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DRAFTED BY AND WHEN
RECORDED, RETURN TO:

Strasburger & Price, L.L.P.
Attn: Jack W. Perry
1221 McKinney Street, Suite 2800
Houston, Texas 77010

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2000-09-20 12:27:32
Cook County Recorder 79.00



LOAN ASSUMPTION AGREEMENT AND AMENDMENT OF LOAN DOCUMENTS

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THIS LOAN ASSUMPTION AGREEMENT AND AMENDMENT OF LOAN DOCUMENTS (this "Agreement") is made by and among SOCALCO LIMITED PARTNERSHIP, an Illinois limited partnership ("**Transferor**"), DIVERSEY & SHEFFIELD PLAZA, L.L.C., an Illinois limited liability company ("**Transferee**"), M & J/RETAIL LIMITED PARTNERSHIP, an Illinois limited partnership ("**Indemnitor**"), THOMAS J. GIBBONS ("**Replacement Indemnitor**"), GE CAPITAL LOAN SERVICES, INC. ("**Master Servicer**") for and on behalf of WELLS FARGO BANK MINNESOTA, N.A., formerly known as NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, as Trustee ("**Trustee**") for the registered holders of DLJ Commercial Mortgage Pass-Through Certificates Series 1999-CG2 (the "**Certificates**"), under that certain Pooling and Servicing Agreement dated June 1, 1999, with respect to the Certificates (the "**Pooling Agreement**") among DLJ Commercial Mortgage Corp., Master Servicer, ORIX REAL ESTATE CAPITAL MARKETS, LLC, f/k/a Bank One Mortgage Capital Markets, LLC ("**Special Servicer**"), and Trustee.

30 Feb
[Signature]

RECITALS

A. Transferor obtained a loan (the "**Loan**") from Colum Financial, Inc., a Delaware corporation ("**Original Lender**") in the original principal amount of One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00), which loan is evidenced by that certain Promissory Note dated April 6, 1999 (the "**Note**"), executed by Transferor, as maker, and payable to the order of Original Lender, as payee, in the same original principal amount, together with interest thereon as more particularly set forth in the Note.

B. Transferor's obligations under and in connection with the Note are secured by, among other things, that certain Mortgage, Security Agreement and Fixture Financing Statement dated as of April 6, 1999 (the "**Mortgage**"), executed by Transferor, as Mortgagor, for the benefit of Original Lender, as Mortgagee, recorded as Doc. No: 99353510 of the Public Records of Cook County, Illinois, and the Assignment of Leases and Rents dated April 6, 1999 (the "**Assignment of Leases**"), recorded as Doc. No: 99354551 of the Public Records of Cook County, Illinois. Pursuant to the Mortgage, Transferor granted to Original Lender a lien and security interest in certain real and personal property of Transferor more particularly described in the Mortgage (the "**Mortgaged Property**"), including without limitation, the real property described on Exhibit "A" attached hereto.

C. In addition, Transferor executed and delivered to Original Lender two (2) UCC-1 Financing Statements (collectively the "**Financing Statements**"), naming Transferor, as debtor, and

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Original Lender as secured party. The first Financing Statement was filed with the Secretary of State of the State of Illinois on April _____, 1999 as Instrument No. 22641. The second Financing Statement was filed for record on April ____, 1999, as Instrument No. 11576 in the Public Records of Cook County, Illinois.

D. In connection with the Note, Transferor executed that certain Hazardous Substances Indemnity Agreement dated April 6, 1999, for the benefit of Original Lender (the "**Hazardous Indemnity Agreement**").

E. In addition, Indemnitor executed that certain Indemnity and Guaranty Agreement dated April 6, 1999, for the benefit of Original Lender (the "**Indemnity Agreement**").

F. The Note, Mortgage, Assignment of Leases, Financing Statements, Hazardous Indemnity Agreement, Indemnity Agreement, and all other documents evidencing or securing the Loan, as the same may be modified, supplemented, amended, substituted or replaced, are referred to herein, collectively, as the "**Loan Documents**." Terms with initial capitalized letters used herein and not otherwise defined herein shall have the meanings given to such terms in the Mortgage.

G. The Loan is now owned and held by Trustee, and the Loan is administered by Master Servicer in accordance with the Pooling Agreement.

H. Pursuant to the Pooling Agreement, Master Servicer is granted the authority to approve on behalf of the Trustee certain modifications to the Loan Documents, including the transfer of the Mortgaged Property and the substitution of the Transferor in accordance with the provisions thereof.

I. Pursuant to the Mortgage, Transferor agreed not to transfer the Mortgaged Property, except as specifically permitted therein.

J. Transferor and Transferee have now requested the consent of Trustee (i) to transfer the Mortgaged Property to Transferee pursuant to Section 1.13 of the Mortgage, and in connection with such transfer, Transferee has agreed to assume Transferor's duties, obligations, guarantees, and indemnities under the Loan Documents, (ii) to release Transferor and Indemnitor from all claims and liabilities arising out of the Loan Documents after the foregoing transfers, assumptions and replacements, all pursuant to and in compliance with the terms of the Mortgage, and have also requested the agreement of Trustee to amend certain of the Loan Documents in certain respects as hereinafter set forth. Trustee, acting by and through Master Servicer, is willing to permit such transfer and assumption and to amend the Loan Documents in such respects, but only upon the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, agree as follows:

