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Cook County Recorder 279.00

PREPARED BY AND UPON
RECORDATION RETURN TO:
Seyfarth Shaw
One Peachtree Pointe, Suite 700
1545 Peachtree Street, N.E.
Atlanta, Georgia 30309-2401
Attention: N. J. Wardlaw, IV



0010599934

Re: Mortgage, Security Agreement and
Fixture Filing with Assignment of Rents
(Cook County, Illinois - First), dated
December 9, 1996, recorded
December 11, 1996 as Instrument No.
96 936911, Cook County, Illinois
Records

Property of Cook County Clerk's Office

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J Byers
AMENDED AND RESTATED MORTGAGE,
SECURITY AGREEMENT
AND FIXTURE FILING
WITH ASSIGNMENT OF RENTS
(Illinois - First)

By:

AMB-SGP CIF-ILLINOIS, L.P.,
as mortgagor
(Borrower)

Address of Borrower:
AMB-SGP CIF-ILLINOIS, L.P.
c/o AMB Property Corporation
Pier 1, Bay 1
San Francisco, California 94111

To:

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, as mortgagee
(Lender)

Address of Lender:
The Prudential Insurance Company of America
Prudential Capital Group
Two Ravinia Drive, Suite 1400
Atlanta, Georgia 30346-2110

Loan Numbers: 6 101 144 and 6 104 291

Dated: As of June 27, 2001

1281 Arthur Avenue, Elk Grove Village
1455 Estes Avenue, Elk Grove Village
1450 Greenleaf Avenue, Elk Grove Village
1500 Greenleaf Avenue, Elk Grove Village
3550-3600 Woodhead Drive, Northbrook
1550 Greenleaf Avenue, Elk Grove Village

County: Cook County, Illinois

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AMENDED AND RESTATED MORTGAGE,
SECURITY AGREEMENT AND FIXTURE FILING
WITH ASSIGNMENT OF RENTS
(Illinois - First)

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF RENTS (Illinois - First) (this "**Instrument**") is made as of the 22 day of June, 2001, by AMB-SGP CIF-ILLINOIS, L.P., a Delaware limited partnership, having its principal office and place of business at c/o AMB Property Corporation, Pier 1, Bay 1, San Francisco, California 94111, as grantor/mortgagor ("**Borrower**"), to THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, having an office at Two Ravinia Drive, Suite 1400, Atlanta, Georgia 30346-2110, as mortgagee/beneficiary ("**Lender**").

RECITALS:

1. AMB Current Income Fund, Inc. ("**AMB Current Income**"), a Maryland corporation, AMB Connecticut Retail Fund, Inc., a Delaware corporation, AMB Industrial Income Fund, Inc. ("**AMB Industrial**"), a Maryland corporation, AMB Retail Income Fund, Inc., a Maryland corporation, and The Chicago Trust Company, an Illinois corporation, as trustee under Trust Agreement dated December 7, 1995, and known as Trust Number 1102241 (collectively, the "**Original Borrowers**"), and Lender entered into that certain Loan Administration Agreement, dated as of December 9, 1996 (the "**Original Loan Administration Agreement**").
2. Pursuant to the Original Loan Administration Agreement, Lender made an initial loan to Original Borrowers in the principal amount of \$73,000,000.00 (the "**Initial Loan**"), evidenced by the Initial Loan Notes (as defined in the Loan Administration Agreement (defined below)).
3. At the closing of the Initial Loan, Original Borrowers conveyed certain properties to Lender to secure repayment of the Initial Loan. Since the closing of the Initial Loan, certain additional properties have been conveyed to Lender to secure repayment of the Initial Loan, and Lender has released its lien on certain properties previously conveyed as collateral for the Initial Loan.
4. AMB Property, L.P., a Delaware limited partnership ("**AMB I**") and AMB Property II, L.P., a Delaware limited partnership ("**AMB II**") (collectively, "**Second Borrower**") acquired Original Borrower's interest under the Original Loan Administration Agreement through a series of merger and consolidation transactions and by operation of that certain Assignment and Assumption Agreement, dated as of November __, 1997, by and among AMB Current Income, as assignor, Second Borrower, as assignee, and Lender (the "**Assignment and Assumption Agreement**"). Concurrently with the execution of the Assignment and Assumption Agreement, the Original Loan Administration Agreement was amended and restated as that certain Amended and Restated Loan Administration Agreement, dated as of November __, 1997, between Lender and Second Borrower, as subsequently amended by that certain First Amendment to Amended and Restated Loan Administration Agreement dated as of June 15, 1999 (as amended, the "**Restated Agreement**").
5. Borrower, together with AMB-SGP CIF-I, LLC, a Delaware limited liability company ("**CIF-I**") and AMB-SGP CIF-California, LLC, a Delaware limited liability company ("**CIF-California**") (collectively, "**Borrowers**") assumed the obligations of Second Borrower under the Restated Agreement

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through a series of conveyances and by operation of that certain Assumption of Liability Agreement, dated as of March 23, 2001, by and among Second Borrower, as assignor, Borrowers, as assignee, and Lender (the "**Assumption Agreement**"). Concurrently with the execution of the Assumption Agreement, the Restated Agreement was further amended by that certain Second Amendment to Amended and Restated Loan Administration Agreement, dated as of March 23, 2001, by and among Second Borrower, Borrowers and Lender.

6. Lender has agreed to make on the date hereof a supplemental loan to Borrowers in the amount of \$45,000,000.00 (the "**Supplemental Loan**"), evidenced by the Supplemental Loan Notes (as defined in the Loan Administration Agreement), and secured by, among other things, (i) the Property, and (ii) certain other properties owned by Borrower, CIF-I, and CIF-California located in the States of California, Georgia and Illinois (collectively, the "**Other Properties**").

7. As a condition to making the Supplemental Loan to Borrowers, Lender and Borrowers have entered into that certain Second Amended and Restated Loan Administration Agreement, dated as of the date hereof (the "**Loan Administration Agreement**").

8. Lender has required, as a condition to making the Supplemental Loan to Borrowers that Borrower execute and deliver this Instrument which amends and restates the Original Mortgage (as hereinafter defined) in its entirety, and Borrower, in order to obtain the Supplemental Loan, is willing to execute and deliver this Instrument.

9. This Instrument is an amendment and restatement of that certain Mortgage, Security Agreement and Fixture Filing with Assignment of Rents (Cook County, Illinois-First), dated December 9, 1996, by and between The Chicago Trust Company and Lender, recorded as Instrument No. 96 936911, Cook County, Illinois records (the "**Original Mortgage**"), and is intended to supersede and replace the Original Mortgage. This Instrument is given to secure the payment of the Note (as herein defined) and the performance of the Obligations (as herein defined) and to reaffirm and clarify the rights and obligations of the parties under the Loan Documents (as herein defined). This Instrument (i) shall in no way waive Lender's rights, powers or remedies under the Loan Documents, (ii) shall in no way limit, impair or prejudice Lender from exercising any past, present or future right, power or remedy from and after the date hereof under the Loan Documents, and (iii) is not intended to constitute or be deemed a novation of the Obligations.

10. Borrower, by the terms of the Note (as herein defined) and the Other Notes (as herein defined) and in connection with the Loan (as defined in the Loan Administration Agreement), is indebted to Lender in the aggregate original principal sum of ONE HUNDRED EIGHTEEN MILLION AND NO/100 U.S. DOLLARS (\$118,000,000.00). Both the Note and the Other Notes bear a maturity date of December 12, 2008.

11. Borrower desires to secure the payment of the Indebtedness and the payment and performance of all of the Obligations in the time and manner set forth in the Loan Documents (defined below); provided, however, that notwithstanding anything to the contrary contained herein, this Instrument shall not secure any obligation of Borrowers relating to the Other Indebtedness, the Other Notes, the Other Loan Documents or the Other Obligations.

