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2001-01-08 13:20:33

Cook County Recorder

207.00

Recording Requested by
and When Recorded Mail to:
The Guardian Life Insurance
Company of America
7 Hanover Square, 23rd Floor - B
New York, NY 10004
Attention: Rose Policastro
Law Department



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(space above this line for Recorder's use)

MORTGAGE AND SECURITY AGREEMENT
WITH ASSIGNMENT OF RENTS AND FIXTURE FILING

THIS MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS AND FIXTURE FILING (hereinafter referred to as this "Mortgage") is made on the 4th day of January 2001 by TDC NILES L.L.C., an Illinois limited liability company, having its principal place of business at c/o Tucker Development Corp., 513 Central Avenue, Suite 400, Highland Park, Illinois 60035, as mortgagor and debtor (hereinafter referred to as the "Mortgagor"), to THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, a New York corporation, having its principal place of business at 7 Hanover Square, New York, New York 10004, as mortgagee (hereinafter referred to as the "Mortgagee").

MORTGAGOR HEREBY IRREVOCABLY MORTGAGES, PLEDGES, GRANTS, CONVEYS, TRANSFERS AND ASSIGNS:

A. To Mortgagee, to secure the obligations described herein, including payment of an indebtedness in the principal sum of TWENTY FOUR MILLION AND 00/100 (\$24,000,000.00) DOLLARS, in lawful money of the United States of America, with interest thereon computed from the date hereof at the rate of eight and five one hundredths (8.05%) percent per annum, in accordance with the terms of a certain note bearing even date herewith and any renewals, extensions or modification thereof, executed by Mortgagor and delivered to Mortgagee (the "Note"), those certain parcels of land known as Pointe Plaza, situate, lying and being in the County of Cook, City of Niles and State of Illinois, and more particularly described in Exhibit A attached hereto (the "Land"), including the following owned by Borrower:

all improvements now existing or hereafter erected or placed upon the Land and all fixtures now or hereafter affixed to such improvements on the Land, including all buildings, structures and other improvements of every kind and description now or hereafter erected or placed thereon and any and all machinery, boilers, equipment (including without limitation all equipment for the generation or distribution of air, water, heat, electricity, light, fuel or refrigeration or for ventilating or air conditioning purposes or for sanitary or drainage purposes or for the removal of dust, refuse or garbage), partitions, appliances, furniture, furnishings, ranges, refrigerators, cabinets, laundry equipment, hotel, kitchen and restaurant equipment, radios, televisions, awnings, window shades, venetian blinds, drapes and drapery rods and brackets, screens, carpeting and other floor coverings, lobby furnishings, games and

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recreational and swimming equipment, incinerators and other property of every kind and description now or hereafter placed, attached, affixed or installed in such buildings, structures or improvements and all replacements, repairs, additions, accessions or substitutions or proceeds thereto or therefor (all of such improvements and fixtures whether now or hereafter placed thereon being hereby declared to be real property and referred to hereinafter as the "Improvements");

all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the centerline thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof with the appurtenances thereto;

all leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore, now or hereafter entered into and all guarantees thereof (the "Leases") and all income, rents, royalties, revenue, issues, profits, proceeds and security deposits from any and all of the Land and the Improvements thereon including all lease termination fees or payments (the "Rents") subject, however, to the right, power and authority hereinafter conferred upon Mortgagee or reserved to Mortgagor to collect and apply such income, rents, royalties, revenue, issues, profits, proceeds and security deposits;

all deposits made with or other security given to utility companies or any other entity by Mortgagor and all advance payments of insurance premiums made by Mortgagor with respect to the Land and Improvements thereon and claims or demands relating to such deposits, other security and/or such insurance;

all damages, royalties and revenue of every kind, nature and description whatsoever that Mortgagor may be entitled to receive, either before or after any default hereunder, from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Land, with the right in Mortgagee to receive and apply the same to the Indebtedness (as hereinafter defined) in such order as Mortgagee may elect, and Mortgagee may demand, sue for and recover any such payments but shall not be required to do so;

all proceeds, causes of action, damages, recoveries, awards, payments and claims arising on account of any damage to or taking of the Land or the Improvements or any part thereof, including the right to receive the same as a result of the exercise of the right of eminent domain or any conveyance in lieu thereof, and all causes of action and recoveries for any loss or diminution in the value of the Land or the Improvements;

all licenses (including without limitation any operating licenses or similar matters, but excluding liquor licenses), contracts, plans and specifications (including working drawings), management contracts or agreements, franchise agreements, permits, authorizations

or certificates required or used in connection with the ownership, operation or maintenance of the Improvements;

the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Land or the Improvements and to commence any action or proceeding to protect the interest of Mortgagee in the Land and Improvements;

all governmental permits relating to construction of the Improvements, all names under or by which the Improvements may at any time be operated or known (to the extent Mortgagor has rights in such names), and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, patents pending and goodwill; and

all claims and rights to refunds or abatements of real property taxes and assessments imposed on the Land or the Improvements, with the right, in Mortgagee's own name or in the name and on behalf of Mortgagor, to appear in and prosecute any action or proceeding to cause the reassessment of the Land and Improvements for real property and assessment purposes or to recover any refund of such real property taxes or assessments; and

All of the property described in Paragraph A above is hereinafter referred to as the "Real Property."

B. Mortgagor hereby grants to Mortgagee, as secured party, a security interest in any portion of the Real Property which may be construed to be personal property and in all other personal property of every kind and description owned by Mortgagor, whether now existing or hereafter acquired, now or at any time hereafter attached to, erected upon, situated in or upon, forming a part of, appurtenant to, used or useful in the construction or operation of or in connection with, or arising from the use or enjoyment of all or any portion of, or from any Leases or agreements pertaining to, the Real Property, including:

all plans and specifications prepared for the construction of the Improvements and all studies, data and drawings related thereto, as well as all contracts and agreements of Mortgagor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings, or to the construction of the Improvements;

all equipment, machinery, fixtures, goods, accounts, general intangibles, documents, instruments and chattel paper, and all other personal property of every kind and description, including all leasehold interests in personal property;

all substitutions and replacements of, and accessions and additions to, any of the foregoing;

all sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into with respect to the sale to any purchaser of any part of the Real Property, together with all deposits and other proceeds of the sale thereof;

subject to the other provisions of this Mortgage, (i) all proceeds of any fire and/or builders risk insurance policy or of any other policy insuring the Real Property (and the

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contents of the Improvements) against any other perils, whether or not required under this Mortgage; (ii) all awards made in eminent domain proceedings, or purchases in lieu thereof, made with respect to the Real Property; and (iii) any compensation, award or payment or relief given by any governmental agency or other source because of damage to the Real Property resulting from earthquake, flood, windstorm or any emergency or any other event or circumstance;

all policies of insurance arising out of the ownership of the Real Property;

all accounts, contract rights, trademarks, trade names, chattel paper, instruments, general intangibles, financial assets and other obligations of any kind now or hereafter existing arising out of or in connection with the operation or development of the Real Property, and all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any such accounts, contract rights, chattel paper, instruments, general intangibles, financial assets or obligations;

all agreements, permits, contracts and entitlements relating to the construction and operation of the Real Property; and

all proceeds of any of the foregoing, including without limitation proceeds of any voluntary or involuntary disposition or claim respecting any of the foregoing (pursuant to judgment, condemnation award or otherwise) and all goods, documents, general intangibles, chattel paper and accounts, wherever located, acquired with cash proceeds of any of the foregoing or proceeds thereof; however, specifically excluding therefrom the reimbursements due to Mortgagor pursuant to that certain Redevelopment Agreement between Assignee and the Village of Niles, Illinois, a municipal corporation dated October 27, 1998, as amended May 14, 1999.

All of the personal property described in Paragraph B above is hereinafter referred to as the "Personal Property."

All of the Real Property and the Personal Property now or hereafter owned by Mortgagor is referred to herein collectively as the "Property."

FOR THE PURPOSE OF SECURING:

ONE: Payment of the indebtedness (the "Loan") evidenced by the Note, together with the interest thereon, fees, prepayment premiums payable with respect thereto and late charges, all as provided by the Note, which is made a part hereof by reference.

TWO: Payment of the total amount of the Loan may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount of \$24,000,000.00 plus interest thereon plus any advances or disbursements made by Mortgagee for the payment of taxes, special assessments, insurance, or other items as provided in this Mortgage relating to the Property, together with the interest on such advances or disbursements at the applicable rate set forth in the Note.

THREE: Payment of all other moneys herein or in the Note agreed or provided to be paid by Mortgagor.

FOUR: Performance of each agreement of Mortgagor herein contained or contained in any other agreement given by Mortgagor to Mortgagee for the purpose of further evidencing or securing any indebtedness secured hereby, including without limitation all security agreements, so long as any portion of the Loan, including principal, interest, premium, fees and late charges, if any, remains outstanding.

FIVE: Any and all advances made by Mortgagee to preserve or protect the Property or the lien or security interest created hereby on the Property, or for taxes, assessments, maintenance charges, insurance premiums as hereinafter provided or costs incurred for the protection of the Property or the lien of this Mortgage or for performance of any of Mortgagor's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or any of the other Loan Documents.

SIX: All modifications, extensions and renewals (if any) of one or more of the obligations secured hereby (such obligations set forth above in paragraphs ONE through SIX are hereinafter referred to collectively as the "Indebtedness").

C. Mortgagor shall promptly cause this Mortgage to be filed, registered or recorded in such manner and in such place or places as may be required by any present or future law in order to publish notice and fully protect and perfect the security interest created by this Mortgage and the lien of the Mortgage upon, and the interest of Mortgagee in, the Property. Mortgagor shall pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the filing, registration, recording, execution and delivery of this Mortgage. Mortgagor shall hold harmless and indemnify Mortgagee against any liability incurred by reason of the imposition of any tax on the issuance, making, filing, registration or recording of this Mortgage.

ARTICLE I

COVENANTS, REPRESENTATIONS AND WARRANTIES

As an inducement to Mortgagee to make the Loan secured by this Mortgage, Mortgagor hereby makes the following covenants, representations and warranties:

1.01. Payment of Indebtedness

Mortgagor covenants to pay the principal of, interest on and prepayment premium with respect to the Loan and all other amounts payable under this Mortgage and the other Loan Documents (as hereinafter defined) according to their respective terms, and will perform and comply with each and every term, covenant and condition herein and therein.