1. Approval of Transfer. Subject to the further terms and conditions set forth in this Agreement, Trustee hereby approves the transfer of the Mortgaged Property to Transferee and the assumption by Transferee of the obligations evidenced by the Loan Documents, as amended hereby. Trustee's approval of this transfer and assumption shall not (a) constitute a waiver of any right to accelerate the obligations under the Note in the event of a subsequent transfer of the Mortgaged Property, or any interest therein, except as may be permitted under the terms of the Mortgage, as amended hereby or (b) constitute a waiver of any other term, covenant or condition of any of the Loan Documents, as amended hereby.
2. Assumption by Transferee. Effective on the effective date of this Agreement and, subject to the limitations of liability described in Paragraph 12 below (the "**Limitations on Recourse Provisions**"), Transferee hereby assumes and agrees to observe, perform and be bound by each and every term, covenant, waiver, duty and condition required to be observed or performed by Transferor, or by which Transferor is bound, under the Loan Documents, as amended hereby, arising from and after the effective date hereof and, subject to the Limitations on Recourse Provisions, promises to pay to Trustee, through Master Servicer or such other servicer or sub-servicer as may be directed by Trustee (which payments until further notice by or on behalf of Trustee shall be paid to Master Servicer), those amounts evidenced by the Note, as specifically set forth in paragraph 3 below, or secured by the Loan Documents, as amended hereby, and all other sums which shall in the future become due and owing pursuant thereto. Additionally, Transferee acknowledges and agrees that it will and does hold title to the Mortgaged Property subject to liens, charges, encumbrances, terms, and conditions of the Loan Documents, as amended hereby. Transferor acknowledges and agrees that the escrows and reserves, if any, referenced in paragraph 3 below have been, and hereby are, transferred and assigned to Transferee. Transferee's federal identification number is 36-4388917.
3. Reaffirmation of Loan Documents: No Change in Priority. Except as amended hereby, the Loan Documents shall remain in full force and effect, unchanged and in all respects, ratified, reaffirmed and confirmed. Nothing contained herein shall be deemed to affect the priority of the Mortgage, the Financing Statements, or any other of the Loan Documents over any other liens, charges, encumbrances, assignments, security interests or conveyances. Without limiting the generality of the foregoing, (a) the parties hereto hereby reaffirm the limitations on liability provisions contained in Section 4.23 of the Mortgage and in Section 1.5 of the Note, (b) Transferee, as debtor, hereby GRANTS unto Trustee a security interest in all of the Mortgaged Property to the full extent any portion of the Mortgaged Property may be subject to the Uniform Commercial Code, (c) subject to the proviso that representations and warranties concerning the condition and operation of the Mortgaged Property as of the date hereof are based on Transferee's actual present knowledge, Transferee hereby reaffirms, ratifies, makes and agrees to the representations, warranties and covenants set forth in the Mortgage and (d) Transferee and Replacement Indemnitor hereby reaffirms, ratifies, makes, and agrees to the representations, warranties, covenants, guarantees and indemnities in the Indemnity Agreement. To the best of their knowledge, all parties acknowledge that subsequent

to the payment made by Transferor on the effective date of this Agreement (i) the outstanding principal balance as of September 6, 2000, 2000 on the Note is \$1,279,518.54; (ii) the escrow account balances as of the date hereof are: Taxes, \$15,211.32, Insurance: \$1,518.00, Tenant Improvements Invested: \$9,099.51; (iii) there are no delinquent outstanding payments of interest due and payable under the Note and the date of the most recent debt service payment under the Note received by Lender was the payment scheduled for payment on September 1, 2000; (iv) as of the date hereof, no Event of Default has been declared under any of the Loan Documents with respect to the Loan, and no party is aware that any Event of Default currently exists or that any event has occurred which, with the passage of time or giving of notice or both, would result in any Event of Default occurring; (v) none of the Loan Documents have been amended except as set forth herein; (vi) there are no agreements, written or oral, between Master Servicer and Transferor, or both pertaining to the Loan or the obligations under the Loan Documents, which will survive the execution and delivery of this Agreement, except as set forth herein; (vii) there are no agreements, written or oral, between Master Servicer and Transferor or Indemnitor, or both, pertaining to the Loan or the obligations under the Loan Documents which will survive the execution and delivery of this Agreement, except as set forth herein; (viii) no further or subsequent advances have been made to or for the benefit of Transferor as contemplated in the granting clause of the Mortgage; and (viii) from and after the date hereof, a default by the Transferor and Indemnitor under their respective continuing obligations (namely, any obligations relating to the Loan which have not been released by this Agreement) shall not constitute a default under the Loan Documents, but shall be and remain obligations and liabilities of Transferor and/or Indemnitor not secured by the Mortgaged Property.

4. Release by Transferor and Indemnitor. Transferor and Indemnitor hereby release, acquit, waive, and forever discharge Master Servicer, Special Servicer and Trustee, their directors, officers, employees, agents, successors, assigns, attorneys, and representatives from any and all claims, demands, cross-actions, cause or causes of action, at law or in equity, costs and expenses, including legal expenses, as well as any other kind or character of claim or action, whether past or present, now held, owned or possessed by the Transferor or Indemnitor, whether based upon breach of duty, contract, usury, common law or statutory right known or unknown, arising, directly or indirectly, proximately or remotely, out of the Loan Documents, or any of the documents, instruments or other transactions, relating thereto; provided, however, that this release shall in no way limit any rights of Transferor or Indemnitor with respect to claims which arise in connection with events which occur after the date of execution hereof. This release is intended to release all liability of any character claimed for damages or other liability whatsoever, whether known or unknown, and whether based upon breach of contract, tort or any other theory or basis, including, without limitation, any loss, cost or damage in connection with, or based upon, any breach of fiduciary duty, breach of any duty of fair dealing or good faith, breach of any other duty, breach of any statutory right, breach of confidence, breach of funding commitment, fraud, usury, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, negligent infliction of mental distress, tortious interference with corporate or other governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any other cause of action. Transferor and Indemnitor understand and agree that this is a full, final and complete release, and agree that this release may be pleaded as an absolute and final bar to any or all suit or suits pending or which may hereafter be filed or prosecuted by Transferor or Indemnitor or anyone claiming by, through or under Transferor or Indemnitor

in respect of any of the matters released hereby, and that no recovery on account of the matters described herein may hereafter be had from anyone whomsoever, and that the consideration given for this release is no admission of liability and that neither Transferor nor Indemnitor nor those claiming under any of them will ever claim that it is.

5. Release of Transferor and Indemnitor. Master Servicer, Special Servicer and Trustee hereby unconditionally release and discharge Transferor and Indemnitor from any and all obligations and liabilities arising out of the Loan Documents, but only to the extent that such obligations and liabilities arise after the date hereof; and provided further that the following has occurred: (a) the Mortgaged Property has been completely and finally transferred to Transferee, (b) subject to the terms of this Agreement, the Transferee has fully assumed the Transferor's duties and obligations under and pursuant to the Loan Documents, (c) the Replacement Indemnitors have fully assumed the Indemnitor's duties, obligations, guarantees, and indemnities arising from and after the date hereof, under the Joinder and Indemnity Agreement, and (d) all Conditions Precedent (as defined herein) hereto set forth herein have been fully satisfied; it being expressly understood and agreed that all obligations and liabilities of Transferor and Indemnitor under or pursuant to the Loan Documents which arose prior to the date hereof are fully binding on, and/or enforceable against, Transferor and Indemnitor, as applicable, and, Master Servicer, Special Servicer and Trustee have neither waived, nor released any such obligations or liabilities whatsoever.