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IN CONSIDERATION of the principal sum of the Note, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Borrower irrevocably:

A. Grants, bargains, sells, assigns, transfers, pledges, mortgages, warrants, and conveys to Lender, and grants Lender a security interest in, the following property, rights, interests and estates owned by Borrower (collectively, the "**Property**"):

- (i) The real property in Cook County, Illinois and described in Exhibit A ("**Land**");
- (ii) All buildings, structures and improvements (including fixtures) now or later located in or on the Land ("**Improvements**");
- (iii) All easements, estates, and interests including hereditaments, servitudes, appurtenances, tenements, mineral and oil/gas rights, water rights, air rights, development power or rights, options, reversion and remainder rights, and any other rights owned by Borrower and relating to or usable in connection with or access to the Property;
- (iv) All right, title, and interest owned by Borrower in and to all land lying within the rights-of-way, roads, or streets, open or proposed, adjoining the Land to the center line thereof, and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;
- (v) All right, title, and interest of Borrower in, to, and under all plans, specifications, surveys, studies, reports, permits, licenses, agreements, contracts, instruments, books of account, insurance policies, and any other documents relating to the use, construction, occupancy, leasing, activity, or operation of the Property;
- (vi) All of the fixtures and personal property described in Exhibit B owned by Borrower and replacements thereof, but excluding all personal property owned by any tenant (a "**Tenant**") of the Property;
- (vii) All of Borrower's right, title and interest in the proceeds (including conversion to cash or liquidation claims) of (A) insurance relating to the Property and (B) all awards made for the taking by eminent domain (or by any proceeding or purchase in lieu thereof) of the Property, including awards resulting from a change of any streets (whether as to grade, access, or otherwise) and for severance damages;
- (viii) All tax refunds, including interest thereon, tax rebates, tax credits, and tax abatements, and the right to receive the same, which may be payable or available with respect to the Property;
- (ix) All leases, subleases, licenses, or other agreements affecting the use, enjoyment or occupancy of the Property now or later existing (including any use or occupancy arrangements created pursuant to Title 7 or 11 of the United States Code, as amended from time to time, or any similar federal or state laws now or later enacted for the relief of debtors (the "**Bankruptcy Code**")) and all extensions and amendments thereto (collectively, the "**Leases**") and all Borrower's right, title and interest under the Leases, including all guaranties thereof; and

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(x) All rents, issues, profits, royalties, receivables, use and occupancy charges (including all oil, gas or other mineral royalties and bonuses), income and other benefits now or later derived from any portion or use of the Property (including any payments received with respect to any Tenant or the Property pursuant to the Bankruptcy Code) and all cash, security deposits, advance rentals, or similar payments relating thereto (collectively, the “**Rents**”) and all proceeds from the cancellation, termination, surrender, sale or other disposition of the Leases, and the right to receive and apply the Rents to the payment of the Obligations.

B. Absolutely and unconditionally assigns, sets over, and transfers to Lender all of Borrower’s right, title, interest and estates in and to the Leases and the Rents, subject to the terms and license granted to the Borrower pursuant to Article XI of this Instrument (the “**Assignment**”).

TO HAVE AND TO HOLD the Property unto Lender and its successors and assigns forever, subject to the matters listed in Exhibit C (“**Permitted Encumbrances**”) and the provisions, terms and conditions of this Instrument.

PROVIDED, HOWEVER, if Borrower shall pay the Indebtedness and shall pay and perform the Obligations as provided for in the Loan Documents (defined below) and shall comply with all the provisions, terms and conditions in the Loan Documents, these presents and the estates hereby granted (except for the obligations of Borrower referenced in Sections 3.11 and 3.12 and Article VIII hereof) shall cease, terminate and be void.

IN FURTHERANCE of the foregoing, Borrower warrants, represents, covenants and agrees as follows:

ARTICLE I - OBLIGATIONS AND DEFINITIONS

Section 1.01 Obligations. This Instrument is executed, acknowledged, and delivered by Borrower to Lender in order to secure and enforce the Obligations (as defined herein).

Section 1.02 Definitions. As used in this Instrument, the following terms shall have the following meanings:

Action: As defined in Section 9.04.

Additional Funds: As defined in Section 3.07 (c).

Affecting the Property: As defined in Section 3.12 (a).

All: As defined in Section 9.05 (m).

Any: As defined in Section 9.05 (m).

Assessments: As defined in Section 3.03 (a).

Awards: As defined in Section 3.08 (b).

Bankruptcy Code: As defined in the Granting Clause, Section (A) (ix).

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Borrowers: As defined in Preamble.

CIF-I: As defined in Recitals, Section 5.

CIF-California: As defined in Recitals, Section 5.

Costs: As defined in Section 4.01.

Damage: As defined in Section 3.07 (a).

Debt Service: As defined the Loan Administration Agreement.

Default Rate: means, (i) with respect to the Initial Illinois Note, the "Secondary Interest Rate" as such term is defined therein, and (ii) with respect to the Supplemental Illinois Note, the "Default Rate" as such term is defined therein.

Demand: As defined in Section 9.12 (n).

Depository: As defined in Section 3.07 (c).

Deposits: As defined in Section 3.10.

Environmental Law: As defined in Section 3.12 (a).

Environmental Liens: As defined in Section 3.12 (b).

Environmental Report: As defined in Section 3.12 (a).

ERISA: As defined in Section 3.11.

Event of Default: As defined in Section 6.01.

Facilities: As defined in the Loan Administration Agreement

Facility: As defined in the Loan Administration Agreement.

Flood Acts: As defined in Section 2.04 (a).

Foreign Person: As defined in Section 2.05.

Full replacement cost: As defined in Section 3.06(a).

Grace Period: As defined in Section 6.01(b).

Hazardous Materials: As defined in Section 3.12 (a).

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Hazardous Substances Agreement: means the Environmental and ERISA Indemnity Agreement executed and delivered by Borrower to Lender with respect to the Property and the Other Properties in a form satisfactory to Lender and as amended, supplemented, restated, or otherwise modified from time to time in accordance with the provisions hereof or thereof.

Impositions: As defined in Section 3.10.

Improvements: As defined in the Granting Clause, Section (A) (ii).

Include, Including: As defined in Section 9.05 (f).

Indebtedness: The principal of and all other amounts, payments and premiums due under the Note and any extensions or renewals thereof (including extensions or renewals at a different rate of interest, whether or not evidenced by a new or additional promissory note or notes), and all other indebtedness of Borrower to Lender and additional advances under, evidenced by and/or secured by the Loan Documents, plus interest on all such amounts, other than any obligations relating to the Other Notes.

Indemnified Parties: As defined in Section 8.02.

Indemnify: As defined in Section 8.02.

Initial Loan: As defined in Recitals, Section 2.

Instrument: As defined in Preamble.

Insurance Premiums: As defined in Section 3.10.

Investors: As defined in Section 9.06.

Land: As defined in the Granting Clause, Section (A) (i).

Laws: As defined in Section 3.05(c).

Lease: As defined in Section 9.05 (k).

Leases: As defined in the Granting Clause, Section (A) (ix).

Lender: As defined in Preamble.

Lessee: As defined in Section 9.05 (k).

Lessor: As defined in Section 9.05 (k).

Liens: As defined in Section 3.09.

Loan: As defined in the Loan Administration Agreement.

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Prudential Loan Nos. 6 101 144 and 6 104 291
AMB: Amended/Restated Mortgage
32029706.3/28227.000353

Loan Administration Agreement: As defined in Recitals, Section 7.

Loan Documents: The Note, the Loan Administration Agreement (as it relates to the Indebtedness), this Instrument, the Assignment of Permits and Developer's Rights of even date herewith, the Closing Certification of even date herewith and all other documents evidencing, securing or relating to the payment of the Indebtedness or the performance of the Obligations. For purposes of this Instrument, the term "Loan Documents" does not include the Loan application, Loan commitment, or the Subordinate Mortgages (as such term is hereinafter defined).

Losses: As defined in Section 8.02.

Major Tenants: As defined in Section 3.08 (d).

Net Operating Income: As defined in the Loan Administration Agreement.

Net Proceeds: As defined in Section 3.07 (d).

Note: Collectively, (i) Promissory Note (Illinois), dated as of December 9, 1996, in the original principal amount of Eleven Million Eight Hundred Twenty-Six Thousand Dollars (\$11,826,000.00), as may be amended, restated, supplemented or otherwise modified from time to time, the interest and obligations of Original Borrowers under such Promissory Note having been assigned to and assumed by Borrowers through a series of transactions culminating in the execution and delivery of the Assumption Agreement (the "Initial Illinois Note"); and (ii) Promissory Note (Illinois Supplemental), dated of even date herewith, from Borrowers, as maker, and payable to the order of Lender, as holder, in the original principal amount of Fifteen Million Nine Hundred Ninety Thousand Dollars (\$15,990,000.00)(the "Supplemental Illinois Note"), as each may be amended, renewed, extended, supplemented, restated or otherwise modified from time to time in accordance with the provisions of the Loan Administration Agreement or such promissory note.

Notice: As defined in Section 9.02.

Obligations: Any and all of the covenants, promises and other obligations (including payment of the Indebtedness) made or owing by Borrower to or due to Lender under and/or as set forth in the Loan Documents and all of the material covenants, promises and other material obligations made or owing by Borrower to each and every other Person relating to the Property, exclusive of the Other Obligations. Notwithstanding anything to the contrary contained in this Instrument, the maximum amount secured by this Instrument shall not exceed Thirty-Three Million Dollars (\$33,000,000.00).

On Demand: As defined in Section 9.05 (n).

Organization State: As defined in Section 2.01.

Original Borrowers: As defined in Recitals, Section 1.

Original Mortgage: As defined in Recitals, Section 9.

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Other Indebtedness: The loan from Lender to Borrowers evidenced by the Other

Notes.

