged Property is located (without regard to any conflict of laws principles) and the applicable laws of the United States of America. Mortgagor hereby irrevocably submits to the jurisdiction of any court of competent jurisdiction located in the state in which the Mortgaged Property is located in connection with any proceeding out of or relating to this Mortgage.

11.27. Time. Time is of the essence in this Mortgage and the other Loan Documents.

11.28. No Third Party Beneficiaries. The provisions of this Mortgage and the other Loan Documents are for the benefit of Mortgagor, Beneficiary and Trustee and shall not inure to the benefit of any third party (other than any successor or assignee of either Trustee or Beneficiary). This Mortgage and the other Loan Documents shall not be construed as creating any rights, claims or causes of action against Beneficiary or any of its officers, directors, agents or employees in favor of any party other than Mortgagor including but not limited to any claims to any sums held in the Tax and Insurance Escrow Fund.

11.29. Relationship of Parties. The relationship of Beneficiary and Mortgagor is solely that of debtor and creditor, and Beneficiary has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Documents shall be construed to be other than that of debtor and creditor. Mortgagor represents and acknowledges that the Loan Documents do not provide for any shared appreciation rights or other equity participation interest.

11.30. Trustee Provisions. In the event that this Mortgage operates as a mortgage, the provisions of this Mortgage which pertain to the Trustee shall be of no force or effect.

11.31. Investigations. Any and all representations, warranties, covenants and agreements made in this Mortgage (and/or in other Loan Documents) shall survive any investigation or inspection made by or on behalf of Beneficiary.

11.32. Lot and Home Sales; Partial Releases. Notwithstanding any other provision hereof, Mortgagor shall have the right to sell one or more individual Lots and Homes from time to time constituting the Mortgaged Property upon satisfaction of the terms and conditions therefor in the Loan Agreement, which terms and conditions are hereby incorporated by reference, including the payment of all required Release Prices (as defined in the Loan Agreement).

11.33. Mortgagor's Expense. Mortgagor acknowledges and confirms that Beneficiary shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of its loans, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Mortgaged Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance. Mortgagor further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Mortgaged Property or any part thereof, whether required by law, regulation, Beneficiary or any governmental or quasi-governmental authority. Mortgagor hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Beneficiary from time to time, upon the occurrence of an event set forth in this Section or otherwise. Wherever it is provided for herein that Mortgagor pay any costs and expenses, such costs and expenses shall include, but not be limited to, all legal fees and disbursements of Beneficiary, whether of retained firms, the reimbursement for the expenses of in-house staff or otherwise.

11.34. Attorneys' Fees. (a) Mortgagor shall pay all legal fees incurred by Beneficiary in connection with i) the preparation of the Notes, this Mortgage and the other Loan Documents; and (ii) the items set forth in Paragraph 11.33 above, and (b) Mortgagor shall pay to Beneficiary on demand any and all expenses, including legal expenses and attorneys' attorneys' fees, incurred or paid by Beneficiary in protecting its interest in the Mortgaged Property or in collecting any amount payable under the Notes, Mortgage or other Loan Documents or enforcing its rights hereunder with respect to the Mortgaged Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Beneficiary until such expenses are paid by Mortgagor.

11.35. Fee for Handling Interest-Bearing Escrows. Upon the request of Beneficiary, (but only to the extent allowed by applicable law) Mortgagor agrees to pay to Beneficiary a fee of Fifty Dollars (\$50.00) per year (not to exceed Mortgagor's interest on the account) on each separate escrow account maintained by Beneficiary on which Mortgagor is credited with interest to compensate Beneficiary (or its servicer) for administrative costs associated with Beneficiary's deposit into an interest-bearing account any funds escrowed under this Mortgage or under any separate escrow agreement between Beneficiary and Mortgagor. Mortgagor agrees that Beneficiary (or its servicer) shall have the right to debit any interest earned for the benefit of Mortgagor on such escrow account maintained by Beneficiary (or its servicer) for the account of Mortgagor hereunder to pay such administrative fee.

11.36. Beneficiary Reimbursement. Any payments made, or funds expended or advanced by Beneficiary pursuant to the provisions of any Loan Document, shall (a) become a part of the Indebtedness, (b) bear interest at the Applicable Interest Rate (as such term is defined in the Notes) from the date such payments are made or funds expended or advanced, (c) become due and payable by Mortgagor upon demand therefor by Beneficiary, and (d) bear interest at the Default Rate (as such term is defined in the Notes) from the date of such demand. Failure to reimburse Beneficiary upon such demand shall constitute an Event of Default under Paragraph 6.1 hereof.

11.37. Acceptance by Trustee. Trustee accepts this trust when this Mortgage, duly executed and acknowledged, is made a public record as provided by law.

11.38. Fees and Expenses. If Beneficiary becomes a party (by intervention or otherwise) to any action or proceeding affecting, directly or indirectly, Mortgagor, the Mortgaged Property or the title thereto or Beneficiary's interest under this Mortgage, or employs an attorney to collect any of the Indebtedness or to enforce performance of the obligations, covenants and agreements of the Loan Documents, Mortgagor shall reimburse Beneficiary for all reasonable expenses, costs, charges and legal fees incurred by Beneficiary (including, without limitation, the fees and expenses of experts and consultants), whether or not suit be commenced, and the same shall be reimbursed to Beneficiary in accordance with Paragraph 11.36 hereof.

11.39. Handicapped Access:

(a) Mortgagor agrees that the completed Mortgaged Property shall at all times strictly 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 including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Beneficiary's

approval of alterations of the Mortgaged Property, Mortgagor shall not alter the Mortgaged Property in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Beneficiary. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Beneficiary may condition any such approval upon receipt of a certificate from an architect, engineer, or other person acceptable to Beneficiary of compliance with Access Laws.

- (c) Mortgagor agrees to give prompt notice to Beneficiary of the receipt by Mortgagor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

11.40 **Statutory Warnings.**

(a) UNDER WASHINGTON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY A BANK CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S PRINCIPAL RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THAT BANK TO BE ENFORCEABLE. Oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable.

(b) Unless Borrower provides Lender with evidence of the insurance coverage required by the Loan Agreement, Lender may purchase insurance at Borrower's expense to protect Lender's interest. This insurance may, but need not, also protect Borrower's interest. If the Property or a Home becomes damaged, the coverage Lender purchases may not pay any claim Borrower makes or any claim made against Borrower. Borrower may later cancel this coverage by providing evidence that Borrower has obtained insurance coverage acceptable to lender elsewhere.

(c) Borrower is responsible for the cost of any insurance purchased by Lender. The cost of this insurance may be added to the balance of the Note. If the cost is added to the Note, the Note rate of interest will apply to this added amount. The effective date of coverage may be the date that Borrower's prior coverage lapsed or the date Borrower failed to provide proof of coverage.

(d) The coverage Lender purchases may be considerably more expensive than insurance Borrower can obtain on his own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

[End of Document]