6. Amendments to Loan Documents. Effective on the effective date of this Agreement, the following Loan Documents shall be and hereby are amended in the following particulars:

(a) Notwithstanding anything to the contrary in the Loan Documents, as amended hereby, the address of Transferee for all purposes under the Loan Documents, as amended hereby, shall be as follows:

To Transferee: Diversey & Sheffield Plaza, L.L.C.
Attn: Thomas J. Gibbons
3030 North Halsted
Chicago, Illinois 60657

With a copy to: Levit & Lipshutz
Attn: Hal Lipshutz
1120 West Belmont
Chicago, Illinois 60657

(b) References in the Note and Assignment of Leases to "Borrower" or "Assignor" and in the Mortgage to "Mortgagor" and in the other Loan Documents to terms of similar import shall, from and after the date hereof, mean and refer to Transferee. As used in the Hazardous Indemnity Agreement, the term "Indemnitor" shall, from and after the date hereof, mean and refer to Transferee and Replacement Indemnitor.

8. Independent Obligations. The parties agree and acknowledge that Transferee's and Replacement Indemnitor's liability and obligations under and pursuant to the Loan Documents, as amended hereby (collectively, the "**Obligations**") are entirely separate, distinct, and independent from

Transferor's and Indemnitor's past and continuing liability and obligations under and pursuant to the Loan Documents. Master Servicer, Special Servicer and/or Trustee shall not be required to, and Transferee and Replacement Indemnitor hereby waive any and all rights to require Master Servicer, Special Servicer and/or Trustee to prosecute or seek to enforce any remedies against Transferor and/or to require Master Servicer, Special Servicer and/or Trustee to seek or enforce or resort to any remedies with respect to any charge, lien, security interest, assignment or encumbrance granted to Master Servicer, Special Servicer and/or Trustee by Transferor, Transferee or any other party on account of the Obligations.

9. Conditions Precedent. Notwithstanding any provision to the contrary in this Agreement, the effectiveness of the respective consents, releases, and directives granted or expressed by Trustee within this Agreement shall be subject to the fulfillment of the following conditions (the "**Conditions Precedent**") to the satisfaction of Master Servicer:

(a) Master Servicer shall have received evidence that Transferee has been duly constituted as a single-purpose "bankruptcy remote" entity;

(b) Master Servicer shall have received this Agreement fully executed by all parties other than Master Servicer;

(c) Master Servicer shall have received either an endorsement to the policy of title insurance insuring Trustee's interest in the Property or a new policy acceptable to Master Servicer (the "**Title Endorsement**"), which Title Endorsement shall extend the effective date of the Title Policy to the date on which this Agreement is recorded in the appropriate public office (taking exception for no lien, encumbrance or other matter other than those set forth in the Title Policy on the date originally issued), and shall insure that fee title to the Mortgaged Property is vested in Transferee and that the lien and priority of the Mortgage is not impaired by the transactions contemplated hereby;

(d) Master Servicer shall have received an opinion of counsel satisfactory to Master Servicer with respect to, among other things, the due formation, good standing of Transferor, the power and authority of the Transferor and the due execution, delivery, legality, validity and enforceability of this Agreement against Transferor. If Transferor executes this Agreement through an attorney-in-fact, such opinion will specifically cover the authority and enforceability of such execution and delivery.

(e) Master Servicer shall have received an opinion of counsel satisfactory to Master Servicer with respect to, among other things, the due formation, good standing and qualifications of Transferee, the power and authority of Transferee, the due execution and delivery, and the legality, validity and enforceability of this Agreement, and each of the Loan Documents against Transferee and the continued perfection of the security interests and liens granted by the Loan Documents under applicable law following the transfer of the Property to Transferee and the assumption of the Loan as provided herein;

(f) Master Servicer shall have received certified copies of all of the organizational documents of each entity comprising Transferee, including formation documents, good

standing certificates, evidence of qualification to do business in the state where the Property is located and authorizing resolutions and/or consents to the transaction;

(g) Master Servicer shall have received new UCC Financing Statements, in form satisfactory to its counsel to reflect the assumption of the Loan by Transferee and evidence of the filing thereof in the appropriate filing offices;

(h) Master Servicer shall have received UCC search reports with respect to Transferee, with results satisfactory to Master Servicer,

(i) Transferee shall have delivered to Master Servicer a copy of the document that evidences the assignment to Transferee of that certain REAL ESTATE SALES CONTRACT dated June 27, 2000 by and between Universal Finance & Investment Corp. and M & J Wilkow, Ltd.

(j) No default or Event of Default shall exist or be then continuing under any of the Loan Documents;

(k) Transferee shall have delivered to Master Servicer insurance policies satisfying the requirements specified in the Mortgage;

(l) Transferee shall have paid to Master Servicer (i) an assumption fee equal to one percent (1%) of the sums secured by the Mortgage; (ii) a non-refundable application reunderwriting fee of Five Thousand and No/100 Dollars (\$5,000.00); and (iii) a fee equal to the amount of all out-of-pocket fees and expenses of Master Servicer as provided in the Loan Documents, including, without limitation, all reasonable attorneys' fees, in connection with this Agreement and the transactions contemplated hereby; and

(m) Replacement Indemnitor shall execute and deliver to Master Servicer an Indemnity and Guaranty Agreement substantially in the form of Exhibit "B" attached hereto;

(n) Trustee shall have received a certified copy of the Management Agreement between Transferee and Manager and approved same; and

(o) such other conditions as Master Servicer and/or Special Servicer may reasonably require.

10. Costs and Expenses. Any and all costs or expenses of Master Servicer or Trustee arising out of or as a result of this Agreement or the transactions described herein, including, without limitation all fees charged by Master Servicer's outside legal counsel in connection herewith, costs of recordation, title insurance endorsements or policies, and escrow fees, shall be paid by Transferee, on or prior to the recordation of this Agreement in the Public Records of Cook County, Illinois, and in no event shall any such costs be borne by Trustee, Master Servicer, or their agents, servicers, sub-servicers or contractors.

11. No Counter Claim, Etc.

(a) Transferee hereby waives any right to assert against Trustee or Master Servicer or their respective agents, servicers, sub-servicers or contractors (collectively, "Noteholder Parties") as a defense, counterclaim, set-off or cross-claim, any defense (legal or equitable), set-off, counterclaim and/or claim which Transferee may now or at any time hereafter may have against Transferor or any other party liable to the Noteholder Parties, or any of them, in any way or manner. Transferee further waives any right to assert against the Noteholder Parties, or any of them as a defense, counterclaim, set-off or cross-claim, any defense (legal or equitable), set-off, cross-claim, counterclaim and/or claim which Transferor may now have against the Noteholder Parties, or any of them, and/or any other party liable to the Noteholder Parties, or any of them, in any way of manner.