Other Loan Documents: The Other Notes, the Loan Administration Agreement (as it relates to the Other Indebtedness), the Subordinate Mortgage, the Other Subordinate Mortgages and all other documents evidencing, securing or relating to the payment of the Other Indebtedness or performance of the Other Obligations.

Other Notes: Collectively, the three (3) promissory notes, dated as of December 9, 1996, from Borrowers, as maker, and payable to the order of Lender, as follows: (i) Promissory Note (Georgia) in the original principal amount of Eleven Million Three Hundred Fifteen Thousand Dollars (\$11,315,000.00), the interest and obligations of Original Borrowers under such Promissory Note having been assigned to and assumed by Borrowers through a series of transactions culminating in the execution and delivery of the Assumption Agreement, (ii) Promissory Note (California) in the original principal amount of Thirty-Five Million Three Hundred Thirty-Two Thousand Dollars (\$35,332,000.00), the interest and obligations of Original Borrowers under such Promissory Note having been assigned to and assumed by Borrowers through a series of transactions culminating in the execution and delivery of the Assumption Agreement, and (iii) the Promissory Note (Connecticut) in the original principal amount of Fourteen Million Five Hundred Twenty-Seven Thousand Dollars (\$14,527,000.00) executed by Borrowers, as maker, and payable to Lender, as holder, the interest and obligations of Original Borrowers under such Promissory Note having been assigned to and assumed by Borrowers through a series of transactions culminating in the execution and delivery of the Assumption Agreement, as each may be amended, renewed, extended, supplemented or otherwise modified from time to time in accordance with the provisions of the Loan Administration Agreement or such promissory note; together with the two (2) promissory notes dated of even date herewith, from Borrowers, as maker, and payable to the order of Lender, as holder, as follows: (x) Promissory Note (Georgia - Supplemental) in the original principal amount of Six Million One Hundred Fifty-Eight Thousand Dollars (\$6,158,000.00), and (y) Promissory Note (California - Supplemental) in the original principal amount of Twenty-Two Million Eight Hundred Fifty-Two Thousand Dollars (\$22,852,000.00), as each may be amended, renewed, extended, supplemented, restated or otherwise modified from time to time in accordance with the provisions of the Loan Administration Agreement or such promissory note.

Other Obligations: Any and all covenants, promises, and other obligations (including payment of the Other Indebtedness) made or owing by Borrowers to or due to Lender under and/or as set forth in the Other Loan Documents, and all of the material covenants, promises, and other material obligations made or owing by Borrowers to each and every other Person relating to the Property, exclusive of the Obligations.

Other Properties: As defined in Recitals, Section 6.

Other Subordinate Mortgages: Those certain other amended and restated second priority deeds of trust, mortgages and deeds to secure debt of even date with this Instrument, executed by Borrower, CIF-1, or CIF-California, for the benefit of Lender, securing the Other Obligations.

Owed: As defined in Section 9.05 (i).

Permitted Encumbrances: As defined in the Granting Clause.

- Person: As defined in Section 9.05 (i).
- Personal Property: As defined in Section 6.02 (j).
- Prepayment Premium: As defined in the Note.
- Property: As defined in the Granting Clause, Section (A).
- Property State: As defined in Section 2.01.
- Provisions: As defined in Section 9.05 (j).
- Rating Agency: As defined in Section 3.06 (d).
- Release: As defined in Section 3.12 (a).
- Rent Loss Proceeds: As defined in Section 3.07 (c).
- Rent: As defined in the Granting Clause, Section (A) (x).
- Restoration: As defined in Section 3.07 (a).
- Securities: As defined in Section 9.06.
- Security Agreement: As defined in Section 7.01.
- Security Pool: As defined in the Loan Administration Agreement.
- Subordinate Mortgage: The Amended and Restated Mortgage, Security Agreement and Fixture Filing with Assignment of Rents (Illinois - Second, of even date with this Instrument, executed by Borrower, for the benefit of Lender, securing the Other Obligations.
- Supplemental Loan: As defined in Recitals, Section 6.
- Taking: As defined in Section 3.08 (a).
- Tenant Recitals: As defined in the Granting Clause, Section (A) (vi).
- Tenants: As defined in Section 9.05 (k).
- Transaction Taxes: As defined in Section 3.03 (c).
- U.C.C.: As defined in Section 2.02.
- Upon Demand: As defined in Section 9.05 (n).
- Violation: As defined in Section 3.11.

Property of Cook County Clerk's Office

ARTICLE II - REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to Lender as follows:

Section 2.01 Title, Legal Status and Authority. Borrower (i) is seized of the Land and Improvements in fee simple and has good and marketable title to the Property, free and clear of all liens, charges, encumbrances, and security interests, except the Permitted Encumbrances; (ii) will forever warrant and defend its title to the Property and the validity, enforceability, and priority of the lien and security interest created by this Instrument against the claims of all persons; (iii) is a limited partnership duly organized, validly existing, and in good standing and qualified to transact business under the laws of its state of organization or incorporation ("Organization State") and the state where the Property is located ("Property State"); and (iv) has all necessary approvals, governmental and otherwise, and full power and authority to own its properties (including the Property) and carry on its business.

Section 2.02 Validity of Documents. The execution, delivery and performance of the Loan Documents and the borrowing evidenced by the Note (i) are within the power of Borrower; (ii) have been authorized by all requisite action; (iii) have received all necessary approvals and consents; (iv) will not violate, conflict with, breach, or constitute (with notice or lapse of time, or both) a default under (1) any law, order or judgment of any court, governmental authority, or the governing instrument of Borrower or (2) any indenture, agreement, or other instrument to which Borrower is a party or by which it or any of its property is bound or affected; (v) will not result in the creation or imposition of any lien, charge, or encumbrance upon any of its properties or assets except for those in this Instrument; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this Instrument and Uniform Commercial Code ("U.C.C.") filings). The Loan Documents constitute legal, valid, and binding obligations of Borrower.

Section 2.03 Litigation. There is no action, suit, or proceeding, judicial, administrative, or otherwise (including any condemnation or similar proceeding), pending or, to the best knowledge of Borrower, threatened or contemplated against, or affecting, Borrower or the Property which would have a material adverse effect on either the Property or Borrower's ability to perform its obligations.

Section 2.04 Status of Property.

(a) The Land and Improvements are not located in an area identified by the Secretary of Housing and Urban Development, or any successor, as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each have been or may be amended, or any successor law (collectively, the "Flood Acts") or, if located within any such area, Borrower has and will maintain the insurance prescribed in Section 3.06 below.

To the best of Borrower's knowledge after due inquiry and investigation and except as indicated on any survey of the Land and Improvements provided to Lender prior to the date hereof, the

- 2/ To the best of Borrower's knowledge after due inquiry and investigation,
- 3/ To the best of Borrower's knowledge after due inquiry and investigation, all
- 4/ and the Subordinate Mortgage

Section 2.06 Bankruptcy and Equivalent Value. No bankruptcy, reorganization, insolvency, liquidation, or other proceeding for the relief of debtors has been instituted by or against Borrower, any general partner of Borrower (if Borrower is a partnership), or any manager or managing member of Borrower (if Borrower is a limited liability company). Borrower has received reasonably equivalent value for granting this Instrument.

Section 2.05 Tax Status of Borrower. Borrower is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

(h) The Property is assessed for real estate tax purposes as one or more wholly independent tax lot(s), separate from any adjoining land or improvements and no other land or improvements is assessed and taxed together with the Property.

(g) Borrower owns and has paid in full for all furnishings, fixtures, and equipment (other than Tenants' property) used in connection with the operation of the Property, free of all security interests, liens, or encumbrances except the Permitted Encumbrances and those created by this Instrument.

(f) All costs and expenses for labor, materials, supplies, and equipment used in the construction of the Improvements have been paid in full except for the Permitted Encumbrances.

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

(d) All public roads and streets necessary to serve the Property for its use have been completed, are serviceable, are legally open, and have been dedicated to and accepted by the appropriate governmental entities.

(c) The Property is served by all utilities (including water and sewer) required for its use.

