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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2005

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

COMMISSION FILE NUMBER: 0-14510

CEDAR SHOPPING CENTERS, INC.

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(Exact name of registrant as specified in its charter)

Maryland

42-1241468

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(State or other jurisdiction of  
incorporation or organization)

(I.R.S. Employer  
Identification No.)

44 South Bayles Avenue, Port Washington, New York

11050-3765

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(Address of principal executive offices)

(Zip Code)

(516) 767-6492

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(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: At May 5, 2005, there were 22,340,981 shares of Common Stock, \$0.06 par value, outstanding.

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CEDAR SHOPPING CENTERS, INC.

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**Forward-Looking Statements**

Statements made or incorporated by reference in this Form 10-Q include certain “forward-looking statements”. Forward-looking statements include, without limitation, statements containing the words “anticipates”, “believes”, “expects”, “intends”, “future”, and words of similar import which express the Company’s belief, expectations or intentions regarding future performance or future events or trends. While forward-looking statements reflect good faith beliefs, they are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors, which may cause actual results, performance or achievements to differ materially from anticipated future results, performance or achievements expressed or implied by such forward-looking statements as a result of factors outside of the Company’s control. Certain factors that might cause such a difference include, but are not limited to, the following: real estate investment considerations, such as the effect of economic and other conditions in general and in the Company’s market areas in particular; the financial viability of the Company’s tenants; the continuing availability of shopping center acquisitions, and development and redevelopment opportunities, on favorable terms; the availability of equity and debt capital in the public and private markets; changes in interest rates; the fact that returns from development, redevelopment and acquisition activities may not be at expected levels; the Company’s potential inability to realize the level of proceeds from property sales as initially expected; inherent risks in ongoing development and redevelopment projects including, but not limited to, cost overruns resulting from weather delays, changes in the nature and scope of development and redevelopment efforts, and market factors involved in the pricing of material and labor; the need to renew leases or re-let space upon the expiration of current leases; and the financial flexibility to refinance debt obligations when due.

**CEDAR SHOPPING CENTERS, INC.**  
**Consolidated Balance Sheets**

	March 31, 2005	December 31, 2004
	(unaudited)	
<b>Assets</b>		
Real estate:		
Land	\$ 98,922,000	\$ 97,617,000
Buildings and improvements	439,161,000	423,735,000
	538,083,000	521,352,000
Less accumulated depreciation	(19,427,000)	(16,027,000)
Real estate, net	518,656,000	505,325,000
Cash and cash equivalents	5,975,000	8,457,000
Cash at joint ventures and restricted cash	6,720,000	7,105,000
Rents and other receivables, net	5,630,000	4,483,000
Other assets	3,781,000	2,379,000
Deferred charges, net	10,406,000	9,411,000
<b>Total assets</b>	<b>\$ 551,168,000</b>	<b>\$ 537,160,000</b>
<b>Liabilities and shareholders' equity</b>		
Mortgage loans payable	\$ 179,873,000	\$ 180,430,000
Secured revolving credit facility	87,500,000	68,200,000
Accounts payable, accrued expenses, and other	7,319,000	9,012,000
Unamortized intangible lease liabilities	24,878,000	25,227,000
<b>Total liabilities</b>	<b>299,570,000</b>	<b>282,869,000</b>
Minority interests	11,979,000	11,995,000
Limited partners' interest in Operating Partnership	5,511,000	6,542,000
<b>Shareholders' equity:</b>		
Preferred stock (\$.01 par value, \$25.00 per share liquidation value, 5,000,000 shares authorized, 2,350,000 shares issued and outstanding)	58,750,000	58,750,000
Common stock (\$.06 par value, 50,000,000 shares authorized, 19,351,000 shares issued and outstanding)	1,161,000	1,161,000
Treasury stock (339,000 shares, at cost)	(3,919,000)	(3,919,000)
Additional paid-in capital	216,240,000	215,271,000
Cumulative distributions in excess of net income	(38,139,000)	(35,139,000)
Accumulated other comprehensive income (loss)	195,000	(165,000)
Unamortized deferred compensation plans	(180,000)	(205,000)
<b>Total shareholders' equity</b>	<b>234,108,000</b>	<b>235,754,000</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$ 551,168,000</b>	<b>\$ 537,160,000</b>

See accompanying notes to consolidated financial statements.

**CEDAR SHOPPING CENTERS, INC.**  
**Consolidated Statements of Income**  
**(unaudited)**

	Three months ended March 31,	
	2005	2004
Revenues:		
Rents	\$ 12,849,000	\$ 8,809,000
Expense recoveries	3,673,000	2,360,000
Interest and other	5,000	106,000
Total revenues	16,527,000	11,275,000
Expenses:		
Operating, maintenance and management	4,027,000	2,740,000
Real estate and other property-related taxes	1,475,000	1,100,000
General and administrative	969,000	642,000
Depreciation and amortization	3,949,000	2,722,000
Interest	3,137,000	2,524,000
Total expenses	13,557,000	9,728,000
Income before minority and limited partners' interests	2,970,000	1,547,000
Minority interests	(290,000)	(168,000)
Limited partners' interest	(62,000)	(36,000)
Net income	2,618,000	1,343,000
Preferred distribution requirements (net of limited partners' share of \$30,000)	(1,264,000)	—
Net income applicable to common shareholders	\$ 1,354,000	\$ 1,343,000
Per common share (basic and diluted)	\$ 0.07	\$ 0.08
Dividends to common shareholders	\$ 4,354,000	\$ 2,633,000
Per common share	\$ 0.225	\$ 0.160
Average number of common shares outstanding	19,351,000	16,456,000

See accompanying notes to consolidated financial statements.

**CEDAR SHOPPING CENTERS, INC.**  
**Condoliated Statement of Shareholders' Equity**  
**Three months ended March 31, 2005**  
**(unaudited)**

	Preferred stock		Common stock		Treasury stock, at cost
	Shares	\$25.00 Liquidation value	Shares	\$0.06 Par value	
Balance, December 31, 2004	2,350,000	\$ 58,750,000	19,351,000	\$ 1,161,000	\$ (3,919,000)
Net income					
Unrealized gain on change in fair value of cash flow hedges					
Deferred compensation plans, net					
Preferred distribution requirements, net of limited partners' share of \$30,000					
Dividends to common shareholders					
Reallocation adjustment of limited partners' interest					
Balance, March 31, 2005	2,350,000	\$ 58,750,000	19,351,000	\$ 1,161,000	\$ (3,919,000)
	Additional paid-in capital	Cumulative distributions in excess of net income	Accumulated other comprehensive income (loss)	Unamortized deferred compensation plans	Total shareholders' equity
Balance, December 31, 2004	\$ 215,271,000	\$ (35,139,000)	\$ (165,000)	\$ (205,000)	\$ 235,754,000
Net income		2,618,000			2,618,000
Unrealized gain on change in fair value of cash flow hedges			360,000		360,000
Deferred compensation plans, net				25,000	25,000
Preferred distribution requirements, net of limited partners' share of \$30,000		(1,264,000)			(1,264,000)
Dividends to common shareholders		(4,354,000)			(4,354,000)
Reallocation adjustment of limited partners' interest	969,000				969,000
Balance, March 31, 2005	\$ 216,240,000	\$ (38,139,000)	\$ 195,000	\$ (180,000)	\$ 234,108,000

See accompanying notes to consolidated financial statements.

**CEDAR SHOPPING CENTERS, INC.**  
**Consolidated Statements of Cash Flows**  
**(unaudited)**

	Three months ended March 31,	
	2005	2004
<b>Cash flow from operating activities:</b>		
Net income	\$ 2,618,000	\$ 1,343,000
Adjustments to reconcile net income to net cash provided by operating activities:		
Non-cash provisions:		
Minority interests	113,000	11,000
Limited partners' interest	62,000	36,000
Straight-line rents	(492,000)	(260,000)
Depreciation and amortization	3,949,000	2,722,000
Amortization of intangible lease liabilities	(907,000)	(425,000)
Other	25,000	(34,000)
Increases/decreases in operating assets and liabilities:		
Joint venture cash	(107,000)	165,000
Rents and other receivables	(655,000)	196,000
Other assets	(1,492,000)	(1,056,000)
Accounts payable and accrued expenses	(1,306,000)	(1,051,000)
<b>Net cash provided by operating activities</b>	<b>1,808,000</b>	<b>1,647,000</b>
<b>Cash flow from investing activities:</b>		
Expenditures for real estate and improvements	(16,709,000)	(30,177,000)
Other	25,000	(431,000)
<b>Net cash (used in) investing activities</b>	<b>(16,684,000)</b>	<b>(30,608,000)</b>
<b>Cash flow from financing activities:</b>		
Line of credit, net	19,300,000	36,650,000
Proceeds from mortgage financings	—	723,000
Mortgage repayments	(557,000)	(6,243,000)
Distributions to minority interest partners	(129,000)	(332,000)
Distributions to limited partners	(102,000)	(70,000)
Preferred distribution requirements	(1,294,000)	—
Distributions to common shareholders	(4,354,000)	(2,633,000)
Deferred financing costs	(470,000)	(1,417,000)
<b>Net cash provided by financing activities</b>	<b>12,394,000</b>	<b>26,678,000</b>
<b>Net (decrease) in cash and cash equivalents</b>	<b>(2,482,000)</b>	<b>(2,283,000)</b>
Cash and cash equivalents at beginning of period	8,457,000	6,154,000
<b>Cash and cash equivalents at end of period</b>	<b>\$ 5,975,000</b>	<b>\$ 3,871,000</b>
<b>Supplemental disclosure of cash activities:</b>		
Interest paid (including capitalized interest of \$564,000 and \$271,000)	\$ 3,568,000	\$ 2,489,000
<b>Supplemental disclosure of non-cash investing and financing activities:</b>		
Purchase accounting adjustments	\$ 350,000	\$ (202,000)
Assumption of mortgage loans payable	\$ —	\$ 9,993,000

See accompanying notes to consolidated financial statements.

**Cedar Shopping Centers, Inc.**  
**Notes to Consolidated Financial Statements**  
**March 31, 2005**  
**(unaudited)**

**Note 1. Organization**

Cedar Shopping Centers, Inc. (the "Company") was organized in 1984 and elected to be taxed as a real estate investment trust ("REIT") in 1986. The Company has focused on the ownership, operation and redevelopment of community and neighborhood shopping centers located in the Northeast, primarily in Pennsylvania. At March 31, 2005, the Company owned 33 properties, aggregating approximately 5 million square feet of gross leasable area ("GLA").

Cedar Shopping Centers Partnership, L.P. (the "Operating Partnership") is the entity through which the Company conducts substantially all of its business and owns (either directly or through subsidiaries) substantially all of its assets. At March 31, 2005, the Company owned a 97.7% economic interest in, and is the sole general partner of, the Operating Partnership. The limited partners' interest in the Operating Partnership is adjusted at the end of each reporting period to an amount equal to the limited partners' ownership percentage of the Operating Partnership's net equity. Such ownership percentage was 2.3% at March 31, 2005. The 454,000 Operating Partnership Units ("OP Units") held by limited partners at March 31, 2005 are economically equivalent to shares of the Company's common stock and are convertible into shares of the Company's common stock at the option of the holders on a one-to-one basis.

As used herein, the "Company" refers to Cedar Shopping Centers, Inc. and its subsidiaries on a consolidated basis, including the Operating Partnership, or, where the context so requires, Cedar Shopping Centers, Inc. only.

**Note 2. Basis of Presentation and Consolidation Policy**

The Company's management has prepared the accompanying interim unaudited financial statements pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States ("GAAP") may have been condensed or omitted pursuant to such rules and regulations. The unaudited financial statements as of March 31, 2005 and for the three months ended March 31, 2005 and 2004 include, in the opinion of management, all adjustments, consisting of normal recurring adjustments, necessary to present fairly the financial information set forth therein. The 2004 financial statements have been reclassified to conform to the 2005 presentation. The results of operations for the three months ended March 31, 2005 are not necessarily indicative of the results that may be expected for the year ending December 31, 2005. The financial statements should be read in conjunction with the Company's audited financial statements and the notes thereto included in the Company's Form 10-K for the year ended December 31, 2004.

The consolidated financial statements include the accounts and operations of the Company, the Operating Partnership, its subsidiaries, and joint venture partnerships in which it participates. With respect to its joint ventures, the Company has general partnership interests



**Cedar Shopping Centers, Inc.**  
**Notes to Consolidated Financial Statements**  
**March 31, 2005**  
**(unaudited)**

ranging from 20% to 50% and, since the Company (1) is the sole general partner and exercises substantial operating control over these entities, and (2) has determined pursuant to The Financial Accounting Standards Board ("FASB") Interpretation No. 46, "Consolidation of Variable Interest Entities", that they are not variable-interest entities, such partnerships are included in the consolidated financial statements.

The accompanying financial statements are prepared on the accrual basis in accordance with GAAP, which requires management to make estimates and assumptions that affect the disclosure of contingent assets and liabilities, the reported amounts of assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the periods covered by the financial statements. Actual results could differ from these estimates.

**Note 3. Stock-Based Compensation**

The Company's 2004 Stock Incentive Plan provides for the granting of incentive stock options, stock appreciation rights, restricted shares, performance units and performance shares. The maximum number of shares of the Company's common stock that may be issued pursuant to this plan is 850,000, and the maximum number of shares that may be subject to grants to any single participant may not exceed 250,000. Commencing in 2004, the Company's Board of Directors determined to grant \$20,000 of restricted shares annually to each of its five independent directors, which shares vest on the third anniversary of the grant date. In addition, the Board determined to grant \$50,000 of restricted shares to each of three independent directors as consideration for past services rendered, which shares would vest 20% on the first anniversary of the grant date, and 40% each on the second and third anniversaries of the grant date. Shares issued relating to these grants were transferred to a Rabbi Trust for the benefit of the Directors, have been classified as treasury stock and deferred compensation plans in the Company's consolidated balance sheet, and are accounted for pursuant to Emerging Issues Task Force ("EITF") No. 97-14, "Accounting for Deferred Compensation Arrangements Where Amounts Earned Are Held in a Rabbi Trust and Invested". Amortization of amounts deferred are being charged to operations over the vesting periods. Shares held by the Rabbi Trust are included in outstanding shares for earnings per share ("EPS") computations.

In connection with the Red Lion acquisition, the Operating Partnership issued warrants to purchase 83,333 OP Units to a minority interests partner in the property. Such warrants have an exercise price of \$13.50 per unit, subject to anti-dilution adjustments, are fully vested, and expire in 2012.

During 2001, pursuant to the 1998 Stock Option Plan (the "Option Plan"), the Company granted to directors options to purchase an aggregate of 16,665 shares of common stock at \$10.50 per share, the market value of the Company's common stock on the date of the grant. The options are fully exercisable and expire in 2011. In connection with the adoption of the 2004 Stock Incentive Plan, the Company agreed that it would not issue any more options under the Option Plan.

**Cedar Shopping Centers, Inc.**  
**Notes to Consolidated Financial Statements**  
**March 31, 2005**  
**(unaudited)**

**Note 4. Earnings Per Share**

In accordance with FASB's Statement of Financial Accounting Standards ("SFAS") No. 128, "Earnings Per Share", basic EPS is computed by dividing net income available to common shareholders by the average number of common shares outstanding for the period. Fully diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock. For the three months ended March 31, 2005 and 2004, fully diluted EPS was not different than basic EPS.

**Note 5. Cash in Joint Ventures and Restricted Cash**

Joint venture partnership agreements require, among other things, that the Company maintain separate cash accounts for the operation of the joint ventures, and distributions to the general and limited (joint venture) partners are strictly controlled. Cash at joint ventures amounted to \$1,300,000 and \$1,193,000 at March 31, 2005 and December 31, 2004, respectively.

The terms of several of the Company's mortgage loans payable require it to deposit certain replacement and other reserves with its lenders. This restricted cash is generally available for property-level requirements for which the reserve was established. This cash is not, however, available to fund other property-level or Company-level obligations. Restricted cash amounted to \$5,420,000 and \$5,912,000 at March 31, 2005 and December 31, 2004, respectively.

**Note 6. Income Taxes**

The Company has elected since 1986 to be taxed as a REIT under the Internal Revenue Code of 1986, as amended. As a REIT, the Company will generally not be subject to federal income taxation on its taxable income that is distributed to its shareholders. To maintain its status as a REIT, the Company must satisfy certain tests, including a requirement that at least 90% of its taxable income be distributed to its shareholders.

**Note 7. Acquisition Activity**

On March 2, 2005, the Company acquired the Kenley Village and St. James Square shopping centers, both located in Hagerstown, MD. These community shopping centers contain approximately 52,000 and 40,000 square feet of GLA, respectively, and both are anchored by Food Lion supermarkets. Kenley Village was built in 1988 and St. James Square was built in 2000. The combined purchase price for both properties, including closing costs, was approximately \$8.3 million.

**Cedar Shopping Centers, Inc.**  
**Notes to Consolidated Financial Statements**  
**March 31, 2005**  
**(unaudited)**

The following table summarizes, on an unaudited pro forma basis, the combined results of operations of the Company for the three months ended March 31, 2005 and 2004 as though (1) the transaction described above, and (2) all 2004 property acquisitions, were completed as of January 1, 2004. This unaudited pro forma information does not purport to represent what the actual results of operations of the Company would have been had all the above occurred as of January 1, 2004, nor do they purport to predict the results of operations of future periods.

	Three months ended March 31,	
	2005	2004
Revenues	\$ 16,681,000	\$ 15,946,000
Net income applicable to common shareholders	\$ 1,385,000	\$ 1,962,000
Per common share (basic and diluted)	\$ 0.07	\$ 0.12
Average number of common shares outstanding	19,351,000	16,456,000

**Note 8. Secured Revolving Credit Facility**

The Company has a \$140 million (expandable to \$200 million, subject to certain conditions) secured revolving credit facility with Bank of America (the agent) and several other banks, pursuant to which the Company has pledged certain of its shopping center properties as collateral for borrowings thereunder. The facility will expire in January 2007, subject to a one-year extension option. Borrowings under the facility aggregated \$87,500,000 at March 31, 2005, and bore interest at an average rate of 4.3% per annum. Based on covenants and collateral in place, the Company was permitted to draw up to \$137.3 million, and \$49.8 million remained available as of that date. The Company plans to add additional properties, when available, to the collateral pool with the intent of making the full facility available. Borrowings under the facility presently incur interest at a rate of LIBOR plus 150 basis points ("bps"), subject to increases to a maximum of 205 bps depending upon the Company's leverage ratio, as defined. The facility also requires an unused portion fee of 15 or 20 bps, depending on the level of outstanding borrowings, and limits dividends to 95% of funds from operations, as defined. The Company has paid facility and arrangement fees to the banks, plus legal and other on-going closing costs as properties are added to the collateral pool, aggregating approximately \$2.3 million through March 31, 2005.

The credit facility is used to fund acquisitions, development/redevelopment activities, capital expenditures, mortgage repayments, dividend distributions, working capital and other general corporate purposes. The facility is subject to customary financial covenants, including limits on leverage and other financial statement ratios.

**Cedar Shopping Centers, Inc.**  
**Notes to Consolidated Financial Statements**  
**March 31, 2005**  
**(unaudited)**

**Note 9. Intangible Lease Assets/Liabilities**

SFAS No. 141, "Business Combinations", and SFAS No. 142, "Goodwill and Other Intangibles", require that management allocate the fair value of real estate acquired to land, building and building improvements. In addition, the fair value of in-place leases, consisting primarily of below-market rents, is allocated to intangible lease liabilities.

The fair value of the tangible assets of an acquired property is determined by valuing the property as if it were vacant, and the "as-if-vacant" value is then allocated to land, building and building improvements based on management's determination of the relative fair values of these assets. Management determines the as-if-vacant value of a property using methods similar to those used by independent appraisers. Factors considered by management in performing these analyses include an estimate of carrying costs during the expected lease-up periods considering current market conditions and costs to execute similar leases. In estimating carrying costs, management includes real estate taxes, insurance and other operating expenses, and estimates of lost rental revenue during the expected lease-up periods based on its evaluation of current market demand. Management also estimates costs to execute similar leases, including leasing commissions, tenant improvements, legal and other related costs.

The value of in-place leases is measured by the excess of (i) the purchase price paid for a property after adjusting existing in-place leases to market rental rates, over (ii) the estimated fair value of the property as if vacant. Above-market and below-market in-place lease values are recorded based on the present value (using an interest rate which reflects the risks associated with the leases acquired) of the difference between the contractual amounts to be received and management's estimate of market lease rates, measured over the non-cancelable terms. This aggregate value is allocated among above-market and below-market leases, tenant relationships, and other intangibles based on management's evaluation of the specific characteristics of each lease. The value of other intangibles is amortized to expense, and the above-market and below-market lease values are amortized to rental income over the remaining non-cancelable terms of the respective leases. If a lease were to be terminated prior to its stated expiration, all unamortized amounts relating to that lease would be immediately recognized in operations.