1.02. Warranty of Title

Mortgagor represents and warrants that at the time of the delivery of this Mortgage, Mortgagor holds fee title to the Land and has the right to encumber, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Land and that it owns the Real Property free and clear of all liens, encumbrances and charges whatsoever, subject only to those items as are listed as exceptions to title in the title policy insuring the lien of this Mortgage to be issued in favor of Mortgagee (the "Permitted Encumbrances"), and has good and absolute title to all existing Personal Property and has good right, full power and lawful authority to convey and encumber the Property in the manner and form conveyed and encumbered hereby; that, except for the Permitted Encumbrances, the Property is free and clear of all liens, charges and encumbrances whatsoever, including, as to the Personal Property and fixtures, security agreements, conditional sales contracts and any other similar agreements; that, except as disclosed by Mortgagor in writing to Mortgagee, there is no financing statement covering the Property, or any part thereof, on file in any public office; and that Mortgagor shall and will warrant and forever defend the title to the Property against the claim of all persons whomsoever. If, while this Mortgage is in force, title to the Property or the interest of Mortgagee therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attacked directly or indirectly, or endangered, clouded, or adversely affected in any manner, Mortgagor, at Mortgagor's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel reasonably approved by Mortgagee, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Mortgagee reasonably determines that Mortgagor is not adequately performing its obligations under this paragraph, Mortgagee may, without limiting or waiving any other rights or remedies of Mortgagee hereunder, take such steps with respect thereto as Mortgagee shall deem necessary or proper and any and all costs and expenses incurred by Mortgagee in connection therewith, together with interest thereon at the Default Rate (as such term is defined in the Note) from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.03. Tax and Insurance Deposits

(a) Mortgagor shall pay monthly to Mortgagee or to Mortgagee's designee, together with and in addition to any amount due under the Note, until the Indebtedness secured by the Mortgage is paid in full, an amount equal to one-twelfth (1/12) of the yearly taxes, assessments, insurance premiums and other similar charges (including any amounts which may become payable by Mortgagor pursuant to Paragraph 1.05 hereof) as estimated by Mortgagee to be sufficient to allow the payment, at least thirty (30) days before they become due, of all taxes, assessments, insurance premiums and other similar charges against or relating to the Property. Mortgagee is hereby given authority to commingle such funds with other accounts held or operated by Mortgagee. Mortgagee shall not be obligated to pay interest to Mortgagor on any such sums unless specifically required by applicable law. Upon demand of Mortgagee, Mortgagor shall promptly deliver to Mortgagee such additional sums as are necessary to make up any deficiency in the amount necessary to pay any such taxes, assessments, insurance premiums or other similar charges in a timely manner, together with interest on all funds expended by Mortgagee to pay such amounts at the Default Rate (as defined in the Note). Mortgagee shall

apply the amounts deposited by Mortgagor to the payment of the obligations in respect to which the amounts were deposited or, at the option of Mortgagee, to the payment of said obligations in such order or priority as Mortgagee shall determine. If the amounts deposited are in excess of the actual obligations for which they were deposited, Mortgagee may refund any such excess, or, at its option, may hold the same in a reserve account, not in trust and not bearing interest, and reduce proportionately the required monthly deposits for the ensuing year. Nothing herein contained shall be deemed to affect any right or remedy of Mortgagee under any other provision of this Mortgage, or under any statute or rule of law, to pay any such amount and to add the amount so paid by Mortgagee to the Indebtedness hereby secured. All amounts so deposited shall be held by Mortgagee or its designee as additional security and are hereby pledged as additional security for the sums secured by this Mortgage, and, upon the occurrence of an Event of Default (as hereinafter defined) hereunder Mortgagee may, in its sole and absolute discretion and without regard to the adequacy of its security hereunder, apply such amounts or any portion thereof to any part of the Indebtedness secured hereby. Any such application of said amounts or any portion thereof to the Indebtedness shall not be construed to cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done pursuant to any such Event of Default or notice. The existence of the above deposits shall not limit Mortgagee's rights under any other provision of this Mortgage or any other agreement or statute or rule of law. Mortgagee may suspend the requirements of this Paragraph 1.03 in writing.

(b) Mortgagor shall deliver to Mortgagee all tax bills, bond and assessment statements, statements of insurance premiums, and statements for any other obligations referred to above as soon as the same are received by Mortgagor.

(c) If Mortgagee sells or assigns its interest under this Mortgage, Mortgagee shall have the right to transfer or assign all amounts deposited under this Paragraph 1.03 to the purchaser or assignee, and Mortgagee shall thereupon be released and have no further liability hereunder for the application of such deposits, and Mortgagor shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

1.04. Taxes, Liens and Other Charges

(a) Except to the extent that Mortgagor is depositing with Mortgagee amounts to be applied towards the payment of any of the following charges in a timely manner and in accordance with Paragraph 1.03 hereof, Mortgagor shall pay or discharge when due:

(i) all taxes, assessments and other governmental or public charges affecting the Property, including assessments on appurtenant structures, water rates and sewer rents, and any accrued interest, cost and/or penalty thereon, now or hereafter levied or assessed or imposed against the Property or any part thereof and upon request shall promptly deliver to Mortgagee receipts evidencing such payments therefor;

(ii) all encumbrances (including any debt secured by a Mortgage), ground rents, liens and/or charges, with interest, on the Property or any part thereof which appear to be prior, superior or on a parity hereto, and all costs and fees related thereto;

(iii) all charges for utilities or services, including without limitation electricity, gas, sewer and water and all private assessments payable pursuant to declarations and restrictive covenants affecting the Property;

(iv) all ground rents, maintenance charges and other charges, including without limitation 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; and

(v) all costs, fees and expenses of this Mortgage, including costs of evidence of title and attorneys' fees in connection with any sale made pursuant to Paragraph 2.01 hereof, together with interest thereon at the Default Rate (whether any such sale be completed or not), which amounts shall become due upon demand.

(b) Additionally, Mortgagor shall deliver to Mortgagee, within thirty (30) days after any taxes, assessments or other charges referred to in Paragraph 1.04(a)(i) hereof become due, evidence satisfactory to Mortgagee that such taxes, assessments and other charges have been paid in full, except in the event that Mortgagor is depositing with Mortgagee amounts to be applied towards taxes, assessments, insurance premiums and other similar charges in a timely manner and in accordance with Paragraph 1.03 hereof, in which case Mortgagor shall deliver the foregoing only upon written request of Mortgagee.

1.05. Insurance

(a) Mortgagor shall keep the Property insured against loss or damage by fire, hazards customarily included within "extended coverage" policies and any other casualties, liabilities, contingencies, risks or hazards, including flood and earthquake, which, in the opinion of Mortgagee, should be insured against, in an amount not less than the full insurable value of the Property on a replacement cost basis, with a company or companies and in such form and with such endorsements as shall be required by and be satisfactory to Mortgagee. All losses under said insurance shall be payable to Mortgagee and shall be applied in the manner provided hereinafter in this Paragraph 1.05. Mortgagor shall also carry public liability insurance, rental interruption insurance and hazard insurance in such form and amounts and with such companies as are satisfactory to Mortgagee. Mortgagee shall be named an additional insured under the public liability insurance policy, as sole loss payee under the rental interruption insurance policy and as mortgagee, an additional insured and as sole loss payee under the hazard insurance policy. All of the above-mentioned insurance policies shall be endorsed with a standard noncontributory mortgagee clause in favor of and in form acceptable to Mortgagee, and may expire, be cancelled or be modified only upon at least thirty (30) days prior written notice to Mortgagee. All of the above-mentioned insurance policies or certificates of such insurance satisfactory to Mortgagee, together with receipts evidencing the payment of premiums thereon, shall be delivered to and held by Mortgagee, which delivery shall constitute an assignment to Mortgagee of all return premiums to be held as additional security hereunder. At least thirty (30) days prior to the expiration date of a policy, Mortgagor shall deliver to Mortgagee evidence of the renewal or replacement of such policy in a form satisfactory to Mortgagee, which evidence may be in the form of certificates of insurance demonstrating compliance with the terms hereof. In the event that any such policy of insurance and evidence of payment of the premium therefor are not so

delivered to Mortgagee, Mortgagor hereby specifically authorizes Mortgagee to obtain such insurance. Without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereunder, Mortgagee may (but is not obligated to) obtain such insurance as hereinabove set forth through or from any insurance agency or company acceptable to it. Mortgagee shall not be chargeable with or responsible for the procurement or maintenance of any such insurance or the collection of any proceeds from such insurance. Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Mortgagor hereby expressly assumes full responsibility therefor and agrees to indemnify, defend and hold Mortgagee and/or Mortgagee harmless from and against all loss, cost, expense and liability, if any, with respect thereto. Except as otherwise provided by applicable law, Mortgagee may from time to time furnish to any insurance agency or company, or any other person, any information contained in or extracted from any policy of insurance delivered to Mortgagee hereunder and any information concerning this Loan.

(b) Mortgagor hereby assigns to Mortgagee all unearned premiums on any policy of insurance issued with respect to the Property, whether or not required hereunder, and agrees that any and all unexpired insurance and any unpaid proceeds thereof shall inure to the benefit of, and pass to, the purchaser of the Property conveyed in foreclosure or at any sale held hereunder or the grantee of any deed in lieu of foreclosure. Mortgagor hereby assigns to Mortgagee all insurance proceeds which Mortgagor may be entitled to receive under any insurance policy issued with respect to the Property, whether or not required hereunder. In the event of the foreclosure or other transfer of the title to the Property in extinguishment of the Indebtedness, in whole or in part, secured hereby, all right, title and interest of Mortgagor in and to any insurance policy, or premiums or payments in satisfaction of claims or any other rights thereunder then in force shall pass to the purchaser, transferee or grantee of the Property irrespective of the amount, if any, paid by said transferee, grantee or purchaser. Any reduction of the Indebtedness pursuant to the terms of this Article shall not be deemed a prepayment of the Indebtedness for the purpose of requiring the payment of a Prepayment Premium (hereinafter defined).

(c) After the occurrence of any casualty, whether or not required to be insured against hereunder, Mortgagor shall give prompt written notice thereof to Mortgagee generally describing the extent of the damage or destruction to the Property.

(d) All insurance proceeds shall be delivered to and held by Mortgagee to be applied, at Mortgagee's option, either (i) to any Indebtedness secured by this Mortgage and in such order as Mortgagee shall determine without any prepayment premium; or (ii) to the restoration of the Property to the same or better condition, character and value as that existing prior to such damage or destruction in accordance with (e) below; provided, however, if (1) an Event of Default does not exist under the Note, this Mortgage or any other Loan Document or the Leases, (2) such restoration of the Property be completed within twelve (12) months from the date of such casualty or (3) such casualty does not occur during the last twelve (12) months of the term of this Loan, Mortgagee shall apply insurance proceeds to the restoration of the Property in the event of a casualty.