(b) Borrower has all necessary (i) certificates, licenses, and other approvals, governmental and otherwise, for the operation of the Property and the conduct of its business and (ii) zoning, building code, land use, environmental and other similar permits or approvals, all of which are currently in full force and effect and not subject to revocation, suspension, forfeiture, or modification. The Property and its use and occupancy is in full compliance with all Laws and Borrower has received no notice of any violation or potential violation of the Laws which has not been remedied or satisfied.

subject to Article V hereof, 5/

(b) **Right to Contest.** So long as no Event of Default (defined below) is continuing, Borrower may, prior to delinquency and at its sole expense, contest any Assessment, but this shall not change or extend Borrower's obligation to pay the Assessment as required above unless (i) Borrower gives Lender prior written notice of its intent to contest an Assessment; (ii) Borrower demonstrates to Lender's reasonable satisfaction that (1) the Property will not be sold to satisfy the Assessment prior to the final determination of the legal proceedings, (2) it has taken such actions as are required or permitted to accomplish a stay of any such sale, or (3) it has furnished a bond or surety (satisfactory to Lender in form and amount) sufficient to prevent a sale of the Property; (iii) at Lender's option, Borrower has deposited the full amount necessary to pay any unpaid portion of the Assessments with Lender; and (iv) such proceeding shall be permitted under any other instrument to which Borrower or the Property is subject (whether superior or inferior to this Instrument); provided, however, that the foregoing shall not

(a) **Payment of Assessments.** Borrower shall pay when due all taxes, liens, assessments, utility charges (public or private and including sewer fees), ground rents, maintenance charges, dues, fines, impositions, and public and other charges of any character (including penalties and interest) assessed against, or which could become a lien against, the Property ("Assessments") ten (10) days prior to the date any fine, penalty, interest or charge for nonpayment may be imposed. Unless Borrower is making deposits per Section 3.10, Borrower shall provide Lender with receipts evidencing such payments (except for income taxes, franchise taxes, ground rents, maintenance charges, and utility charges) within thirty (30) days after their due date.

Section 3.03 Taxes and Other Charges

(d) do anything to cause the representations in Section 2.02 to become untrue.

reorganize or change its legal structure without Lender's prior written consent; (c) change its name, address, or the name under which Borrower conducts its business without promptly notifying Lender; or dispose of, directly, indirectly, or by operation of law, all or substantially all of its assets; (b) 5/

Section 3.02 Continuation of Existence. Borrower shall not (a) dissolve, terminate, or otherwise

Section 3.01 Payment of Obligations. Borrower shall timely pay and cause to be performed the Obligations.

Borrower covenants and agrees with Lender as follows:

ARTICLE III - COVENANTS AND AGREEMENTS

Section 2.08 Illegal Activity. No portion of the Property has been or will be purchased, improved, fixtured, equipped or furnished with proceeds of any illegal activity and, to the best of Borrower's knowledge, there are no illegal activities at or on the Property.

Section 2.07 Disclosure. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading. There has been no adverse change in any condition, fact, circumstance, or event that would make any such information materially inaccurate, incomplete or otherwise misleading.

6/	reasonable
7/	actually

Section 3.04 Defense of Title, Litigation and Rights under Documents. Borrower shall forever warrant, defend and preserve Borrower's title to the Property, the validity, enforceability and priority of this Instrument and the lien or security interest created thereby, and any rights of Lender under the Loan Documents against the claims of all persons, and shall promptly notify Lender of any such claims. Lender (whether or not named as a party to such proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may deem necessary or proper for the defense of any such proceeding or the protection of the lien, security interest, validity, enforceability, or priority of this Instrument, title to the Property, or any rights of Lender under the Loan Documents, including the employment of counsel, the prosecution and/or defense of litigation, the compromise, release, or discharge of such adverse claims, the purchase of any tax title, the removal of any such lien and security interests, and any other actions Lender deems necessary to protect its interests. Borrower authorizes Lender to take any actions required to be taken by Borrower, or permitted to be taken by Lender, in the Loan Documents in the name and on behalf of Borrower. Borrower shall reimburse Lender on demand for all 6/ expenses (including attorneys' fees) 7/ incurred by it in connection with the foregoing and

(e) No Credits on Account of the Obligations. Borrower will not claim or be entitled to any credit(s) on account of the Obligations for any part of the Assessments and no deduction shall be made or claimed from the taxable value of the Property for real estate tax purposes by reason of the Loan Documents or the Obligations. If such claim, credit or deduction is required by law, Lender shall have the option to declare the Obligations immediately due and payable (without any Prepayment Premium) upon sixty (60) days' notice to Borrower.

(f) Changes in Laws Regarding Taxation. If any law (i) deducts from the value of real property for the purpose of taxation any lien or encumbrance thereon, (ii) taxes mortgages or debts secured by mortgages for federal, state or local purposes or changes the manner of the collection of any such existing taxes, and/or (iii) imposes a tax, either directly or indirectly, on any of the Loan Documents or the Obligations, Borrower shall, if permitted by law, pay such tax within the statutory period or within twenty (20) days after demand by Lender, whichever is less; provided, however, that if, in the opinion of Lender, Borrower is not permitted by law to pay such taxes, Lender shall have the option to declare the Obligations immediately due and payable (without any Prepayment Premium) upon sixty (60) days' notice to Borrower.

(g) Documentary Stamps and Other Charges. Borrower shall pay all taxes, assessments, charges, expenses, costs and fees (including registration and recording fees and revenue, stamp, intangible, and any similar taxes) (collectively, the "Transaction Taxes") required in connection with the making and/or recording of the Loan Documents. If Borrower fails to pay the Transaction Taxes after demand, Lender may (but is not obligated to) pay these and Borrower shall reimburse Lender on demand for any amount so paid with interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws.

apply to the contesting of any income taxes, franchise, taxes, ground rents, maintenance charges, and utility charges.

Lender's exercise of its rights under the Loan Documents. All such expenses of Lender, until reimbursed by Borrower, shall be part of the Obligations, bear interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, and shall be secured by this Instrument.

Section 3.05 Operation and Maintenance of Property.

(a) **Repair and Maintenance.** Borrower will operate and maintain the Property in good order, repair, and operating condition ⁸ / . Borrower will promptly make all necessary repairs, replacements, additions, and improvements necessary to ensure that the Property shall not in any way be diminished or impaired. Borrower will not cause or allow any of the Property to be misused, wasted, or to deteriorate and Borrower will not abandon the Property. No new building, structure, or other improvement ⁹ / shall be constructed on the Land nor shall any material part of the Improvements be removed, demolished, or structurally or materially altered, without Lender's prior written consent.

(b) **Replacement of Property.** Borrower will keep the Property fully equipped and will replace all worn out or obsolete Property with new, comparable fixtures or Property. Borrower will not, without Lender's prior written consent, remove any Property ¹⁰ / covered by this Instrument unless the same is replaced by Borrower with a new, comparable article (i) owned by Borrower free and clear of any lien or security interest (other than the Permitted Encumbrances and those created by this Instrument) or (ii) leased by Borrower (A) with Lender's prior written consent or (B) if the replaced Property was leased at the time of execution of this Instrument.

(c) **Compliance with Laws.** Borrower and the Property shall be maintained, used, and operated in compliance with all (i) present and future laws, Environmental Laws (defined below), ordinances, regulations, and requirements (including zoning and building codes) of any governmental or quasi-governmental authority or agency applicable to Borrower or the Property (collectively, the "Laws"); (ii) orders, rules, and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization, or other body exercising similar functions; (iii) duties or obligations of any kind imposed under any Permitted Encumbrance or by Law, covenant, condition, agreement, or easement, public or private; and (iv) policies of insurance at all time in force with respect to the Property. If proceedings are initiated or Borrower receives notice that or the Property is not in compliance with any of the foregoing, Borrower will promptly send Lender notice and a copy of the

⁸ / , subject to the casualty and condemnation provisions set forth in Article III hereof

⁹ / , other than tenant improvements under a Lease which (i) is in existence as of the date hereof, or (ii) has been entered into by Borrower subsequent to the date hereof, and either (A) has been approved by Lender in accordance with the terms of Section 8.1 of the Loan Administration Agreement, or (B) is expressly permitted under the terms of Section 8.1 of the Loan Administration Agreement without the necessity of Lender's consent,

¹⁰ / (other than Tenants' trade fixtures)

11/	reasonable
12/	until such time as the non-compliance is corrected
13/	all-risk
14/	commercially
15/	as published by the Insurance Services Offices, Inc.
16/	Fifty Thousand Dollars (\$50,000.00)

(a) Property and Time Element Insurance. Borrower shall keep the Property insured for the benefit of Borrower and Lender (with Lender named as mortgagee) by (i) an "all risk" property insurance policy with an agreed amount endorsement for full replacement cost (defined below) without any coinsurance provisions or penalties, or the broadest ^{13/} form of coverage ^{14/} available ^{15/} in an amount sufficient to prevent Lender from ever becoming a coinsurer under the policy or Laws, and with a deductible not to exceed ^{16/} Ten Thousand Dollars (\$10,000.00); (ii) a policy or endorsement covering business interruption and extra expense insurance and/or rent insurance on an actual loss sustained basis in an amount equal to at least one (1) year's total income from the Property including all rents plus all other pro forma annual income such as percentage rent and tenant reimbursements of fixed and operating expenses; (iii) a policy or endorsement insuring against damage by flood if the Property is located in a Special Flood Hazard Area identified by the Federal Emergency Management Agency or any successor or related government agency as a 100 year flood plain currently classified as Flood Insurance Rate Map Zones "A", "AO", "AH", "A1-A30", "AE", "A99", "V", "V1-V30", and "VE", under which flood insurance has been made available under the Flood Acts, in an amount equal to the lesser of (1) the original amount of the Note or (2) the maximum limit of coverage available for the Property under the Flood Acts; (iv) a policy or endorsement covering against damage or loss from (A) sprinkler system leakage and (B) boilers, boiler tanks, HVAC systems, heating and air-conditioning equipment, pressure vessels, auxiliary piping, and similar apparatus, in the amount reasonably required by Lender; (v) during the period of any construction, repair, restoration, or replacement of the Property, a standard builder's risk policy with extended coverage in an amount at least equal to the full replacement cost of such

Section 3.06 Insurance.