With respect to the Company's 2005 acquisitions, the fair value of in-place leases and other intangibles has been allocated, on a preliminary basis, to the applicable intangible asset and liability accounts. Unamortized intangible lease liabilities of \$24,878,000 and \$25,227,000 at March 31, 2005 and December 31, 2004, respectively, relate primarily to below-market leases.

Revenues include \$907,000 and \$425,000 for the three months ended March 31, 2005 and 2004, respectively, relating to the amortization of intangible lease liabilities. Correspondingly, depreciation and amortization expense includes \$1,070,000 and \$439,000 for the three months ended March 31, 2005 and 2004, respectively, applicable to amounts allocated to intangible lease assets.

**Cedar Shopping Centers, Inc.**  
**Notes to Consolidated Financial Statements**  
**March 31, 2005**  
**(unaudited)**

**Note 10. Derivative Financial Instruments**

During the three months ended March 31, 2005, an unrealized gain resulting from a change in the fair value of derivatives totaled \$368,000, of which a \$360,000 gain was credited to accumulated other comprehensive income (loss) and \$8,000 was credited to limited partners' interest. During the three months ended March 31, 2004, the Company recognized a net unrealized loss of \$656,000 relating to the change in fair value of its derivative financial instruments. Of that amount, a \$366,000 loss was recorded in accumulated other comprehensive income (loss), a \$10,000 loss was charged to limited partners' interest, and a \$280,000 charge for the ineffective portion of the net loss was charged to earnings.

**Note 11. Subsequent Events**

On April 4, 2005, the Company concluded the sale of 1,200,000 shares of its 8-7/8% Series A Cumulative Redeemable Preferred Stock in a public offering at a price of \$26.00 per share. The net proceeds of the offering, after underwriting fees and offering costs, amounted to approximately \$30 million, substantially all of which were used to repay amounts outstanding under the Company's secured revolving credit facility.

On April 6, 2005, the Company concluded the sale of 2,990,000 shares of its common stock (including 390,000 shares representing the exercise by the underwriters of their over-allotment option) in a public offering at a price of \$13.80 per share. The net proceeds of the offering, after underwriting fees and offering costs, amounted to approximately \$40 million, substantially all of which were used to repay amounts outstanding under the Company's secured revolving credit facility.

On April 12, 2005, the Company entered into a three-year construction loan facility for the renovation of the retail facilities and construction of additional buildings at the Camp Hill Shopping Center. The \$49.5 million aggregate facility includes \$14.0 million representing the original acquisition loan from the same lender, which has been amended to conform to the terms of the new facility, and up to \$35.5 million for reconfiguration and renovation of in-line retail space and construction of new space. The facility is for a three-year period; draws thereunder will bear interest at LIBOR plus 185 basis points.

Pursuant to an agreement dated February 3, 2005 to acquire 25 primarily drug store-anchored properties located in Ohio, Pennsylvania, New York and Connecticut, the Company, on April 25, 2005, purchased 21 of the properties for an aggregate consideration, excluding closing costs, of approximately \$67.9 million. The total consideration consisted of (1) approximately \$27.6 million of new 10-year first mortgage financings at a weighted average fixed interest rate of approximately 5.2%, (2) the assumption of approximately \$8.4 million of existing financing at a weighted average fixed interest rate of 7.4%, (3) approximately \$13.8 million in newly-issued

**Cedar Shopping Centers, Inc.**  
**Notes to Consolidated Financial Statements**  
**March 31, 2005**  
**(unaudited)**

OP Units, and (4) approximately \$18.1 million funded from the Company's secured revolving credit facility. It is anticipated that the acquisition of the remaining four properties will be concluded within thirty days. The total consideration for those four properties will be approximately \$19.4 million, excluding closing costs, and will similarly consist of a combination of new first mortgage financings, assumption of existing financing, the issuance of OP Units, and draws on the Company's secured revolving credit facility.

On May 3, 2005, the Company's Board of Directors approved a dividend of \$0.225 per share with respect to its common stock as well as an equal distribution per unit on its outstanding OP Units. At the same time, the Board approved a dividend of \$0.554688 per share with respect to the Company's 8-7/8% Series A Cumulative Redeemable Preferred Stock. The distributions will be paid on May 20, 2005 to shareholders of record on May 13, 2005.

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion should be read in conjunction with the Company's consolidated financial statements and related notes thereto included elsewhere in this report.

### **Executive Summary**

The Company is a fully integrated, self-administered and self-managed real estate company. At March 31, 2005, the Company had a portfolio of 33 properties totaling approximately 5 million square feet of GLA, including 27 wholly-owned properties comprising approximately 4.3 million square feet and six properties owned through joint ventures comprising approximately 700,000 square feet. The portfolio, excluding 6 properties currently under development and/or redevelopment, was approximately 97% leased as of that date.

The Company, organized as a Maryland corporation, has established an umbrella partnership structure through the contribution of substantially all of its assets to the Operating Partnership. At March 31, 2005, the Company owned 97.7% of the Operating Partnership and is its sole general partner; in addition, the Company conducts all of its business through the Operating Partnership. OP Units held by limited partners are economically equivalent to the Company's common stock and are convertible into the Company's common stock at the option of the holders on a one-to-one basis.

The Company derives substantially all of its revenues from rents and operating expense reimbursements received pursuant to long-term leases. The Company's operating results therefore depend on the ability of its tenants to make the payments required by the terms of their leases. The Company focuses its investment activities on community shopping and convenience centers, anchored principally by regional supermarket and drug store chains. The Company believes, because of the need of consumers to purchase food and other staple goods and services generally available at its properties, that the nature of its investments provide for relatively stable revenue flows even during difficult economic times.

The Company continues to seek opportunistic acquisition opportunities of (1) stabilized properties, and (2) properties suited for development and/or redevelopment activities where it can utilize its experience in shopping center renovation, expansion, re-leasing and re-merchandising to achieve long-term cash flow growth and favorable investment returns. The Company would also consider investment opportunities in markets beyond those in which it presently operates in the event such opportunities were consistent with its focus, could be effectively controlled and managed by it, have the potential for favorable investment returns, and could expect to contribute to increased shareholder value.

### **Summary of Critical Accounting Policies**

The preparation of the consolidated financial statements in conformity with GAAP requires the Company to make estimates and judgments that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities.

On an ongoing basis, management evaluates its estimates, including those related to revenue recognition and the allowance for doubtful accounts receivable, real estate investments and purchase price allocations related thereto, asset impairment, and derivatives used to hedge interest-rate risks. These accounting policies are further described in the notes to the consolidated financial statements. Management's estimates are based on information that is currently available and on various other assumptions management believes to be reasonable under the circumstances. Actual results could differ from those estimates and those estimates could be different under varying assumptions or conditions.

The Company has identified the following critical accounting policies, the application of which requires significant judgments and estimates:

***Revenue Recognition***

Rental income with scheduled rent increases is recognized using the straight-line method over the respective terms of the leases. The aggregate excess of rental revenue recognized on a straight-line basis over base rents under applicable lease provisions is included in rents and other receivables on the consolidated balance sheet. Leases generally contain provisions under which the tenants reimburse the Company for a portion of property operating expenses and real estate taxes incurred. In addition, certain operating leases contain contingent rent provisions under which tenants are required to pay a percentage of their sales in excess of a specified amount as additional rent. The Company defers recognition of contingent rental income until those specified targets are met.

The Company must make estimates as to the collectibility of its accounts receivable related to base rent, straight-line rent, expense reimbursements and other revenues. Management analyzes accounts receivable and historical bad debts, tenant creditworthiness, current economic trends, and changes in tenants' payment patterns when evaluating the adequacy of the allowance for doubtful accounts receivable. These estimates have a direct impact on net income, because a higher bad debt allowance would result in lower net income.

***Real Estate Investments***

Real estate investments are carried at cost less accumulated depreciation. The provision for depreciation is calculated using the straight-line method based on the estimated useful lives of the assets. Expenditures for maintenance, repairs and betterments that do not materially prolong the normal useful life of an asset are charged to operations as incurred. Expenditures for betterments that substantially extend the useful lives of the properties are capitalized.

The Company is required to make subjective estimates as to the useful lives of its properties for purposes of determining the amount of depreciation to reflect on an annual basis. These assessments have a direct impact on net income. A shorter estimate of the useful life of an investment would have the effect of increasing depreciation expense and lowering net income, whereas a longer estimate of the useful life of the investment would have the effect of reducing depreciation expense and increasing net income.



The Company applies Statement of Accounting Standards (“SFAS”) No. 141, “Business Combinations”, and SFAS No. 142, “Goodwill and Other Intangibles”, in valuing real estate acquisitions. In connection therewith, the fair value of real estate acquired is allocated to land, building and building improvements. The fair value of in-place leases, consisting primarily of below-market rents is allocated to intangible lease liabilities.

The fair value of the tangible assets of an acquired property is determined by valuing the property as if it were vacant, and the “as-if-vacant” value is then allocated to land, building and building improvements based on management’s determination of the relative fair values of these assets. Management determines the as-if-vacant value of a property using methods similar to those used by independent appraisers. Factors considered by management in performing these analyses include an estimate of carrying costs during the expected lease-up periods considering current market conditions and costs to execute similar leases. In estimating carrying costs, management includes real estate taxes, insurance and other operating expenses, and estimates of lost rental revenue during the expected lease-up periods based on its evaluation of current market demand. Management also estimates costs to execute similar leases, including leasing commissions, tenant improvements, legal and other related costs.

The value of in-place leases is measured by the excess of (i) the purchase price paid for a property after adjusting existing in-place leases to market rental rates, over (ii) the estimated fair value of the property as if vacant. Above-market and below-market in-place lease values are recorded based on the present value (using an interest rate which reflects the risks associated with the leases acquired) of the difference between the contractual amounts to be received and management’s estimate of market lease rates, measured over the non-cancelable terms. This aggregate value is allocated among above-market and below-market leases, tenant relationships, and other intangibles based on management’s evaluation of the specific characteristics of each lease.

The value of other intangibles is amortized to expense, and the above-market and below-market lease values are amortized to rental income over the remaining non-cancelable terms of the respective leases. If a lease were to be terminated prior to its stated expiration, all unamortized amounts relating to that lease would be immediately recognized in operations.

The Company applies SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets”, to recognize and measure impairment of long-lived assets. Management reviews each real estate investment for impairment whenever events or circumstances indicate that the carrying value of a real estate investment may not be recoverable. The review of recoverability is based on an estimate of the future cash flows that are expected to result from the real estate investment’s use and eventual disposition. These cash flows consider factors such as expected future operating income, trends and prospects, as well as the effects of leasing demand, competition and other factors. If an impairment event exists due to the inability to recover the carrying value of a real estate investment, an impairment loss is recorded to the extent that the carrying value exceeds estimated fair market value. Real estate investments held for sale are carried at the lower of carrying amount or estimated fair value, less cost to sell. Depreciation and amortization are suspended during the period held for sale. Management is required to make subjective assessments as to whether there are impairments in the value of its real estate properties. These assessments have a direct impact on net income, because an impairment loss is recognized in the period that the assessment is made.

**Results of Operations****Comparison of the quarter ended March 31, 2005 to the quarter ended March 31, 2004**

	Three months ended March 31,		Increase (decrease)	Percentage change	Acquisitions	Properties held in both years
	2005	2004				
Rents and expense recoveries	\$ 16,522,000	\$ 11,169,000	\$ 5,353,000	48%	\$ 4,718,000	\$ 635,000
Property expenses	5,502,000	3,840,000	1,662,000	43%	1,632,000	30,000
Depreciation and amortization	3,949,000	2,722,000	1,227,000	45%	1,203,000	24,000
Interest expense	3,137,000	2,524,000	613,000	24%	n/a	n/a
General and administrative	969,000	642,000	327,000	51%	n/a	n/a

**Acquisitions.** Differences in results of operations between the first quarters of 2005 and 2004, respectively, were driven largely by acquisition activity. During the period January 1, 2004 through March 31, 2005, the Company acquired 11 shopping centers aggregating approximately 1.6 million square feet of GLA for a total cost of approximately \$169 million. Income before minority interests, limited partners' interest and preferred distribution requirements increased from \$1.5 million in the first quarter of 2004 to \$3.0 million in the first quarter of 2005.

**Properties held in both years.** The Company held 22 properties throughout the first quarters of both 2005 and 2004. Revenues increased as a result of lease commencements at our development properties (\$135,000) and from higher occupancy rates elsewhere in the portfolio (\$500,000).

**Interest expense** Interest expense increased as a result of a higher level of borrowing generally used to finance acquisition properties, and higher short term interest rates.

**General and administrative expenses.** General and administrative expenses increased primarily as a result of the Company's growth throughout 2004 and continuing into 2005.

**Liquidity and Capital Resources**

The Company funds operating expenses and other short-term liquidity requirements, including debt service, tenant improvements, leasing commissions, and preferred and common dividend distributions, primarily from operating cash flows; if needed, the Company may also use its secured revolving credit facility for these purposes. The Company expects to fund long-term liquidity requirements for property acquisitions, development and/or redevelopment costs, capital improvements, and maturing debt initially with the secured revolving credit facility and ultimately through a combination of issuing and/or assuming additional mortgage debt, the sale of equity securities, and the issuance of additional OP Units.

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The Company has a \$140 million (expandable to \$200 million, subject to certain conditions) syndicated secured revolving credit facility with Bank of America (the agent) and several other banks, pursuant to which the Company has pledged certain of its shopping center properties as collateral for borrowings thereunder. As of March 31, 2005, based on covenants and collateral in place, the Company was permitted to draw up to \$137.3 million, of which approximately \$49.8 million remained available as of that date. The Company plans to add additional properties, when available, to the collateral pool with the intent of making the full facility available. Borrowings under the facility presently bear interest at a rate of LIBOR plus 150 basis points ("bps"), an average rate of 4.3% as of March 31, 2005, and are subject to increases to a maximum of 205 bps depending upon the Company's leverage ratio, as defined. The credit facility may be used to fund acquisitions, development and redevelopment activities, capital expenditures, mortgage repayments, dividend distributions, working capital and other general corporate purposes. The facility is subject to customary financial covenants, including limits on leverage and other financial statement ratios.

At March 31, 2005, the Company's financial liquidity was provided by \$6.0 million in cash and cash equivalents and by the \$49.8 million availability under the secured revolving credit facility. Mortgage loans payable at March 31, 2005 consisted of fixed-rate notes totaling \$160.9 million and floating rate debt totaling \$18.9 million, with a combined weighted average interest rate of 6.4%, and maturing at various dates through 2013. See Note 11 of notes to consolidated financial statements elsewhere herein for information relating to (1) recent sales of equity securities by the Company, and (2) an agreement for construction financing at the Company's Camp Hill Shopping Center.

Portions of the Company's assets are owned through joint venture partnership arrangements which require, among other things, that the Company maintain separate cash accounts for the operations of the respective properties. In addition, the terms of certain of the Company's mortgage agreements require it to deposit replacement and other reserves with its lenders. These joint venture and reserve accounts are separately classified on the Company's balance sheet as restricted cash, and are available for the specific purpose for which they were established; they are not available to fund other Company obligations.

**Contractual obligations and commercial commitments**

The following table sets forth the Company's significant debt repayment and operating lease obligations at March 31, 2005 (in thousands):

	Maturity Date						Total
	2005	2006	2007	2008	2009	Thereafter	
Mortgage loans payable	\$ 1,604	\$ 2,667	\$ 12,614	\$ 44,292	\$ 1,542	\$ 117,154	\$ 179,873
Secured revolving credit facility	—	—	87,500	—	—	—	87,500
Operating lease obligations	258	349	354	360	366	7,959	9,646
Total	\$ 1,862	\$ 3,016	\$ 100,468	\$ 44,652	\$ 1,908	\$ 125,113	\$ 277,019

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In addition, as of March 31, 2005, the Company plans to spend approximately \$45 million, principally by June 30, 2006, in connection with its development and redevelopment activities.

**Net Cash Flows**

*Operating Activities*

Net cash flows provided by operating activities amounted to \$1.8 million during the first three months of 2005 compared to \$1.6 million during the first three months of 2004. Such increase in operating cash flows is primarily due to the Company's property acquisition program.

*Investing Activities*

Net cash flows used in investing activities decreased to \$16.7 million during the first three months of 2005 from \$30.6 million during the first three months of 2004. Cash flows used in investing activities are the result of an active acquisition program during both periods. The Company acquired two shopping centers during the first three months of 2005 and acquired two shopping centers during the first three months of 2004.

*Financing Activities*

Net cash flows provided by financing activities decreased to \$12.4 million during the first three months of 2005 as compared to \$26.7 million during the first three months of 2004. During the first three months of 2005, the net amount included \$19.3 million in net borrowings under the Company's secured revolving credit facility, offset by \$5.8 million in distributions to common and preferred shareholders and OP Unit holders, and \$1.1 million in other uses. During the first three months of 2004, the net amount included \$36.6 million in net borrowings under the Company's secured revolving credit facility, offset by \$5.5 million in mortgage repayments, net, \$2.7 million in distributions to common shareholders and OP Unit holders, and \$1.7 in other uses.

**Funds From Operations**

The Company considers Funds From Operations ("FFO") to be a relevant and meaningful supplemental measure of the Company's performance because it is predicated on a cash flow analysis, contrasted with net income, a measure predicated on GAAP, which gives effect to non-cash items such as depreciation and amortization. The Company computes FFO in accordance with the "White Paper" on FFO published by the National Association of Real Estate Investment Trusts ("NAREIT"), which defines FFO as income before allocation to minority interests (computed in accordance with GAAP), excluding gains or losses from debt restructurings and sales of properties, plus depreciation and amortization, and after preferred distribution requirements and adjustments for unconsolidated partnerships and joint ventures. Adjustments for unconsolidated partnerships and joint ventures are computed to reflect FFO on the same basis. In computing FFO, the Company does not add back to net income the amortization of costs incurred in connection with its financing or hedging activities, or depreciation of non-real

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estate assets, but does add back to net income those items that are defined as “extraordinary” under GAAP. FFO does not represent cash generated from operating activities in accordance with GAAP and should not be considered as an alternative to cash flow as a measure of liquidity. Since the NAREIT White Paper only provides guidelines for computing FFO, the computation of FFO may vary from one company to another. FFO is not necessarily indicative of cash available to fund ongoing cash needs. The following table sets forth the Company’s calculations of FFO for the three months ended March 31, 2005 and 2004:

	2005	2004
Net income	\$ 2,618,000	\$ 1,343,000
Add (deduct):		
Depreciation and amortization	3,730,000	2,192,000
Limited partners’ interest	62,000	36,000
Preferred distribution requirements	(1,294,000)	—
Minority interests	290,000	168,000
Minority interests’ share of FFO	(536,000)	(370,000)
Funds from operations	\$ 4,870,000	\$ 3,369,000
FFO per common share/OP Unit outstanding	\$ 0.25	\$ 0.20
Average number of common shares/OP Units outstanding (1)	19,805,000	16,895,000

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(1) Assumes conversion of OP Units

**Inflation**

Low to moderate levels of inflation during the past several years have favorably impacted the Company’s operations by stabilizing operating expenses. At the same time, low inflation has had the indirect effect of reducing the Company’s ability to increase tenant rents. However, the Company’s properties have tenants whose leases include expense reimbursements and other provisions to minimize the effect of inflation.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

The primary market risk facing the Company is interest rate risk on its mortgage loans payable and secured revolving credit facility. The Company will, when advantageous, hedge its interest rate risk using derivative financial instruments. The Company is not subject to foreign currency risk. The Company's interest rate risk management objectives are to limit the impact of interest rate changes on operations and cash flows, and to lower its overall borrowing costs. To achieve these objectives, the Company may borrow at fixed rates and may enter into derivative financial instruments such as interest rate swaps, caps and/or treasury locks in order to mitigate its interest rate risk on a related variable-rate financial instrument. At March 31, 2005, the Company had swap agreements in place applicable to approximately \$15.0 million of variable rate mortgages. The Company does not enter into derivative or interest rate transactions for speculative purposes.

The Company is exposed to interest rate changes primarily through (i) the secured floating-rate revolving credit facility used to maintain liquidity, fund capital expenditures and expand its real estate investment portfolio, and (ii) floating rate acquisition and construction financing. At March 31, 2005, long-term debt consisted of fixed- and variable-rate mortgage loans payable, and the variable-rate secured revolving credit facility. The average interest rate on the \$160.9 million of fixed rate indebtedness outstanding was 6.5%, with maturities at various dates through 2013. The average interest rate on the Company's \$106.4 million of variable-rate debt was 4.5%, with maturities at various dates through 2007. At March 31, 2005, the Company's pro rata share of variable rate debt amounted to \$104.0 million. Based upon this amount, if interest rates either increase or decrease by 1%, the Company's net income would decrease or increase respectively by approximately \$1,040,000 per annum.