(e) In the event Mortgagee elects to apply the insurance proceeds for restoration, Mortgagor shall furnish to Mortgagee evidence satisfactory to Mortgagee of the total estimated cost of the restoration. If the insurance proceeds held by Mortgagee (less the costs, fees and expenses of Mortgagee incurred in collecting such proceeds, including without limitation adjuster's fees and expenses and attorneys' fees and expenses) are insufficient to pay the total estimated cost of restoration, Mortgagor shall pay to Mortgagee such additional amounts as are necessary to pay such cost. The funds held by Mortgagee shall be disbursed by Mortgagee from time to time, but only if the following terms and conditions are satisfied:

(i) There are no uncured Events of Default under this Mortgage or any other documents evidencing or relating to the Indebtedness, including without limitation the Note (all such documents being hereinafter referred to collectively as the "Loan Documents") at the time of the casualty or at any subsequent time prior to completion of the restoration;

(ii) No Leases are terminated or terminable by the tenants thereunder as a result of the casualty event, nor is there any permanent abatement of rent payable by any such tenant;

(iii) Prior to commencement of restoration under this Paragraph 1.05(e) or under Paragraph 1.06, Mortgagor shall provide a policy or policies of builder's risk insurance in an amount not less than the full insurable value of the Property insuring against such risks (including without limitation fire and extended coverage, collapse of the Improvements and earthquake coverage, if applicable, to agreed limits) as Mortgagee may request, in form and substance and from companies acceptable to Mortgagee;

(iv) The work shall be performed under the supervision of an architect or engineer approved in writing by Mortgagee (such architect or engineer being referred to hereinafter as the "Architect") and, before Mortgagor commences any work other than temporary work to protect property or prevent interference with business, Mortgagee shall have approved in writing the construction contract and plans and specifications for such work;

(v) If at any time Mortgagee makes an upward revision, in good faith, of the total remaining cost of restoration, and as a result Mortgagee does not have available a sufficient amount of money to pay the cost of restoration, Mortgagor shall pay to Mortgagee such additional amounts as are necessary to cover such revised estimated cost;

(vi) Mortgagee receives each request for payment on seven (7) days' prior written notice accompanied by a certificate signed by the Architect stating that: (A) the work completed to date has been performed in compliance with the approved plans and specifications; (B) the sum requested is necessary to reimburse Mortgagor for payments by Mortgagor to, or is due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services, materials and related costs and to whom same is payable) and, when added to all sums previously disbursed by Mortgagee, does not exceed the value of the work performed to the date of such certificate; and (C) the

amount of the remaining proceeds held by Mortgagee shall be sufficient to pay for the work in full upon completion of the same (giving in such reasonable detail as Mortgagee may require an estimate of the cost of such completion);

(vii) Each request shall be accompanied by a lien waiver satisfactory to Mortgagee covering that part of the work for which payment or reimbursement was requested in the immediately preceding request for payment and, if required by Mortgagee, an endorsement to Mortgagee's title policy insuring that no liens have been filed in connection with the work performed to date;

(viii) Mortgagee receives, at Mortgagee's option, a satisfactory completion bond covering the work;

(ix) The Property is in compliance with all laws, rules, regulations, and other requirements affecting the work; and

(x) Mortgagee receives the final request for payment after completion of the work accompanied by a copy of any such certificate or certificates as shall be required by law to render occupancy of the Improvements legal.

(f) Mortgagor shall commence and diligently prosecute to completion the restoration of the Property. In the event that any condition to the application of insurance proceeds as provided above is not satisfied at any time prior to completion of the restoration, then Mortgagee shall have the option, in its sole discretion, of paying or applying all or any part of the insurance proceeds: (i) to any Indebtedness secured hereby and in such order as Mortgagee may determine; or (ii) to the repair, restoration, replacement and rebuilding of the Improvements.

(g) Upon Mortgagee's receipt of satisfactory evidence that (i) the restoration work has been completed and the cost thereof paid in full and (ii) no mechanic's or similar liens for labor or materials supplied in connection with the restoration work are outstanding against the Property, Mortgagee shall be entitled to apply the balance, if any, of insurance proceeds still held by Mortgagee to the Indebtedness without any adjustment in the dollar amount of the installments due under the Note.

(h) Mortgagee may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Mortgagee is hereby authorized, in its own name or in Mortgagor's name, to adjust any loss covered by insurance, and to settle or compromise any claim or cause of action in connection therewith, and Mortgagor shall from time to time deliver to Mortgagee any instruments required to permit such participation.

1.06. Condemnation

In the event that the Property or any part thereof shall be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be further entitled at its option to commence, appear in and prosecute in its own name any action or proceeding or to make any compromise or settlement in connection with such

taking or damage. All such compensation, awards, damages, rights of action and proceeds (the "Proceeds") are hereby assigned to Mortgagee, who shall, at Mortgagee's option, after deducting therefrom all its reasonable expenses, including attorneys' fees, apply such proceeds either (i) to the Indebtedness secured by this Mortgage in such order as Mortgagee shall determine, or (ii) to the restoration of the Property to the same or better condition, character and value as that existing prior to such damage or destruction; provided, that if Mortgagee elects to apply the Proceeds for restoration of the Property said Proceeds shall be disbursed in the same manner and subject to the same conditions as are set forth in subparagraph (e) of Paragraph 1.05. If Mortgagee has elected to apply the Proceeds for restoration of the Property, and there are any excess Proceeds remaining after application thereof to the restoration of the Property, Mortgagee shall be entitled to apply such excess to the Indebtedness without any adjustment in the dollar amount of the installments due under the Note. Any reduction of the Indebtedness pursuant to the terms of this Paragraph 1.06 shall not be deemed a prepayment of the Indebtedness for the purpose of requiring the payment of a Prepayment Premium. Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require.

1.07. Care of the Property

Mortgagor shall:

- (a) Keep the Property in good condition and repair, and shall not permit, commit or suffer any waste, impairment or deterioration thereof, or commit, suffer or permit any act upon or use of the Property in violation of any law or applicable order of any governmental authority, whether now or hereafter existing.
- (b) Perform any and all acts which, from the character or use of the Property, may be reasonably necessary to protect and preserve the value of the Property as security, including without limitation maintaining at all times adequate on-site parking in compliance with zoning regulations, building codes and Leases.
- (c) Not permit to exist any mechanic's or materialman's liens or similar encumbrances against the Property.
- (d) Not take or permit to be taken any actions that might invalidate any insurance carried on the Property.
- (e) Promptly repair, replace, rebuild or restore any part of the Property which may be destroyed by any casualty, partially taken by condemnation or eminent domain proceeding, or become damaged, worn or dilapidated.

1.08 Leases and Other Agreements Affecting the Property

- (a) Each lease of a portion of any building which constitutes a part of the Property shall be assigned to Mortgagee and each such assignment shall be recorded.
- (b) Unless otherwise approved in writing by Mortgagee, all Leases shall be absolutely subordinate to the lien of this Mortgage but may contain a provision satisfactory to Mortgagee that, in the event of the exercise of the private power of sale or a judicial foreclosure

hereunder, such Lease, at the sole and exclusive option of the purchaser at such sale, shall not be terminated and the tenant thereunder shall attorn to such purchaser and, if requested to do so, shall enter into a new lease for the balance of the term then remaining of such Lease upon the same terms and conditions. Mortgagor shall submit counterparts of all Leases executed after the date hereof to Mortgagee. Mortgagee shall have the sole and exclusive option to require the tenant thereunder to execute a tenant estoppel and enter into a subordination, non-disturbance and attornment agreement including a subordination of the tenant's rights to casualty and condemnation proceeds by the tenant under such lease.

(c) Mortgagor: (i) shall observe and perform all the obligations imposed upon the lessor under the Leases; (ii) shall promptly send to Mortgagee copies of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of lessee thereunder to be observed or performed, but shall not terminate any Lease as a result of the tenant's default without the prior written consent of Mortgagee; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (vi) shall not alter, modify or change any provision of any Lease without the prior written consent of Mortgagee; (vii) shall not cancel or terminate the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, any lessee thereunder; (viii) shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate any such guaranty without the prior written consent of Mortgagee; (ix) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; and (x) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Property as Mortgagee shall from time to time require.

(d) A default by Mortgagor in the performance of any covenant in any of the Leases assigned to Mortgagee, by reason of which default the tenant has the right to cancel such Lease or claim any diminution of or offset against future rents, shall, at the option of Mortgagee, constitute a default hereunder.

(e) All Leases shall be fully net to Mortgagor, with the tenant thereunder paying its pro-rata share of real estate taxes, insurance, utilities and common area maintenance charges.

(f) Mortgagor shall not enter into any Leases for any portion of the Property without obtaining the prior written consent of Mortgagee; provided, however, Mortgagee's consent shall not be required for any new Lease which encompasses not more than 5,000 square feet and which new Lease is in substantially the same form as the standard form of Lease approved by Mortgagee.

1.09. Expenses

(a) Mortgagee may elect to employ an attorney, and Mortgagor shall pay all attorneys' fees, costs and expenses, including expenses of retaking, holding, preparing for sale or selling (including cost of evidence or search of title), in connection with any action or actions

which may be commenced: (i) in foreclosure pursuant to this Mortgage; (ii) for possession of the Property; (iii) for the protection or defense of the first lien priority evidenced by this Mortgage; (iv) for the appointment of a receiver; and (v) for the enforcement of any and all covenants or rights contained in or secured by this Mortgage and/or any case or proceeding under the United States Federal Bankruptcy Code or any successor thereto.

(b) Mortgagor shall pay immediately, upon demand by Mortgagee, all sums expended or expenses incurred by Mortgagee, including without limitation reasonable attorneys' fees, under any of the terms of this Mortgage, with interest at the Default Rate accruing from the date of expenditure.

(c) Mortgagor shall pay the amount demanded by Mortgagee's authorized loan servicing agent for any statement regarding the obligations secured hereby; provided, however, such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

1.10. Books, Records and Accounts; Financial Statements

(a) Mortgagor shall keep adequate books and records of account in accordance with generally accepted accounting practices consistently applied and shall furnish to Mortgagee: (i) prior to March 31st of each year, a current annual rent roll detailing the names of all tenants of the Property, the number of square feet occupied by each tenant, the rent and any other charges payable under each Lease, and the term and expiration date of each Lease; (ii) prior to March 31st of each year, an annual statement of the operation of the Property showing in reasonable detail satisfactory to Mortgagee total rents received and total expenses, together with an annual balance sheet for the Property; (iii) such interim balance sheets and profit and loss statements with respect to the Property as may be requested by Mortgagee; (iv) prior to March 31st of each year, annual financial statements of Mortgagor and of any guarantor or indemnitor under the Loan Documents; and (v) to the extent furnished by Tenants, prior to March 31st of each year, Mortgagor shall submit a copy of any sales figures and the reports thereof reported to Mortgagor by tenants of the Property. All such items shall be certified as true and correct by Mortgagor [or the individuals for whom such statements are prepared], provided, however, if an Event of Default shall have occurred hereunder or otherwise, and be continuing, then the items referred to in clauses (ii) and (iv) above shall be audited by an independent certified public accountant satisfactory to Mortgagee. All documents delivered pursuant to this Paragraph 1.10 shall be in form satisfactory to Mortgagee. On demand, Mortgagor shall furnish to Mortgagee and its agents convenient facilities for the audit of any such statements.

(b) Mortgagor shall keep and maintain or cause to be kept and maintained at a place acceptable to Mortgagee, proper and accurate books, records and accounts reflecting all items of income and expense related to the ownership and operation of the Property or in connection with any services, equipment or furnishings provided in connection with the ownership and operation of the Property, whether such income or expenses be realized by Mortgagor or by any other person or entity whatsoever. Mortgagee or its designee or both shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of Mortgagor or other person or entity maintaining such

books, records and accounts and to make copies or extracts thereof as Mortgagee or its designee or both shall desire.