(d) Zoning and Title Matters. Borrower shall not, without Lender's prior written consent; (i) initiate or support any zoning reclassification of the Property or variance under existing zoning ordinances; (ii) modify or supplement any of the Permitted Encumbrances; (iii) impose any restrictive covenants or encumbrances upon the Property; (iv) execute or file any subdivision plat affecting the Property; (v) consent to the annexation of the Property to any municipality; (vi) permit the Property to be used by the public or any person in a way that might make a claim of adverse possession or any implied dedication or easement possible; (vii) cause or permit the Property to become a non-conforming use under zoning ordinances or any present or future non-conforming use of the Property to be discontinued; or (viii) fail to comply with the terms of the Permitted Encumbrances.

proceeding or violation notice. If the Property is not in compliance with all Laws, Lender may impose additional ^{11/} requirements upon Borrower including monetary reserves or financial equivalents ^{12/}.

- 17/ , unless Borrower provides satisfactory evidence to Lender that other institutional owners of real property do not customarily carry insurance against damage or loss by earthquake and other natural phenomenon for properties which are similar in kind and similar situated to the Property upon policy expiration or renewal
- 18/ as direct insured
- 19/ , unless Borrower provides satisfactory evidence to Lender that other institutional owners of real property do not customarily carry insurance against war risks for properties which are similar in kind and similarly situated to the Property
- 20/ In the event that Borrower elects to carry any insurance policy or policies covering environmental liability or similar matters with respect to the Property, Lender shall be named as an additional insured under such policy or policies.
- 21/ and
- 22/ with respect to policies described in Section 3.06(a) only;

(c) Form of Policy. All insurance required under this Section shall be fully paid for, non-assessable, and the policies shall contain such provisions, ^{22/} endorsements and expiration dates as Lender shall reasonably require. The policies shall be issued by insurance companies authorized to do business in the Property State, approved by Lender, and must have and maintain a current financial strength rating of "AA" (or higher) from Standard & Poor's or equivalent (or if a rating by Standard & Poor's is no longer available, a similar rating from a similar or successor service). In addition, all policies shall (i) ^{23/} include a standard mortgagee clause, without contribution, in the name of Lender, and (ii) require insurance against war risks ^{20/} . ^{21/}

(b) Liability and Other Insurance. Borrower shall maintain commercial general liability insurance with per occurrence limits of \$1,000,000, a products/completed operations limit of \$2,000,000, and a general aggregate limit of \$2,000,000, with an excess/umbrella liability policy of not less than \$10,000,000 per occurrence and annual aggregate covering Borrower ^{19/} , with Lender named as an additional insured, against claims for bodily injury or death or property damage occurring in, upon, or about the Property or any street, drive, sidewalk, curb, or passageway adjacent thereto. The insurance policies shall also include operations and blanket contractual liability coverage which insures contractual liability under the indemnifications set forth in Section 8.02 below (but such coverage or the amount thereof shall in no way limit such indemnifications). Upon request, Borrower shall also carry additional insurance or additional amounts of insurance covering Borrower or the Property as Lender shall reasonably require including insurance against war risks ^{20/} . ^{21/}

(c) Form of Policy. All insurance required under this Section shall be fully paid for, non-assessable, and the policies shall contain such provisions, ^{22/} endorsements and expiration dates as Lender shall reasonably require. The policies shall be issued by insurance companies authorized to do business in the Property State, approved by Lender, and must have and maintain a current financial strength rating of "AA" (or higher) from Standard & Poor's or equivalent (or if a rating by Standard & Poor's is no longer available, a similar rating from a similar or successor service). In addition, all policies shall (i) ^{23/} include a standard mortgagee clause, without contribution, in the name of Lender, and (ii) require insurance against war risks ^{20/} . ^{21/}

(b) Liability and Other Insurance. Borrower shall maintain commercial general liability insurance with per occurrence limits of \$1,000,000, a products/completed operations limit of \$2,000,000, and a general aggregate limit of \$2,000,000, with an excess/umbrella liability policy of not less than \$10,000,000 per occurrence and annual aggregate covering Borrower ^{19/} , with Lender named as an additional insured, against claims for bodily injury or death or property damage occurring in, upon, or about the Property or any street, drive, sidewalk, curb, or passageway adjacent thereto. The insurance policies shall also include operations and blanket contractual liability coverage which insures contractual liability under the indemnifications set forth in Section 8.02 below (but such coverage or the amount thereof shall in no way limit such indemnifications). Upon request, Borrower shall also carry additional insurance or additional amounts of insurance covering Borrower or the Property as Lender shall reasonably require including insurance against war risks ^{20/} . ^{21/}

(c) Form of Policy. All insurance required under this Section shall be fully paid for, non-assessable, and the policies shall contain such provisions, ^{22/} endorsements and expiration dates as Lender shall reasonably require. The policies shall be issued by insurance companies authorized to do business in the Property State, approved by Lender, and must have and maintain a current financial strength rating of "AA" (or higher) from Standard & Poor's or equivalent (or if a rating by Standard & Poor's is no longer available, a similar rating from a similar or successor service). In addition, all policies shall (i) ^{23/} include a standard mortgagee clause, without contribution, in the name of Lender, and (ii) require insurance against war risks ^{20/} . ^{21/}

(a) **Borrower's Obligations.** If any damage to, loss, or destruction of the Property occurs (any "Damage"), (i) Borrower shall promptly notify Lender and take all necessary steps to preserve any undamaged part of the Property and (ii) if the insurance proceeds are made available for Restoration (defined below) (but regardless of whether any proceeds are sufficient for Restoration), Borrower shall promptly commence and diligently pursue to completion the restoration, replacement, and rebuilding of the Property as nearly as possible to its value and condition immediately prior to the Damage or a Taking (defined below) in accordance with plans and specifications approved by Lender ("Restoration"). Borrower shall comply with other reasonable requirements established by Lender to preserve the security under this Instrument.

Section 3.07 Damage and Destruction of Property.

(i) **Waiver of Subrogation.** Borrower and Lender each waive and release the other from any and all liability or responsibility to the other or anyone claiming by, through or under them by way of subrogation or otherwise for any liability or loss resulting from or relating to any damage to the Property caused by fire or any other casualty, even if such fire or other casualty shall have been caused by the fault or negligence of the other party or anyone for whom such party may be responsible.

(e) **General Provisions.** Borrower shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Section unless endorsed in favor of Lender as per this Section and approved by Lender in all respects. In the event of foreclosure of this Instrument or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Obligations, all right, title, and interest of Borrower in and to all policies of insurance then in force regarding the Property and all proceeds payable thereunder and unearned premiums thereon shall immediately vest in the purchaser or other transferee of the Property. No approval by Lender of any insurer shall be construed to be a representation, certification, or warranty of its solvency. No approval by Lender as to the amount, type, or form of any insurance shall be construed to be a representation, certification, or warranty of its sufficiency. Borrower shall comply with all insurance requirements and shall not cause or permit any condition to exist which would be prohibited by any insurance requirement or would invalidate the insurance coverage on the Property.

(d) **Original Policies.** Borrower shall deliver to Lender (i) original or certified copies of all policies (and renewals) required under this Section and (ii) receipts evidencing payment of all premiums on such policies at least thirty (30) days prior to their expiration. If original and renewal policies are unavailable or if coverage is under a blanket policy, Borrower shall deliver duplicate originals, or, if unavailable, original ACORD 25-S certificates (or equivalent certificates) evidencing that such policies are in full force and effect together with certified copies of the original policies.

(ii) provide that they shall not be canceled, amended, or materially altered (including reduction in the scope or limits of coverage) without at least thirty (30) days' prior written notice to Lender except in the event of cancellation for non-payment of premium, in which case only ten (10) days' prior written notice will be given to Lender, and (iii) include a waiver of subrogation clause substantially equivalent to the following: "The Company may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Company, but the Company shall not acquire any rights of recovery which the Insured has expressly waived prior to loss, nor shall such waiver affect the Insured's rights under this policy".