(b) Transferor hereby agrees and acknowledges that there are no claims, defenses (legal or equitable), counterclaims, set-offs and/or any other rights or remedies whatsoever which it now may have, claim or assert against Trustee or Master Servicer, Special Servicer, or any of them, including any of same which would in any way alter, reduce or extinguish its liabilities to the Noteholder Parties under and pursuant to the Loan Documents, as amended hereby.

(c) Each of Transferor and Transferee hereby agrees and acknowledges that it has no current knowledge of any facts that could give rise to future claims, defenses (legal or equitable), counterclaims, set-offs and/or other rights or remedies whatsoever against Trustee or Master Servicer, or any of them, which would in any way alter, reduce or extinguish their liabilities to the Noteholder Parties under and pursuant to the Loan Documents, as amended hereby.

(d) Each of Transferor and Transferee hereby represents that it has no current knowledge of the existence of any Event of Default under the Loan Documents.

(e) Transferor and Transferee hereby authorize Trustee, without notice or demand and without affecting their liability hereunder, from time-to-time to exchange, enforce, waive, and release any security held by it for the payment of the obligations under the Loan Documents, as amended hereby; to apply such security and direct the order or manner of sale thereof as Trustee in its sole discretion may determine and which is not inconsistent with the Loan Documents; and to assign, without notice, this Agreement in whole or in part, or Trustee's rights hereunder, to anyone at any time. Transferor and Transferee hereby agree that Trustee may do any or all of the foregoing in such manner, upon such terms, and at such times as Trustee, in its discretion, deems advisable, without, in any way or respect, impairing, affecting, reducing or releasing the parties from their respective obligations under the Loan Documents, as amended hereby, or this Agreement. This Agreement is not assignable by Transferee in whole or in part.

(f) With respect to the Loan, Transferor and Transferee hereby waive and agree not to assert against Trustee or Master Servicer, Special Servicer, or any of them, or against each other any rights which a guarantor or surety could exercise.

12. Limitations on Recourse. The limitations on recourse provisions set forth in Section 4.23 of the Mortgage and in Section 1.5 of the Note apply to this Agreement and to the Loan Documents as modified and assumed pursuant to this Agreement.

13. Governing Law. The terms and provisions of this Agreement shall be construed in accordance with and governed by the laws of the state of Illinois, without reference to choice of laws provisions.

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, trustees (including bankruptcy trustees), receivers, successors and assigns, subject in each case to the limitations on transfers as provided in the Mortgage, as amended hereby. As used herein, the singular number includes the plural and the masculine gender includes the feminine and neuter.

15. Attorneys' Fees. If any party brings an action or proceeding to enforce or declare its rights under the term of this Agreement, the prevailing party in such proceeding shall be entitled to reasonable attorneys' fees and costs, including without limitation, fees pursuant to Title 11 of the U.S. Code, whether or not such action or proceeding is pursued to decision or judgment.

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

17. Usury. It is expressly stipulated and agreed to be the intent of all of the parties hereto at all times to comply with the applicable law governing the maximum rate or amount of interest payable on or in connection with the Note and the Loan (or applicable United States federal law to the extent that it permits Trustee or any other owner and holder of the Note (collectively, "Noteholder") to contract for, charge, take, reserve or receive a greater amount of interest payable on or in connection with the Note and the Loan than under applicable law). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note, this Agreement or any other Loan Document, or contracted for, charged, taken, reserved or received with respect to the Loan, or if Transferor or Transferee having paid any interest in excess of that permitted by law, then it is the express intent of all of the parties that all excess amounts theretofore collected by Noteholder or Lender be credited to the then outstanding principal balance of the Note (or, if the Note has been or would thereby be paid in full, any surplus refunded to Transferor or Transferee), and the provisions of the Note, this Agreement, and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with such applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. The right to accelerate the maturity of the Note does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Noteholder does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender or Noteholder for the use, forbearance or detention of the indebtedness evidenced by the Note or other Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread through the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the applicable usury ceiling,

Notwithstanding any provision contained in the Note, this Agreement, or in any of the other Loan Documents, as amended herein, that permits the compounding of interest, including, without limitation, any provision by which any of the accrued interest is added to the principal amount of the Note, the total amount of interest that Transferor or Transferee is obligated to pay and Noteholder is entitled to receive with respect to the Loan shall not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the maximum rate allowed by applicable law on principal amounts actually advanced to or for the account of Transferor or Transferee, including all current and prior advances and any advances made pursuant to the Mortgage, this Agreement or the other Loan Documents, as amended herein (including, but not limited to, the payment of taxes, insurance premiums and the like). The provisions of the Note and the other Loan Documents limiting the amount of interest which may be contracted for, charged or received on the indebtedness evidenced thereby and dealing with the rights and duties of the parties with respect to the charging or receiving of interest in excess of the maximum rate, are hereby incorporated in this Agreement by reference as though fully set forth herein. To the extent permitted by law, the Transferor, the Transferee and the Indemnitor hereby waive and release all claims and defenses based upon usury in connection with the execution and delivery of the Note and the other Loan Documents and the borrowing of the funds represented by the Loan.

18. Additional Assurances Each of the Transferor, Transferee, Indemnitor and Replacement Indemnitor agrees to promptly execute and deliver all such documents and instruments and do all such other acts as may be reasonably required by Noteholder in the future, to perfect, confirm or effectuate the transaction contemplated by this Agreement.

IN WITNESS WHEREOF, the parties, hereto have executed this Agreement as of the dates of the respective acknowledgments set forth below, to be effective as of September 15, 2000.