(c) Mortgagor, within five (5) days upon request therefor by Mortgagee, shall furnish to Mortgagee and any third party designated by Mortgagee a written statement duly acknowledged before a notary public of all amounts due on any Indebtedness secured hereby, whether for principal or interest hereunder or otherwise, certifying that this Mortgage and the other secured obligations are unmodified and in full force and effect or, if modified, stating the nature thereof and certifying that each secured obligation, as so modified, is in full force and effect and stating whether any offsets or defenses exist against the Indebtedness secured hereby and covering such other matters with respect to any such Indebtedness as Mortgagee may reasonably require. Any such certificate may be conclusively relied upon by Mortgagee and any prospective purchaser or assignee of any such secured obligation. Mortgagor's failure to deliver such certificate within such time shall constitute a conclusive representation by Mortgagor that: (i) such obligations are in full force and effect, without modification; and (ii) there is no uncured Event of Default or event which, with the giving of notice or the passage of time or both, would constitute an Event of Default.

1.11. Action by Mortgagee

At any time, or from time to time, without liability therefor and without notice, and without affecting the personal liability of any person for payment of the Indebtedness secured hereby or the effect of this Mortgage upon the remainder of the Property, Mortgagee may (i) release any part of the Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon and, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

1.12. Subrogation

As additional security hereunder, Mortgagee shall be subrogated to the rights of Mortgagor with respect to any lien or encumbrance, although released of record, which is paid out of the proceeds of this Loan.

1.13. Inspection of Property

Mortgagee is authorized by itself, its agents, employees or workmen to enter any part of the Property at any time, in the case of an emergency, and otherwise at any reasonable time for the purpose of inspecting the same, and for the purpose of performing any of the acts Mortgagee is authorized to perform under the terms of this Mortgage. Mortgagor agrees to cooperate with Mortgagee to facilitate such inspections.

1.14. Performance by Mortgagor

Mortgagor shall faithfully perform each and every covenant to be performed by Mortgagor under any lien or encumbrance affecting the Property including without limitation any mortgages, deeds of trust, leases, management agreements, declarations of covenants, conditions and restrictions and other agreements. A breach of or a default under any such lien or encumbrance shall constitute an Event of Default under this Mortgage.

1.15. Assignment of Rents

Mortgagor hereby presently, absolutely and unconditionally assigns and transfers to Mortgagee all Rents, whether now due, past due or to become due, and hereby gives to and confers upon Mortgagee the right, power and authority to collect such Rents. Mortgagee irrevocably appoints Mortgagee its true and lawful attorney at the option of Mortgagee at any time to demand, receive and enforce payment, to give receipts, releases, and satisfactions and to sue, either in the name of Mortgagor or in the name of Mortgagee, for such Rents and apply the same to the Indebtedness secured hereby. It is understood and agreed that: (i) the foregoing assignment of Rents to Mortgagee; (ii) the exercise by Mortgagee of any of its rights or remedies under the Loan Documents; or (iii) the appointment of a receiver for the Property by any court at the request of Mortgagee or by agreement with Mortgagor or the entering into possession of the Property or any part thereof by such receiver shall not be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

1.16. Collection of Rents

Mortgagee hereby grants to Mortgagor a revocable license to operate and manage the Property and collect the Rents. Under the terms of such license, so long as there has not occurred and is not continuing an Event of Default, Mortgagor shall have the right to collect all Rents and to retain, use and enjoy the same. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due hereunder, for use in the payment of such sums. Upon or at any time after an Event of Default, the license granted to Mortgagor herein may be revoked by Mortgagee, and Mortgagee may enter upon the Property, and collect, retain and apply the Rents toward payment of the Indebtedness in such priority and proportions as Mortgagee in its discretion shall deem proper.

1.17. Collateral Security Instruments

Mortgagor covenants and agrees that if Mortgagee at any time holds additional security for any obligation secured hereby, Mortgagee may enforce the terms thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds to the Indebtedness secured hereby without affecting the status of or waiving any right to exhaust all or any other security, including the security hereunder, and without waiving any breach or default or any right or power whether exercised hereunder or contained herein or arising out of any such other security.

1.18. Suits to Protect Property

Mortgagor covenants and agrees to appear in and defend any action or proceeding purporting to affect: (i) the security of this Mortgage and/or any additional or other security for the obligations secured hereby; (ii) the interests of Mortgagee hereunder; or (iii) the rights, powers and/or duties of Mortgagee hereunder. Mortgagor agrees to pay all costs and expenses, including costs relating to evidence of title, appraisal, or an environmental audit and attorneys' fees in a reasonable sum, in any action or proceeding in which Mortgagee and/or Mortgagee may appear or be made a party, including without limitation foreclosure or other proceedings

commenced by those claiming a right to any part of the Property under subordinate liens, any action to partition or condemn all or part of the Property, whether or not pursued to final judgment, and any exercise of the power of sale contained herein, whether or not the sale is actually consummated.

1.19. Hazardous Substances

(a) For the purposes of this Paragraph, the following terms shall have the following meanings: (i) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous (including without limitation asbestos or PCB's in any form or condition) and which is now or hereafter regulated under any Environmental Law, or which is or contains petroleum, gasoline, diesel fuel or another petroleum hydrocarbon product; (ii) the term "Environmental Laws" shall collectively mean all present and future laws, statutes, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to Hazardous Materials or addressing the protection of the environment or human health; (iii) the term "Environmental Reports" shall collectively mean the Phase I Environmental Assessment prepared by Carlson Environmental, Inc. dated February 27, 1998, the Limited Subsurface Soil Investigation prepared by Carlson Environmental, Inc. dated February 25, 1998, the Focused Site Investigation Report prepared by Carlson Environmental, Inc. dated October 26, 1998 and the Remedial Action Plan prepared by Carlson Environmental, Inc. dated November 1998; and (iv) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(b) Mortgagor hereby represents and warrants to Mortgagee that, except as disclosed in the Environmental Reports, to the best of Mortgagor's knowledge after diligent inquiry: (i) no Hazardous Material is currently located at, on, in, under or about the Property; (ii) no releasing, emitting, discharging, leaching, dumping or disposing of any Hazardous Material from the Property onto or into any other property or from any other property onto or into the Property has occurred or is occurring in violation of any Environmental Law; (iii) no notice of violation, lien, complaint, suit, order or other notice with respect to the Property is presently outstanding under any Environmental Law; and (iv) the Property and the operation thereof are in full compliance with all Environmental Law. Mortgagor shall comply, and shall cause all tenants or other occupants of the Property to comply, in all respects with all Environmental Laws, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any tenant or other occupant of the Property to generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in, on, under or about the Property in a manner that could lead or potentially lead to the imposition on Mortgagor, Mortgagee or the Property of any liability or lien of any nature whatsoever under any Environmental Law. Mortgagor shall notify Mortgagee promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Property which is required to be reported to a Governmental Authority under any Environmental Law, will promptly forward to Mortgagee copies of any notices received by Mortgagor relating to alleged violations of any Environmental Law and will

promptly pay when due any fine or assessment against Mortgagor, Mortgagee or the Property relating to any Environmental Law. Mortgagor shall strictly comply in all respects with all requirements, use limitations, preventive, engineering and institutional controls, and all terms and conditions (collectively "Requirements") imposed by the Illinois Environmental Protection Agency ("IEPA") as set forth in the focused No Further Remediation Letter dated August 23, 2000 and recorded October 6, 2000 in the Cook County Recorder of Deeds as document number 00786894 related to the Property, and any other Requirements that the IEPA may impose from time to time pursuant to such No Further Remediation Letter ("NFR Letter"). Mortgagor shall provide to Mortgagee any and all notices it receives from IEPA in connection with the NFR Letter. Upon written request from Mortgagee, Mortgagor shall provide evidence satisfactory to Mortgagee in Mortgagee's sole and absolute discretion, of Mortgagor's compliance with the terms and conditions of the NFR Letter. In connection therewith, Mortgagor shall have the right to perform periodic inspections on the Property to confirm compliance with the terms and conditions of the NFR Letter.

(c) If at any time it is determined that the operation or use of the Property violates or does not comply with the NFR Letter and the Requirements and/or violates any applicable Environmental Law or that there are Hazardous Materials located at, in, on, under or about the Property which, under any Environmental Law, require special handling in collection, storage, treatment or disposal, or any other form of cleanup or corrective action, Mortgagor shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority or from Mortgagee, take, at its sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Laws provided, however, that if such compliance cannot reasonably be completed within such thirty (30) day period, Mortgagor shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to fully comply in all respects and in a timely fashion with all Environmental Laws and NFR Letter requirements. If Mortgagor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action, Mortgagee may, in its sole and absolute discretion, make advances or payments towards the performance or satisfaction of the same, but shall in no event be under any obligation to do so.

(d) All sums so advanced or paid by Mortgagee (including without limitation counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from Mortgagor and shall bear interest at the Default Rate from the date any such sums are so advanced or paid by Mortgagee until the date any such sums are repaid by Mortgagor to Mortgagee. Mortgagor will execute and deliver, promptly upon request, such instruments as Mortgagee may deem useful or necessary to permit Mortgagee to take any such action, and such additional notes and mortgages as Mortgagee may require to secure all sums so advanced or paid by Mortgagee. If a lien is filed against the Property by any Governmental Authority resulting from the need to expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of Mortgagor or for which Mortgagor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Material into the waters or onto land located within or without the State in which the Property is located, then Mortgagor will, within thirty (30) days from the date that Mortgagor is first given notice that such lien has been placed against the

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Property (or within such shorter period of time as may be specified by Mortgagee if such Governmental Authority has commenced steps to cause the Property to be sold pursuant to such lien) either (i) pay the claim and remove the lien, or (ii) furnish a cash deposit; bond or such other security with respect thereto as is satisfactory in all respects to Mortgagee and is sufficient to effect a complete discharge of such lien on the Property.

(e) In the event that Mortgagee has reason to believe that (i) Mortgagor has failed to comply with any Environmental Laws, or (ii) there exists a threat of harm to the environment or any persons or entity, Mortgagee or its agent shall have the right, but not the obligation, at any time during business hours or otherwise upon reasonable written notice, to enter upon the Property, and conduct or cause to be conducted a so-called Phase I environmental site assessment, at Mortgagor's sole expense. In the event such Phase I environmental site assessment recommends further testing, then Mortgagee or its agent shall likewise have the right, but not the obligation, at any time during business hours or otherwise upon reasonable written notice, to enter upon the Property and conduct or cause to be conducted, such additional assessment as may be required by Mortgagee, including without limitation testing, at Mortgagor's sole expense.