**Item 4. Controls and Procedures**

The Company maintains disclosure controls and procedures and internal controls designed to ensure that information required to be disclosed in its filings under the Securities Exchange Act of 1934 is reported within the time periods specified in the SEC's rules and forms. In this regard, the Company has formed a Disclosure Committee currently comprised of several of the Company's executive officers as well as certain other employees with knowledge of information that may be considered in the SEC reporting process. The Committee has responsibility for the development and assessment of the financial and non-financial information to be included in the reports filed with the SEC, and assists the Company's Chief Executive Officer and Chief Financial Officer in connection with their certifications contained in the Company's SEC filings. The Committee meets regularly and reports to the Audit Committee on a quarterly or more frequent basis. The Company's principal executive and financial officers have evaluated its disclosure controls and procedures as of March 31, 2005, and have determined that such disclosure controls and procedures are effective.

During the three months ended March 31, 2005, there have been no changes in the internal controls over financial reporting or in other factors that have materially affected, or are reasonably likely to materially affect, these internal controls over financial reporting.

<b>Part II</b>	<b>Other Information</b>
<b>Item 6.</b>	<b>Exhibits</b>
Exhibit 10.1	Form of open-end mortgage, assignment of leases and rents, security agreement, and fixture filing, by Cedar-Clyde LLC, a Delaware limited liability company, as Borrower, in favor of KeyBank National Association, a national banking association, as Lender
Exhibit 31	Section 302 Certifications
Exhibit 32	Section 906 Certifications

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

CEDAR SHOPPING CENTERS, INC.

/s/ LEO S. ULLMAN

/s/ THOMAS J. O'KEEFFE

\_\_\_\_\_  
Leo S. Ullman  
Chairman of the Board, Chief  
Executive Officer and President  
(Principal executive officer)

\_\_\_\_\_  
Thomas J. O'Keeffe  
Chief Financial Officer  
(Principal financial officer)

May 5, 2005

Attached as Exhibit 10.1 is a form of mortgage entered into with KeyBank National Association. The Registrant has entered into ten mortgages with KeyBank National Association, all dated April 25, 2005. These mortgages are all substantially identical to the form of mortgage filed as an exhibit, except as follows: (a) the rates on interest range from 5.15% to 5.55% per annum, (b) the principal amounts of the mortgages range from \$1,235,000 to \$4,775,000, and (c) the property secured by each mortgage is a different convenience center.

=====

OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT, AND FIXTURE FILING

CEDAR-CLYDE LLC,  
a Delaware limited liability company  
(Borrower)

in favor of

KEYBANK NATIONAL ASSOCIATION,  
a national banking association  
(Lender)

Dated: April 25, 2005

Location: 1062-1076 W. McPherson Highway, Clyde, Ohio 43410

RECORD AND RETURN TO:

KEYBANK NATIONAL ASSOCIATION  
911 Main Street, Suite 1500  
Kansas City, Missouri 64105  
Attention: Carol Brownfield

Loan No.: 10027097

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#### PREAMBLE

THIS OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("SECURITY INSTRUMENT") is made as of April 25, 2005, by and among, CEDAR-CLYDE LLC, a Delaware limited liability company, having its principal place of business at 44 South Bayles Avenue, Suite 304, Port Washington, New York 11050, as grantor ("BORROWER," for all purposes of this Security Instrument, such term shall include any successors or assigns of Borrower and any future owners of all or any part of the Property), and KEYBANK NATIONAL ASSOCIATION, a national banking association, having a place of business at 911 Main Street, Suite #1500, Kansas City, Missouri 64105, as mortgagee ("LENDER," such term includes all successors and assigns and all subsequent holders, if any, of the Promissory Note that this Security Instrument secures).

PROPERTY ADDRESS: 1062-1076 W. McPherson Highway, Clyde, Ohio 43410

#### RECITALS

Borrower by its promissory note of even date herewith given to Lender is indebted to Lender in the principal sum of \$2,080,000.00 (the "LOAN") or so much thereof that as is then outstanding in lawful money of the United States of America (the note together with all extensions, renewals, modifications, consolidations, substitutions, replacements, restatements and increases thereof shall collectively be referred to as the "NOTE"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment of the Debt and the performance of all of its obligations under the Note and other Loan Documents.

#### DEFINITIONS

The terms set forth below are defined in the following Loan Documents or Sections and Subsections of this Security Instrument and when used in this Security Instrument shall have the meanings set forth in such Loan Documents (such Loan Documents being incorporated herein by reference for such purposes), Sections, and Subsections unless the context clearly otherwise requires. Certain other capitalized words and phrases that are used on a more limited basis are defined in the Sections in which they are used.

Action: Section 17.1;  
Administration and Enforcement Expenses: Section 19.1;  
Affiliated Manager Subsection: 8.1(a);  
Applicable Laws: Subsection 3.10(a);  
Availability Threshold Subsection: 4.4(a);  
Bankruptcy Code Subsection: 1.1(f);  
Borrower: Preamble and Section 20.1;  
Business Day: Section 16.1;  
Business Income Insurance: Subsection 3.3(a)(ii);  
Business Interruption Period: Subsection 3.3(a)(ii);  
Casualty Loss: Section 4.4;

Commercial Property Insurance: Subsection 3.3(a)(i);  
Condemnation Action: Section 4.4;  
Condemnation Awards: Subsection 1.1(g);  
Condemnation Restoration: Section 3.6;  
Control: Subsection 8.1(b);  
Conversion: Section 18.5;  
Debt: Section 2.1;  
Decision Power: Subsection 20.3(i);  
Default Rate: Note;  
Default: Section 3.5(b);  
Defeasance: Note;  
Encumbrance: Subsection 8.1(a);  
Environmental Law: Section 12.1;  
Environmental Lien: Section 12.1;  
Environmental Reports: Section 12.1;  
ERISA: Subsection 4.2(a);  
Estimated Rental Income: Subsection 3.3(a)(ii);  
Event of Default: Section 10.1;  
Financial Statement Reporting Deposit: Note;  
Governing State: Section 17.1;  
Guarantor: Section 5.5;  
Hazardous Substances: Section 12.1;  
Impound Account: Section 3.5;  
Improvements: Subsection 1.1(c);  
Indemnified Parties: Section 13.1;  
Indemnitor: Section 5.5;  
Institutional Control: Section 12.1;  
Insurance Premiums: Subsection 3.3(b);  
Insurance Restoration: Subsection 3.3(e);  
Insured Property: Subsection 3.3(a)(i);

Interested Parties: Section 18.3;  
Investor: Section 18.1;  
Land: Subsection 1.1(a);  
Late Charges: Note;  
Leases: Subsection 1.1(f);  
Leasing Report: Subsection 3.11(b);  
Lender: Preamble and Section 20.1;  
Lender's Underwriting Standards: Subsection 8.2(a);  
Liability Insurance: Subsection 3.3(a)(vi);  
Loan Application: Section 5.14;  
Loan Documents: Subsection 2.1(a);  
Loan Sale: Section 18.1;  
Loan Splitting: Section 18.5;  
Loan Tranching: Section 18.5;  
Loan: Recitals;  
Losses: Section 13.1;

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Maturity Date: Note;  
Monthly Insurance Impound: Section 3.5;  
Monthly Payment: Note;  
Monthly Tax Impound: Section 3.5;  
Net Proceeds: Subsection 4.4(b);  
New Borrower: Subsection 8.2(a)(iv);  
New Guarantor: Subsection 8.2(a)(viii);  
Non-consolidation Opinion: Section 5.19;  
Note: Recitals and Section 20.1;  
O&M Plan: Section 12.1;  
Other Charges: Subsection 3.4(a);  
Participations: Section 18.1;  
Permitted Exceptions: Section 5.1;  
Personal Property: Subsection 1.1(e);  
Policies/Policy: Subsection 3.3(b);  
Prepayment Consideration: Note;  
Prohibited Transfer: Section 8.1;  
Property: Section 1.1 and Section 20.1;  
Qualifying Manager: Section 5.18  
Rating Agency; Section 5.18  
Release: Section 12.1;  
Remediation: Section 12.1;  
REMIC: Section 18.2;  
Rents: Subsection 1.1 (f);  
Restoration Consultant: Subsection 4.4(b)(iii);  
Restoration Retainage: Subsection 4.4(b)(iv);  
Restoration: Section 4.4;  
Restoration: Subsection 3.3(d);  
Restricted Party: Subsection 8.1(a);  
Sale: Subsection 8.1(a);  
Sale Officer: Subsection 11.11(a);  
Secondary Market Transaction: Section 18.2;  
Securities: Section 18.1;  
Securitization: Section 18.1;  
Security Instrument: Preamble;  
Servicing Rights Transfers: Section 18.1;  
Special Cause of Loss: Subsection 3.3(a)(i);  
Tax Change Acceleration: Subsection 7.3(a);  
Taxes: Subsection 3.4(a);  
Terrorism Coverage: Subsection 3.3(c);  
Transfer Fee: Subsection 8.2(a)(vi);  
Uniform Commercial Code: Subsection 1.1(e).

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#### ARTICLE 1 - GRANTS OF SECURITY

SECTION 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably deed, mortgage, grant, bargain, sell, alien, enfeoff, hypothecate, remise, release, pledge, assign, warrant, transfer, confirm, and convey to Lender a lien on, pledge of, and security interest in, the following property, rights, interests, and estates now owned or hereafter acquired by Borrower to the full extent of Borrower's right, title, and interest therein, including hereafter acquired rights, interests, and property, and all products and proceeds thereof and additions and accessions thereto (sometimes collectively referred to herein as the "PROPERTY"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "LAND"); TOGETHER with

(b) Additional Land. All additional lands, estates, and development rights now owned or hereafter acquired by Borrower for use in connection with the Land and the development of the Land that may, from time to time, by

supplemental mortgage or otherwise, be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "IMPROVEMENTS");

(d) Easements and Appurtenances. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, riparian rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, including any homestead or other claim at law or in equity and any after-acquired title, franchises, licenses, and any reversions and remainders thereof, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, 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 Borrower of, in, and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Tangible Personal Property. All inventory, machinery, furniture, equipment, and fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever located upon the Land or the Improvements or appurtenant thereto or used in connection with the present or future operation or occupancy of the Land or the Improvements, including all materials intended for construction, reconstruction, refurbishment, renovation, alterations, and repairs to the Property (whether stored or located on or off the Property) (all of the items described in Subsections 1.1(e) through 1.1(m) below are herein sometimes collectively called the "PERSONAL PROPERTY"), including the right, title and interest of Borrower in and to any of the Personal Property that may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by any state or states where any of the Property is

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located (the "UNIFORM COMMERCIAL CODE") superior in lien to the lien of this Security Instrument, such Personal Property to include, for example, the following: (1) all furniture and furnishings, including carpets, rugs and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, Venetian blinds, curtains, lighting fixtures, desk chairs, stools, pictures, lamps, ash trays, waste baskets, clocks, radios, and all other furniture and furnishings of every kind and nature whatsoever; (2) all cash registers, coin machines, computers, word processing equipment, adding machines, calculators, check protectors, postage meters, desks, chairs, tables, room dividers, filing cabinets, safes, vaults, time clocks, time card machines, and other office furniture, equipment and supplies of every kind and nature whatsoever; (3) all right and interest of the Borrower in and to all equipment leases, personal property leases, conditional sales contracts and similar agreements in and to the telephone system (including the switching components thereof), television sets, computer systems, refrigerator/bars, and point of sale computer systems and/or inventory control systems; (4) all apparatus, machinery, motors, tools, insurance proceeds, leases, and equipment, including fire sprinklers and alarm systems, air conditioning, heating, refrigerating, electronic monitoring, window or structural cleaning rigs, maintenance equipment, equipment for the extermination or exclusion of vermin or insects, equipment for removal of dust, debris, snow, refuse or garbage, and all other equipment of every kind; (5) elevators, fittings, radiators, gas ranges, mechanical equipment, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning, central energy and sprinkler equipment and fixtures and appurtenances thereto; and (6) all renewals or replacements of any of the foregoing, whether or not the same are or shall be attached to the Improvements;

(f) Leases and Rents. All leases and other agreements affecting or relating to the use, enjoyment or occupancy of all or any part of the Land or the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. ss. 101 et seq. (the "BANKRUPTCY CODE"), as the same may be amended from time to time (the "LEASES") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, royalties, licenses, payments (including payments pursuant to the exercise of any purchase option by any tenant under any Lease), fees (including termination fees), revenues, income, receipts, charges, accounts, accounts receivable, issues and profits and other benefits (including all oil and gas or other mineral royalties and bonuses) from the Land or the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "RENTS") 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;

(g) Condemnation Awards. All awards or payments, including interest thereon (collectively "CONDEMNATION AWARDS"), which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, inverse condemnation or for any other injury to or decrease in the value of the Property whether permanent or temporary;

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(h) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Miscellaneous Personal Property. All intangible property used in connection with or generated by, located on or at or pertaining to the Property including all general intangibles, payment intangibles, software, goodwill, trademarks, trade names, service marks, logos, copyrights, option rights, purchase contracts, contract rights or leases of personal property and security deposits received pursuant thereto, utility contracts, service contracts, guaranties, warranties, telephone exchange numbers, licenses, government permits and applications, approvals and other government rights relating to the Property or the operation of the business thereon; all books and records; deposit accounts, letter-of-credit rights, accounts, contract rights, instruments, chattel paper, investment property, all rights of Borrower for payment of money for property sold, rented or lent, for services rendered, for money lent, or advances or deposits made; all claims, actions, and causes of action (including those arising in tort, including commercial tort claims) of Borrower against others; all agreements, contracts, certificates, instruments (including promissory notes, guaranties, liens and all writings which evidence a right to the payment of money), franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto; in each case respecting or pertaining to the use, occupation, construction, management or operation of the Property or any part thereof or respecting any business or activity conducted on the Property or any part thereof and all right, title and interest of Borrower therein and thereunder, including the right to receive and collect any sums payable to Borrower thereunder; all extensions, improvements, betterments, replacements, renewals, or additions and accessions to any of the foregoing; and any other intangible property of Borrower related to the Property; and

(k) Personal Property As Defined In Uniform Commercial Code. In addition to any other property mentioned in this Section 1.1, all property in which a security interest may be created pursuant to the Uniform Commercial Code (or any similar laws) including all goods, inventory, equipment, accounts, accounts receivable, contract rights, general intangibles, chattel paper, documents, documents of title, instruments, deposit accounts, letter-of-credit rights, investment property, tort claims (including commercial tort claims), and securities located on or generated by or used in connection with the ownership or operation of the Property;

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including proceeds of insurance and Condemnation Awards, into cash or liquidation claims; and

(m) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (l) above.

SECTION 1.2 ASSIGNMENT OF LEASES AND RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents, it being acknowledged by

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Borrower that this assignment constitutes, and is intended to constitute a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 3.7, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold a portion of the Rents sufficient to discharge all current sums due on the Debt for use in the payment of such sums.

SECTION 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Debt, a security interest in any of the Property that is deemed to be personal property to the full extent that such property may be subject to the Uniform Commercial Code. This Security

Instrument shall be and is intended to serve as a financing statement under the Uniform Commercial Code with respect to the Personal Property, and when filed shall serve as a financing statement for all intents and purposes thereunder. Borrower authorizes Lender to file financing statements describing the Personal Property. Subject to the terms and conditions of the Loan Documents, Lender shall be entitled to all rights and remedies of a "secured party" under the Uniform Commercial Code. Upon its recording in the real property records, this Security Instrument shall be effective as a financing statement filed as a fixture filing and when filed shall serve as a financing statement for all intents and purposes thereunder. For purposes of this filing, Borrower is the record owner of the Property. The name and mailing address of Borrower, as debtor, and the name and mailing address of Lender, as secured party, from which information concerning this Financing Statement may be obtained, are set forth in the Preamble of this Security Instrument. The Borrower shall promptly (and in no event later than thirty (30) days after the occurrence of such event) advise the Lender in writing of any change in the state of Borrower's organization, or Borrower's exact legal name.

If any of the Property is deemed to be personal property, this Security Instrument shall also constitute a security agreement with respect to such personal property executed by Borrower as debtor in favor of Lender as secured party. During the continuance of an Event of Default, Lender may, in addition to and not in derogation of any other rights and remedies of Lender under the Loan Documents or applicable law, in accordance with Section 9-604 of the Uniform Commercial Code, as applicable, or other such provisions of the Uniform Commercial Code, elect (i) to proceed under and have all the rights and remedies of a secured party under Article 9 of the Uniform Commercial Code and any other applicable law, or (ii) to proceed as to both the real property and the personal property in accordance with Lender's rights and remedies in respect of the real property encumbered by this Security Instrument, whereupon at any foreclosure sale conducted pursuant to this Security Instrument the Sale Officer acting hereunder may offer the real and personal property together as part of the same sale, with bids to be taken on the whole of the real and personal property rather than separately.

Borrower shall promptly notify Lender of the existence of any commercial tort claim (as defined in the Uniform Commercial Code) now or hereafter existing for the benefit of Borrower or the Property, and shall execute, acknowledge and deliver a security agreement or other documentation, each in form and substance reasonably satisfactory to Borrower, as Lender shall from time to time require to acquire and perfect a valid and binding security interest in such commercial tort claim.

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SECTION 1.4 PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all items and monies now or hereafter held by Lender, including any sums deposited in the Impound Account or any escrow, as additional security for the Debt until expended or applied as provided in this Security Instrument.

SECTION 1.5 COMMON LAW PLEDGE/ASSIGNMENT. To the extent that the Uniform Commercial Code does not apply to any item of the Personal Property, it is the intention of this Security Instrument that Lender have a common law pledge and/or collateral assignment of such item of Personal Property.

#### CONDITIONS TO GRANT

TO HAVE AND TO HOLD the Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Loan Documents, and shall abide by and comply, subject to the terms of the Loan Documents, with each and every covenant and condition set forth in the Loan Documents, these presents and the estate hereby granted shall terminate and Lender will promptly execute documents in form and substance reasonably satisfactory to Lender evidencing the release or assignment of this Security Instrument.

#### ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

SECTION 2.1 DEBT. This Security Instrument and the grants, assignments, and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine (the "DEBT"):

(a) the payment of the indebtedness and obligations evidenced by or arising under the following, which, together with all amendments or modifications thereto and substitutions or replacements thereof are sometimes herein collectively called the "LOAN DOCUMENTS" or individually a "LOAN DOCUMENT": this Security Instrument, the Note and all other documents and instruments executed and/or delivered by or on behalf of Borrower or any guarantor of the Loan existing now or after the date hereof that evidence, secure or otherwise relate to the Loan, including any assignments of leases and rents, other assignments, security agreements, financing statements, guaranties, indemnity agreements (including environmental indemnity agreements), letters of

credit, or escrow/holdback or similar agreements or arrangements.

(b) the payment of interest, default interest, late charges and other sums, as provided in the Note, this Security Instrument, or any other Loan Document;

(c) Prepayment Consideration (as such term is defined in the Note);

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(d) the payment of all other monies agreed or provided to be paid in the Note, this Security Instrument, or any other Loan Document;

(e) the payment of all sums advanced pursuant to this Security Instrument or any other Loan Document to protect and preserve the Property and the lien and the security interest created hereby or otherwise, it being agreed by Borrower that any future advances made by Lender to or for the benefit of Borrower from time to time under the Note or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Lender, or otherwise, made for any purpose, and all interest accruing thereon, shall be equally secured by this Security Instrument and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Security Instrument;

(f) the payment of all loans and advances by Lender, all actual liabilities, indemnities, damages and claims of any kind or nature (in contract, tort or otherwise), and costs and expenses (including reasonable attorneys' fees) incurred by Lender in connection with the Debt or any part thereof, or the servicing or administration thereof or the enforcement of Lender's remedies in the collection thereof, any renewal, extension, modification, consolidation, change, substitution, replacement, restatement or increase of the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender and whether or not evidenced by additional promissory notes or other instruments;

(g) the performance of all other obligations of Borrower contained herein;

(h) the performance of each obligation of Borrower contained in the Note in addition to the payment of the Debt and in any other Loan Document; and

(i) the performance of each obligation of Borrower contained in any renewal, extension, modification, consolidation, change, substitution, replacement for, restatement or increase of all or any part of the Note, this Security Instrument or any other Loan Document.

#### ARTICLE 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

SECTION 3.1 PAYMENT OF DEBT. Borrower shall pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

SECTION 3.2 INCORPORATION BY REFERENCE. All of the covenants, conditions and agreements contained in the Note and each other Loan Document are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

SECTION 3.3 INSURANCE.