[SIGNATURE PAGES FOLLOW]

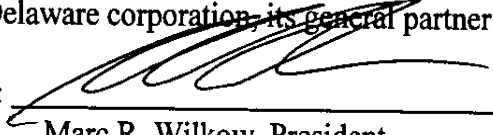
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TRANSFEROR:

SOCALCO LIMITED PARTNERSHIP,
an Illinois limited partnership

By: MJW INVESTMENTS, LTD.,
a Delaware corporation, its general partner

By: 

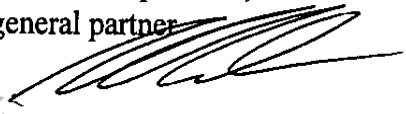
Marc R. Wilkow, President

INDEMNITOR:

M & J/RETAIL LIMITED PARTNERSHIP,
an Illinois limited partnership

By: Wilkow/Retail Partners Limited
Partnership, an Illinois limited partnership,
its general partner

By: MJW INVESTMENTS, LTD.,
a Delaware corporation,
its general partner

By: 

Marc R. Wilkow, President

Property of Cook County Clerk's Office

TRANSFeree:

DIVERSEY & SHEFFIELD PLAZA, L.L.C.,
an Illinois limited liability company

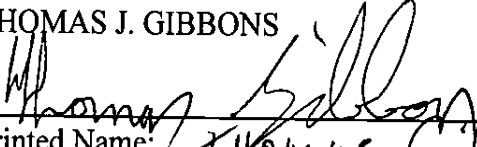
By: _____

Thomas J. Gibbons, Sole Member

Property of Cook County Clerk's Office

REPLACEMENT INDEMNITOR:

THOMAS J. GIBBONS


Printed Name: THOMAS GIBBONS

Property of Cook County Clerk's Office

TRUSTEE (BY SERVICER):

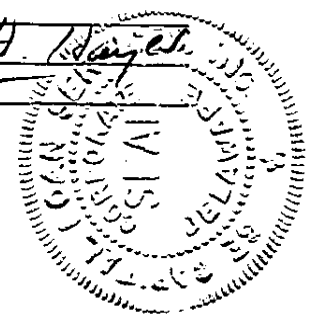
WELLS FARGO BANK MINNESOTA, N.A.,
formerly known as NORWEST BANK
MINNESOTA, NATIONAL ASSOCIATION, as
Trustee for the registered holders of DLJ
Commercial Mortgage Pass-Through Certificates
Series 1999-CG2, under that certain Pooling and
Servicing Agreement dated as of June 1, 1999 *PS*

By: GE CAPITAL LOAN SERVICES, INC., a
Delaware corporation, acting not individually,
but solely in its capacity as Master Servicer

By: *Robert D. Hargett*

Printed Name: *Robert D. Hargett*

Title: *Vice President*



Property of Cook County Clerk's Office

STATE OF IL §
 §
COUNTY OF COOK §

This instrument was acknowledged before me on September 14th, 2000, by Marc R. Wilkow, President of MJW INVESTMENTS, LTD., a Delaware corporation, as general partner of SOCALCO LIMITED PARTNERSHIP, an Illinois limited partnership, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf of such corporation.



Jennifer L. Harshbarger
NOTARY PUBLIC, STATE OF IL

STATE OF IL §
 §
COUNTY OF COOK §

This instrument was acknowledged before me on September 14th, 2000, by Marc R. Wilkow, President of MJW INVESTMENTS, LTD., a Delaware corporation, as general partner of Wilkow/Retail Partners Limited Partnership, an Illinois limited partnership, as general partner of M & J/RETAIL LIMITED PARTNERSHIP, an Illinois limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.



Jennifer L. Harshbarger
NOTARY PUBLIC, STATE OF IL

STATE OF Illinois §
COUNTY OF Cook §

This instrument was acknowledged before me on September 15th, 2000, by Thomas J. Gibbons, as Sole Member of DIVERSEY & SHEFFIELD PLAZA, L.L.C., an Illinois limited liability company, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf of such limited liability companies.

{Seal}

Meredith Logan
NOTARY PUBLIC, STATE OF Illinois



STATE OF Illinois §
COUNTY OF Cook §

This instrument was acknowledged before me on September 15th, 2000, by Thomas J. Gibbons known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

{Seal}

Meredith Logan
NOTARY PUBLIC, STATE OF Illinois



UNOFFICIAL COPY

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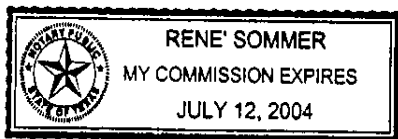
STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on September 13 2000, by Robert H. Hayes, Vice President of GE CAPITAL LOAN SERVICES, INC., a Delaware corporation, acting not individually, but solely in its capacity of Master Servicer on behalf of WELLS FARGO BANK MINNESOTA, N.A., formerly known as NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, as Trustee for the registered holders of DLJ Commercial Mortgage Pass-Through Certificates Series 1999-CG2, under that certain Pooling and Servicing Agreement dated as of June 1, 1999.

{Seal}

Rene Sommer
NOTARY PUBLIC, STATE OF TEXAS



THIS INSTRUMENT WAS PREPARED BY:

Jack W. Perry
Strasburger & Price, L.L.P.
1221 McKinney Street, Suite 2800
Houston, Texas 77010
Tel: 713.951.5600
Fax: 713.951.5660

Property of Cook County Clerk's Office

EXHIBIT "A"

Description of Real Property

Parcel 1:

Lots 19 to 23, inclusive, and Lot 24 (except that part thereof conveyed to Clarence Buckingham by deed dated September 17, 1895 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on October 7, 1895 as Document 2288080 in Book 5532, Page 148) and Lot 27 in Block 1 in Bergman and Others Subdivision of the West 3/4 of Block 9 in Canal Trustee's Subdivision of the East 1/2 of Section 29, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois, said Plat of Subdivision having been recorded in the Office of the Recorder of Deeds of Cook County, Illinois on January 25, 1875 as Document No. 11281.

Parcel 2:

Lots 28 and 29 in Block 1 in Bergman and Others Subdivision of the West 3/4 of Block 9 in Canal Trustee's Subdivision of the East 1/2 of Section 29, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois, said Plat of Subdivision having been recorded in the Office of the Recorder of Deeds of Cook County, Illinois on January 25, 1875 as Document No. 11281.

Permanent Tax Identification Numbers:

14-29-404-001	(Lot 19)
14-29-404-002	(Lot 20)
14-29-404-003	(Lot 21)
14-29-404-004	(Lot 22)
14-29-404-005	(Lot 23)
14-29-404-006	(Lot 24)
14-29-404-007	(Lot 27)
14-29-404-008	(Lots 28 and 29)

EXHIBIT "B"INDEMNITY AND GUARANTY AGREEMENT

THIS INDEMNITY AND GUARANTY AGREEMENT (this "Agreement"), made as of the ____ day of September, 2000, by THOMAS J. GIBBONS (collectively "Indemnitor"), whose address is 3030 North Halsted, Chicago, Illinois 6065, in favor of WELLS FARGO BANK MINNESOTA, N.A., formerly known as NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION as Trustee for Registered Holders of DLJ Commercial Mortgage Pass-Through Certificates Series 1999-CG2 whose address is 1015 SE 10th Avenue, Minneapolis, Minnesota 55414 ("Lender").

