

37. *No Merger of Title.* There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in the Leased Property or any part thereof by reason of the fact that the same corporation, firm or other entity may acquire or own or hold, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate, and (b) the fee estate in the Leased Property or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities having any interest in (x) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate, and (y) the fee estate in the Leased Property or any part thereof or any interest in such fee estate, including each Assignee, shall join in a written instrument effecting such merger and shall duly record the same.

38. *Assignment of Lessor's Interest.* Lessor shall not, at any time when no Default exists hereunder, make any assignment of this Lease or of any interest herein or rights hereunder or convey, mortgage or transfer the Leased Property or any part thereof (except in connection with the creation or sufferance of Permitted Encumbrances (as defined in any indenture referred to in the definition of "Assignee" appearing in Section 39)) without the written consent of Lessee which consent Lessee agrees not unreasonably to withhold. Any assignment by Lessor to an Assignee made without the consent of Lessee at any time when a Default exists hereunder may be either a complete assignment or a partial assignment covering only a portion of the rents or other amounts payable hereunder or a portion of the Lessor's other rights hereunder or interest herein and any conveyance or mortgage of Leased Property to an Assignee so made may cover all the Leased Property or may be a partial conveyance or mortgage of the Leased Property covering only a portion thereof. The Assignee may enforce any and all of the terms of this Lease, to the extent so assigned, as though the Assignee had been a party hereto. No action or failure to act on the part of Lessor shall adversely affect or limit any rights of any Assignee. No assignment shall constitute an assumption of any obligation hereunder on the part of any Assignee. So long as there shall be any Assignee, this Lease may not be modified