(a) Insurance. Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

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(i) Property Insurance. Insurance ("COMMERCIAL PROPERTY INSURANCE") with respect to the Improvements, including fixtures, machinery, equipment and any other items of Property (collectively "INSURED PROPERTY") owned by Borrower and typically insured by a commercial property insurance policy, insuring against any peril now or hereafter included within the classification "Special Cause of Loss" insuring against risks of direct physical loss, in an amount not less than one hundred percent (100%) of the "Full Insurable Value" (as hereinafter defined) of the Improvements and other Insured Property, with an "agreed amount" endorsement waiving all co-insurance provisions. The term "Full Insurable Value" shall mean the full replacement cost value of the Improvements and Insured Property (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined no less frequently than required by Borrower's Commercial Property Insurance policy at Borrower's sole cost and expense by an insurer, a recognized independent insurance broker or an independent appraiser selected by Borrower and reasonably



approved by Lender, but in no event less than the coverage required to be maintained by Borrower pursuant to the terms of any Lease. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended; (y) earthquake or earth movement insurance in amounts and in form and substance reasonably satisfactory to Lender in the event that Property is located in an area with a high degree of seismic activity (provided that in no event shall such insurance be required if the Property is located in seismic zones 0, 1 or 2); and (z) coastal windstorm insurance in amounts and in form and substance reasonably satisfactory to Lender in the event the Property is located in any coastal region, provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the "SPECIAL CAUSE OF LOSS" insurance policy required under this subsection (i).

(ii) Business Interruption. Business interruption and/or loss of "rental income" insurance ("BUSINESS INCOME INSURANCE") in an amount sufficient to avoid any co-insurance penalty and to provide proceeds that will cover the estimated annual gross income as determined by Lender (the "ESTIMATED RENTAL INCOME") for a period (the "BUSINESS INTERRUPTION PERIOD") of not less than twelve (12) months from the date of casualty or loss. In each such case, such Business Income Insurance policy shall provide that, after the physical loss to the Improvements and the other Insurable Property has been repaired, the continued loss of Estimated Rental Income will be insured during the applicable Business Interruption Period, and notwithstanding that the policy may expire prior to the end of such period. The term "rental income" to mean the sum of (A) the total then ascertainable Rents payable under the Leases and (B) the total ascertainable amount of all other amounts to be received by Borrower from third parties which

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are the legal obligation of the tenants. The amount of Business Income Insurance coverage shall be adjusted annually by Lender (based on the rent rolls and other financial reports delivered by Borrower to Lender) to reflect the projected rents payable during the next succeeding Business Interruption Period;

(iii) Boiler and Machinery. If applicable, comprehensive form boiler and machinery insurance (without exclusion for explosion), on terms consistent with those set forth for Commercial Property Insurance in Section 3.3(a) (i) above;

(iv) Builder's Risk. At all times during which construction, repairs or alterations are being made with respect to the Improvements that either affect the structure of the Improvements or will cost in excess of five percent (5%) of the value of the Property (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the commercial general liability insurance policy described in Subsection 3.3(a) (vi) below; and (B) the insurance provided for in Subsection 3.3(a) (i) written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsection 3.3(a) (i), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) Ordinance/Law Coverage. Ordinance or law coverage and insurance coverage to compensate for the cost of demolition or rebuilding of the undamaged portion of the Property along with any reduced value and the increased cost of construction in amounts as requested by Lender if the Property is or becomes a legally non-conforming use;

(vi) Liability Insurance. Commercial general liability insurance ("LIABILITY INSURANCE") on an "occurrence" form, including bodily injury and property damage liability, and insurance against any and all claims, including all legal liability imposed upon Lender and all court costs and legal fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition

of the Property. Such insurance shall provide commercial general liability protection in an amount not less than Three Million Dollars (\$3,000,000) each occurrence and annual aggregate, combined single limit, bodily injury and property damage;

(vii) Workers Compensation Insurance. If the Property includes commercial property, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or any Applicable Law; and

(viii) Other Insurance. Such other insurance with respect to the Property against loss or damage of the kinds from time to time customarily insured against and generally required by institutional lenders for properties comparable to the Property.

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(b) Insurance Policies. All insurance provided for in Subsection 3.3(a) hereof shall be obtained under valid and enforceable policies (the "POLICIES" or in the singular, the "POLICY") issued by one or more insurers satisfactory to Lender and having a rating of A:V or better by Best's Key Rating Guide. All insurers providing the insurance required under this Security Instrument shall be authorized to issue insurance in the state in which the Property is located. The Policy referred to in Subsection 3.3(a)(vi) above shall name Lender as an additional insured and the Policies referred to in Subsection 3.3(a)(i), (ii), (iii) and (iv), and as applicable (viii), above shall provide that all proceeds be payable to Lender as set forth in Section 4.4 hereof. The Policies referred to in Subsections 3.3(a)(i), (iii), and (iv) shall also: (1) contain a standard "non-contributory mortgagee" endorsement or its equivalent relating, inter alia, to recovery by Lender notwithstanding the negligent or willful acts or omission of Lender; (2) contain a waiver of subrogation endorsement as to Lender; and (3) be approved by Lender (such approval not to be unreasonably withheld, delayed or conditioned) as to amounts, form, risk coverage, deductibles, loss payees and insureds. All Policies shall contain (i) a provision that such Policies shall not be cancelled or terminated, nor shall they expire, without at least thirty (30) days prior written notice to Lender in each instance; and (ii) effective waivers by the insurer of all claims for Insurance Premiums against any loss payees, additional insureds and named insureds (other than Borrower). Copies of certificates of insurance with respect to all renewal and replacement Policies shall be delivered to Lender not less than ten (10) days prior to the expiration date of any of the Policies required to be maintained hereunder together with evidence of payment of applicable premiums (the "INSURANCE PREMIUMS"). Copies of such replacement Policies shall be delivered to Lender promptly after Borrower's receipt thereof. If Borrower fails to maintain and deliver to Lender the copies of certificates of insurance required by this Security Instrument, upon ten (10) days prior written notice to Borrower, Lender may procure such insurance at Borrower's sole cost and expense.

(c) Terrorism Coverage. The commercial property and business income insurance required pursuant to Section 3(a) hereof shall be required to cover perils of terrorism and acts of terrorism (other than biological, nuclear, and chemical acts of terrorism) ("TERRORISM COVERAGE") and Borrower shall maintain Commercial Property Insurance and Business Income Insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 3.3(a)(i) and (iii) above at all times during the term of the Loan so long as (A) Lender determines in good faith that either (I) prudent owners of real estate comparable to the Property are maintaining same, or (II) prudent institutional lenders are requiring that such owners of real estate comparable to the Property maintain such insurance; and (B) if such insurance is obtainable from any insurer or the United States of America or any agency or instrumentality thereof and the lack of such insurance in and of itself will result in a qualification, downgrade or withdrawal of the then current rating assigned, or to be assigned, or prevent ratings from being assigned, to the Securities or any class thereof in any applicable Securitization. If Lender has waived the requirement that Borrower obtain Terrorism Coverage, Lender may at any time require that Borrower obtain such Terrorism Coverage upon thirty (30) days written notice provided that the condition set forth in subsections (A) and (B) of the foregoing sentence have been satisfied.

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(d) Compliance With Insurance Requirements. Borrower shall comply in all material respects with all insurance requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist

thereon which would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to this Section 3.3.

(e) Restoration. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and provided that Borrower shall have received the Net Proceeds, Borrower shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be reasonably approved by Lender (the "INSURANCE RESTORATION") and otherwise in accordance with Section 4.4 of this Security Instrument.

(f) Blanket Insurance Policies. The insurance coverage required under Section 3.3(a) may be effected under a blanket policy or policies covering the Property and other properties and assets not constituting a part of the security hereunder; provided that any such blanket policy shall specify the portion of the total coverage of such policy that is allocated to the Property, and any sub-limit in such blanket policy applicable to the Property, and shall in any case comply in all other material respects with the requirements of this Section 3.3. Lender may make such other requirements with respect to blanket insurance as Lender may deem appropriate or desirable from time to time; provided that such requirements are generally required by institutional lenders for insurance on properties comparable to the Property.

#### SECTION 3.4 PAYMENT OF TAXES, ETC.

(a) Subject to Section 3.4(b), Borrower shall pay by their due date all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "TAXES"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "OTHER CHARGES"), and all charges for utility services provided to the Property as same become due and payable. Borrower shall deliver to Lender, promptly following Lender's written request, evidence reasonably satisfactory to Lender that the Taxes, Other Charges, and utility service charges have been so paid or are not then delinquent. Subject to Section 3.4(b), Borrower shall not suffer and shall promptly cause to be discharged (by bonding, payment or otherwise) any lien or charge whatsoever that may be a lien or charge against the Property.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default exists under the Note,

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this Security Instrument or any of the Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property (it not being implied by this clause that any such encumbrance will be permitted), (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in reasonably foreseeable danger of being sold, forfeited, terminated, cancelled or lost, (vi) Borrower shall have set aside adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding, together with all interest and penalties thereon, taking into consideration the amount in the Impound Account available for payment of Taxes.

SECTION 3.5 TAX AND INSURANCE IMPOUND ACCOUNT. Borrower shall establish and maintain at all times while this Security Instrument continues in effect an impound account (the "IMPOUND ACCOUNT") with Lender for payment of Taxes and Insurance Premiums on the Property and as additional security for the indebtedness secured hereby. Commencing on the first Monthly Payment Date under the Note and continuing thereafter on each Monthly Payment Date under the Note, Borrower shall pay to Lender, concurrently with the Monthly Payment due under the Note, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual Taxes that will next become due and payable on the Property (the "MONTHLY

TAX IMPOUND"), plus one-twelfth (1/12) of the amount of the annual Insurance Premiums that will next become due and payable on insurance policies which Borrower is required to maintain hereunder (the "MONTHLY INSURANCE IMPOUND"), each as reasonably estimated and determined by Lender. The Monthly Tax Impound or Monthly Insurance Impound, 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 Borrower to Lender. If Lender at any time reasonably determines that the Monthly Tax Impound or Monthly Insurance Impound is insufficient, Lender may in its reasonable discretion adjust the required monthly payments of such amounts, and Borrower shall be obligated to pay the increased amounts for the Monthly Tax Impound or Monthly Insurance Impound commencing with the next monthly payment date under the Note. So long as no Event of Default, and no event that, with notice or the passage of time or the modification or termination of the automatic stay of Section 362 of the United States Bankruptcy Code may become an Event of Default ("DEFAULT"), has occurred and is continuing, all sums in the Impound Account shall be held by Lender in the Impound Account and used to pay Taxes and Insurance Premiums on or before the applicable due date. Borrower shall be responsible for ensuring the receipt by Lender, at least fifteen (15) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all Taxes and Insurance Premiums to be paid from the Impound Account, and so long as no Event of Default has occurred and is continuing, Lender shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. In making any payment from the Impound Account, Lender shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof. Lender shall

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pay no interest on funds contained in the Impound Account to Borrower and any interest or other earnings on funds deposited in the Impound Account shall be solely for the account of Lender. If the total funds in the Impound Account shall exceed the amount of payments actually applied by Lender for the purposes of the Impound Account, such excess may be credited by Lender on subsequent payments to be made hereunder or, at the option of Lender, refunded to Borrower. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If, however, the Impound Account shall not contain sufficient funds to pay the sums required when the same shall become due and payable, Borrower shall, within ten (10) Business Days after receipt of written notice thereof, deposit with Lender the full amount of any such deficiency. The Impound Account shall not constitute a trust fund and may be commingled with other monies held by Lender.

SECTION 3.6 CONDEMNATION. Borrower shall promptly after obtaining knowledge thereof, give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers received by Borrower in connection with such proceedings. Lender may participate in any such proceedings to the extent permitted by law. Borrower shall deliver to Lender all instruments reasonably requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and to the extent reasonably requested cooperate with them in the carrying on or defense of any such proceedings. Borrower shall not make any agreement in lieu of condemnation of the Property or any portion thereof without the prior written consent of Lender in each instance, which consent shall not be unreasonably withheld or delayed. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including any transfer made in lieu of or in anticipation of the exercise of such taking) and whether or not any Condemnation Awards are made available to Borrower for the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to the condemnation or transfer in lieu of condemnation, with such alterations as may be reasonably approved by Lender in accordance with Section 4.4 (a "CONDEMNATION RESTORATION"), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any Condemnation Award shall have been actually received and applied by Lender, after the deduction of actual out of pocket expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Condemnation Awards by the condemning authority but shall be entitled to receive out of the Condemnation Awards interest at the rate or rates provided herein or in the Note. Subject to the terms of Article 4, Borrower shall cause Condemnation Awards payable to Borrower in any condemnation or transfer made in lieu of or in anticipation of the exercise of such taking to be paid directly to Lender. Subject to the terms of Article 4, Lender shall apply any such Condemnation Awards (after deducting any reasonable expenses of collection) to the reduction or discharge of the Debt (whether or not then due and payable). No Prepayment Consideration shall be payable solely in connection with the application of such Condemnation Awards to the Debt; provided, however, that notwithstanding the foregoing, if an Event of Default is existing as of the date of the condemnation, then any Condemnation Awards or proceeds applied to the Debt pursuant to this Section shall be subject to the Prepayment Consideration

computed in accordance with the terms of the Note. For the purposes of determining whether Prepayment Consideration shall be payable under this Section

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3.6, a civil or criminal action seeking or resulting in a forfeiture of the Property shall not be deemed a condemnation or eminent domain proceeding and any payment made pursuant to or in connection with such forfeiture action is subject to the payment of Prepayment Consideration. If the Property or any portion thereof is taken by the power of eminent domain, Borrower shall promptly commence and diligently prosecute the Condemnation Restoration in accordance with Section 4.4 of this Security Instrument. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Condemnation Awards or a portion thereof sufficient to fully satisfy the Debt.

SECTION 3.7 LEASES AND RENTS. Borrower shall comply at all times with that certain Assignment of Leases and Rents of even date herewith executed by Borrower in favor of Lender, which is incorporated herein by this reference as though fully set forth herein. All Rents generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including current expenses relating to Borrower's liabilities and obligations with respect to the Loan Documents, and none of the Rents generated by or derived from the Property shall be diverted by Borrower and utilized for any other purpose unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied; provided, however, that the foregoing shall in no event limit distributions to the members of Borrower in the ordinary course of business in accordance with the terms of Borrower's operating agreement.

SECTION 3.8 MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (unless such Personal Property is replaced with personal property of equal or better quality) without the consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses that may be made of the Property or any part thereof without the prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use or Improvement to be discontinued or abandoned without the express written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned.

SECTION 3.9 WASTE. Borrower shall not commit or suffer any intentional physical waste of the Property ("waste" meaning the diminution in the Property's value resulting from Borrower's willful failure to manage, maintain, repair and otherwise operate the Property in a commercially reasonable manner) or make any change in the use of the Property which will materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that is likely to invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that is likely to materially impair the value of the Property or the security of this Security Instrument.

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Borrower shall not, without the prior written consent of Lender, which consent shall not be unreasonably withheld or conditioned, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

SECTION 3.10 COMPLIANCE WITH LAWS.

(a) Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting the Property and the use thereof ("APPLICABLE LAW"), except to the extent that any non-compliance would not have a material adverse effect on Borrower, the Property or Borrower's ability to perform its obligations under the Loan Documents.

(b) Borrower shall maintain all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other

similar permits or approvals, in full force and effect and shall not intentionally take or omit to take any action that would subject any of the foregoing to revocation, suspension, forfeiture or modification.

(c) Borrower shall from time to time, upon Lender's reasonable request, provide Lender with evidence reasonably satisfactory to Lender that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws.

(d) Lender's approval, if required, of the plans, specifications, or working drawings for alterations of the Property shall create no responsibility or liability on behalf of Lender for their completeness, design, sufficiency or their compliance with Applicable Laws. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval, if required, of all alterations the cost of which will exceed 5% of this Loan upon receipt of a certificate of compliance with Applicable Laws from an independent architect, engineer, or other person reasonably acceptable to Lender.

(e) Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice of the Property's violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to the Property's compliance with Applicable Laws; in each case if such violation, proceeding or investigation is reasonably likely to result in a material adverse effect on Borrower, the Property or Borrower's ability to perform its obligations under the Loan Documents.

(f) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Applicable Laws affecting the Property, provided that (i) no Event of Default has occurred and is continuing; (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of

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any other instrument to which Borrower is subject and shall not constitute a default thereunder; (iv) neither the Property nor any material part thereof or material interest therein nor any of the tenants or occupants thereof shall be affected in any material adverse way as a result of such proceeding; and (v) Borrower shall have furnished to Lender all other items reasonably requested by Lender.

#### SECTION 3.11 BOOKS AND RECORDS.

(a) Borrower shall keep adequate books and records of account in accordance with methods reasonably acceptable to Lender and consistently applied, and shall furnish to Lender:

(i) Within one hundred twenty (120) days after the close of each fiscal year of Borrower, Borrower shall deliver or cause to be delivered to Lender the following financial reports, each of which shall be certified by the Borrower's chief financial officer or another person reasonably acceptable to Lender: (A) an annual rent roll; (B) an annual operating statement of the Property; and (C) an annual balance sheet and profit-and-loss statement of Borrower.

(ii) For each Guarantor, Borrower shall deliver, or cause to be delivered to Lender within one hundred twenty (120) days after the close of the fiscal year of such Guarantor (A) an annual balance sheet and profit and loss statement of such Guarantor certified by such Guarantor's chief financial officer or another person reasonably acceptable to Lender if such Guarantor is an entity, or (B) a signed personal financial statement in a form Lender reasonably satisfactory to Lender if such Guarantor is an individual. Lender hereby acknowledges that so long as the Guarantor is Cedar Shopping Centers Partnership, L.P., the above-referenced balance sheet and profit and loss statement shall be provided within the consolidated statements of Cedar Shopping Centers, Inc.

(iii) Prior to securitization and, in any event for no longer than the first twelve (12) months after the date of this Security Instrument, Borrower shall deliver, or cause to be delivered, upon Lender's reasonable request all of the following with respect to the previous calendar month within twenty (20) Business Days after the close of each calendar month, in each case be certified by the Borrower's chief financial officer or another person reasonably acceptable to Lender: (A) monthly rent roll(s); (B) monthly operating

statement(s) of the Property; and (C) year-to-date operating statement(s) of the Property.

(iv) Beginning thirteen (13) months after the date of this Security Instrument, Borrower shall deliver, or cause to be delivered, all of the following with respect to the previous fiscal quarter (but only with regard to the first three fiscal quarters of any fiscal year) within sixty (60) days after the close of each fiscal quarter, all to be certified by the Borrower's chief financial officer or another person reasonably acceptable to Lender: (A) a quarterly rent roll; (B) a quarterly operating statement of the Property; and (C) a year-to-date operating statement of the Property.

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(b) Not more frequently than once per 12-month period during the term of the Note upon Lender's request, Borrower shall deliver to Lender a report (the "LEASING REPORT") setting forth the minimum economic terms that Borrower proposes for use in connection with the standard lease form for leases of portions of the Property during the subsequent twelve month period beginning upon such anniversary date. The terms set forth in the Leasing Report shall reflect the prevailing market conditions for like properties in the locality of the Property.

(c) Borrower shall deliver to Lender annually upon request, in form satisfactory to Lender, information regarding the sales and/or receipts of each tenant of the Property who reports such information to Borrower pursuant to such tenant's Lease.

(d) Borrower and its affiliates shall furnish Lender with such other additional financial or management information as may, from time to time, be reasonably required by, and in form and substance reasonably satisfactory to, Lender, provided that such other additional financial or management information is (i) generally required by institutional Lenders with respect to loans comparable to the Loan, or (ii) required by any Rating Agency rating any securities issued by the holder of the Loan or any other Interested Party.

SECTION 3.12 PAYMENT FOR LABOR AND MATERIALS. Borrower shall promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, without Lender's prior written consent except for the Permitted Exceptions. Notwithstanding the foregoing, after prior written notice to Lender, Borrower may, at its own expense, contest any mechanic's or similar lien affecting the Property by appropriate legal proceedings, promptly initiated and conducted in good faith and with due diligence, provided that all of the following conditions are satisfied in Lender's reasonable discretion: (i) no Event of Default has occurred and is continuing; (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and shall not constitute a default thereunder; (iv) neither the Property, any material part thereof or material interest therein, any of the tenants or occupants thereof shall be affected in any material adverse way as a result of such proceeding; (v) if the amount being contested exceeds \$2,500.00, upon the Lender's reasonable request Borrower shall have furnished to Lender additional security in respect of the lien being contested in an amount reasonably requested by Lender, but in any event not less than 125% of the amount of the lien; and (vi) Borrower shall have furnished to Lender all other items reasonably requested by Lender with respect to such contest.

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SECTION 3.13 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform in all material respects each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property.

SECTION 3.14 CHANGE OF NAME, IDENTITY OR STRUCTURE. Except as may be expressly permitted under Article 8, Borrower shall not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure, its state of organization or its identification number, without notifying the Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of the Lender not to be unreasonably withheld.

SECTION 3.15 EXISTENCE. Borrower shall continuously maintain (a) its existence and shall not dissolve or permit its dissolution, and (b) its rights

to do business in the state where the Property is located.

#### ARTICLE 4 - SPECIAL COVENANTS

Borrower covenants and agrees that:

SECTION 4.1 PROPERTY USE. The Property shall be used only as a shopping center and for no other use without the prior written consent of Lender.