WITNESSETH:

WHEREAS, pursuant to that certain Promissory Note, dated April 6, 1999, executed by SOCALCO LIMITED PARTNERSHIP, an Illinois limited partnership ("Old Borrower"), and payable to the order of General Electric Capital Corporation, a New York Corporation ("Prior Lender") in the original principal amount of One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00) (together with all renewals, modifications, increases and extensions thereof, the "Note"), Old Borrower became indebted to Prior Lender with respect to a loan ("Loan") which is secured by the lien and security interest of a Mortgage, Security Agreement and Fixture Financing Statement, dated as of April 6, 1999 (the "Mortgage"), recorded as Doc. No: 99353510 of the Public Records of Cook County, Illinois and further evidenced, secured or governed by other instruments and documents executed in connection with the Loan (together with the Note and Mortgage, the "Loan Documents"); and

WHEREAS, the Property, as defined in the Mortgage, is being transferred by the Old Borrower to DIVERSEY & SHEFFIELD PLAZA, L.L.C., an Illinois limited liability company ("Borrower") and in connection with such transfer, the obligations, liabilities, and indebtedness of the Old Borrower under the Loan Documents are being assumed by the Borrower pursuant to the Loan Assumption Agreement and Amendment of Loan Documents dated of even date herewith.

WHEREAS, the Loan is now owned and held by Lender; and

WHEREAS, Lender is not willing to consent to the transfer of the Property to, and assumption of the Loan obligations by, Borrower unless Indemnitor unconditionally indemnifies Lender from and guarantees payment to Lender of the "Costs" (as herein defined); and

WHEREAS, Indemnitor is the owner of a direct or indirect interest in Borrower, and Indemnitor will directly benefit from Lender's consent to the transfer of the Property to Borrower and assumption of the Loan obligations by Borrower.

NOW, THEREFORE, as an inducement to Lender to consent to the transfer of the Property to Borrower and assumption of the Loan obligations by Borrower, and to extend such additional credit as Lender may from time to time agree to extend under the Loan Documents, and for other

good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Indemnity and Guaranty. Indemnitor hereby assumes liability for, hereby guarantees payment to Lender of, hereby agrees to pay, protect, defend and save Lender harmless from and against, and hereby indemnifies Lender from and against any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, attorneys' fees), causes of action, suits, claims, demands and judgments of any nature or description whatsoever (collectively, "Costs") which may at any time be imposed upon, incurred by or awarded against Lender as a result of:
 - (a) Borrower's commission of a criminal act;
 - (b) the failure to comply with provisions of the Loan Documents prohibiting the sale, transfer or encumbrance of the Property, any other collateral, or any direct or indirect ownership interest in Borrower;
 - (c) the misapplication by Borrower or any member of Borrower of any funds derived from the Property, including security deposits, insurance proceeds, and condemnation award in violation of the Loan Documents;
 - (d) the fraud or misrepresentation by Borrower or any member of Borrower made in or in connection with the Loan Documents or the Loan;
 - (e) Borrower's collection of rents more than one month in advance or entering into or modifying any leases, or receipt of monies by Borrower or any member of Borrower in connection with the modification of any leases in violation of the Loan Documents;
 - (f) Borrower's failure to apply proceeds of rents or any other payments in respect of the leases and other income of the Property or any other collateral when received to the costs of maintenance and operation of the Property and to the payment of taxes, lien claims, insurance premiums, debt service, the replacement escrow funds, and other amounts due under the Loan Document to the extent the Loan Documents require such proceeds to be then so applied;
 - (g) Borrower's interference with Lender's exercise of rights under the Assignment of Leases and Rents;
 - (h) Borrower's failure to maintain insurance as required by the Loan Documents;
 - (i) damage or destruction to the Property caused by the acts or omissions of Borrower, its agents, employees, or contractors;
 - (j) Borrower's obligations with respect to environmental matters as required by the Loan Documents;
 - (k) Borrower's failure to pay for any loss, liability, or expense (including attorneys' fees) incurred by Lender arising out of any claim or allegation made by Borrower, its

successors or assigns, or any creditor of Borrower, that the transactions contemplated by the Loan Documents and the Hazardous Substances Indemnity Agreement establishes a joint venture, partnership, or other similar arrangement between Borrower and Lender; or

(l) Any brokerage commission or finder's fees claimed in connection with the transactions contemplated by the Loan Documents.

This is a guaranty of payment and performance and not of collection. The liability of Indemnitor under this Agreement shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against Borrower or any other person (including, without limitation, other guarantors, if any), nor against the collateral for the Loan. Indemnitor waives any right to require that an action be brought against Borrower or any other person or to require that resort be had to any collateral for the Loan or to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other person. In the event, on account of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, Borrower shall be relieved of or fail to incur any debt, obligation or liability as provided in the Loan Documents, Indemnitor shall nevertheless be fully liable therefor. In the event of a default under the Loan Documents which is not cured within any applicable grace or cure period, Lender shall have the right to enforce its rights, powers and remedies (including, without limitation, foreclosure of all or any portion of the collateral for the Loan) thereunder or hereunder, in any order, and all rights, powers and remedies available to Lender in such event shall be non-exclusive and cumulative of all other rights, powers and remedies provided thereunder or hereunder or by law or in equity. If the indebtedness and obligations guaranteed hereby are partially paid or discharged by reason of the exercise of any of the remedies available to Lender, this Agreement shall nevertheless remain in full force and effect, and Indemnitor shall remain liable for all remaining indebtedness and obligations guaranteed hereby, even though any rights which Indemnitor may have against Borrower may be destroyed or diminished by the exercise of any such remedy.

2. Indemnification Procedures.

(a) If any action shall be brought against Lender based upon any of the matters for which Lender is indemnified hereunder, Lender shall notify Indemnitor in writing thereof and Indemnitor shall promptly assume the defense thereof, including, without limitation, the employment of counsel acceptable to Lender and the negotiation of any settlement; provided, however, that any failure of Lender to notify Indemnitor of such matter shall not impair or reduce the obligations of Indemnitor hereunder. Lender shall have the right, at the expense of Indemnitor (which expense shall be included in Costs), to employ separate counsel in any such action and to participate in the defense thereof. In the event Indemnitor shall fail to discharge or undertake to defend Lender against any claim, loss or liability for which Lender is indemnified hereunder, Lender may, at its sole option and election, defend or settle such claim, loss or liability. The liability of Indemnitor to Lender hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both the settlement consideration and the costs and expenses, including, without limitation, attorneys' fees and disbursements, incurred by Lender in effecting such settlement. In such event, such settlement consideration, costs and expenses shall be included in Costs and Indemnitor shall pay the same as hereinafter provided. Lender's good faith in any such settlement

shall be conclusively established if the settlement is made on the advice of independent legal counsel for Lender.