(f) If this Mortgage is foreclosed, or if the Property is sold pursuant to the provisions of this Mortgage, or if Mortgagor tenders a deed or assignment in lieu of foreclosure or sale, Mortgagor shall deliver the Property to the purchaser at foreclosure or sale or to Mortgagee, its nominees, or wholly owned subsidiary, as the case may be, in a condition that complies in all respects with all Environmental Laws and the Requirements. Mortgagor will defend, protect, indemnify and hold harmless Mortgagee and/or Mortgagee and its employees, agents, officers, and directors excluding loss of value to the Property, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including without limitation counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to: (i) any breach by Mortgagor of any of the provisions of this Paragraph 1.19; (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Property prior to the date on which title to the Property is transferred to Mortgagee or its successors and assigns pursuant to foreclosure or deed-in-lieu of foreclosure, including without limitation any damage or injury resulting from any such Hazardous Material to or affecting the Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Property or on any other property or otherwise; (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material; (iv) any lawsuit brought or threatened, settlement reached or order or directive of or by any Governmental Authority relating to such Hazardous Material; or (v) any violation of any Environmental Law. The aforesaid indemnification shall, notwithstanding any exculpatory or other provision of any nature whatsoever to the contrary set forth in the Note, this Mortgage or any of the other Loan Documents, constitute the personal recourse undertakings, obligations and liabilities of Mortgagor. The obligations and liabilities of Mortgagor under this Paragraph shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Indebtedness has been paid in full and irrespective of any foreclosure of this Mortgage, sale of this Property pursuant to the provisions

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of this Mortgage or acceptance by Mortgagee, its nominee or wholly owned subsidiary of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

1.20. Certain Taxes

Mortgagor shall pay any taxes; except income taxes, imposed on Mortgagee by reason of its interest in the Note, and/or this Mortgage or any of the Loan Documents.

1.21. Additional Construction

Mortgagor shall not commence, nor allow to be commenced, any construction, structural alteration, non-structural alteration, the total cost of which exceeds \$500,000 or modification of the Improvements or any new construction on the Land without obtaining the prior written consent of Mortgagee. Notwithstanding the foregoing, Mortgagor shall be permitted to construct, upon prior written notice, but without Mortgagee's prior written consent, a building not less than 9,500 net rentable square feet of rentable space. Notwithstanding the foregoing, all construction shall comply with the terms and conditions of the NFR Letter and all federal, state and local laws, rules, regulations and ordinances.

1.22. Authority of Mortgagor, Validity of Loan Documents

Mortgagor represents and warrants that the execution, delivery and performance by Mortgagor of this Mortgage and the other Loan Documents: (i) are within the power of Mortgagor; (ii) have received all necessary government approval; (iii) will not violate any provisions of law, any order of any court or agency of government, the charter documents of Mortgagor, any indenture, agreement or any other instrument to which Mortgagor is a party or by which it is bound or be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument; and (iv) constitute the legal, valid, binding and enforceable obligation of Mortgagor. Mortgagor further represents, warrants and covenants that there are no offsets, counterclaims or defenses against the Indebtedness, the Note, this Mortgage or any of the Loan Documents and that it is and shall remain in compliance with all applicable laws of the state in which the Property is situated, and shall maintain its authority to transact business in said state. Mortgagor covenants and agrees that the documentation under which Mortgagor was formed shall not be amended, modified or terminated without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

1.23. Parking

Mortgagor shall maintain at all times the greater of (i) nine hundred forty five (945) paved parking spaces on the Property, and (ii) sufficient parking spaces to comply with the terms of all Leases and all applicable zoning regulations.

1.24. Restriction on Transfer

(a) Mortgagor shall not transfer, or agree to transfer, in any manner either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of the Property,

or any interest therein (including any air or development rights) without, in any such case, the prior written consent of Mortgagee. Mortgagee may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this Mortgage and all other Loan Documents which evidence or secure the Loan secured hereby, and any such transferee shall assume all of Mortgagor's obligations hereunder and thereunder and agree to be bound by all provisions and perform all obligations contained herein and therein. Consent to one such transfer shall not be deemed to be a waiver of the right to require consent to future or successive transfers. As used herein "transfer" shall include without limitation any sale, assignment, lease or conveyance except leases for occupancy subordinate to this Mortgage and to all advances made and to be made hereunder. If Mortgagor is a corporation, any sale, transfer, merger or disposition of a controlling or majority interest of the voting stock of Mortgagor or of any corporation which directly or indirectly owns or controls Mortgagor, including without limitation the parent company of Mortgagor and the parent company of the parent of Mortgagor, shall constitute a transfer of the Property for purposes of this Paragraph 1.24. If Mortgagor is a partnership, any change or addition of a general partner of Mortgagor or in any entity which directly or indirectly owns or controls any general partner of Mortgagor, including without limitation each parent company of any parent company of a general partner of Mortgagor, shall constitute a transfer of the Property for purposes of this Paragraph 1.24. If Mortgagor is a limited liability company, any transfer of a membership interest resulting in a change in the controlling or majority membership interest of Mortgagor or the management thereof shall constitute a transfer of the Property for purposes of this Paragraph 1.24.

(b) Without Mortgagee's prior written consent, Mortgagor shall not file or subject any part of the Land or the Improvements to any declaration of condominium or co-operative or convert any part of the Land or the Improvements to a condominium, co-operative or other form of multiple ownership and governance.

(c) Notwithstanding anything to the contrary contained in this Paragraph 1.24, upon prior written notice, Mortgagee shall permit transfers by members of Mortgagor to their spouses, respective lineal ancestors, descendants, or a trust or trusts, established by or for the benefit of any such spouses, ancestors or descendants subject to Richard H. Tucker retaining control of Mortgagor if at the time of each such transfer there is no event of default under the Loan Documents and no event or occurrence which, with the passage of time or giving of notice, or both, would constitute an event of default. "Control" for the purposes hereof shall be defined as the right to direct the management and policies of Mortgagor, without veto rights or approval rights in any other person, and under circumstances where Richard H. Tucker may not be removed from Control except upon (i) being adjudged guilty of gross negligence, willful misconduct or fraud by a court of competent jurisdiction; or (ii) death or long-term disability.

(d) Provided further that Mortgagor shall have a one-time right to sell its entire interest in the Property and assign all of its rights and obligations under the Loan Documents to a third party; provided that (i) such third party transferee expressly assumes all of Mortgagor's obligations under and pursuant to the Note, this Mortgage, the Environmental Indemnity and all other Loan Documents on such terms and conditions and pursuant to such documentation as is acceptable to Mortgagee, in Mortgagee's sole discretion; (ii) Mortgagee shall have given its prior written approval to such third party transferee's credit history, reputation, legal organization, financial strength and experience in the ownership and operation

of properties similar to the Property; (iii) Mortgagee shall have received a transfer premium equal to one percent (1%) of the principal amount outstanding under the Note as of the date of such transfer; and (iv) Mortgagor shall pay all costs incurred by Mortgagee in connection with any such transfer, including, without limitation, attorneys' fees and the cost of an endorsement to Mortgagee's title insurance policy, insuring the continuing first priority of Mortgagee's lien.

(e) In the event that Mortgagor breaches any of the terms contained in this Paragraph 1.24, Mortgagee may declare all sums secured hereby immediately due and payable and Mortgagor shall, in addition, pay to Mortgagee the Involuntary Prepayment Premium (as defined in Paragraph 2.06(h)) and any other amounts owing under the Loan Documents.

1.25. Restriction on Encumbrance

Mortgagor shall not encumber or agree to encumber, in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of the Property, or any interest therein (including any air or development rights) without, in any such case, the prior written consent of Mortgagee. Mortgagee may grant or deny such consent in its sole discretion and, if consent should be given, any such encumbrance shall be subject to this Mortgage and the Loan Documents. Consent to one such encumbrance shall not be deemed to be a waiver of the right to require consent to future or successive encumbrances. As used herein "encumber" shall include without limitation the placing or permitting the placing as a lien against the Property of any mortgage, Mortgage, assignment of rents or other security device.

1.26 Zoning

Without the prior written consent of Mortgagee, Mortgagor shall not seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Land or the Improvements. Mortgagor shall keep all licenses, permits, franchises and other approvals necessary for the operation of the Property in full force and effect. Mortgagor shall operate the Property in the manner currently operated for so long as the indebtedness is outstanding. If, under applicable zoning provisions, the use of all or any part of the Land or the Improvements is or becomes a nonconforming use, Mortgagor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Mortgagee.

1.27 Easements and Rights-of-Way

Mortgagor shall not grant any easement or right-of-way with respect to all or any portion of the Land or the Improvements without the prior written consent of Mortgagee. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Mortgage and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Mortgagee consents to the grant of an easement or right-of-way, Mortgagee agrees to grant such consent without charge to Mortgagor other than expenses, including without limitation, reasonable attorneys' fees, incurred by Mortgagee in the review of Mortgagor's request and in the preparation of documents effecting the subordination of such easement or right of way to the liens of this Mortgage and the other Loan Documents.

1.28 Compliance with Laws

Mortgagor shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction (any such construction being subject to Mortgagee's prior written consent in accordance with Paragraph 1.21 hereof), use or operation of the Property, including without limitation those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property; provided, however, that, Mortgagor may, upon providing Mortgagee with security satisfactory to Mortgagee, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in imminent danger of being forfeited, lost or closed.

1.29 Management

The management of the Property shall be by either: (a) Mortgagor or an affiliate of Mortgagor approved by Mortgagee for so long as Mortgagor or said affiliate is managing the Property in a first class manner; or (b) a professional property management company approved in advance by Mortgagee. Such management by an affiliate or a professional property management company shall be pursuant to a written agreement approved by Mortgagee, which agreement shall provide, inter alia, that it is subordinate to this Mortgage (any such person or entity which manages the Property, other than Mortgagor, is hereinafter referred to as the "Manager"). In no event shall the Manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Mortgagee. Upon: (i) an Event of Default; or (ii) a default under any management contract then in effect, which default is not cured within any applicable grace or cure period, Mortgagee shall have the right to terminate, or to direct Mortgagor to terminate, such management contract upon thirty (30) days' notice. In the event: (i) there occurs a change in control (fifty (50%) percent or more) of the ownership of Manager or (ii) Manager provides cause for termination, including without limitation gross negligence, willful misconduct or fraud, Mortgagee shall have the right to terminate, or direct Mortgagor to terminate, such management contract at any time and, in any such event of termination of the management contract, to retain, or to direct Mortgagor to retain, a new management agent approved by Mortgagee. Any such successor manager shall be a reputable management company having a senior executive with at least five (5) years' experience in the management of buildings in the state in which the Property is located similar to the Property, shall be the manager of at least five (5) such buildings and shall be reasonably acceptable to Mortgagee.