24/ (in consultation with Borrower, but with Lender retaining ultimate decision-making authority in the event Borrower and Lender cannot agree) subject to Section 3.07(c)

25/ at the rates customarily paid by Lender on similar accounts in its reasonable judgment

26/ the earlier of (x) one (1) year after the date on which the Net Proceeds are first made available for Restoration (notwithstanding the fact that the first disbursement may be made on a later date), and (y) eighteen (18) months

27/ , in either event,

28/ , provided that the aggregate of any Rent Loss Proceeds (as hereinafter defined) and any funds that Borrower has deposited with Lender are sufficient to cover all costs and operating expenses of the Property, including payments due and reserves required under the Loan Documents, during the entire period of Restoration (which amounts Lender shall make available to cover such costs and operating expenses, including payments due and reserves required under the Loan Documents, so long as there has been no Event of Default under the Loan Documents),

29/ either (1)

(b) Lender's Rights. If any Damage occurs and some or all of it is covered by insurance, then (i) Lender may, but is not obligated to, make proof of loss if not made promptly by Borrower and Lender is authorized and empowered by Borrower ^{24/} to settle, adjust, or compromise any claims for the Damage; (ii) each insurance company concerned is authorized and directed to make payment directly to Lender for the Damage; and (iii) Lender may apply the insurance proceeds in any order it determines (1) Lender for all Costs (defined below) related to collection of the proceeds and (2) subject to Section 3.07(c) and at Lender's option ^{25/} ; to (A) payment (without any Prepayment Premium) of all or part of the Obligations, whether or not then due and payable, in the order determined by Lender (provided that if any Obligations remain outstanding after this payment, the unpaid Obligations shall continue in full force and effect and Borrower shall not be excused in the payment thereof); (B) the cure of any default under the Loan Documents; or (C) the Restoration. Any insurance proceeds held by Lender shall be held without the payment of interest thereon ^{26/} . If Borrower receives any insurance proceeds for the Damage, Borrower shall promptly deliver the proceeds to Lender. Notwithstanding anything in this instrument or at law or in equity to the contrary, none of the insurance proceeds paid to Lender shall be deemed trust funds and Lender may dispose of these proceeds as provided in this Section. Borrower expressly assumes all risk of loss from any Damage, whether or not insurable or insured against.

(c) Application of Proceeds to Restoration. Lender shall make the Net Proceeds (defined below) available to Borrower for Restoration if: (i) there shall then be no Event of Default at the time of application; (ii) Lender shall be satisfied ^{27/} that (A) Restoration can and will be completed within ^{28/} one (1) year after the Damage occurs and ^{29/} at least one (1) year prior to the maturity of the Note ^{30/} and (B) ^{31/} Leases which are terminated or terminable as a result of the Damage cover an aggregate of

- 32/ fifty percent (50%)
- 33/ (2) those Leases which are not terminated or terminable as a result of the Damage maintain a ratio of Net Operating Income to Debt Service plus 10% contingent obligations under capitalized leases of at least 1.60 to 1.00 with respect to the entire Security Pool and Lender receives satisfactory evidence that this ratio will be maintained for the next succeeding twelve (12) months following the date of the Damage, or (3) those Leases which are terminated or terminable as a result of the Damage have been replaced with Leases which contain rental provisions which, taken as a whole, maintain or enhance the overall value of the Property immediately prior to the Damage as determined by Lender,
- 34/ and (v) Lender shall be satisfied that Restoration can be completed in accordance with all applicable Laws and that all necessary permits and approvals have been or will be obtained
- 35/ if the amount of the Damage to any Facility or Facilities (as defined in the Loan Administration Agreement), individually or at any one time in the aggregate, exceeds \$1,000,000.00,
- 36/ first
- 37/ that Borrower has
- 38/ that Borrower has
- 39/ , during the entire period of Restoration (which amounts Lender shall make available to cover such costs and operating expenses, including payments due and reserves required under the Loan Documents), so long as there has been no Event of Default under the Loan Documents)

less than ten percent (10%) ^{32/} of the total rentable square footage contained in the Property at the closing of the Loan or such Tenants agree in writing to continue their Leases ^{33/} ; (iii) Borrower shall have entered into a general construction contract acceptable in all respects to Lender for Restoration, which contract must include provision for retention of not less than ten percent (10%) until final completion of the Restoration; and (iv) in Lender's reasonable judgment, after Restoration has been completed, the net cash flow of the Property will be sufficient to cover all costs and operating expenses of the Property, including payments due and reserves required under the Loan Documents ^{34/} .

Notwithstanding any provision of this Instrument to the contrary, ^{35/} Lender shall not be obligated to make any portion of the Net Proceeds available for Restoration unless, at the time of the ^{36/} disbursement request, Lender has determined in its reasonable discretion that (y) Restoration can be completed at a cost which does not exceed the aggregate of the remaining Net Proceeds and any funds deposited with Lender by Borrower ("Additional Funds") and (z) the aggregate of any loss of rental income insurance proceeds which the carrier has acknowledged to be payable ("Rent Loss Proceeds") and any funds ^{38/} deposited with Lender by Borrower are sufficient to cover all costs and operating expenses of the Property, including payments due and reserves required under the Loan Documents ^{39/} .

- 40/ If there is no Event of Default and the amount of the Damage to any Facility or Facilities, individually or at any one time in the aggregate, is less than \$1,000,000.00, Lender shall disburse the Net Proceeds (defined below) to Borrower to be used for Restoration of the Facility or Facilities suffering such Damage. If the amount of Damage to any Facility or Facilities, individually or at any one time in the aggregate, exceeds \$1,000,000.00 and
- 41/ reasonable
- 42/ (but at least quarterly, with Borrower becoming eligible to receive the first quarterly disbursement no later than ninety (90) days after the date on which the Net Proceeds are first made available for Restoration, provided that Borrower has complied with all requirements for disbursements under this Section 3.07)
- 43/ (other than any Net Proceeds or Additional Funds remaining after Restoration has been completed, which shall be returned to Borrower)

(a) Borrower's Obligations Borrower will promptly notify Lender of any threatened or instituted proceedings for the condemnation or taking by eminent domain of the Property including any change in any street (whether as to grade, access or otherwise) (a "Taking"). Borrower shall, at its expense, (i) diligently prosecute these proceedings, (ii) deliver to Lender copies of all papers served in connection therewith, and (iii) consult and cooperate with Lender in the handling of these proceedings. No settlement of these proceedings shall be made by Borrower without Lender's prior written consent. Lender may participate in these proceedings (but shall not be obligated to do so) and Borrower will sign and deliver all instruments requested by Lender to permit this participation.

Section 3.08 Condemnation

(d) Disbursement of Proceeds. If Lender elects or is required to make insurance proceeds available for Restoration, Lender shall, through a ^{41/} disbursement procedure established by Lender, periodically ^{42/} make available to Borrower in installments the net amount of all insurance proceeds received by Lender after deduction of all reasonable costs and expenses incurred by Lender in connection with the collection and disbursement of such proceeds ("Net Proceeds") and, if any, the Additional Funds. The amounts periodically disbursed to Borrower shall be based upon the amounts currently due under the construction contract for Restoration and Lender's receipt of (i) appropriate lien waivers, (ii) a certification of the percentage of Restoration completed by an architect or engineer acceptable to Lender, and (iii) title insurance protection against materialmen's and mechanic's liens. At Lender's election, the disbursement of funds may be handled by a disbursing agent selected by Lender, and such agent's reasonable fees and expenses shall be paid by Borrower. The Net Proceeds, Rent Loss Proceeds, and any Additional Funds shall constitute additional security for the Loan and Borrower shall execute, deliver, file and/or record, at its expense, such instruments as Lender requires to grant to Lender a perfected, first-priority security interest in these funds. If the Net Proceeds are made available for Restoration and (x) Borrower refuses or fails to complete the Restoration, (y) an Event of Default occurs, or (z) the Net Proceeds or Additional Funds are not applied to Restoration ^{43/}, then any undisbursed portion may, at Lender's option, be applied to the Obligations in any order of priority and any application to principal shall be deemed a voluntary prepayment subject to the Prepayment Premium.