(b) Indemnitor shall not, without the prior written consent of Lender: (i) settle or compromise any action, suit, proceeding or claim or consent to the entry of any judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to Lender of a full and complete written release of Lender (in form, scope and substance satisfactory to Lender in its sole discretion) from all liability in respect of such action, suit, proceeding or claim and a dismissal with prejudice of such action, suit, proceeding or claim; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that may adversely affect Lender or obligate Lender to pay any sum or perform any obligation as determined by Lender in its sole discretion.

(c) All Costs shall be immediately reimbursable to Lender when and as incurred and, in the event of any litigation, claim or other proceeding, without any requirement of waiting for the ultimate outcome of such litigation, claim or other proceeding, and Indemnitor shall pay to Lender any and all Costs within ten (10) days after written notice from Lender itemizing the amounts thereof incurred to the date of such notice. In addition to any other remedy available for the failure of Indemnitor to periodically pay such Costs, such Costs, if not paid within said ten-day period, shall bear interest at the Default Rate (as defined in the Loan Agreement).

3. Reinstatement of Obligations. If at any time all or any part of any payment made by Indemnitor or received by Lender from Indemnitor under or with respect to this Agreement is or must be rescinded or returned for any reason whatsoever (including, but not limited to, the insolvency, bankruptcy or reorganization of Indemnitor or Borrower), then the obligations of Indemnitor hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous payment made by Indemnitor, or receipt of payment by Lender, and the obligations of Indemnitor hereunder shall continue to be effective or be reinstated, as the case may be, as to such payment, all as though such previous payment by Indemnitor had never been made.

4. Waivers by Indemnitor. To the extent permitted by law, Indemnitor hereby waives and agrees not to assert or take advantage of:

(a) the unenforceability of any Loan Documents against Borrower and/or any other Indemnitor;

(b) any release or other action or inaction taken by Lender with respect to the collateral, the Loan, Borrower, and/or other Indemnitor, whether or not the same may impair or destroy any subrogation rights of any Indemnitor or constitute a legal or equitable discharge of any surety of indemnitor;

(c) the existence of any collateral or other security for the Loan, and any requirement that Lender pursue any of such collateral or other security, or pursue any remedies it may have against Borrower and/or any other Indemnitor;

(d) any requirement that Lender provide notice to or obtain an Indemnitor's consent to any modification, increase, extension, or other amendment of the Loan, including the guaranteed obligations;

(e) any right of subrogation (until payment in full of the Loan, including the guaranteed obligations, and the expiration of any applicable preference period and statute of limitations for fraudulent conveyance claims);

(f) any defense based on any statute of limitations;

(g) any payment by Borrower to Lender if such payment is held to be a preference or fraudulent conveyance under bankruptcy laws or Lender is otherwise required to refund such payment to Borrower or any other party; and

(h) any voluntary or involuntary bankruptcy, receivership, insolvency, reorganization, or similar proceeding affecting Borrower or any of its assets.

5. General Provisions.

(a) Fully Recourse. All of the terms and provisions of this Agreement are recourse obligations of Indemnitor and not restricted by any limitation on personal liability.

(b) Unsecured Obligations. Indemnitor hereby acknowledges that Lender's appraisal of the Property is such that Lender is not willing to accept the consequences of the inclusion of Indemnitor's indemnity set forth herein among the obligations secured by the Mortgage and the other Loan Documents and that Lender would not make the Loan but for the unsecured personal liability undertaken by Indemnitor herein.

(c) Survival. This Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the exercise of any remedy by Lender under the Mortgage or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof, even if, as a part of such remedy, the Loan is paid or satisfied in full.

(d) No Subrogation; No Recourse Against Lender. Notwithstanding the satisfaction by Indemnitor of any liability hereunder, Indemnitor shall not have any right of subrogation, contribution, reimbursement or indemnity whatsoever or any right of recourse to or with respect to the assets or Property of Borrower or to any collateral for the Loan. In connection with the foregoing, Indemnitor expressly waives any and all rights of subrogation to Lender against Borrower, and Indemnitor hereby waives any rights to enforce any remedy which Lender may have against Borrower and any right to participate in any collateral for the Loan. In addition to and without in any way limiting the foregoing, Indemnitor hereby subordinates any and all indebtedness of Borrower now or hereafter owed to Indemnitor to all indebtedness of Borrower to Lender, and agrees with Lender that Indemnitor shall not demand or accept any payment of principal or interest from Borrower, shall not claim any offset or other reduction of Indemnitor's obligations hereunder because of any such indebtedness and shall not take any action to obtain any of the collateral from the Loan. Further, Indemnitor shall not have any right of recourse against Lender by reason of any

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action Lender may take or omit to take under the provisions of this Agreement or under the provisions of any of the Loan Documents.

(e) Reservation of Rights. Nothing contained in this Agreement shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which Lender may have against Borrower, Indemnitor or any other party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42 U.S.C. §9601 et seq.), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.

(f) Financial Statements. Indemnitor hereby agrees, as a material inducement to Lender to make the Loan to Borrower, to furnish to Lender promptly upon demand by Lender current and dated financial statements detailing the assets and liabilities of Indemnitor certified by Indemnitor, in form and substance acceptable to Lender. Indemnitor hereby warrants and represents unto Lender that any and all balance sheets, net worth statements and other financial data which have heretofore been given or may hereafter be given to Lender with respect to Indemnitor did or will at the time of such delivery fairly and accurately present the financial condition of Indemnitor.

(g) Rights Cumulative; Payments. Lender's rights under this Agreement shall be in addition to all rights of Lender under the Note, the Mortgage and the other Loan Documents. FURTHER, PAYMENTS MADE BY INDEMNITOR UNDER THIS AGREEMENT SHALL NOT REDUCE IN ANY RESPECT BORROWER'S OBLIGATIONS AND LIABILITIES UNDER THE NOTE, THE MORTGAGE AND THE OTHER LOAN DOCUMENTS.