ARTICLE II

DEFAULTS, REMEDIES AND PREPAYMENT

2.01. Events of Default

If one or more of the following events (each, an "Event of Default") shall have occurred and be continuing:

- (a) default shall be made in the payment of any principal, interest, deposit or other sums under the Note or this Mortgage, in any such case, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any payment or prepayment or otherwise, in each case, and such default shall have continued for a period of ten (10) days;
- (b) default shall be made under Paragraph 1.05, 1.19, 1.24 or 1.25;
- (c) default shall be made in the due observance or performance of any covenant, condition or agreement in the Note, this Mortgage or in any of the Loan Documents, other than those defaults mentioned in (a) and (b) above, and such default shall have continued for a period of thirty (30) days after notice thereof shall have been given to Mortgagor by Mortgagee, provided, however, if such default is not capable of being cured within such thirty day period, Mortgagor shall have such additional time as is necessary provided Mortgagor commences and diligently proceeds to cure such default with said thirty day period and thereafter prosecutes such cure to completion within an additional thirty (30) days, or, in the case of the Loan Documents containing other grace periods, such grace periods as may be provided for therein;
- (d) by order of a court of competent jurisdiction, a Mortgagee, receiver or liquidator shall be appointed with respect to the Property or Mortgagor and such order shall not be discharged or dismissed within sixty (60) days after such appointment;
- (e) Mortgagor shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Federal Bankruptcy Code or any similar law, federal or state, or if by decree of a court of competent jurisdiction, Mortgagor shall be adjudicated a bankrupt or declared insolvent, or if Mortgagor shall make an assignment for the benefit of creditors, shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any part of its property;
- (f) any of the creditors of Mortgagor shall file a petition in bankruptcy against Mortgagor for reorganization pursuant to the United States Federal Bankruptcy Code or any similar law, federal or state, and such petition shall not be discharged or dismissed within sixty (60) days after the date on which such petition was filed;
- (g) final judgment for the payment of money shall be rendered against Mortgagor and Mortgagor shall not discharge the same or cause it to be discharged within sixty (60) days from the entry date thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal;
- (h) it shall be illegal for Mortgagor to pay any tax referred to in Paragraph 1.20 hereof or if the payment of such tax by Mortgagor would result in the violation of applicable usury laws;
- (i) there should occur a default which is not cured within the applicable grace period, if any, under any other mortgage which encumbers all or part of the Property, it being

further agreed by Mortgagor that an Event of Default under this Mortgage shall constitute an Event of Default under any such other mortgage given by Mortgagor and held by Mortgagee; or

(j) any representation or warranty made by Mortgagor in any of the Loan Documents or in any loan application or commitment associated with this Loan shall have been false or misleading in any material respect as of the date such representation or warranty was made; then and in every such case: Mortgagee may declare all sums secured hereby immediately due and payable, including the Involuntary Prepayment Premium, and may, concurrently therewith or at any time thereafter, commence an action to foreclose this Mortgage as a mortgage, and/or deliver to Mortgagee a written declaration of default and demand for sale and a written notice of default and election to cause the Property to be sold, which notice Mortgagee shall cause to be duly filed for record in case of foreclosure by exercise of the power of sale herein, to the extent permitted by law. Should Mortgagee elect to foreclose by exercise of the power of sale herein, and notice of sale having been given as required by law and after lapse of time as may then be required by law, Mortgagee, without demand on Mortgagor, shall sell the Property at the time and place of sale fixed by it in such notice of sale as Mortgagee may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Indebtedness secured by this Mortgage, including without limitation interest at the Default Rate, any prepayment charge, fee or premium required to be paid hereunder or under the Note in order to prepay principal (to the extent permitted by applicable law), attorneys' fees and any other amounts due and unpaid to Mortgagee under the Loan Documents, may be bid by Mortgagee in the event of a foreclosure sale hereunder. In addition, Mortgagee shall have the sole right to direct the order in which separate parcels of the Property shall be sold. Mortgagee may postpone the sale of all or any portion of the Property by public announcement given on the date and time designated for the closing by the preceding postponement. Mortgagee shall deliver to such purchaser its deed conveying the Property, or any portion thereof, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Mortgagor or Mortgagee, may purchase at such sale.

Mortgagee may proceed as to the Personal Property in accordance with Mortgagee's rights and remedies with respect to the Property or sell the Personal Property separately and without regard to the remainder of the Property in accordance with Mortgagee's rights and remedies provided by the Uniform Commercial Code as well as other rights and remedies available at law or in equity. Mortgagor waives all rights to direct the order in which any of the Property shall be sold in the event of any sale under this Mortgage, and also waives all rights to have any of the Property marshalled upon any such sale.

2.02. Discontinuance of Proceedings

Mortgagee, from time to time before any sale pursuant to Paragraph 2.01 hereof, may rescind any notice of breach or default and notice of election to cause the Property to be sold by executing and delivering to Mortgagor a written notice of rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale. The exercise by Mortgagee of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring or impair the right of Mortgagee to execute and deliver to Mortgagor, as above provided, other declarations of default and demands

for sale, notices of breach or default, or elections to cause the Property to be sold to satisfy the obligations hereof, nor otherwise affect any provision, covenant or condition of the Note and/or this Mortgage or any of the rights, obligations or remedies of the parties thereunder or hereunder.

2.03. Application of Proceeds of Sale

Upon a sale of all or part of the Property pursuant to Paragraph 2.01 hereof, after deducting all costs, fees and expenses of such sale, including the costs, fees and expenses of Mortgagee hereunder, attorneys' fees, expenses and costs of investigations incurred in appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under the United States Bankruptcy Code or any successor thereto, Mortgagee shall apply the proceeds of sale to payment of: (i) all sums expended under this Paragraph 2.03 not then repaid, with interest accrued thereon at the Default Rate; (ii) all other sums secured hereby including without limitation all sums due, owing or unpaid under the Note, this Mortgage and any other Loan Documents; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

2.04. Intentionally Omitted

2.05. Remedies Upon Default

(a) In addition to all of Mortgagee's rights and remedies available at law and in equity, Mortgagor covenants and agrees that should Mortgagor fail or refuse to make any payment or perform any act which Mortgagor is obligated hereunder to make or do, at the time and in the manner herein provided, then Mortgagee, may in its sole discretion, upon ten (10) days' notice to Mortgagor, without releasing Mortgagor from any obligation hereunder and without waiving its right to declare a default as herein provided or impairing any declaration of default or election to cause the Property to be sold or any sale proceeding predicated thereon:

(i) Make any payment or perform any act in such manner and to such extent as Mortgagee deems necessary to protect the value of the security granted hereunder, Mortgagee being authorized to enter upon and take possession of the Property to protect the value of the security granted hereunder with any sums expended for such purposes becoming part of the Indebtedness secured hereby;

(ii) Commence, appear in and/or defend any action or proceeding purporting to affect the value of the security granted hereunder, and/or any additional or other security therefor, the interests, rights, powers and/or duties of Mortgagee hereunder, whether brought by or against Mortgagor or Mortgagee;

(iii) Pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the judgment of Mortgagee may affect or appear to affect the lien of this Mortgage, the value of the security granted hereunder, or the interests of Mortgagee or the rights, powers or duties of Mortgagee hereunder with any sums expended for such purposes becoming part of the Indebtedness secured hereby; and

(iv) By itself, its self-appointed agent or a receiver appointed by a court of competent jurisdiction: (A) enter into and take and hold possession of all or any portion of the Property and exclude Mortgagor and all other persons therefrom; (B) operate and

manage the Property and rent and lease the same, perform such reasonable acts of repair or protection as may be reasonably necessary or proper to conserve the value thereof, (C) collect any and all income, rents, issues, profits and proceeds therefrom, the same being hereby assigned and transferred to Mortgagee, for the benefit and protection of Mortgagee, and from time to time to apply in such order and/or accumulate such income, rents, issues, profits and proceeds as Mortgagee or such receiver in its sole discretion shall consider advisable, including without limitation the application of such amounts towards (V) the cost of maintenance, repair and/or operation of the Property; (W) the repayment of any sums theretofore or thereafter advanced pursuant to the terms of this Mortgage; (X) the interest then due or next to become due upon any other amounts payable with respect to the Indebtedness secured hereby; (Y) the taxes and assessments upon the Property then due or next to become due; and/or (Z) the unpaid principal of the Indebtedness secured hereby. The collection or receipt of income, rents, issues, profits and/or proceeds from the Property by Mortgagee, its agent or receiver, after declaration of default and election to cause the Property to be sold under and pursuant to the terms of this Mortgage shall not affect or impair such default or declaration of default or election to cause the Property to be sold or any sale proceedings predicated thereon, but such proceedings may be conducted and sale effected notwithstanding the receipt and/or collection of any such income, rents, issues, profits and/or proceeds. Any such income, rents, issues, profits or proceeds in the possession of Mortgagee, its agent or receiver, at the time of sale and not theretofore applied as herein provided, shall be applied in the same manner and for the same purposes as the proceeds of the sale.

(b) Mortgagee shall not be under any obligation to make any of the payments or perform any of the acts referred to in this Paragraph 2.05. Mortgagee may exercise its rights under this Paragraph 2.05 without notice and without regard to the adequacy of the security for the Indebtedness.

(c) In addition to all of Mortgagee's rights and remedies at law or in equity which it may have, Mortgagee shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including without limitation the right to take possession of the Personal Property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Personal Property. Upon request of Mortgagee, Mortgagor shall, at Mortgagor's expense, assemble the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee upon demand any and all expenses, including attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Personal Property and in enforcing its rights hereunder with respect to the Personal Property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personal Property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Personal Property, or any part thereof, may be applied by Mortgagee to the payment of the Indebtedness in such priority and proportions as Mortgagee in its discretion shall deem proper.

2.06 Prepayment

(a) The term "Loan Year" shall mean a twelve (12) calendar-month period commencing on the due date of the first full installment of principal and interest and each anniversary thereof. The first Loan Year hereunder shall, however, also include the period of time from the date hereof to the due date of the first full installment of principal and interest.

(b) Mortgagor shall have no right to prepay the principal amount of the Indebtedness outstanding in whole or in part during the first five (5) Loan Years. After expiration of the first five (5) Loan Years, Mortgagor shall have no right to prepay the principal amount of the Loan in part but may prepay the principal amount of the Indebtedness in full, provided that each of the following conditions precedent is satisfied:

(i) There shall not have occurred an Event of Default or an event which, with the giving of notice or the passage of time or both, would constitute an Event of Default.

(ii) Mortgagor shall have given Mortgagee at least sixty (60) days' prior written notice of Mortgagor's intention to prepay the principal amount of the Loan in full, which notice shall specify the date on which such prepayment shall be made.

(c) On the date specified in Mortgagor's written notice of prepayment, Mortgagee shall receive immediately available funds in an amount equal to: (i) the total principal amount of the Indebtedness as of the date of prepayment; (ii) interest accrued and unpaid as of the date of prepayment; (iii) the Voluntary Prepayment Premium; and (iv) all other sums owing under this Mortgage and the other Loan Documents.

(d) Mortgagor shall pay, in connection with any voluntary prepayment made under this Mortgage, a prepayment premium (the "Voluntary Prepayment Premium"). The Voluntary Prepayment Premium shall be the greater of:

(i) An amount equal to one (1%) percent of the then outstanding principal balance of the Indebtedness; or

(ii) An amount equal to the product of (A) the outstanding principal balance of the Indebtedness, (B) a decimal equal to the excess, if any, of the interest rate on the Note over the Yield (as defined below) and (C) a fraction, the numerator of which is the number of months (including any partial month) from the date of prepayment to the maturity date of the Loan and the denominator of which is twelve (12). The "Yield" shall mean the yield to maturity percentage quoted on the fifth business day preceding the date of prepayment for the U.S. Treasury Note or Bond which is closest in maturity to the remaining term of this Loan, as such yield is reported in The Wall Street Journal (or, if The Wall Street Journal is no longer published, another daily financial publication of national circulation selected by Mortgagee).