SECTION 4.2 ERISA.

(a) Borrower shall not engage in any transaction that would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument and any other Loan Document) 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) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender, that (i) Borrower 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) Borrower 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:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. ss. 2510.3-101(b) (2);

(ii) Less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. ss. 2510.3-101(f) (2); or

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(iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. ss. 2510.3-101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

SECTION 4.3 SINGLE PURPOSE ENTITY.

(a) Limited Purpose. Borrower by execution of this Security Instrument represents, warrants and covenants that it (i) has been and shall continue to be organized solely for the limited purpose of acquiring, owning, improving, leasing, managing, operating, holding for investment and selling or otherwise disposing of the Property and doing only those things necessary in connection therewith, (ii) shall not engage in any other business, (iii) shall have no other purpose, (iv) shall not own or acquire any real property other than the real estate included in the Property or any personal (tangible or intangible) property other than personal property included in the Property or in furtherance of the purposes of Borrower as stated herein, and (v) shall not incur, create, or assume any indebtedness or liabilities, secured or unsecured, direct or contingent, other than (A) the Loan and (B) unsecured indebtedness that represents trade payables or accrued expenses occurring in the normal course of business of owning and operating the Property that is not evidenced by a promissory note and is due and payable within sixty (60) days after the date incurred and which in no event exceeds two percent (2%) of the original principal amount of the Note.

(b) Prohibited Action. Borrower by execution of this Security Instrument represents, warrants, and covenants that it has not taken and shall not take any of the following actions:

(i) take any "BANKRUPTCY ACTION", which is defined as any of the following actions:

(A) taking any action that is reasonably likely to cause Borrower to become insolvent;

(B) commencing any case, proceeding or other action on behalf of Borrower or under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors;

(C) instituting proceedings to have Borrower adjudicated as bankrupt or insolvent;

(D) consenting to the institution of bankruptcy or insolvency proceedings against Borrower;



(E) filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of Borrower of its debts under any federal or state law relating to bankruptcy;

(F) seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower or a substantial portion of its properties;

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(G) admitting in writing Borrower's inability to pay debts generally as they become due;

(H) making any assignment for the benefit of Borrower's creditors; or

(I) taking any action in furtherance of the foregoing;

(ii) dissolve, liquidate or terminate in whole or in part, or consolidate with or merge into any person or entity, or sell, transfer or otherwise dispose of or encumber all or substantially all of its assets or change its legal structure;

(iii) amend or recommend the amendment of the operating agreement, certificate of formation, or any other formation or organizational document of Borrower in any manner which adversely affects Borrower's existence as a single purpose entity unless (i) Lender consents to such amendment and (ii) following any securitization of the Loan, the applicable rating agencies confirm in writing that such change will not result in the qualification, withdrawal or downgrade of any securities ratings of securities issued by the holder of the Loan;

(iv) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if required) under the applicable laws of the jurisdiction of its organization or formation;

(v) terminate or fail to comply in any material respect with the provisions of its organizational documents; or

(vi) engage in any business or activity that is not consistent with the purposes of Borrower as set forth in Section 4.3(a) above.

(c) Separateness Covenants. Except as otherwise expressly required by any Loan Document, Borrower by execution of this Security Instrument represents, warrants, and covenants that it shall at all times:

(i) not commingle assets with those of any other entity,

(ii) hold its assets in its own name;

(iii) conduct its own business in its own name;

(iv) maintain its bank accounts, books, records and financial statements in accordance with generally accepted accounting principles, keep such bank accounts, books, records and financial statements separate from those of any other person or entity, and not permit the listing of its assets on the financial statement of any other person or entity, provided, however, that its assets may be included in a consolidated financial statement of an Affiliate provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of it and such Affiliate and to indicate that its assets and credit are not available to satisfy the debts and obligations of such Affiliate or any other person or entity and (B) such assets shall be listed on its own balance sheet;

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(v) maintain its books, records, resolutions and agreements as official records;

(vi) pay its own liabilities out of its own funds;

(vii) maintain adequate capital in light of its contemplated business operations;

(viii) observe all organizational formalities;

(ix) maintain an arm's-length relationship with Affiliates and enter into transactions with Affiliates only on a commercially reasonable basis;

(x) pay the salaries of only its own employees and maintain a sufficient number of employees in light of contemplated business operations;

(xi) not guarantee or become obligated for the debts of any

other entity or hold out its credit as being available to satisfy the obligations of others;

(xii) not acquire the obligations or securities of its Affiliates or owners, including partners, members or shareholders;

(xiii) not make loans or advances to any other person or entity;

(xiv) allocate fairly and reasonably any overhead for shared office space;

(xv) use separate stationery, invoices and checks;

(xvi) file its own tax returns separate from any other entity, except to the extent that Borrower is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law;

(xvii) not pledge its assets for the benefit of any other person or entity;

(xviii) hold itself out as a separate entity, and not fail to correct any known misunderstanding regarding its separate identity;

(xix) not identify itself as a division of any other person or entity;

(xx) not maintain its assets in such a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other person or entity; and

(xxi) observe the single purpose entity and separateness covenants and requirements set forth herein.

(d) Definitions. As used in this Section, the terms shall have the meanings set forth herein:

(i) "AFFILIATE" means a person or entity that directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control of or with, the person or entity specified; and

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(ii) "CONTROL" means (A) whether directly or indirectly, ownership or control of the power to vote fifty percent (50%) or more of the outstanding equity interests of any such entity, (B) the control in any manner of the election of more than one director or trustee (or persons exercising similar functions) of such entity, or (C) the possession of the power to direct or cause the direction of the management and/or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

(e) Injunctive Relief. Borrower by execution of this Security Instrument acknowledges and agrees with Lender that Lender would be irreparably damaged if any of the covenants of this Section 4.3 are breached or not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which Lender may be entitled, at law or in equity, Lender shall be entitled to injunctive relief to prevent or remedy breaches of the provisions of this Section 4.3 and specifically to enforce the terms and provisions of this Section 4.3.

SECTION 4.4 RESTORATION AFTER CASUALTY/CONDEMNATION. For the purposes of this Section 4.4, the term "NET PROCEEDS" shall mean, as applicable, (1) the net amount of all insurance proceeds under the Policies carried pursuant to Subsections 3.3(a) (i) (Property Insurance), (iii) (Boiler and Machinery), (iv) (Builder's Risk), (v) (Ordinance/Law Coverage), and (vi) (Personal Property) of this Security Instrument as a result of such damage or destruction, or (2) the net amount of all proceeds from insurance or Condemnation Awards relating to the Condemnation Action, in each case after deduction of Borrower's and Lender's reasonable actual out of pocket costs and expenses (including reasonable counsel fees), if any, in collecting the same. If the Property is damaged or destroyed, in whole or in part, by fire or other casualty (a "CASUALTY LOSS") or if the Property or any portion thereof is taken, or threatened to be taken, in any condemnation or eminent domain proceeding (whether instituted or threatened, a "CONDEMNATION ACTION"), the following provisions shall apply in connection with any Insurance Restoration or Condemnation Restoration (collectively the "RESTORATION"):

(a) The Net Proceeds shall be disbursed directly to Borrower if each of the following conditions are satisfied: (i) the Net Proceeds do not exceed \$50,000.00 ("AVAILABILITY THRESHOLD"), (ii) the cost of completing the Restoration as reasonably estimated by Borrower is less than or equal to the Availability Threshold, (iii) no Event of Default has occurred and is continuing, (iv) the Property and the use thereof after the Restoration will be in compliance with, and permitted under,

all applicable zoning laws, ordinances, rules and regulations (including all applicable Environmental Laws), and (v) such Casualty Loss or Condemnation Action does not materially impair access to the Property or the Improvements. Borrower shall be permitted and is obligated to settle any insurance claims with respect to the Net Proceeds that are, in the aggregate, less than or equal to the Availability Threshold unless an Event of Default has occurred and is continuing. Lender shall have the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds that in the aggregate are equal to or greater than the Availability Threshold. Borrower hereby grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of filing and prosecuting such claim and collecting and making receipt for any such payment, which such power may be exercised by Lender during the continuance of an Event of Default. If the Net Proceeds are received by

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Borrower, such Net Proceeds shall, until the completion of the related work, be held in trust for Lender. Borrower shall commence and diligently prosecute to completion the Restoration of the Property to as nearly as possible the condition it was in immediately prior to such Casualty Loss or Condemnation Action

(b) If the Net Proceeds are greater than the Availability Threshold, such Net Proceeds shall, subject to the provisions of the Leases that are superior to the lien of this Security Instrument or with respect to which subordination and non-disturbance agreements binding upon Lender have been entered into which provide for the use and/or disposition of Net Proceeds, be forthwith paid to Lender to be held by Lender in a segregated account to be made available to Borrower for the Restoration in accordance with the provisions of this Subsection 4.4(b).

(i) The Net Proceeds shall be made available to Borrower for payment of, or reimbursement of Borrower's actual out of pocket expenses in connection with, the Restoration, subject to the following conditions:

(A) no Event of Default has occurred and is continuing;

(B) Lender is furnished, within a reasonable period of time prior to request for initial disbursement, with (i) an estimate of the costs of the Restoration, which upon Lender's request, shall be accompanied by an independent architect's certification as to such costs, and (ii) appropriate plans and specifications for the Restoration, which plans and specifications shall be subject to Lender's approval not to be unreasonably withheld, conditioned or delayed;

(C) Lender determines that the Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Lender, are sufficient to cover the costs of the Restoration as certified by the independent architect;

(D) if the Net Proceeds are insurance proceeds, less than fifty percent (50%) of the total floor area of the Improvements has been damaged or destroyed or rendered unusable as a result of such Casualty Loss, or, if the Net Proceeds are Condemnation Awards, less than twenty-five percent (25%) of the Land constituting the Property is taken and such Land that is taken is located along the perimeter or periphery of the Property and no portion of the Improvements is located on such Land;

(E) the fair market value of the Improvements has been damaged, destroyed or rendered unusable is less than (1) thirty percent (30%) in the event of a Casualty Loss or (2) fifteen percent (15%) in the event of a Condemnation Action;

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(F) Lender reasonably determines that any operating deficits, including all scheduled payments of principal and interest under the Note that will be incurred with respect to the Property as a result of the occurrence of any such Casualty Loss or Condemnation Action, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the

proceeds of business interruption and/or loss of "rental income" insurance, or (3) other funds of Borrower;

(G) Lender determines that, upon the completion of the Restoration and related lease-up, if applicable, the net cash flow of the Property will be restored to a level sufficient to cover all carrying costs and operating expenses of the Property, including debt service on the Note at a coverage ratio (after deducting replacement reserve requirements and reserves for tenant improvements and leasing commissions from net operating income) equal to or greater than the coverage ratio calculated and assumed by Lender in connection with the origination of the Loan or, if lower, the coverage ratio that existed as of the date immediately preceding such Casualty Loss or Condemnation Action;

(H) the Restoration can reasonably be completed on or before the earliest to occur of (1) twelve (12) months from the date of the Casualty Loss or Condemnation Action, (2) six (6) months prior to the Maturity Date (as defined in the Note), (3) the earliest date required for such completion under the terms of any Leases, or (4) such time as may be required under applicable zoning law, ordinance, rule or regulation in order to repair and restore the Property to as nearly as possible the condition it was in immediately prior to such Casualty Loss or Condemnation Action;

(I) the Property and the use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances, rules and regulations (including all applicable Environmental Laws), except to the extent that non-compliance would not have a material adverse effect on the Borrower, Property or Borrower's ability to perform its obligations under the Loan Documents; and

(J) such Casualty Loss or Condemnation Action does not materially impair post-Restoration access to the Land or the Improvements.

(ii) The Net Proceeds shall be held by Lender and constitute additional security for the obligations until disbursed pursuant to this Subsection 4.4(b). The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Lender that (A) all materials installed and work and labor performed to the date of such disbursement request (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to

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file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration that have not either been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company insuring the lien of this Security Instrument.

(iii) Upon Lender's request, Borrower shall send Lender copies of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. With respect to contracts exceeding 50,000, the identity of the contractors engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and approval by Lender and an independent consulting engineer, architect, or other expert selected by Lender (the "RESTORATION CONSULTANT"), such approval not to be unreasonably withheld or delayed. Borrower shall pay all reasonable out of pocket costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including the reasonable fees and expenses of Lender's attorneys and the Restoration Consultant.

(iv) Subject to the terms and conditions of Section 4.4, in no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Restoration Consultant, minus the Restoration Retainage. The term "RESTORATION RETAINAGE" as used in this Subsection 4.4(b) shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Restoration Consultant. The Restoration Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Subsection 4.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Restoration Retainage shall not be released until the Restoration Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b) and that all approvals reasonably necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Restoration Retainage, provided, however, that Lender will release the portion of the Restoration Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Restoration Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract in all material respects, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman (other than Retainage) as may be reasonably requested by Lender or by the title company insuring the lien of this Security Instrument. If required by Lender, the surety company, if any, that issued a payment or performance bond with respect to the contractor, subcontractor or materialman shall approve the release of any such portion of the Restoration Retainage.

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(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in Lender's determination, be sufficient to pay in full the balance of the costs that are estimated by the Restoration Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "NET PROCEEDS DEFICIENCY") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Subsection 4.4(b) shall constitute additional security for the obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Restoration Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) All Net Proceeds not required (i) to be made available for the Restoration pursuant to this Section 4.4 or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 4.4(b) (vii) shall be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender shall deem proper or, at the discretion of Lender, the same shall be paid, either in whole or in part, to Borrower. If Lender shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of

the Debt, and no Prepayment Consideration shall be payable solely in connection with such application; provided, however, that notwithstanding the foregoing, if an Event of Default exists as of the date of such application, then any Net Proceeds applied to the Debt pursuant to this Section shall be subject to the Prepayment Consideration computed in accordance with the terms of the Note.

#### ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

SECTION 5.1 WARRANTY OF TITLE. Borrower has good, marketable and indefeasible title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and

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the Improvements, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "PERMITTED EXCEPTIONS"), none of which, individually or in the aggregate, materially (a) interfere with the benefits of the security intended to be provided by this Security Instrument, (b) affect the value or marketability of the Property (as it is currently used), (c) impair the use or operation of the Property for the uses currently made thereof, or (d) impair Borrower's ability to pay its obligations in a timely manner. Borrower shall, so long as the Loan shall be in effect, warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

SECTION 5.2 AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

SECTION 5.3 LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have, so long as the Loan shall be in effect, the full right, power and authority to operate and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the Loan Documents.

SECTION 5.4 VALIDITY OF DOCUMENTS. (a) The execution, delivery and performance of the Note, this Security Instrument and the Loan Documents and the borrowing evidenced by the Note (i) are within the power and authority of Borrower; (ii) have been authorized by all requisite organizational action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership or operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby), and (b) the Note, this Security Instrument and the Loan Documents constitute the legal, valid and binding obligations of Borrower except to the extent limited by applicable bankruptcy, insolvency, liquidation, conservatorship, receivership or other debtor relief laws affecting the enforcement of creditor rights generally.

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SECTION 5.5 LITIGATION. There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower's knowledge, threatened or contemplated against Borrower, any person guaranteeing the payment of the Debt or any portion thereof or performance by Borrower of any terms of this Security Instrument (a "GUARANTOR"), if any, any person liable under that certain Environmental Indemnity Agreement of even date herewith or any other indemnity agreement entered into in favor of Lender in connection with the Loan ("INDEMNITOR"), if any, or against or affecting the Property that (a) has not

been disclosed to Lender, and has a material, adverse effect on the Property or Borrower's, any Guarantor's or any Indemnitor's ability to perform its obligations under the Note, this Security Instrument or the Loan Documents, or (b) is not adequately covered by insurance.

#### SECTION 5.6 STATUS OF PROPERTY.

(a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended, or any successor law, or, if any portion of the Improvements is now or at any time in the future located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof.

(b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification, except, in each case, as would not have a material adverse effect on Borrower, the Property or Borrower's ability to perform its obligations under the Loan Documents.

(c) The Property and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use and Environmental Laws and other similar laws, except to the extent non-compliance would not have a material adverse effect on Borrower, the Property or Borrower's ability to perform its obligations under the Loan Documents.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

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(g) The Property is free from material damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full (other than ongoing tenant improvements for which payment is not yet due).

(i) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws, except, in each case, as would not have a material adverse effect on Borrower, the Property or Borrower's ability to perform its obligations under the Loan Documents.

(k) All security deposits relating to the Leases reflected on the certified rent roll delivered to Lender have been collected by Borrower except as noted on the certified rent roll.

(l) Borrower has received no notice of an actual or threatened condemnation or eminent domain proceeding by any public or quasi-public authority.

(m) Except as set forth in the survey of the Property delivered to Lender in connection with the closing of the Loan, all the Improvements lie within the boundaries of the Property.

SECTION 5.7 NO FOREIGN PERSON. Borrower 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, including temporary regulations.

SECTION 5.8 SEPARATE TAX LOT. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

SECTION 5.9 ERISA COMPLIANCE.

(a) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower 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 Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; and

(b) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(3) of ERISA, and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

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SECTION 5.10 LEASES. Except as disclosed in the rent roll for the Property delivered to Lender or as otherwise disclosed in writing by Borrower to Lender, (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the current terms of the Leases are reflected in the certified rent roll delivered to Lender; (c) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated by Borrower (except to Lender); (d) none of the Rents have been collected for more than one (1) month in advance (except a security deposit or first month's rent on execution of a Lease shall not be deemed rent collected in advance); (e) to Borrower's knowledge the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (f) to Borrower's knowledge there exist no offsets or defenses to the payment of any portion of the Rents; (g) Borrower has received no notice from any tenant challenging the validity or enforceability of any Lease; (h) to Borrower's knowledge there are no agreements with the tenants under the Leases other than expressly set forth in each Lease or in the estoppels delivered to Lender in connection with the Closing of the Loan; (i) the Leases are valid and enforceable against Borrower and, to Borrower's knowledge, the tenants set forth therein; (j) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (k) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; and (l) no brokerage commissions or finders fees are due and payable regarding any Lease which has not been paid as of the date hereof.

SECTION 5.11 FINANCIAL CONDITION; NO PRIOR BANKRUPTCY. Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and it has received reasonably equivalent value for the granting of this Security Instrument.

SECTION 5.12 TAXES. Borrower, any Guarantor and any Indemnitor have filed, or timely obtained extensions for the filing of, all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower, any Guarantor nor any Indemnitor knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

SECTION 5.13 MAILING ADDRESS. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with Article 16, is true and correct.

SECTION 5.14 NO CHANGE IN FACTS OR CIRCUMSTANCES. All information in the application for the loan submitted to Lender (the "LOAN APPLICATION") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application or in satisfaction of the terms thereof, are accurate, complete and correct in all material respects as of the date of submission. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect.

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SECTION 5.15 INTENTIONALLY OMITTED.

SECTION 5.16 THIRD PARTY REPRESENTATIONS. Each of the representations and the warranties made by each Guarantor and Indemnitor herein or in any Loan Document(s) is true and correct in all material respects as of the date made.



SECTION 5.17 ILLEGAL ACTIVITY. No portion of the Property has been or will be purchased, improved, fixtured, equipped or furnished with proceeds of any criminal or other illegal activity and to the best of Borrower's knowledge, there are no illegal activities or activities relating to controlled substances at the Property.

SECTION 5.18 MANAGEMENT. The Property shall be managed by either (i) Borrower, Cedar Shopping Centers Partnership, L.P. ("CSCP"), or an affiliate of Borrower or CSCP, for so long as Borrower or said affiliate of Borrower possesses sufficient experience in managing and operating commercial properties similar in size, scope, uses and value as the Property, as reasonably determined by Lender; or (ii) GBC Property Management L.L.C., or a professional property management company reasonably approved in writing by Lender. Management by an affiliate of Borrower or a professional property management company shall be pursuant to a written agreement reasonably approved by Lender. In no event shall any manager be removed or replaced (except in the event of a default by manager under the applicable management agreement), or shall the terms of any management agreement be materially modified or amended without the prior written consent of Lender, such consent not to be unreasonably withheld or conditioned. If (i) an Event of Default has occurred, (ii) a default has occurred under any management contract then in effect that is not cured within any applicable grace or cure period, or (iii) any manager of the Property becomes bankrupt or insolvent, Lender shall have the right to immediately terminate, or to direct Borrower to immediately terminate, such manager, and to retain, or to direct Borrower to retain, a new manager reasonably approved by Lender. Lender's approval of a replacement property manager shall not be unreasonably withheld provided the proposed property manager is a Qualifying Manager (as hereinafter defined). As used herein, "QUALIFYING MANAGER" means a reputable and experienced management organization reasonably satisfactory to Lender, which organization or its principals possess at least ten (10) years experience in managing commercial properties similar in size, scope, use and value of the Property and which, on the date Lender determines whether such management organization is a Qualifying Manager, (i) manages a quantity of square footage reasonably acceptable to Lender of the same property type as the Property, and (ii) upon Lender's request, obtains prior written confirmation from each Rating Agency (as hereinafter defined) that management of the Property by such management organization will not cause a downgrading, withdrawal or qualification of the then current rating of the Securities issued in connection with any Securitization. As used in this Security Instrument, the term "Rating Agency" shall mean Standard & Poor's Rating Services, a Division of McGraw-Hill Companies, Inc., Fitch, Inc., Moody's Investor Service, Inc. or any successor of the foregoing, or any other nationally recognized statistical rating organization; in each case then rating any securities issued by a holder of the Loan.