(h) No Limitation on Liability. Indemnitor hereby consents and agrees that Lender may at any time and from time to time without further consent from Indemnitor do any of the following events, and the liability, of Indemnitor under this Agreement shall be unconditional and absolute and shall in no way be impaired or limited by any of the following events, whether occurring with or without notice to Indemnitor or with or without consideration: (i) any extensions of time for performance required by any of the Loan Documents or extension or renewal of the Note; (ii) any sale, assignment or foreclosure of the Note, the Mortgage or any of the other Loan Documents or any sale or transfer of the Property; (iii) any change in the composition of Borrower, including, without limitation, the withdrawal or removal of Indemnitor from any current or future position of ownership, management or control of Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Indemnitor herein or by Borrower in any of the Loan Documents; (v) the release of Borrower or of any other person or entity from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Lender's voluntary act or otherwise; (vi) the release or substitution in whole or in part of any security for the Loan; (vii) Lender's failure to record the Mortgage or to file any financing statement (or Lender's improper recording or filing thereof) or to otherwise perfect, protect, secure or insure any lien or security interest given as security for the Loan; (viii) the modification of the terms of any one or more of the Loan Documents; or (ix) the taking or failure to take any action of any type whatsoever. No such action which Lender shall take or fail to take in connection with the Loan Documents or any collateral for the Loan, nor any course or dealing with Borrower or any other person, shall limit, impair or release Indemnitor's obligations hereunder, affect this Agreement in any way or afford Indemnitor any recourse against Lender. Nothing contained in

this Section shall be construed to require Lender to take or refrain from taking any action referred to herein.

(i) Entire Agreement; Amendment; Severability. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

(j) Governing Law; Binding Effect; Waiver of Acceptance. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling. This Agreement shall bind Indemnitor and the heirs, personal representatives, successors and assigns of Indemnitor and shall inure to the benefit of Lender and the officers, directors, shareholders, agents and employees of Lender and their respective heirs, successors and assigns. Notwithstanding the foregoing, Indemnitor shall not assign any of its rights or obligations under this Agreement without the prior written consent of Lender, which consent may be withheld by Lender in its sole discretion. Indemnitor hereby waives any acceptance of this Agreement by Lender, and this Agreement shall immediately be binding upon Indemnitor.

(k) Notice. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery to the intended addressee at its address set forth on the first page of this Agreement or at such other address as may be designated by such party as herein provided, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth on the first page of this Agreement or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

(l) No Waiver; Time of Essence; Business Day. The failure of any party hereto to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must

be in writing and signed by the party to be bound. This Agreement is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof. The term "business day" as used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

(m) Captions for Convenience. The captions and headings of the sections and paragraphs of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.

(n) Attorneys' Fees. In the event it is necessary for Lender to retain the services of an attorney or any other consultants in order to enforce this Agreement, or any portion thereof, Indemnitor agrees to pay to Lender any and all costs and expenses, including, without limitation, attorneys' fees, incurred by Lender as a result thereof and such costs, fees and expenses shall be included in Costs.

(o) Successive Actions. A separate right of action hereunder shall arise each time Lender acquires knowledge of any matter indemnified or guaranteed by Indemnitor under this Agreement. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Indemnitor hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments.

(p) Reliance. Lender would not make the Loan to Borrower without this Agreement. Accordingly, Indemnitor intentionally and unconditionally enters into the covenants and agreements as set forth above and understands that, in reliance upon and in consideration of such covenants and agreements, the Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

(q) SUBMISSION TO JURISDICTION; WAIVER OF JURY

(1) INDEMNITOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF TEXAS OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN COOK COUNTY, ILLINOIS, (C) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (D) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT NEITHER OF THEM WILL BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). INDEMNITOR FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S.

MAIL, POSTAGE PREPAID, TO THE INDEMNITOR AT THE ADDRESS 'FOR NOTICES DESCRIBED IN SECTION 5(k) HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(2) INDEMNITOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR INDEMNITOR, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR INDEMNITOR, IN EACH OR THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

(r) Waiver by Indemnitor. Indemnitor covenants and agrees that, upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Indemnitor shall not seek or cause Borrower or any other person or entity to seek a supplemental stay or other relief, whether injunctive or otherwise, pursuant to 11 U.S.C. § 105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law, (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against Indemnitor or the collateral for the Loan by virtue of this Agreement or otherwise.

(s) Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument.

6. Assignments by Lender

(a) Lender may, without notice to, or consent of, Indemnitor, sell assign or transfer to or participate with any entity or entities all or any part of the indebtedness secured hereby, and each such entity or entities shall have the right to enforce the provisions of this Agreement and any of the other Loan Documents as fully as Lender, provided that Lender shall continue to have the unimpaired right to enforce the provisions of this Agreement and any of the other Loan Documents as to so much of the indebtedness secured hereby that Lender has not sold, assigned or transferred. In connection with the foregoing, Lender shall have the right to disclose to any such actual or potential purchaser, assignee, transferee or participant all financial records, information, reports, financial statements and documents obtained in connection with this Agreement and any of the other Loan Documents or otherwise.

(b) In particular, Indemnitor acknowledges and agrees that Lender and its successors and assigns may (i) sell the indebtedness secured hereby, this Agreement and each of the

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other Loan Documents to one or more investors as a whole loan, (ii) participate the indebtedness secured hereby, in whole or in part, to one or more investors, (iii) deposit this Agreement and each of the Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets, or (iv) otherwise sell the indebtedness secured hereby or any interest therein to investors (the transactions referred to in clauses (i) through (iv) are hereinafter each referred to as a "Secondary Market Transaction"). In this regard, Indemnitor shall make available to Lender all information concerning its business and operations that Lender may reasonably request. Lender shall be permitted to share such information with the investment banking firms, rating agencies, accounting firms, law firms, and other third-party advisory firms involved with the indebtedness secured hereby and the Loan Documents of the applicable Secondary Market Transaction. It is understood that the information provided by Indemnitor to Lender may ultimately be incorporated into the offering documents for a Secondary Market Transaction and thus various investors may also have access to some or all of such information. Lender and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Indemnitor. Indemnitor shall execute and deliver to Lender and/or the prospective transferee such documentation, including but not limited to, any amendments, corrections, deletions or additions to the Note, this Agreement and the other Loan Documents as is required by Lender and/or the prospective transferee; provided however, that Indemnitor shall not be required to do anything that has the effect of (a) changing the essential economic terms of the indebtedness secured hereby as set forth in the Loan Documents, or (b) imposing greater personal liability in connection with the indebtedness secured hereby than that currently set forth in the Loan Documents.

[SIGNATURE PAGE FOLLOWS]

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00733907

IN WITNESS WHEREOF, Indemnitor has executed this Indemnity and Guaranty Agreement as of the day and year first above written.

THOMAS J. GIBBONS

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of Septembert, 2000, by Thomas J. Gibbons.

{Seal}

NOTARY PUBLIC, STATE OF _____

Property of Cook County Clerk's Office