(e) For the purposes of this Mortgage, bankruptcy prepayment shall mean any event (at any time during the term of the Loan) whereby any portion of the principal amount of the Indebtedness is prepaid in full or in part prior to the stated due date as a result of any bankruptcy or insolvency proceedings.

(f) In the event of a bankruptcy prepayment hereunder, Mortgagor shall pay to Mortgagee, upon demand: (i) the total principal amount of the Indebtedness outstanding as of the date of prepayment; (ii) accrued interest thereon to the date of prepayment; (iii) the Bankruptcy Prepayment Premium (as hereinafter defined) and (iv) all other sums owing under this Mortgage and the other Loan Documents.

(g) The bankruptcy prepayment premium (the "Bankruptcy Prepayment Premium") shall be an amount equal to the present value of a stream of hypothetical interest payments accruing on an amount equal to the outstanding principal balance of the Indebtedness on the date of prepayment, for each month (including any partial month) from the date of prepayment to the maturity date of the Note, computed by (i) using an interest rate equal to the excess, if any, of the interest rate on the Note over the Reinvestment Rate (as hereinafter defined) to determine the amount of each payment; and (ii) using a discount rate equal to the Reinvestment Rate to determine the present value of such payments. The "Reinvestment Rate" shall mean an interest rate equal to the Yield plus 175 basis points.

(h) In connection with any prepayment under this Mortgage other than those made pursuant to Paragraph 2.05(a)-(g) above and those prepayments made upon receipt of casualty insurance proceeds or condemnation awards Mortgagee shall pay to Mortgagee, upon demand: (1) the total principal amount of the Indebtedness outstanding as of the date of prepayment; (2) interest accrued thereon and unpaid as of the date of prepayment; (3) the Involuntary Prepayment Premium (as hereinafter defined); and (4) all other sums owing under this Mortgage and the other Loan Documents. The prepayment premium in such cases (the "Involuntary Prepayment Premium") shall be the greater of:

(i) An amount equal to five (5%) percent of the outstanding principal balance of the Indebtedness; or

(ii) two times the amount of the Voluntary Prepayment Premium that would then be payable if the Loan were being prepaid in accordance with (b) of this Paragraph 2.06.

(i) Notwithstanding anything to the contrary contained in this Mortgage, no Voluntary Prepayment Premium nor any other prepayment premium shall be payable by Mortgagor with respect to any voluntary prepayment which is made on or within sixty (60) days of the maturity date of the Loan.

(j) Mortgagee shall not be required to accept any prepayment if it does not include the applicable Prepayment Premium. Acceptance of a prepayment not accompanied by the Prepayment Premium shall not constitute a waiver of Mortgagee's right to the Prepayment Premium.

(k) Mortgagor acknowledges and agrees that if the Indebtedness is prepaid for any reason (other than by application of casualty insurance proceeds or condemnation awards), Mortgagee shall receive the applicable Prepayment Premium as partial compensation for, among other things, the cost of reinvesting the prepayment proceeds and for the loss of the contracted-

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for return over the remaining term of the Loan. Mortgagor further agrees that the applicable Prepayment Premium amounts are reasonable.

MORTGAGOR HEREBY ACKNOWLEDGES AND AGREES THAT MORTGAGEE WOULD NOT LEND TO MORTGAGOR THE LOAN SECURED BY THIS MORTGAGE WITHOUT MORTGAGOR'S AGREEMENT, AS SET FORTH ABOVE, TO PAY MORTGAGEE A VOLUNTARY PREPAYMENT PREMIUM, A BANKRUPTCY PREPAYMENT PREMIUM OR AN INVOLUNTARY PREPAYMENT PREMIUM IN THE MANNER AS SET FORTH ABOVE, INCLUDING WITHOUT LIMITATION IN THE EVENT OF A DEFAULT ARISING FROM THE CONVEYANCE OF ANY RIGHT, TITLE OR INTEREST IN THE PROPERTY ENCUMBERED BY THIS MORTGAGE.

ARTICLE III

GENERAL COVENANTS

3.01. Waiver of Statute of Limitations

To the full extent permitted by law, Mortgagor hereby waives the right to plead any and all statutes of limitation as a defense to any demand secured by or made pursuant to this Mortgage.

3.02. No Waiver

Mortgagor covenants and agrees that the acceptance by Mortgagee or any holder of the Note of any sum secured hereby after its due date, or in an amount less than the sum then due, shall not constitute a waiver by Mortgagee or such holder of its rights either to require prompt payment when due of all other sums so secured or to declare a default or exercise such other rights as herein provided for such failure to so pay. The failure of Mortgagee to insist upon strict performance of any term, covenant or condition hereof or failure to exercise any right or remedy hereunder shall not be deemed to be a waiver of any other term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Mortgagor's guarantor, if any, to take any action to foreclose or otherwise enforce any of the provisions of this Mortgage or of the Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Indebtedness or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of this Mortgage or the Loan Documents. Mortgagee may resort for the payment of the Indebtedness to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose.

3.03. Remedies Cumulative

No remedy conferred upon or reserved to Mortgagee herein is intended to be exclusive of any other remedy herein or by law provided or permitted, but each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No act of Mortgagee shall be construed as an election to proceed under any one provision herein or in the Loan Documents to the exclusion of any other provision herein or in the Loan Documents. Every power or remedy given by this Mortgage or the Loan Documents to Mortgagee or to which either or both may be entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and either such party may pursue a remedy or remedies which is inconsistent with the remedy or remedies sought by the other.

3.04. Recordation

Mortgagee accepts this mortgage when this Mortgage, duly executed and acknowledged, is made a public record as provided by law.

3.05. Intentionally Omitted

3.06. Liability

If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

3.07. Counterpart Originals

This Mortgage may be executed in any number of counterparts each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.

3.08. Notice

(a) Any notice, request, demand, consent, approval or other communication required or desired to be given or delivered under this Mortgage or other instrument contemplated hereby shall be in writing, signed by the party giving such notice and shall be given by hand delivery to the other party or parties or addressed to the party or parties for whom it is intended at the address or addresses set forth below and sent by United States certified or registered mail, postage prepaid, return receipt requested or by a nationally recognized overnight courier (but not United Parcel Service) or by facsimile accompanied by: (i) a contemporaneous telephone call to the addressees set forth below; and (ii) overnight courier delivery of such notice, by an approved means described above. Notices sent to Mortgagee shall be handed or addressed to the following persons:

The Guardian Life Insurance Company of America
7 Hanover Square
20th Floor - C
New York, New York 10004
Attention: Celeste P. Stinson
Real Estate Investment

T: (212) 598-8216
F: (212) 919-2149

with a copy of said notice to:

Vice President, Investment and Real Estate Counsel
Law Department
at the address immediately above written
T: (212) 598-8792
F: (212) 919-2690

notices sent to Mortgagor shall be addressed as follows:

DC Niles L.L.C.
c/o Tucker Development Corp.
513 Central Avenue, Suite 400
Highland Park, Illinois 60035
Attention: Richard H. Tucker
T: (312) 471-6560
F: (312) 440-2683

with a copy of said notice to:

Wildman Harold Allen & Dixon
225 W. Wacker
Chicago, Illinois 60606
Attention: Thomas P. Duffy, Esq.
T: (312) 201-2585
F: (312) 201-2555

(b) The addresses set forth above may be changed by notice given in accordance with the provisions of this Paragraph 3.08. If notice is given in accordance with the provision of this Paragraph 3.08, it shall be deemed given upon receipt thereof, upon refusal of the addressee to accept delivery thereof or upon inability to effect delivery thereof.

(c) Unless otherwise provided by applicable law, Mortgagee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Mortgagor, Mortgagee and/or Mortgagee shall be a party or of any pending sale under any Mortgage, unless brought by Mortgagee.

3.09. Heirs and Assigns, Terminology

This Mortgage applies to, inures to the benefit of, and binds all parties hereto and their respective heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Mortgagor" shall mean both the original Mortgagor and any subsequent owner or owners of any of the Property. The term "Mortgagee" shall mean the original, any successor holder or agent of the holder of the Note. In this Mortgage, whenever the context so requires, the

masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

3.10. Severability

If any provision of this Mortgage shall be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions hereof and shall in no way affect the validity of this Mortgage, except that if the provision held unenforceable or void relates to the payment of any monetary sum, then Mortgagee may, at its option, declare the Indebtedness and all other sums secured hereby immediately due and payable.

3.11. Applicable Law

This Mortgage shall be deemed to be an instrument made under, governed by and construed and interpreted in accordance with the laws of the state in which the Property is located.

3.12. Captions

The captions are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this Mortgage.

3.13. Security Agreement

(a) This Mortgage creates a lien on the Property and, to the extent the Property is not Real Property, but is deemed Personal Property under applicable law, then this Mortgage shall constitute a security agreement under the Uniform Commercial Code and any other applicable law with respect to such Personal Property and is filed as a fixture filing.

(b) The grant of a security interest to Mortgagee in the granting clauses of this Mortgage shall not be construed to derogate from or impair the lien or rights of Mortgagee under this Mortgage with respect to any property described therein which is Real Property or which the parties have agreed to treat as Real Property. Mortgagor and Mortgagee intend that everything used in connection with the production of income for such Real Property or adapted for use thereon is, at all times and for all purposes and in all proceedings, both legal and equitable, and shall be regarded as, Real Property, irrespective of whether or not the same is physically attached to the Land or the Improvements thereon.

(c) Mortgagor hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor, which appointment is irrevocable and coupled with an interest, to execute, deliver and file with the appropriate filing officer or office such security agreements, financing statements or other instruments as Mortgagee may request or require in order to perfect the lien and security interest hereof more specifically on the Personal Property and Improvements (excepting any equipment or fixtures owned by any tenant).

(d) It is understood and agreed that, in order to protect Mortgagee from the effect of Uniform Commercial Code, as amended from time to time, in the event that (i) Mortgagor intends to or does purchase any goods which may become fixtures attached to the

Property, or any part thereof, and (ii) such goods will be subject to a purchase money security interest held by a seller or any other party:

(A) Mortgagor, before executing any security agreement or other document evidencing such security interest, shall obtain the prior written approval of Mortgagee, and all requests for such written approval shall be in writing and contain the following information:

- (1) a description of the fixtures to be replaced, added to, installed or substituted;
- (2) the address at which the fixtures will be replaced, added to, installed or substituted; and
- (3) the name and address of the proposed holder and proposed amount of the security interest.