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#### ARTICLE 6 - DEBTOR/CREDITOR RELATIONSHIP

SECTION 6.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument or the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

SECTION 6.2 NO RELIANCE ON LENDER The members, partners, principals or shareholders of Borrower, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

SECTION 6.3 NO LENDER OBLIGATIONS Notwithstanding any provision of the Loan Documents, Lender is not undertaking the performance of (i) any obligations under the Leases except as provided in any subordination, non-disturbance and attornment agreement; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or the effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

SECTION 6.4 RELIANCE OF LENDER ON BORROWER REPRESENTATIONS. Borrower recognizes and acknowledges that in accepting the Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth herein without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting

the Loan Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth herein.

#### ARTICLE 7 - FURTHER ASSURANCES

SECTION 7.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, shall cause this Security Instrument and any of the Loan Documents creating a lien or security interest or evidencing the lien hereof upon the 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 and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower shall pay all taxes, filing, registration or recording fees,

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and all reasonable out of pocket expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Loan Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, 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 Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

SECTION 7.2 FURTHER ACTS, ETC. Borrower shall, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument, including promptly notifying Lender of any commercial tort claim in which Borrower has an interest and executing any documentation reasonably required by Lender to create and perfect any security interest in such commercial tort claim as provided in Section 1.3 hereof, or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, promptly following written demand, shall execute and deliver and hereby authorizes Lender to execute in the name of Borrower, or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence or perfect more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 7.2 or Section 7.1, exercisable during the continuance of an Event of Default.

#### SECTION 7.3 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument that deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower shall pay the tax, with interest and penalties thereon, if any. If Lender is advised by its counsel that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option to declare the Debt immediately due and payable (a "TAX CHANGE ACCELERATION") by giving Borrower not less than one hundred twenty (120) days' written notice of such Tax Change Acceleration. No Prepayment Consideration shall be payable solely in connection with a Tax Change Acceleration; provided, however, that notwithstanding the foregoing, if an Event of Default exists as of the date of such Tax Change Acceleration, then the Borrower's payment of the Loan shall be subject to Prepayment Consideration computed in accordance with the terms of the Note.

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(b) Borrower shall 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 Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to

declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State or other governmental authorities shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the Loan Documents or impose any other tax or charge on the same, Borrower shall pay for the same, with interest and penalties thereon, if any.

#### SECTION 7.4 ESTOPPEL CERTIFICATES.

(a) Within ten (10) Business Days after any request by Lender, Borrower shall furnish Lender or any proposed assignee of the Loan with a statement, duly acknowledged and certified, setting forth (i) 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 terms of payment and Maturity Date, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, there are no Defaults or Events of Default under this Security Instrument or any of the other Loan Documents, (vii) that the Loan Documents are valid, legal and binding obligations of Borrower except to the extent limited by applicable bankruptcy, insolvency, liquidation, conservatorship, receivership or other debtor relief laws affecting the enforcement of creditor rights generally, and have not been modified or if modified, giving particulars of such modification, (viii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if modified, setting forth all modifications), (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the best knowledge of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease (or if not consistent, an explanation reasonably satisfactory to Lender as to the amounts and reason for such inconsistency), and (xiii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

(b) Within fifteen days after any request by Lender (or such longer period as may be permitted under the Lease), Borrower shall furnish Lender with duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding any Lease as Lender may reasonably require, including attestations that each Lease covered thereby is in full force and effect with no knowledge of any defaults thereunder on the part of any party (or if a default exists, an explanation thereof), that none of the Rents have

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been paid more than one month in advance, except as security or first month's rent, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease. Notwithstanding the foregoing, if the terms of any Lease do not require the lessee to deliver an estoppel certificate upon request or provide for use of a different form, Borrower agrees that it shall use its reasonable efforts to deliver to Lender, promptly upon request, such an estoppel certificate with respect to such Lease.

SECTION 7.5 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any Loan Document that is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or Loan Document, Borrower shall issue, in lieu thereof, a replacement Note or Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or Loan Document in the same principal amount thereof and otherwise of like tenor; provided that Lender indemnify Borrower for any loss, damages or claims arising in connection with such loss, theft, destruction, mutilation and replacement.

SECTION 7.6 AMENDED FINANCING STATEMENTS. At the request of the Lender, Borrower shall execute a certificate in form reasonable satisfactory to the Lender listing the trade names under which Borrower operates the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

#### ARTICLE 8 - DUE ON SALE/ENCUMBRANCE/CHANGE IN BORROWER

##### SECTION 8.1 NO SALE/ENCUMBRANCE/CHANGE OF OWNERSHIP WITHOUT CONSENT.

(a) Except as otherwise expressly provided in this Security Instrument, Borrower shall not cause or permit any of the following (each a "PROHIBITED TRANSFER") to occur without the prior written

consent of Lender in each instance: the voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest (each a "SALE OR ENCUMBRANCE") of the Property or any part thereof, or permit a Sale or Encumbrance of an interest in Borrower or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower or any non-member manager (each a "RESTRICTED PARTY"), other than pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 3.7. A Prohibited Transfer shall include (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the 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, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Encumbrance of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (iv) if a Restricted Party is a limited or general partnership or joint

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venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Encumbrance of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Encumbrance of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Encumbrance of non-managing membership interests or the creation or issuance of new non-managing membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Encumbrance of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) the removal or the resignation of any manager (including any manager in which Borrower has, directly or indirectly, any legal, beneficial or economic interest (an "AFFILIATED MANAGER")) other than in accordance with Section 5.18.

(b) Notwithstanding the provisions of Sections 8.1(a), a transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party shall not be deemed to be a Prohibited Transfer, nor shall the Sale or Encumbrance, in one or a series of transactions, of not more than forty-nine percent (49%) of the stock, limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, no such transfers shall result in a change in "CONTROL" in the Restricted Party, and as a condition to each such transfer, Lender shall receive not less than ten (10) Business Days prior written notice of such proposed transfer. For the purpose of this Article 8, "Control" shall mean the power to direct the management and policies of a Restricted Party, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise. Provided, further, that it is acknowledged that Cedar Shopping Centers, Inc. is a publicly traded entity and that the issuance, sale or transfer of interests in Cedar Shopping Centers, Inc. shall not be deemed to be a Prohibited Transfer, nor shall the issuance, sale or transfer of limited partnership interests in Cedar Shopping Centers Partnership, L.P. provided Cedar Shopping Centers, Inc. remains the general partner of such limited partnership and in Control of such limited partnership.

#### SECTION 8.2 CONDITIONS TO LENDER'S CONSENT.

(a) Without limiting Lender's discretion to approve or disapprove in accordance with Section 8.1 any request from Borrower for a waiver of the prohibition against Prohibited Transfers, Lender specifically reserves the right to condition its consent to a Prohibited Transfer upon the satisfaction of the following minimum conditions:

- (i) Lender has received Borrower's written request for Lender's consent to a transfer and Lender has expressly approved such request in writing;
- (ii) no Event of Default has occurred and is continuing;

- (iii) Borrower has paid Lender an application fee and a deposit for legal fees, each in amounts reasonably determined by Lender. The legal fee deposit shall be applied towards the legal fees and expenses incurred by Lender in connection with such request for a transfer;
- (iv) Lender has determined that the proposed new owner/assignee (the "NEW BORROWER") meets Lender's Underwriting Standards (as hereinafter defined) in all material respects;
- (v) Lender has determined that the Property meets in all material respects all of the Lender's Underwriting Standards related to its financial condition, cash flow, operating income, physical condition, management and operation;
- (vi) Borrower remits to Lender a fee (the "TRANSFER FEE") in the amount of one percent (1%) of the outstanding principal balance of the Debt as of the date such transfer is consummated;
- (vii) New Borrower has executed and delivered such documentation and agreements evidencing the transfer and, if applicable, the assumption of the Loan, as may be reasonably required by Lender, including a release of Lender, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents through and including the date of the closing of the transfer, and an indemnification with respect thereto. All such documentation shall be in form and substance reasonably satisfactory to Lender;
- (viii) If New Borrower assumes the Loan and a person or entity associated with New Borrower approved by Lender in its reasonable discretion (a "NEW GUARANTOR") agrees to be liable for the obligations of the current Guarantor or Indemnitor under its guaranty or indemnity agreement by executing a new guaranty and environmental indemnity agreement in substantially similar form to any such existing agreements, Lender shall release Borrower from its obligations arising under Loan Documents, and any current Guarantor or Indemnitor from its obligations under any guaranty or environmental indemnity agreement as to acts or events or omissions occurring or obligations arising after the date of this Security Instrument, provided however such release shall not apply to any acts or events or omissions which occurred prior to the date of the assumption of the Loan by New Borrower, whether or not the effects of or damages from such acts or events or omissions are apparent or ascertainable as of the date of such assumption;
- (ix) If New Borrower assumes the Loan, Lender has determined that New Borrower is in material compliance with the covenants set forth in this Security Instrument, including the covenants in Section 4.3 hereof, if any;

- (x) Borrower has delivered to Lender, without any cost or expense to Lender, such endorsements to Lender's title insurance policy, hazard insurance endorsements or certificates and other similar materials as Lender may reasonably deem necessary, all in form and substance reasonably satisfactory to Lender, including an endorsement or endorsements to the title insurance policy insuring the lien of this Security Instrument, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement, with no additional exceptions added to such policy and insuring that fee simple title to the Property is vested in the New Borrower;
- (xi) If New Borrower assumes the Loan, Borrower and New Borrower have furnished, if a corporation, partnership or other entity copies of all documents

evidencing each such party's capacity and good standing, and the qualification of the signers to execute any assumption or other agreement, which papers shall include certified copies of all documents relating to the organization and formation of Borrower, New Borrower and the entities, if any, which are partners or members, as applicable, of Borrower or the New Borrower;

- (xii) Borrower has reimbursed Lender for all reasonable out of pocket costs and expenses incurred by Lender in connection with such transfer (including engineering and/or architect's fees, environmental studies, title and UCC searches, credit checks and attorney's fees), whether or not any requested transfer is approved or consummated; and
- (xiii) Borrower and New Borrower have delivered or caused to be delivered such other documents and instruments, including legal opinions, as Lender shall reasonably determine to be in the best interests of Lender, including, if required by any pooling and servicing agreement following a securitization or otherwise reasonably deemed necessary or desirable by Lender, the prior written confirmation by each applicable Rating Agency rating securities issued by the holder of the Loan that the proposed transfer will not result in the downgrade, withdrawal or qualification of the then-current ratings of such securities.

For the purpose of this Section 8.2, "LENDER'S UNDERWRITING STANDARDS" shall mean the actual commercial loan underwriting standards of KeyBank National Association (or any successor entity that is then servicing the Loan) in effect at the time of the proposed transfer, or, if no such standards exist, such standards which are then customary for a commercial lender in connection with a mortgage loan of the size and type of the Borrower's loan from Lender secured hereby.

Notwithstanding any provision in Section 8.2(a) to the contrary, Lender must exercise reasonable discretion in its determination of whether to give or withhold its consent to any waiver of a Prohibited Transfer unless said Prohibited Transfer is a further encumbrance of the Property in which case Lender may give or withhold its consent in its sole and absolute discretion. Furthermore, if Lender determines to give said consent, said consent shall not be unreasonably delayed.

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(b) All reasonable out of pocket expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. This provision shall apply to every Prohibited Transfer under Section 8.2 or otherwise, whether or not Lender has consented to any previous Prohibited Transfer. Lender 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 the occurrence of any Prohibited Transfer without Lender's consent in accordance with Section 8.1.

#### ARTICLE 9 - PREPAYMENT; DEFEASANCE

The Debt may be prepaid or defeased only in accordance with the terms of the Note. If Borrower has the right to prepay the Loan pursuant to the terms of the Note, Lender shall only be obligated to release the lien of this Security Instrument if the Loan has been paid in full, including the payment of any Prepayment Consideration if applicable. If Borrower has the right to cause the Property to be released from the lien of the Security Instrument and the other Loan Documents pursuant to a Defeasance (as such term may be defined in the Note), Lender shall only be obligated to release the lien of this Security Instrument if the Defeasance has been consummated in accordance with the terms of the Note or the Loan has been paid in full as expressly permitted under the terms of the Note.

#### ARTICLE 10 - DEFAULT

SECTION 10.1 EVENTS OF DEFAULT. Borrower acknowledges that Lender has relied upon all of the terms, covenants or conditions of the Note, this Security Instrument and the other Loan Documents in making the Loan to Borrower, and that subject to the terms of this Security Instrument the breach of or default in any such term, covenant and condition may result in the acceleration of the Debt and the exercise of Lender's remedies hereunder and under the other Loan Documents. The occurrence of any one or more of the following events shall constitute an "EVENT OF DEFAULT" under the Note, this Security Instrument and each of the other Loan Documents:

- (a) Borrower fails to make full and punctual payment of the

Monthly Payment (as defined in the Note) within five (5) Business Days after the Monthly Payment Date (as defined in the Note);

(b) Borrower fails to make full payment of the Debt when due, whether on the Maturity Date (as defined in the Note), upon acceleration or prepayment, or otherwise;

(c) Borrower fails to make full and punctual payment of any Late Charges (as defined in the Note), costs and expenses due hereunder, or any other sum of money required to be paid to Lender hereunder or under the Note or any other Loan Document (other than any payment described in subclauses (a), (b) or (d) of this Article 10.1), which failure is not cured on or before the fifth (5th) Business Day after Lender's written notice to Borrower that such payment is required; or

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(d) Borrower fails to make the full and punctual payment of Taxes or Other Charges as required hereby;

(e) Borrower fails to keep the Policies in full force and effect in accordance with the provisions of this Security Instrument;

(f) if a Prohibited Transfer occurs in violation of the provisions of Article 8, or Borrower violates or does not comply with the provisions of Article 12 or 13 of this Security Instrument;

(g) if any representation or warranty of Borrower or any Guarantor or Indemnitor in any guaranty or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(h) Borrower shall make an assignment for the benefit of creditors or Borrower is not paying debts as and when the same become due;

(i) if (i) Borrower or any Guarantor or Indemnitor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower or any Guarantor or Indemnitor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any Guarantor or Indemnitor any case, proceeding or other action of a nature referred to in clause (i) above and the same is not dismissed within ninety (90) days following commencement; or (iii) there shall be commenced against the Borrower or any Guarantor or Indemnitor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets and the same is not dismissed within ninety (90) days following commencement; or (iv) the Borrower or any Guarantor or Indemnitor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower or any Guarantor or Indemnitor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(j) Borrower shall be in default under any other deed of trust, mortgage or security agreement covering any part of the Property whether it be superior or junior in priority to this Security Instrument (it not being implied by this clause that any such encumbrance will be permitted);

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(k) the Property becomes subject to any mechanic's, materialman's or other lien (other than a lien for local real estate taxes and assessments not then due and payable), and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of sixty (60) calendar days following receipt by Borrower of written notice thereof, unless Borrower shall be contesting same in accordance with the terms of this Security Instrument;

(l) Borrower fails to promptly and diligently cure any material violations of laws or ordinances affecting the Property;

(m) the occurrence of an event of default under any other Loan

Document and the expiration of any applicable grace or cure period thereunder;

(n) INTENTIONALLY OMITTED.

(o) if Borrower violates or does not comply with any of the provisions of Section 4.3 or Article 8 of this Security Instrument; or

(p) Intentionally Omitted.

(q) any breach or default hereunder by Borrower (including breach of or default under any covenant herein), other than a default or breach set forth in any of Sections 10.1(a) through (p), if such breach or default is not cured within thirty (30) days after written notice from Lender to Borrower (provided that Borrower shall not be entitled to a cure period hereunder if such breach or default is not capable of being cured as reasonably determined by Lender), provided however that (i) if Lender reasonably determines that such breach or default is capable of being cured but cannot reasonably be cured within such thirty (30) day period, (ii) Borrower shall have commenced to cure such default within such thirty (30) day period, and (iii) Borrower is thereafter diligently and expeditiously proceeding to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days, unless, only in the case of cures that require construction or remedial work, such cure cannot with diligence be completed within such one hundred twenty (120) day period, in which case such period shall be extended for an additional one hundred twenty (120) days or such longer period as Lender shall reasonably determine.

SECTION 10.2 LATE CHARGE. If any Monthly Payment is not timely paid, Borrower shall pay any late payment charge required by the Note.

SECTION 10.3 DEFAULT INTEREST. Borrower shall pay, from the date of an Event of Default through the earlier of the date on which the Event of Default is cured or the date on which the Debt is paid in full, interest on the unpaid principal balance of the Note at the Default Rate (as defined in the Note).

#### ARTICLE 11 - RIGHTS AND REMEDIES

SECTION 11.1 REMEDIES. During the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and

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to the Property, including the following actions, each of which may be pursued concurrently or otherwise, without notice or demand, at such time and in such order as Lender may determine, without impairing or otherwise affecting the other rights and remedies of Lender:

(a) declare the entire unpaid Debt to be immediately due and payable;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, but such proceeding shall not affect the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, which shall remain unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Loan Documents;



(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property on an ex parte basis (any required notice of such appointment or any proceeding to appoint the same being hereby expressly waived) and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor, Indemnitor or of any person, firm or other entity liable for the payment of the Debt;

(h) subject to any applicable law and the terms of the Assignment of Leases and Rents, the license granted to Borrower under Section 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and

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conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender reasonably deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property as Lender reasonably deems advisable; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate after deducting therefrom all expenses (including reasonable out of pocket attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the tangible Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute reasonable notice to Borrower;

(j) apply any sums then deposited in the Impound Account and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Loan Document to the payment of the following items in any order that Lender may determine:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) amortization of the unpaid principal balance of the Note; and all other sums payable pursuant to the Note, this Security Instrument and the Loan Documents, including advances made by Lender pursuant to the terms of this Security Instrument;

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(k) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance

Premiums;

(l) apply the undisbursed balance of any Net Proceeds or any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion;

(m) prohibit Borrower and anyone claiming for or through Borrower from making use of or withdrawing any sums from any lockbox, escrow or similar account; or

(n) pursue such other remedies as Lender may have under any of the Loan Documents or applicable law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as described in Subsection 10.1(i) (i) or (ii) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

SECTION 11.2 APPLICATION OF PROCEEDS. The purchase money proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

SECTION 11.3 LENDER RIGHT TO CURE DEFAULTS. During the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, cure the same in such manner and to such extent as Lender may deem reasonably necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the reasonable cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or in appearing in, defending, or bringing in any such action or proceeding shall bear interest at the Default Rate (as defined in the Note), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate (as defined in the Note) shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

SECTION 11.4 ACTIONS AND PROCEEDINGS. After the occurrence and during the continuance of an Event of Default, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, that Lender, in its reasonable discretion, decides should be brought to protect its interest in the Property.

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SECTION 11.5 RECOVERY OF SUMS REQUIRED TO BE PAID. After the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to take action to recover any sum or sums that constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for Events of Default existing at the time such earlier action was commenced.

SECTION 11.6 EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right during reasonable business hours and upon prior written notice to examine the records, books, management and other papers of Borrower or of any Guarantor or Indemnitor which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower, its affiliates or any Guarantor or Indemnitor where the books and records are located. Lender and its agents shall have the right during reasonable business hours and upon prior written notice to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower or of any Guarantor or Indemnitor pertaining to the income, expenses and operation of the Property during reasonable business hours upon prior written notice at any office of Borrower, its affiliates or any Guarantor or Indemnitor where the books and records are located.

SECTION 11.7 OTHER RIGHTS, ETC.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this

Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower, any Guarantor or any Indemnitor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the 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 unless and until Lender, its nominee, designee or affiliate acquires title to the Property through a foreclosure, trustee's sale or deed in lieu of foreclosure. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

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(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender 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.

SECTION 11.8 LENDER RIGHT TO RELEASE. Lender may release any portion of the Property or any portion of the Debt for such consideration as Lender may require without, as to the remainder of the Property or the Debt, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

SECTION 11.9 VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws and such non-compliance is reasonably likely to result in a material adverse effect on Borrower or the Property, or Borrower's ability to perform its obligations under the Loan Documents, Lender may impose additional requirements upon Borrower in connection herewith including monetary reserves or financial equivalents.

SECTION 11.10 RIGHT OF ENTRY. Lender and its agents shall have the right upon prior written notice to Borrower to enter and inspect the Property at all reasonable times upon notice to Borrower.