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Prudential Loan Nos. 6 101 144 and 6 104 291
AMB: Amended/Restated Mortgage

48/ (without any Prepayment Premium, provided Borrower has complied with its obligations under this Section 3.08 and there is no Event of Default at the time of application)

47/ (B) those Leases which are not terminated or terminable as a result of the Taking maintain a ratio of Net Operating Income to Debt Service plus non-contingent obligations under capitalized leases of at least 1.60 to 1.00 with respect to the entire Security Pool and Lender receives satisfactory evidence that this ratio will be maintained for the next succeeding twelve (12) months following the date of the Taking; or (C) those Leases which are terminated or terminable as a result of the Taking have been replaced with Leases which contain rental provisions which, taken as a whole, maintain or enhance the overall value of the Property immediately prior to the Taking, as determined by Lender,

46/ either (A)

45/ impair or diminish

44/ with respect to the Property

(e) Effect on the Obligations. Notwithstanding any Taking, Borrower shall continue to pay and perform the Obligations as provided in the Loan Documents. Any reduction in the Obligations due to application of the Award shall take effect only upon Lender's actual receipt and application of the

Obligations ^{48/} or paid to Borrower.
of the cost of any Restoration permitted above, may, in Lender's sole discretion, be applied against the abatement of rent ^{47/}. Any portion of the Award that is (i) for loss of value or property or (ii) in excess of the amount of the loss does not exceed twenty percent (20%) of the original amount of the Note; (iii) the area of the Improvements or (B) ten percent (10%) of the parking spaces is affected by the Taking; (ii) the amount of the loss does not exceed twenty percent (20%) of the original amount of the Note; (iii) the Taking does not ^{45/} affect access to the Property from any public right-of-way; (iv) there is no Event of Default at the time of application; (v) after Restoration, the Property and its use will be in compliance with all Laws; (vi) in Lender's reasonable judgment, Restoration is practical and can be completed within one (1) year after the Taking and at least one (1) year prior to the maturity of the Note; and (vii) ^{46/} the Tenants listed in Exhibit "D" ("Major Tenants") agree in writing to continue their Leases without

(d) Application of Award to Restoration. With respect to any portion of the Award that is not for loss of value or property, Lender shall permit the application of the Award to Restoration in accordance with the provisions of Section 3.07 if: (i) no more than (A) twenty percent (20%) of the gross area of the Improvements or (B) ten percent (10%) of the parking spaces is affected by the Taking; (ii) the amount of the loss does not exceed twenty percent (20%) of the original amount of the Note; (iii) the Taking does not ^{45/} affect access to the Property from any public right-of-way; (iv) there is no Event of Default at the time of application; (v) after Restoration, the Property and its use will be in compliance with all Laws; (vi) in Lender's reasonable judgment, Restoration is practical and can be completed within one (1) year after the Taking and at least one (1) year prior to the maturity of the Note; and (vii) ^{46/} the Tenants listed in Exhibit "D" ("Major Tenants") agree in writing to continue their Leases without

(c) Application of Award. Lender shall have the right to apply any Award, subject to Section 3.08(d), as per Section 3.07 for insurance proceeds held by Lender, including the waiver of Prepayment Premium. If Borrower receives any Award, Borrower shall promptly deliver it to Lender. Notwithstanding anything in this instrument or at law or in equity to the contrary, none of the Award paid to Lender shall be deemed trust funds and Lender may dispose of these proceeds as provided in this Section.
sign and deliver all instruments requested by Lender to permit these actions.
received without question or appeal, and/or to appeal any judgment, decree, or award. Borrower will authorize Lender to collect and receive them, to give receipts for them, to accept them in the amount of sale in lieu of condemnation ^{44/} ("Award") are assigned and shall be paid to Lender. Borrower

(b) Lender's Rights to Proceeds. All condemnation awards, judgments, decrees, or proceeds

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- 49/ actually and reasonably
- 50/ (i) following an Event of Default or (ii) in the event that Borrower fails to timely deliver to Lender evidence of payment of Assessments or insurance premiums as required by Section 3.03 (a) and 3.06 (d), respectively, and such failure continues for twenty (20) days after notice from Lender of such failure,
- 51/ after receipt of notice from Lender of the amount of such deficiency

Section 3.10 Tax and Insurance Deposits. At Lender's option ^{50/}, Borrower shall make monthly deposits ("Deposits") with Lender equal to one-twelfth (1/12) of the annual Assessments (except for income taxes, franchise taxes, ground rents, maintenance charges and utility charges) and the premiums for insurance required under Section 3.06 (the "Insurance Premiums") together with amounts sufficient to pay these items thirty (30) days before they are due (collectively, the "Impositions"). Lender shall estimate the amount of the Deposits until ascertainable. At that time, Borrower shall promptly deposit any deficiency ^{51/}. Borrower shall promptly notify Lender of any changes to the amounts, schedules and instructions for payment of the Impositions. Borrower authorizes Lender or its agent to obtain the bills for Assessments directly from the appropriate tax or governmental authority. All Deposits are pledged to Lender and shall constitute additional security for the Obligations. The Deposits shall be held by Lender without interest (except to the extent required under Laws) and may be commingled with other funds. If (i) there is no Event of Default at the time of payment, (ii) Borrower has delivered bills or invoices to Lender for the Impositions in sufficient time to pay them when due, (iii) the Deposits are sufficient to pay the Impositions or Borrower has deposited the necessary additional amount, then Lender shall pay the Impositions prior to their due date. Any Deposits remaining after payment of the Impositions shall, at Lender's option, be credited against the Deposits required for the following year or paid to Borrower. If an Event of Default occurs, the Deposits may, at Lender's option, be applied to the Obligations in any order of priority. Any application to principal shall be deemed a voluntary prepayment subject to the Prepayment Premium. Borrower shall not claim any credit against the principal and interest due under the Note for the Deposits. Upon an assignment or other transfer of this Instrument, Lender may pay over the Deposits in its possession to the assignee or transferee and then it

Section 3.09 Liens and Liabilities. Borrower shall pay, bond, or otherwise discharge all claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in a lien or encumbrance on the Property or the Rents (collectively, "Liens") and Borrower shall, at its sole expense, do everything necessary to preserve the lien and security interest created by this Instrument and its priority. Nothing in the Loan Documents shall be deemed or construed as constituting the consent or request by Lender, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration, or repair of the Property. Borrower further agrees that Lender does not stand in any fiduciary relationship to Borrower. Any contributions made, directly or indirectly, to Borrower by or on behalf of any of its partners, members, principals or any party related to such parties shall be treated as equity and shall be subordinate and inferior to the rights of Lender under the Loan Documents.

Award to the Obligations. If the Property shall have been foreclosed, sold pursuant to any power of sale granted hereunder, or transferred by deed-in-lieu of foreclosure prior to Lender's actual receipt of the Award, Lender may apply the Award received to the extent of any deficiency upon such sale and Costs ^{49/} incurred by Lender in connection with such sale.

based on advice of counsel 52/

(a) Environmental Representations and Warranties. Borrower represents and warrants, to the best of Borrower's knowledge (after due inquiry and investigation) and additionally based upon the environmental site assessment report of the Property (the "Environmental Report"), that except as fully disclosed in the Environmental Report delivered to and approved by Lender: (i) there are no Hazardous Materials (defined below) or underground storage tanks affecting the Property ("affecting the Property" shall mean "in, on, under, stored, used or migrating to or from the Property") except for (A) routine office, cleaning, janitorial and other materials and supplies necessary to operate the Property

Section 3.12 Environmental Representations, Warranties, and Covenants.

Borrower shall comply with this Section. representations and warranties of this Section will be true after consummation and (ii) an agreement to shall obtain from the proposed transferee or lienholder (i) a certification to Lender that the cause a Violation. At least fifteen (15) days before consummation of any of the foregoing, Borrower be permitted which would, in Lender's opinion ^{52/}, negate Borrower's representations in this Section or in Borrower or the Property (including creation of a junior lien, encumbrance or leasehold interest) shall Documents to the contrary, no sale, assignment, or transfer of any direct or indirect right, title, or interest plans (collectively, a "Violation"), shall be an Event of Default. Notwithstanding anything in the Loan prohibited transaction under ERISA or (ii) violate ERISA or any state statute regulating governmental Instrument or any exercise of Lender's rights under this Instrument to (i) constitute a non-exempt of these representations and warranties, or consummation of any transaction which would cause this Lender to verify these representations and warranties. Failure to deliver these certifications or evidence, breach Lender such certifications and/or other evidence periodically requested by Lender, in its sole discretion, company" within the meaning of 29 C.F.R. Section 2510.3-101(c) or (e). Borrower shall deliver to Section 2510.3-101(f)(2); or (3) Borrower qualifies as an "operating company" or a "real estate operating interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. meaning of 29 C.F.R. Section 2510.3-101(b)(2); (2) Less than twenty-five percent (25%) of all equity circumstances is true: (1) Equity interests in Borrower are publicly offered securities, within the or more plans within the meaning of 29 C.F.R. Section 2510.3-101; and (iv) one or more of the following with respect to governmental plans; (iii) the assets of the Borrower do not constitute "plan assets" of one ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations 1974, as amended ("ERISA"), or a "governmental plan" within the meaning of Section 3(32) of "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of Section 3.11 ERISA. Borrower represents and warrants to Lender that (i) Borrower is not an

such servicer or institution. financial institution as Lender may periodically designate and Borrower agrees to make the Deposits to right or claim to the Deposits. Lender may transfer all its duties under this Section to such servicer or Lender's possession shall be paid over to the record owner of the Land and no other party shall have any satisfaction of this Instrument or, at Lender's option, at any prior time, the balance of the Deposits in automatically transfer to the new owner the beneficial interest in the Deposits. Upon full payment and Deposits to a new assignee or transferee. Subject to Article V, a transfer of title to the Land shall the assignee or transferee with respect thereto. This provision shall apply to every transfer of the shall be completely released from all liability with respect to the Deposits. Borrower shall look solely to