Any failure of Mortgagor to obtain such approval shall be a material breach of Mortgagor's covenants under this Mortgage, and shall, at the option of Mortgagee, entitle Mortgagee to exercise all rights and remedies provided for herein upon the occurrence of an Event of Default. No consent by Mortgagee pursuant to this subparagraph shall be deemed to constitute an agreement to subordinate any right of Mortgagee in fixtures or other Property covered by this Mortgage.

(B) Mortgagee, at its option and after five (5) days' notice to Mortgagor, may pay the amount secured by a purchase money security interest in the Personal Property or Improvements if at any time Mortgagor fails to make any payment on an obligation secured by such purchase money security interest and the amount so paid by Mortgagee (A)(1) shall be secured by this Mortgage and shall become a lien on the Property having the same priority as the lien and security interest created by this Mortgage and (2) shall be payable on demand with interest at the Default Rate. If Mortgagor shall fail to make such payment to Mortgagee within ten (10) days after demand therefor, the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable.

(C) Mortgagee shall have the right to acquire by assignment from the holder of such security interest any and all contract rights, accounts receivable, negotiable or non-negotiable instruments, or other evidence of Mortgagor's indebtedness for such Personal Property, and, upon acquiring such interest by assignment, shall have the right to enforce the security interest as assignee thereof, in accordance with the terms and provisions of the Uniform Commercial Code then in effect, and in accordance with any other provision of law.

(D) Whether or not Mortgagee has paid the indebtedness secured by or taken an assignment of such security interest, Mortgagor covenants to pay all sums and perform all obligations secured thereby, and if Mortgagor at any time shall be in default for a period of thirty (30) days under such security agreement, it shall be an Event of Default hereunder and Mortgagee may, at its option, declare the Indebtedness immediately due and payable, time being of the essence.

(E) The provisions of subparagraphs (B) through (D) above shall not apply if the goods which may become fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding such security interest are subordinate or have been expressly subordinated, at no cost to Mortgagee, to the lien of this Mortgage in a manner satisfactory to Mortgagee, including without limitation at the option of Mortgagee, providing to Mortgagee a satisfactory opinion of counsel to the effect that this Mortgage constitutes a valid and subsisting first lien on such fixtures which is not subordinate to the lien of such security interest under any applicable law.

3.14. Intentionally Omitted

3.15. Late Charge

If Mortgagor shall fail to make any payment owing under this Mortgage within ten (10) days after the date such payment is due Mortgagor shall pay to Mortgagee, in addition to the delinquent payment and without any requirement of notice or demand by Mortgagee, a late payment charge equal to five (5%) percent of the amount of the delinquent payment.

3.16. Waiver of Counterclaims

Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any proceeding against it by Mortgagee.

3.17. Consent to Jurisdiction; Waiver of Jury Trial

(a) Any legal action or proceeding with respect to this Mortgage or any of the other Loan Documents may be brought in the courts of the state in which the Property is located, and, by execution and delivery of this Mortgage, Mortgagor hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Mortgagor hereby further irrevocably waives any claim that any such courts lack personal jurisdiction over Mortgagor, and agrees not to plead or claim, in any legal action or proceeding with respect to this Mortgage or any of the other Loan Documents brought in any of the aforementioned courts, that such courts lack personal jurisdiction over Mortgagor. Mortgagor further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by, in addition to such other methods as are permitted under applicable law, the mailing of copies thereof by registered or certified mail, postage prepaid, to Mortgagor at its address for notices pursuant to Paragraph 3.08 hereof, such service to become effective thirty (30) days after such mailing. Mortgagor hereby irrevocably waives any objection to such service of process and further irrevocably waives and agrees not to plead or claim in any action or proceeding commenced hereunder that service of process was in any way invalid or ineffective. Nothing herein shall affect the right of Mortgagee to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Mortgagor in any other jurisdiction.

(b) Mortgagor hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Mortgage or any of the other Loan Documents brought in the courts referred to in clause (a) above and hereby further irrevocably waives and agrees not to plead or

claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

3.18. Recovery of Sums Required to be Paid

Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as the same become due, without regard to whether or not the balance of the Indebtedness shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action in foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

3.19. Waiver of Right of Redemption, Appraisal and Similar Rights

Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter and all rights of marshaling assets in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law from sale under any order or decree of foreclosure pursuant to the exercise of Mortgagee's rights under this Mortgage.

3.20. Non-Foreign Entity

(a) Section 1445 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Mortgagee that the withholding of tax will not be required in the event of the disposition of the Property pursuant to the terms of this Mortgage, Mortgagor hereby certifies, under penalty of perjury, that:

- (i) Mortgagor is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate as these terms or related terms are defined in the Internal Revenue Code and the regulations promulgated there under; and
- (ii) Mortgagor's U.S. employer identification number is 324-46-2006; and
- (iii) Mortgagor's principal place of business is 513 Central Avenue, Suite 400, Highland Park, Illinois.

(b) It is understood that Mortgagee may disclose the contents of this certification to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. Mortgagor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Mortgagee shall reasonably require. The covenant set forth herein shall survive a transfer of the Property, including without limitation a foreclosure of the lien of this Mortgage or acceptance of delivery of a deed in lieu thereof.

(c) Mortgagor agrees to defend, protect, indemnify and hold Mortgagee harmless from and against any and all loss, liability, costs, expenses, damages, claims or causes of action which may arise or be incurred by Mortgagee by reason of any failure of any representation or warranty made by Mortgagor under this Paragraph 3.21 to be true and correct in all respects, including without limitation any liability for failure to withhold any amount required under Section 1445 of the Internal Revenue Code in the event of foreclosure or other transfer of the Property.

3.21. Brokers

Mortgagor is responsible for the payment of all brokers involved in this loan transaction, including without limitation to Cohen Financial Corp.. Mortgagor shall defend, protect, indemnify and hold Mortgagee harmless from and against any and all claims of brokerage fees or commissions due or claimed to be due in connection with the Loan.

3.22. Indemnification

Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of: (i) ownership of this Mortgage, the Note, or any of the other Loan Documents, the Property or any interest therein or receipt of any Rents; (ii) 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; (iii) 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; (iv) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage or any of the other Loan Documents; (v) performance of or failure to perform any labor or services or the furnishing of or failure to furnish any materials or other property with respect to the Property or any part thereof; (vi) 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 this Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made. Any amounts payable to Mortgagee by reason of the application of this paragraph shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until such amounts are fully paid. The obligations of Mortgagor under this Paragraph shall survive any termination, satisfaction, assignment, entry of judgment of foreclosure or acceptance of delivery of a deed in lieu of foreclosure.

3.23. Usury Laws

This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the Indebtedness at a rate which could subject Mortgagee or the holder of the Note to either civil or criminal liability as a result of such payment being in excess of the maximum interest rate which Mortgagor is permitted by law to

contract or agree to pay. If, by the terms of the Note or this Mortgage, Mortgagor is at any time required or obligated to pay interest on the Indebtedness at a rate in excess of such maximum rate, the rate of interest under the same 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, to the extent permitted by law, shall be applied and shall be deemed to have been payments in reduction of the principal balance under the Note.

3.24. Entire Agreement

This Mortgage and the other Loan Documents set forth the entire understanding between Mortgagor and Mortgagee and the same shall not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought. Any and all previous agreements and understandings between the parties hereto regarding the subject matter of the Indebtedness or the Loan Documents, whether written or oral, are superseded by this Mortgage and the other Loan Documents.

3.25. Liability of Mortgagor

In the Event of Default, Mortgagee will not hold Mortgagor personally liable for repayment of the Loan or for any other sums due under the Loan Documents, or for the payment of any deficiency established after judicial foreclosure or after a power of sale foreclosure, except to the extent of Mortgagor's interest in the Property and all other collateral given as security for performance of Mortgagor's obligations under the Loan Documents, and the recourse of Mortgagee shall be by judicial or nonjudicial foreclosure or other remedies set forth in the Loan Documents or otherwise available at law or in equity; provided, however, Mortgagor and Richard H. Tucker shall be subject to full personal liability for any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever, incurred or suffered by Mortgagee or any assignee thereof as a result of any of the following: (i) any fraud or misrepresentation by Mortgagor in connection with the Loan Documents or the Property; (ii) Mortgagor's misappropriation of tenant security deposits, rents collected in advance, insurance proceeds, condemnation awards or other sums paid to or held by Mortgagor in connection with the Property; (iii) any failure of Mortgagor to apply rents received by Mortgagor to the Indebtedness or to the normal operating expenses of the Property after an Event of Default; (iv) failure of Mortgagor to deliver to Mortgagee or its assignee(s), at its or their request and following foreclosure of the Property, any tangible personal property, including leases, books, records, and files relating to the leasing, operation, or maintenance of the Property in Mortgagor's possession or which Mortgagor may readily obtain; (v) failure by Mortgagor to pay when due all real estate taxes and assessments or insurance premiums in regard to the Property, which are due and owing for the period up to the later of (a) the date of transfer of title to the Property pursuant to foreclosure, or the acceptance of Mortgagor of a deed in lieu of foreclosure or (b) ninety (90) days after delivery to Mortgagor of a deed-in-lieu of foreclosure; or (vi) failure of Mortgagee to comply with Section 1.19 hereof.

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10016691

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage and Security Agreement with Assignment of Rents and Fixture Filing as of the date first above written.

MORTGAGOR:

TDC NILES L.L.C., an Illinois limited liability company

By: Tucker Development Corporation, its managing member

By: 

Name: Richard H. Tucker

Title: *President*

Property of Cook County Clerk's Office

UNOFFICIAL COPY

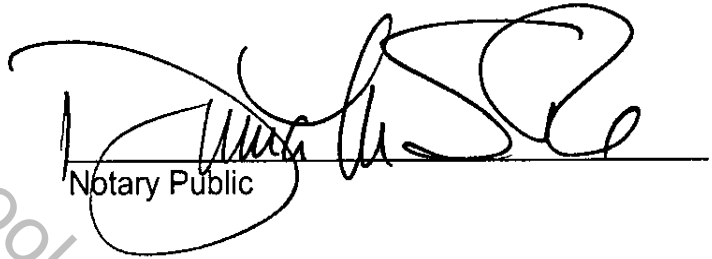
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STATE OF ILLINOIS

COUNTY OF COOK

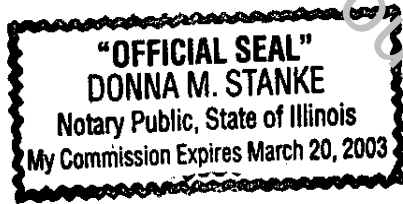
I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that RICHARD H. TUCKER, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of Tucker Development Corporation, an Illinois corporation, the sole Manager of TDC NILES, L.L.C., an Illinois limited liability company, appeared before me and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Corporation and Limited Liability Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4th day of January, 2001.



Notary Public

My Commission Expires:



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10016691

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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LEGAL DESCRIPTION

LOTS 2, 3, 4, 5, 6, 7, 9 AND 10 IN POINTE PLAZA SUBDIVISION, BEING A SUBDIVISION OF LOT 2 IN ANNIE MULLEN SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 22, 1999 AS DOCUMENT NUMBER 09188471, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office