SECTION 11.11 RIGHTS PERTAINING TO SALES. The following provisions shall, to the extent permitted by law, apply to any sale or sales of all or any portion of the Property under or by virtue of this Security Instrument, whether under any power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(a) The public officer or other person conducting such sale (herein called the "SALE OFFICER") may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more of such sales as to any part of the Property that has not been sold or by any sale that is not completed or is defective until the Debt has been paid in full.

(b) 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, and such sale may be completed at the time and place so announced without further notice.

(c) Lender is hereby appointed the true and lawful attorney-in-fact of Borrower, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Borrower's name and stead, to make all necessary conveyances, assignments, transfers and

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deliveries of the Property and rights so sold, and for that purpose Lender may execute all necessary instruments to accomplish the same, and may substitute one or more persons with like power, and Borrower hereby ratifies and confirms all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Borrower, if requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to Lender or such purchaser or purchasers, as applicable, all such instruments as may be advisable, in Lender's judgment, for the purposes designated in such request.

(d) Any and all statements of fact or other recitals made in any of the instruments referred to in Subsection 11.11(c) given by Lender concerning nonpayment of the Debt, occurrence of any Event of Default, any declaration by Lender that all or any of the Debt is due and payable, any request to sell, any representation that notice of time, place and terms of sale and property or rights to be sold was duly given, or that any other act or thing was duly done by Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited.

(e) The receipt by Sale Officer of the purchase money paid at any such sale, or the receipt of any other person authorized to give the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Security Instrument or, in any manner whatsoever, be answerable for any loss, misapplication or non-application of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) 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 Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and any and all persons claiming or who may claim the same, or any part thereof, by, through or under Borrower to the fullest extent permitted by applicable law.

(g) Upon any such sale or sales, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, 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 that Lender is authorized to charge to Borrower under the terms of the Note, this Security Instrument, or any other Loan Document to the extent necessary to satisfy such bid.

(h) If Borrower, or any person claiming by, through or under Borrower, shall transfer or refuse or fail to surrender possession of the Property after any sale thereof, then Borrower or such person shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of unlawful detainer proceedings or other appropriate proceedings, and to any other right or remedy available hereunder or under applicable law.

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(i) Upon any such sale, it shall not be necessary for Sale Officer, Lender or any public officer acting under execution or order of court to have present or constructively in its possession any or all of the Property.

(j) In the event of any sale referred to in this Subsection 11.11, the entire Debt, if not previously due and payable, immediately thereupon shall, notwithstanding anything to the contrary in the Note, this Security Instrument or any other Loan Document, become due and payable.

(k) This instrument shall be effective as a mortgage. If a sale hereunder shall be commenced by Sale Officer, Lender may, at any time before the sale of the Property, direct the Sale Officer to abandon the sale, and may institute suit for the collection of the Debt or part thereof and for the foreclosure of this Security Instrument. If Lender shall institute suit for the collection of the Debt or part thereof, and for the foreclosure of this Security Instrument, Lender may at any time before the entry of final judgment in said suit dismiss the same (or part thereof) and direct the Sale Officer to sell the Property in accordance with the provisions of this Security Instrument. Lender may pursue its rights and remedies against any guarantor or other party liable for any of the obligations in such a suit for foreclosure or by separate suit, whether or not the Sale Officer is also pursuing a sale under the terms hereof.

SECTION 11.12 RIGHT TO RELEASE INFORMATION. During the continuance of any Event of Default, Lender may forward to any broker, prospective purchaser of the Property or the Loan, or other person or entity as Lender reasonably determines to be necessary or desirable, all documents and information which Lender now has or may hereafter acquire relating to the Debt, Borrower, any Guarantor, any Indemnitor, the Property and any other matter in connection with the Loan, whether furnished by Borrower, any Guarantor, any Indemnitor or otherwise, as Lender reasonably determines to be necessary or desirable. Borrower irrevocably waives any and all rights it may have to limit or prevent such disclosure, including any right of privacy or any claims arising therefrom.

#### ARTICLE 12 - ENVIRONMENTAL HAZARDS

SECTION 12.1 ENVIRONMENTAL DEFINITIONS. The following terms shall have meanings set forth herein for the purposes of this Article 12 and the other Articles of this Security Instrument:

"ENVIRONMENTAL LAW" shall mean any present, and for the purposes of Sections 12.2, 12.3 and 13.4 only, future, federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes the following statutes, as amended, any successor

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thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Law" also includes any present, and for the purposes of Sections 12.2, 12.3 and 13.4 only, future, federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property.

"ENVIRONMENTAL LIENS" shall mean all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other person or entity.

"ENVIRONMENTAL REPORTS" shall mean any Phase I, Phase II or other written reports resulting from any environmental assessments of the Property delivered to Lender at or prior to the closing of the Loan.

"HAZARDOUS SUBSTANCES" shall mean, but shall not be limited to, any and all substances (whether solid, liquid or gas) (i) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present, or for the purposes of Sections 12.2, 12.3 and 13.4 only, future, Environmental Laws or (ii) that may have a negative impact on human health or the environment, including petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables, explosives, medical and infectious waste, mold, fungus and spores present in the air and in and on the physical components of the Property.

"INSTITUTIONAL CONTROL" shall mean any legal or physical restrictions or limitations on the use of, or access to, the Property to eliminate or minimize potential exposures to any Hazardous Substance, to prevent activities that could interfere with the effectiveness of any Remediation, or to ensure maintenance of a level of risk to human health or the environment, including physical modifications to the Property such as slurry walls, capping, hydraulic controls for ground water, or point of use water treatment, restrictive covenants, environmental protection easements, or property use limitations.

"O&M PLAN" shall mean any operations and maintenance plan with respect to any asbestos or asbestos containing materials, polychlorinated biphenyls and compounds containing them, lead and lead-based paint, mold, fungus and spores at the Property, which plan may be required by Lender if recommended by the Environmental Report or any other environmental assessment or audit hereafter made of the Property as may be permitted or required herein or in any other Loan Documents, or if required by Environmental Law or Governmental Authority. Any required O&M Plan shall be in form and substance reasonably satisfactory to Lender and be prepared by an environmental consultant reasonably satisfactory to Lender.

"RELEASE" of any Hazardous Substance includes any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

"REMEDIATION" includes any response, remedial removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any enrollment or participation of the Property within any state's voluntary cleanup or similar program, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in this Article 12.

SECTION 12.2 ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants, that, to the best of Borrower's knowledge after due inquiry and investigation: (a) except as disclosed in the Environmental Report obtained in connection with the origination of the Loan, there are no Hazardous Substances or underground storage tanks in, on, or under the Property, except those that are in compliance with applicable Environmental Laws and with permits issued pursuant thereto, if any; (b) there are no past or present Releases of Hazardous Substances in violation of any Environmental Law or which would require Remediation by a Governmental Authority in, on, under or from the Property except as described in the Environmental Report; (c) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (d) Borrower does not know of, and has not received, any written notice or other communication from any person or entity (including a governmental entity) relating to Hazardous Substances or Remediation thereof, of possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual administrative or judicial proceedings in connection with any of the foregoing except as previously disclosed in writing to Lender; (e) Borrower has truthfully provided to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property that is known to Borrower and that is contained in Borrower's files and records, including any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property; and (f) there are no Institutional Controls on or affecting the Property except as disclosed in the Environmental Report.

SECTION 12.3 ENVIRONMENTAL COVENANTS. Borrower covenants and agrees that so long as the Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property, whether by Borrower or any other person or entity, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances in, on, under or from the Property in violation of Environmental Laws; (c) there shall be no Hazardous Substances in, on, or under the Property, except those that are in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required; (d) Borrower shall keep the Property free and clear of all Environmental Liens; (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.4 below, including providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender after Lender has reason to reasonably believe this Section 12.3 has been violated (including sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas, and the preparation of any O&M Plan required by Lender), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate Remediation of any condition (including a Release of a Hazardous

Substance in violation of Environmental Laws or the correction of any conditions identified in any O&M Plan) in, on, under or from the Property, (ii) comply with any Environmental Law, and (iii) comply with any directive from any governmental authority with respect to Hazardous Substances in, on, under or from the Property or Remediation thereof; (h) Borrower shall not do or allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), materially impairs or may reasonably be expected to materially impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (i) Borrower shall notify Lender in writing promptly after it has become aware of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property which is required to be reported to a governmental authority under any Environmental Law, (B) any actual Environmental Lien affecting the Property, (C) any required Remediation of environmental conditions relating to the Property, and (D) any written notice or other communication of which Borrower becomes aware from any source whatsoever (including a governmental entity) relating in any way to Hazardous Substances in, on, from or under the Property or Remediation thereof, reasonably likely liability of any person or entity pursuant to any Environmental Law, in connection with the Property, or any actual or threatened administrative or judicial proceedings in connection with anything referred to in this Article 12, (j) Borrower shall not allow any Institutional Control to be imposed on the Property from and after the date hereof; and (k) Borrower shall take all acts necessary to preserve its status, if applicable, as an "innocent landowner", "contiguous property owner", or "prospective purchaser" as to the Property and as those terms are defined in CERCLA; provided, however, that this covenant does not limit or modify any of Borrower's other duties or obligations under this Security Instrument.

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SECTION 12.4 LENDER'S RIGHTS. Lender, its environmental consultant, and any other person or entity designated by Lender, including any receiver and any representative of a governmental entity, shall have the right, but not the obligation, at intervals of not less than one year, or more frequently if the Lender reasonably believes that Section 12.3 hereof has been violated, after prior written notice to Borrower, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including conducting any environmental assessment or audit of the Property or portions thereof to confirm Borrower's compliance with the provisions of this Article 12 and performance of any Remediation required under any O&M Plan, and Borrower shall cooperate in all reasonable ways with Lender in connection with any such audit. Such audit shall be performed in a manner so as to minimize interference with the conduct of business at the Property. If such audit discloses that a violation of or a liability under any Environmental Law exists or if such audit was required or prescribed by law, regulation or governmental or quasi-governmental authority, Borrower shall pay all reasonable out of pocket costs and expenses incurred in connection with such audit; otherwise, the costs and expenses of such audit shall, notwithstanding anything to the contrary set forth in this Section, be paid by Lender.

#### ARTICLE 13 - INDEMNIFICATION

SECTION 13.1 GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all actual claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, expenses, judgments, awards or amounts paid in settlement (including attorneys' fees and other costs) (the "LOSSES") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following (but excluding Losses arising out of any Indemnified Party's gross negligence or willful misconduct): (a) ownership, servicing or administration of this Security Instrument, the Property or any interest therein or the receipt of any Rents or other income or proceeds from the Property; (b) claims of any third parties with respect to any amendment to, or restructuring of, the Debt, and the Note, this Security Instrument, or any other Loan Document; (c) any and all lawful actions that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Note or any other Loan Document, whether or not suit is filed in connection with same, or in connection with Borrower, any Guarantor or Indemnitor becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways (provided, however, if Lender, its nominee, designee or affiliate acquires title to the Property through a foreclosure, trustee's sale or deed in lieu of foreclosure (each a "FORECLOSURE ACQUISITION"), Borrower shall not be liable for any loss attributable to such occurrences, events or activities first occurring after the date of the Foreclosure Acquisition ("FORECLOSURE ACQUISITION DATE"), provided such occurrence, event or activity is unrelated to any occurrence, event or activity which existed prior to the Foreclosure Acquisition Date); (e) any use,

nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways (provided, however, if a Foreclosure Acquisition occurs, Borrower shall not be liable for any loss attributable to such occurrences, events or activities first occurring after the Foreclosure Acquisition Date, provided such

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occurrence, event or activity is unrelated to any occurrence, event or activity which existed prior to the Foreclosure Acquisition Date); (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with the Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Applicable Laws; (j) the enforcement by any Indemnified Party of the provisions of this Article 13; (k) any and all claims and demands whatsoever that may be asserted against Lender 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 otherwise (provided, however, if a Foreclosure Acquisition occurs, Borrower shall not be liable for any loss attributable to such occurrences, events or activities first occurring after the Foreclosure Acquisition Date, provided such occurrence, event or activity is unrelated to any occurrence, event or activity which existed prior to the Foreclosure Acquisition Date); (l) any and all claims (including lender liability claims) or demands by Borrower or any third parties, including any Guarantor or Indemnitor that do not result in a final judgment in favor of the person asserting the same; (m) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the loan evidenced by the Note and secured by this Security Instrument; or (n) any representation made by Borrower in this Security Instrument or other Loan Document not being true and correct in all material respects as of the date made.

Any amounts payable to Lender by reason of the application of this Article 13 shall become within five (5) Business Days of notice of such amounts to Borrower due and payable and shall bear interest at the Default Rate (as defined in the Note) from the date of such notice or damage is sustained by Lender until paid, and be secured by this Security Instrument and the other Loan Documents. The obligations and liabilities of Borrower under this Article 13 shall survive any termination, satisfaction, or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder including the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

As used in this Security Instrument, the term "INDEMNIFIED PARTIES" means Lender and any person or entity who is or will have been involved in the origination of this Loan, any person or entity who is or will have been involved in the servicing of this Loan (whether or not such person or entity has any ownership interest therein), any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in this Loan (including Investors in the Securities (as such terms are defined in Section 18.1 hereof), as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in this Loan for the benefit of third parties) as well as the respective directors, officers, shareholders, members, partners, employees, agents, attorneys, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including any other person or entity who holds or acquires or will have held a participation or other full or partial interest in this Loan or the Property, whether during the term of this Loan or as a part of or following a foreclosure of this Loan and including any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

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SECTION 13.2 MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents.

SECTION 13.3 ERISA INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including reasonable attorneys' fees and reasonable out of pocket costs incurred in the investigation, defense, and settlement of Losses 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



Lender's reasonable discretion) that Lender may incur, directly or indirectly, as a result of a default under Section 4.2 or 5.9.

#### SECTION 13.4 ENVIRONMENTAL INDEMNIFICATION.

(a) Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses and costs of Remediation (whether or not performed voluntarily or required under any O&M Plan), engineers' fees, environmental consultants' fees, and costs of investigation (including sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and arising out of or in any way relating to any one or more of the following, unless caused by the gross negligence or willful misconduct of any Indemnified Party: (a) any presence of any Hazardous Substances in, on, above or under the Property; (b) any past, present or threatened release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Borrower, any person or entity affiliated with Borrower or tenant or other users of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Borrower, any person or entity affiliated with Borrower or tenant or other users of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or required under any O&M Plan or pursuant to court or administrative order, including any removal, remedial or corrective action; (e) any past, present or threatened violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including any failure by Borrower, any person or entity affiliated with Borrower or tenant or other users of the Property to comply with any order of any governmental authority in

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connection with Environmental Laws; (f) the imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Article 12 and this Section 13.4; (h) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including costs to investigate and assess such injury, destruction or loss; (i) any acts of Borrower or other users of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances owned or possessed by such Borrower or other users, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Substance; (j) any acts of Borrower or other users of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites selected by Borrower or such other users, from which there is a Release, or a threatened Release of any Hazardous Substance which causes costs for Remediation to be incurred; (k) any personal injury, wrongful death, or property damage caused by Hazardous Substances arising under any statutory or common law or tort law theory, including damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property; and (l) any representation or warranty set forth in Article 12 being untrue in any material respect as of the date made, or any breach or failure to perform any covenants or other obligations pursuant to Article 12.

(b) The indemnity provided in this Section 13.4 shall not be included in any exculpation of Borrower from personal liability provided in this Security Instrument or in any of the other Loan Documents. Further, Borrower's obligations under this Section 13.4 shall survive (in perpetuity) the closing and disbursement of the funds evidenced by the Note, payment of the Note, payment and performance of the Obligations, any release, reconveyance, discharge or foreclosure of this Security Instrument, conveyance by deed in lieu of foreclosure, and any subsequent conveyance of the Property (except for such losses attributable to such occurrences, events or activities by any party other than Borrower or its affiliates first occurring after the Foreclosure Acquisition Date, provided such occurrence, event or activity is unrelated to any occurrence, event or activity which existed prior to the Foreclosure Acquisition Date). Nothing in this Section 13.4 shall be deemed to deprive Lender of any rights or remedies provided to it elsewhere in this Security Instrument or the other Loan Documents or otherwise available to it under law. Borrower waives and releases Lender and all other Indemnified Parties from any

rights or defenses Borrower may have under common law or Environmental Laws for liability arising or resulting from the presence, use or Release of Hazardous Materials except to the extent caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification hereunder.

SECTION 13.5 DUTY TO DEFEND, ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, accountants, financial advisors, engineers, environmental consultants, laboratories and other professionals in connection therewith.

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#### ARTICLE 14 - WAIVERS

SECTION 14.1 WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the other Loan Documents, or the Debt.

SECTION 14.2 MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all homestead, appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of or in connection with any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Law, and hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

SECTION 14.3 WAIVER OF NOTICE. To the extent permitted by Applicable Law, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or any other Loan Document specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or any other Loan Document does not specifically and expressly provide for the giving of notice by Lender to Borrower.

SECTION 14.4 WAIVER OF STATUTE OF LIMITATIONS. Borrower 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 or performance of its other obligations under this Security Instrument.

SECTION 14.5 SURVIVAL. Except as hereinafter specifically set forth below, the representations and warranties, covenants, and other obligations arising under Article 12 shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property in accordance with Article 18 hereof (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto, including foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any other Loan Document, any transfer of all or any portion of the Property (whether by Borrower or by Lender following

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foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or any other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

SECTION 14.6 WAIVER OF TRIAL BY JURY. BORROWER AND LENDER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTS OR OMISSIONS OF BORROWER OR LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE 15 - EXCULPATION

To the extent of any conflict between the provisions of this Security Instrument and Section 21 of the Note, the provisions of Section 21 of the Note shall control.

ARTICLE 16 - NOTICES

SECTION 16.1 NOTICES. Any notice required or permitted to be given hereunder must be in writing and given (a) by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (b) by delivering the same in person to such party; (c) by transmitting a facsimile copy to the correct facsimile number of the intended recipient (with a second copy to be sent to the intended recipient by any other means permitted under this Section 16.1); or (d) by depositing the same into the custody of a nationally recognized overnight delivery service addressed to the party to be notified. In the event of mailing, notices shall be deemed effective three (3) Business Days after posting; in the event of overnight delivery, notices shall be deemed effective on the next Business Day following deposit with the delivery service; in the event of personal service or facsimile transmissions, notices shall be deemed effective when delivered. For purposes of notice, the addresses of the parties shall be as set forth in the Preamble to this Security Instrument. A copy of any notice sent, transmitted or delivered to Lender shall also be delivered to Daniel Flanigan, Esq., Polsinelli Shalton Welte Suelthaus, 700 W. 47th Street, Suite 1000, Kansas City, Missouri 64112, facsimile number: (816) 753-1536 and a copy of any notice sent, transmitted or delivered to Borrower shall also be delivered to Stuart Widowski, Esq., 44 South Bayles Avenue, Port Washington, New York 11050, facsimile number: (516) 767-6497, provided however, that the failure to send such copies shall not impair the effect of the notice sent, transmitted or delivered. From time to time, either party may designate another address than the address set forth in the Preamble by giving the other party no less than ten (10) days advance notice of such change of address in accordance with the notice provisions hereof.

For purposes of this Subsection, "BUSINESS DAY" shall mean a day on which commercial banks are not authorized or required by law to close in the State in which the Land is located or in the state of New York.

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ARTICLE 17 - APPLICABLE LAW

SECTION 17.1 CHOICE OF LAW/JURISDICTION AND VENUE. This Security Instrument shall be governed, construed, applied and enforced in accordance with the laws of the state where the Land is located without regard to the conflicts of law provisions thereof ("GOVERNING STATE"). Borrower and Lender hereby consent to personal jurisdiction in the Governing State. JURISDICTION AND VENUE OF ANY ACTION BROUGHT TO ENFORCE THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT OR ANY ACTION RELATING TO THE LOAN OR THE RELATIONSHIPS CREATED BY OR UNDER THE LOAN DOCUMENTS ("ACTION") SHALL, AT THE ELECTION OF LENDER, BE IN (AND IF ANY ACTION IS ORIGINALLY BROUGHT IN ANOTHER VENUE, THE ACTION SHALL AT THE ELECTION OF LENDER BE TRANSFERRED TO) A STATE OR FEDERAL COURT OF APPROPRIATE JURISDICTION LOCATED IN THE GOVERNING STATE. BORROWER AND LENDER HEREBY CONSENT AND SUBMIT TO THE PERSONAL JURISDICTION OF THE STATE COURTS OF THE GOVERNING STATE AND OF FEDERAL COURTS LOCATED IN THE GOVERNING STATE IN CONNECTION WITH ANY ACTION AND HEREBY WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH GOVERNING STATE FOR PURPOSES OF ANY ACTION. Borrower and Lender hereby waive and agree not to assert, as a defense to any Action or a motion to transfer venue of any Action, (i) any claim that it is not subject to such jurisdiction, (ii) any claim that any Action may not be brought against it or is not maintainable in those courts or that this Security Instrument may not be enforced in or by those courts, or that it is exempt or immune from execution, (iii) that the Action is brought in an inconvenient forum, or (iv) that the venue for the Action is in any way improper.

SECTION 17.2 USURY LAWS. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as

the Debt is outstanding.

SECTION 17.3 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law.

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SECTION 17.4 INAPPLICABLE PROVISION. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

#### ARTICLE 18 - SECONDARY MARKET

SECTION 18.1 TRANSFER OF LOAN. Lender may at any time, (a) sell, transfer or assign the Note, this Security Instrument, and the other Loan Documents (a "LOAN SALE"), (b) any or all servicing rights with respect thereto ("SERVICING RIGHTS TRANSFERS"), (c) grant participations therein ("PARTICIPATIONS"), or (d) issue mortgage pass-through certificates or other securities ("SECURITIES") evidencing a beneficial interest in a rated or unrated public offering or private placement (a "SECURITIZATION"). Lender may forward to each purchaser, transferee, assignee, servicer, participant, or investor (including any broker or authorized representative thereof) in such Loan Sale, Servicing Rights Transfers, Participations or Securities (collectively, the "INVESTOR") or any Rating Agency rating such Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information that Lender now has or may hereafter acquire relating to the Debt, Borrower, any Guarantor, any Indemnitor, the Property and any other matter relating to the Loan, whether furnished by Borrower, any Guarantor, any Indemnitor or otherwise, as Lender reasonably determines necessary or desirable. Borrower irrevocably waives any and all rights it may have to limit or prevent such disclosure, including any right of privacy or any claims arising therefrom.

SECTION 18.2 SECONDARY MARKET TRANSACTIONS. Lender shall have the right to engage in one or more Secondary Market Transactions (as hereinafter defined) with respect to the Loan, and to structure and restructure all or any part of the Loan, including in multiple tranches, as a wraparound loan, or for inclusion in a "real estate mortgage investment conduit" (a "REMIC") within the meaning of Section 860D of the Internal Revenue Code of 1986, as amended, or other Securitization. Without limitation, Lender shall have the right to cause the Note and the Security Instrument to be split into a first and a second mortgage loan, or into one or more loans secured by mortgages in whatever proportion Lender determines provided that in no event shall such split result in a change in the applicable interest rate (except as set forth in Section 18.5) or any other economic term, and thereafter to engage in Secondary Market Transactions with respect to all or any part of the indebtedness and loan documentation. Borrower acknowledges that it is the intention of the parties that all or a portion of the Loan will be securitized and that all or a portion of the Loan will be rated by one or more Rating Agencies. Borrower further acknowledges that additional structural modifications may be required to satisfy issues raised by any Rating Agencies provided that such modifications will not result in a change of any economic terms. As used herein, "SECONDARY MARKET TRANSACTION" means any of (i) the sale, assignment, or other transfer of all or any portion of the Debt or the Loan Documents or any interest therein to one or more Investors, (ii) the sale, assignment, or other transfer of one or more participation interests in the Debt or Loan Documents to one or more Investors, (iii) the transfer or deposit of all or any portion of the Debt or Loan Documents to or with one or more trusts or other entities which may sell certificates or other instruments to Investors evidencing an ownership interest in the assets of such trust or the right to receive income or proceeds therefrom or (iv) any other Securitization backed in whole or in part by the Loan or any interest therein.

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SECTION 18.3 COOPERATION; LIMITATIONS. Borrower shall, at Lender's cost and expense, cooperate in good faith with Lender in effecting any such restructuring or Secondary Market Transaction. Such cooperation shall include executing and delivering such amendments to the Loan Documents and the organizational documents of Borrower and any constituent entities as Lender or any Rating Agency then rating the securities issued by the holder of the Loan, purchaser, transferee, assignee, trustee, servicer or potential Investor (the Rating Agencies and all of the foregoing parties are herein collectively referred to as "INTERESTED PARTIES") may reasonably request, provided however, that no such amendment shall modify (i) the interest rate payable under the Note (except as set forth in Section 18.5); (ii) the stated maturity date of the Note, (iii) the amortization of the principal amount of the Note, (iv) any other material economic terms of the Loan, (v) the non-recourse provisions of the Loan or (vi) any provision, the effect of which would increase Borrower's obligations or decrease Borrower's rights under the Loan Documents other than to a de minimis extent. Such cooperation also shall include using commercially

reasonable efforts to obtain such certificates and assurances from governmental entities and others as Lender may reasonably request. Borrower shall not be required to provide additional collateral that was not initially contemplated by the Loan Documents to effect any such restructuring or Secondary Market Transaction. Borrower shall not be required to pay any third party costs and expenses incurred by Borrower or Lender in connection with any such Secondary Market Transaction.

SECTION 18.4 INFORMATION. Borrower, at its sole cost and expense, shall provide such access to personnel and such information and documents relating to Borrower, its constituent persons or entities, any Guarantor or Indemnitor, the Property and the business and operations of all of the foregoing and at Lender's cost and expense, such opinions of counsel as Lender may reasonably request or as any Rating Agency or any other Interested Party may request (and in form and substance reasonably acceptable to Lender and acceptable to each Interested Party) in connection with any such Secondary Market Transaction including updated financial information, appraisals, market studies, environmental reviews (Phase I's and, if appropriate, Phase II's), property condition reports and other due diligence investigations together with appropriate verification of such updated information and reports through letters of auditors and consultants, all at Lender's cost and expense and, as of the closing date of the Secondary Market Transaction, updated representations and warranties made in the Loan Documents and such additional representations and warranties as any Rating Agency or other Interested Party may request. If requested by any Rating Agency or reasonably required by Lender, provide revisions or "bringdowns" to any opinions delivered at Closing, or if reasonably required by Lender or required by any Rating Agency or other Interested Party new versions of such opinions, addressed to Lender, any trustee under any Securitization backed in whole or in part by the Loan, any Rating Agency that assigns a rating to any securities in connection therewith. Lender shall be permitted to share all such information with the investment banking firms, Rating Agencies then rating the securities in connection with the Secondary Market Transaction, accounting firms, law firms, other third party advisory firms, potential investors, servicers and other service providers and other parties involved in any proposed Secondary Market Transaction. Borrower understands that any such information may be incorporated

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into any offering circular, prospectus, prospectus supplement, private placement memorandum or other offering documents for any Secondary Market Transaction. Lender and all of the aforesaid third-party advisors and professional firms and investors shall be entitled to rely upon such information; provided that in no event shall Borrower be responsible for the accuracy of any information provided by a third party.

SECTION 18.5 SEVERANCE. In connection with any Secondary Market Transaction, Borrower shall, at the request of Lender and at Lender's sole cost and expense (a) sever the Loan into two or more portions in such individual amounts as Lender may determine, each of which portion shall be secured by a mortgage lien on the Property ("LOAN SPLITTING") or (b) sever the Loan into two or more tranches in such individual amounts as Lender may determine ("LOAN TRANCHING"; Loan Splitting and Loan Tranching are collectively referred to herein as a "CONVERSION"). To effectuate a Loan Split, Borrower, shall, promptly following written request of Lender, execute, acknowledge and deliver to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount secured by this Security Instrument, and containing terms, provisions and clauses no less favorable to Borrower than those contained herein and in the Note, and such other documents and instruments as may be reasonably required by Lender to effect the splitting of the Note and this Security Instrument. Any such Loan Tranching shall be evidenced by Lender's then standard form "A/B Loan". Any Conversion shall not preclude any further Conversion or modification of the Loan by agreement of Borrower and Lender. In the event any portion of the Loan is converted into an "A/B Loan", the interest rate on any one or more components of the Loan may be changed at Lender's request provided that the weighted average interest rate of all components of the Loan shall in no event exceed at any time during the term of the Loan the interest rate set forth in the Note. Borrower shall cooperate with all of Lender's reasonable requests made in connection with a Conversion and shall deliver such documents as Lender may reasonably request in connection therewith, including any opinion letters which Lender may reasonably request, all of which shall be in form and substance reasonably acceptable to Lender. The aggregate of the principal amount of all such portions shall in no event exceed the then principal balance of the Loan.

#### ARTICLE 19 - COSTS

SECTION 19.1 ORIGINATION, ADMINISTRATION, ENFORCEMENT, AND DEFENSE EXPENSES. Borrower shall pay Lender, within five (5) Business Days after written demand, all Administration and Enforcement Expenses (as hereinafter defined) now or hereafter incurred by Lender, together with interest thereon at the Default Rate from the date Lender delivers notice thereof to Borrower until such fees and expenses are paid by Borrower, whether or not an Event of Default or Default then exists. For the purpose of this Security Instrument, "ADMINISTRATION AND ENFORCEMENT EXPENSES" shall mean all reasonable out of pocket fees and expenses incurred at any time or from time to time by Lender, including legal (whether

for the purpose of advice, negotiation, documentation, defense, enforcement or otherwise), accounting, financial advisory, auditing, rating agency, appraisal, valuation, title or title insurance, engineering, environmental, collection agency, or other expert or consulting or similar services, in connection with: (a) the origination of the Loan, including the negotiation and preparation of this Security Instrument, any other Loan Document and any amendments or modifications of the Loan or the Loan Documents (except to the extent that Article 18 hereof expressly provides that Lender shall be responsible for the

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costs thereof), whether or not consummated; (b) the administration, servicing or enforcement of the Loan or the Loan Documents (except to the extent that Article 18 hereof expressly provides that Lender shall be responsible for the costs thereof), including any request for interpretation or modification of the Loan Documents or any matter related to the Loan or the servicing thereof (which shall include the consideration of any requests for consents, waivers, modifications, approvals, lease reviews or similar matters and any proposed transfer of the Property or any interest therein), (c) any litigation, contest, dispute, suit, arbitration, mediation, proceeding or action (whether instituted by or against Lender, including actions brought by or on behalf of Borrower or Borrower's bankruptcy estate or any indemnitor or guarantor of the Loan or any other person) in any way relating to the Loan or the Loan Documents including in connection with any bankruptcy, reorganization, insolvency, or receivership proceeding; (d) any attempt to enforce any rights of Lender against Borrower or any other person that may be obligated to Lender by virtue of any Loan Document whether or not litigation is commenced in pursuance of such rights; and (e) protection, enforcement against, or liquidation of the Property or any other collateral for the Loan, including any attempt to inspect, verify, preserve, restore, collect, sell, liquidate or otherwise dispose of or realize upon the Loan, the Property or any other collateral for the Loan. All Administration and Enforcement Expenses shall be additional Debt hereunder secured by the Property, and may be funded, if Lender so elects, after prior written notice to Borrower if no Event of Default exists, by Lender paying the same to the appropriate persons and thus making an advance on Borrower's behalf. Other than in connection with a securitization, Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include all reasonable out of pocket legal fees and disbursements of Lender.

#### ARTICLE 20 - CERTAIN DEFINITIONS, HEADINGS, RULE OF CONSTRUCTION

SECTION 20.1 GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "individually and collectively, jointly and severally, each Borrower (if more than one) and any subsequent owner or owners of the Property or any part thereof or any interest therein and Borrower in its capacity as debtor-in-possession after the commencement of a proceeding under the Bankruptcy Code; "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender (a) in protecting its interest in the Property, the Leases and the Rents, (b) relating to or arising out of any lawsuit or proceeding brought by or against Lender in any court or other forum (including actions or proceedings brought by or on behalf of Borrower's bankruptcy estate or any guarantor or indemnitor) relating to the Loan or the Loan Documents, or (c) in enforcing its rights under this Security Instrument. No provision herein

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or in any other Loan Document referring to the continuance of an Event of Default shall be interpreted as implying that Borrower or any other party has any right to cure an Event of Default and an Event of Default shall continue unless and until it is expressly waived in writing by Lender. With respect to any reference herein or in any other Loan Document to "reasonable out of pocket" expenses, costs, charges or fees: (i) charges of rating agencies, governmental entities and other third parties that are outside the control of Lender shall not be subject to a reasonableness standard; and (ii) customary fees charged by a loan servicer shall be deemed to be out of pocket expenses.

SECTION 20.2 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument 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.

#### SECTION 20.3 RULES OF CONSTRUCTION.

The following rules of construction shall be applicable for all purposes of this Security Instrument and all documents or instruments supplemental hereto, unless the context otherwise clearly requires:

(a) The terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to";

(b) any pronoun used herein shall be deemed to cover all genders, and words importing the singular number shall mean and include the plural number, and vice versa;

(c) all captions to the Sections hereof are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Security Instrument;

(d) the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or";

(e) the words "hereof", "herein", "hereby", "hereunder", and similar terms in this Security Instrument refer to this Security Instrument as a whole and not to any particular provision or section of this Security Instrument;

(f) an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Lender;

(g) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof or any other Loan Document;

(h) The cover page (if any) of, all recitals set forth in, and all Exhibits to, this Security Instrument are hereby incorporated herein; and

(i) Wherever Lender's judgment, consent, approval or discretion is required under this Security Instrument or any other Loan Document for any matter or thing or Lender shall have an option, election, or right of determination or any other power to decide any

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matter relating to the terms and conditions of this Security Instrument, including any right to determine that something is satisfactory or not ("DECISION POWER"), such Decision Power shall be exercised in the sole and absolute discretion of Lender unless otherwise expressly stated to be reasonably exercised or not to be unreasonably withheld or conditioned. Such Decision Power and each other power granted to Lender upon this Security Instrument or any other Loan Document may be exercised by Lender or by any authorized agent of Lender (including any servicer and/or attorney-in-fact), and Borrower hereby expressly agrees to recognize the exercise of such Decision Power by such authorized agent.

#### ARTICLE 21 - MISCELLANEOUS

SECTION 21.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, including the provisions of this Section, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, 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, and the parties hereby: (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Security Instrument; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Security Instrument; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Security Instrument.

SECTION 21.2 LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. Under no circumstances whatsoever shall Borrower or Lender have any liability for consequential or incidental damages under this Security Instrument or any other Loan Document except as expressly provided in the Loan Documents. Lender shall have no duties or responsibilities except those expressly set forth in this Security Instrument and the other Loan Documents. Neither Lender nor any of its officer, directors, employees or agents shall be liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross negligence or willful misconduct. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

SECTION 21.3 DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each

duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterpart shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

SECTION 21.4 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of

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such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and any other Loan Document, and the performance and discharge of the obligations.

SECTION 21.5 ENTIRE AGREEMENT. The Note, this Security Instrument and any other Loan Document constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and any other Loan Document, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and any other Loan Document.

SECTION 21.6 LENDER'S RIGHT TO SUBORDINATE. Lender may, at its election, subordinate the lien of this Security Instrument and any or all of Lender's rights, titles or interests hereunder to any lien, leasehold interest, easement, plat, covenant, restriction, dedication, encumbrance or other matter affecting the Property or any part thereof by recording a written declaration of such subordination in the office of the register or recorder of deeds or similar filing officer for the county in which the Land is located. If foreclosure sale occurs hereunder after the recording of any such declaration, the title received by the purchaser at such sale shall be subject to the matters specified in such declaration, but such declaration shall not otherwise affect the validity or terms of this Security Instrument or any other Loan Document or the priority of any lien or security interest created hereunder or under any other Loan Document. Without limitation of the foregoing, Lender shall have the right to unilaterally modify any Loan Document to release any lien on any portion of the Property.

#### ARTICLE 22 - LOCAL LAW PROVISIONS

SECTION 22.1 INCONSISTENCIES. In the event of any inconsistencies between the terms and conditions of this Article 22 and the other provisions of this Security Instrument (other than the terms and provisions of Article 23), the terms and conditions of this Article 22 shall control and be binding.

SECTION 22.2 MATURITY DATE. The maturity date of the principal sum of the Note secured by this Security Instrument is May 1, 2015.

SECTION 22.3 ADVANCES BY LENDER SECURED. Without limiting the generality of any other provisions of this Security Instrument, during the continuance of an Event of Default hereunder, Lender may, but without any obligation to do so, make advances with respect to the Property for Taxes, Other Charges, Insurance Premiums or costs incurred for the protection of the Property, and any such advances shall be secured by this Security Instrument.

SECTION 22.4 OPEN-END MORTGAGE. Borrower and Lender intend that this Security Instrument comply with Division (A) of Ohio Revised Code ss. 5301.232. In that regard, Borrower and Lender intend that, in addition to any other debtor

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obligations secured hereby, this Security Instrument shall secure unpaid balances of loan advances made after this Security Instrument is delivered to the Recorder for record. The maximum amount of unpaid loan indebtedness secured hereby, exclusive of interest thereon, which may be outstanding at any time is \$2,080,000.00.

#### ARTICLE 23 - ADDITIONAL OR SPECIAL PROVISIONS OR MODIFICATIONS

SECTION 23.1 INCONSISTENCIES. In the event of any inconsistencies between the terms and conditions of this Article 23 and the other provisions of this Security Instrument, the terms and conditions of this Article 23 shall control and be binding.



SECTION 23.2 INSURANCE ESCROW FUND. So long as Borrower maintains blanket policies of insurance in accordance with Section 3.3 hereof, the provisions of Section 3.5 hereof with regard to the Monthly Insurance Impound shall not be applicable, until and unless Lender elects to apply such provisions following (i) the issuance by any insurer or its agent of any notice of cancellation, termination, or lapse of any insurance coverage required under Section 3.3 hereof, (ii) any cancellation, termination, or lapse of any insurance coverage required under Section 3.3 hereof whether or not any notice is issued, (iii) Lender having not received from Borrower evidence of insurance coverages as required by and in accordance with the terms of Section 3.3 hereof, or (iv) during the continuance of any Event of Default.

SECTION 23.3 TAX IMPOUND ACCOUNT. Lender agrees to waive the requirement of the Monthly Tax Impound provided in Section 3.5 so long as the following conditions are satisfied at all times as determined by Lender in its sole discretion: (i) Cedar Shopping Centers, Inc. maintains a shareholder equity level of at least \$100,000,000.00; (ii) no Event of Default exists; (iii) Borrower furnishes evidence to Lender of timely payment on or prior to due date at least thirty (30) Business Days prior to the due dates of all such Taxes. If Borrower shall fail to satisfy any of the foregoing requirements, Lender may by written notice to Borrower, reinstate the provisions of Section 3.5 relating to an Monthly Tax Impound.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Borrower the day and year first above written.

BORROWER:

CEDAR-CLYDE LLC,  
a Delaware limited liability company

By: Cedar Shopping Centers Partnership, L.P., a  
Delaware limited partnership, its member

By: Cedar Shopping Centers, Inc., a  
Maryland corporation, its general  
partner

By: /s/ Brenda J. Walker

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Name: Brenda J. Walker

Title: Vice President

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State of New York

County of New York

The foregoing instrument was acknowledged before me this April \_\_, 2005 by Brenda J. Walker of Cedar Shopping Centers, Inc., a Maryland corporation, the general partner of Cedar Shopping Centers Partnership, L.P., a Delaware limited partnership, the sole member of Cedar-Clyde LLC, a Delaware limited liability company, on behalf of the said entities.

\_\_\_\_\_  
Notary Public

This Instrument Prepared By:

Maribeth S. McMahon  
POL SINELLI SHALTON WELTE SUELTHAUS  
700 W. 47th Street, Suite 1000  
Kansas City, Missouri 64112  
(816)753-1000  
FAX (816) 753-1536

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EXHIBIT A

(Description of Land)

ALL of that certain lot, piece or parcel of land, with the buildings  
and improvements thereon, situate, lying and being

CERTIFICATION

I, Leo S. Ullman, Chief Executive Officer of Cedar Shopping Centers, Inc. (the "Company"), certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of the Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 5, 2005

/s/ LEO S. ULLMAN

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Leo S. Ullman, Chief Executive Officer

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CERTIFICATION

I, Thomas J. O’Keeffe, Chief Financial Officer of Cedar Shopping Centers, Inc. (the “Company”), certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of the Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: May 5, 2005

/s/ THOMAS J. O’KEEFFE

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Thomas J. O’Keeffe, Chief Financial Officer

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CERTIFICATION

I, Leo S. Ullman, Chief Executive Officer of Cedar Shopping Centers, Inc. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, do hereby certify as follows:

1. The Quarterly Report on Form 10-Q of the Company for the period ended March 31, 2005 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, I have executed this Certification this 5<sup>th</sup> day of May, 2005.

/s/ LEO S. ULLMAN

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Leo S. Ullman, Chief Executive Officer

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CERTIFICATION

I, Thomas J. O’Keeffe, Chief Financial Officer of Cedar Shopping Centers, Inc. (the “Company”), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, do hereby certify as follows:

1. The Quarterly Report on Form 10-Q of the Company for the period ended March 31, 2005 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, I have executed this Certification this 5<sup>th</sup> day of May, 2005.

/s/ THOMAS J. O’KEEFFE

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Thomas J. O’Keeffe, Chief Financial Officer

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