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53/ , or except as are expressly permitted to be used or stored by Tenants in accordance with Borrower's standard form lease which has been approved by Lender

54/ or other Hazardous Materials

55/ used

56/ , or except as are expressly permitted to be used or stored by Tenants in accordance with Borrower's standard form lease which has been approved by Lender

(b) Environmental Covenant. Borrower covenants and agrees that: (i) all use and operation of the Property shall be in compliance with all Environmental Laws and required permits; (ii) there shall be no Releases of Hazardous Materials affecting the Property; (iii) there shall be no Hazardous Materials affecting the Property except (A) routine office, cleaning and janitorial supplies^{54/}, (B)^{55/} in compliance with all Environmental Laws, (C) with all required permits, and (D) (1) in only the amounts necessary to operate the Property or (2) fully disclosed to and approved by Lender in writing^{56/}; (iv) Borrower shall keep the Property free and clear of all liens and encumbrances imposed by any Environmental Laws due to any act or omission by Borrower or any person (the "Environmental Liens"); (v) Borrower shall, at its sole expense, fully and expeditiously cooperate in all activities in Section 3.12 (c) including providing all relevant information and making knowledgeable persons available for interviews; (vi) Borrower shall, at its sole expense, (A) perform any environmental site

for its current use and (B) Hazardous Materials that are (1) in compliance with Environmental Laws (defined below), (2) have all required permits, and (3) are in only the amounts necessary to operate the Property^{53/}; (ii) there are no past, present or threatened Releases (defined below) of Hazardous Materials in violation of any Environmental Law affecting the Property; (iii) there is no past or present non-compliance with Environmental Laws or with permits issued pursuant thereto; (iv) Borrower does not know of, and has not received, any written or oral notice or communication from any person relating to Hazardous Materials affecting the Property; and (v) Borrower has provided to Lender, in writing, all information relating to environmental conditions affecting the Property known to Borrower or contained in Borrower's files. "Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, that apply to Borrower or the Property and relate to Hazardous Materials including the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act. "Hazardous Materials" shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable, underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," or "pollutant" within the meaning of any Environmental Law. "Release" of any Hazardous Materials includes any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, pumping, pouring, escaping, dumping, disposing or other movement of Hazardous Materials.

57/ reasonable and customary

58/ additional testing or investigations reasonably required by Lender and any

59/ promptly

60/ In the event that Borrower elects to carry any insurance policy or policies covering environmental liability or similar matters with respect to the Property, Lender shall be named as an additional insured under such policy or policies.

61/ (which entry under clause (C) only shall be at Lender's sole cost and expense)

Section 3.13 Electronic Payments. Unless directed otherwise in writing by Lender, all payments due under the Loan Documents shall be made by electronic funds transfer debit entries to Borrower's account at an Automated Clearing House member bank satisfactory to Lender or by similar electronic transfer process selected by Lender. Each payment due under the Loan Documents shall be initiated by Lender through the Automated Clearing House network (or similar electronic process) for settlement on the Due Date (as defined in the Note) for the payment. Borrower shall, at Borrower's sole cost and expense, direct its bank in writing to permit such electronic fund transfer debit entries (or similar electronic transfer) to be made by Lender. Prior to each payment Due Date under the Loan Documents, Borrower shall deposit and/or maintain sufficient funds in Borrower's account to cover each debit entry. If Lender determines in its reasonable judgment that a change in Borrower's bank is necessary to appropriately effectuate the Loan payments by electronic funds transfer debit entries (or similar electronic process), Lender shall have the right, after thirty (30) days written notice to Borrower, to require Borrower to use a

and provide access to Lender and such person.

Environmental Laws, or (C) the Loan is being considered for sale ^{61/}. Borrower shall cooperate with reasonably believes that a Release has occurred or the Property is not in compliance with all testing at all reasonable times when (A) a default has occurred under the Loan Documents, (B) Lender samples of soil, groundwater or other water, air, or building materials, and conducting other invasive environmental assessment or audit (the scope of which shall be determined by Lender) and (ii) taking Property to assess the environmental condition of the Property and its use including (i) conducting any Lender's Rights. Lender and any person designated by Lender may enter the

^{60/} Property.

Borrower to perform its obligations under this Section 3.12 shall constitute bad faith waste of the or oral communication or notice from any person relating to Hazardous Materials. Any failure of required or proposed remediation of environmental conditions relating to the Property, or (E) any written the Property with any Environmental Laws, (C) any actual or potential Environmental Lien, (D) any Release, or threatened Release of Hazardous Materials affecting the Property, (B) any non-compliance of Borrower shall ^{59/} immediately notify Lender in writing after it becomes aware of (A) the presence, shall not allow any Tenant or other user of the Property to violate any Environmental Law; and (viii) Materials affecting the Property or other actions required by any Environmental Laws; (vii) Borrower shall be entitled to rely on such results and reports, and (C) complete any ^{58/} remediation of Hazardous (B) share with Lender the results and reports and Lender and the Indemnified Parties (defined below) based on Lender's reasonable belief that the Property is not in compliance with all Environmental Laws, assessment or other ^{57/} investigation of environmental conditions at the Property upon Lender's request

upon not less than 48 hours' prior written notice to Borrower (and, at the option of Borrower, accompanied by a representative of Borrower), except in an emergency when no such prior notice shall be required	62/
reasonably	64/
one hundred twenty (120)	65/
after written notice from Lender	66/

(b) **Delivery of Reports.** All of the reports, statements, and items required under this Section shall be (i) certified as being true, correct, and accurate by an authorized person, partner, or officer of the delivering party or, at the deliverer's option, audited by a Certified Public Accountant; (ii) satisfactory to Lender in form and substance; and (iii) delivered within 65/ (A) ninety (90) days after the end of Borrower's fiscal year for annual reports and (B) fifteen (15) days after the end of each calendar quarter for quarterly reports. If any one report, statement, or item is not received by Lender on its due date, a late fee of Five Hundred and No/100 Dollars (\$500.00) per month shall be due and payable by Borrower. If any one report, statement, or item is not received within thirty (30) days 66/ of its due date, Lender may immediately declare an Event of Default under the Loan Documents. Borrower shall (i) provide Lender with such additional financial, management, or other information regarding Borrower,

(a) **Records and Reports.** Borrower shall maintain complete and accurate books and records with respect to all operations of or transactions involving the Property. Annually, Borrower shall furnish Lender financial statements for the most current fiscal year (including a schedule of all related Obligations and contingent liabilities) for (i) Borrower, (ii) any general partner(s) of Borrower and any general partners of such partners, (iii) any guarantors or sureties of the Note, and (iv) any Major Tenants, to the extent available through commercially reasonable efforts by Borrower. Annually (or quarterly upon Lender's request) Borrower shall furnish Lender (i) operating statements showing cash flow and capital expenditures for the Property including income and expenses (before and after Obligations service), major capital improvements, and a schedule showing the gross sales of each Tenant paying percentage rent; (ii) copies of paid tax receipts for the Property; (iii) a certified rent roll including security deposits held, the expiration of the terms of the Leases, and identification and explanation of any Tenants in default; (iv) a budget showing projected income and expenses (before and after Obligations service) for the next twelve (12) month budget period; and (v) upon Lender's 69/ request, (A) a schedule showing Borrower's tax basis in the Property; (B) the distribution of economic interests in the Property, and (C) copies of any other loan documents affecting the Property.

Section 3.15 Records, Reports, and Audits.

Section 3.14 Inspection. Borrower shall allow Lender and any person designated by Lender to enter upon the Property and conduct tests or inspect the Property at all reasonable times 67/ . Borrower shall assist Lender and such person in effecting said inspection.

Borrower. Different bank. Any charges or costs, if any, by Borrower's bank for the foregoing shall be paid by

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Such reports, statements or items (other than the operating statements for the Property) shall be delivered to Lender in the format in which such reports, statements or items are ordinarily prepared and maintained by Borrower.	67/
receipt of Lender's written	68/
, if true,	69/
commercially reasonable	70/

Section 3.16 Borrower's Certificates. Within ten (10) days after ^{68/} Lender's request, Borrower shall furnish a written certification to Lender and any Investors (defined below) as to (a) the amount of the Obligations outstanding; (b) the interest rate, terms of payment, and maturity date of the Note; (c) the date to which payments have been paid under the Note; (d) whether any offsets or defenses exist against the Obligations and a detailed description of any listed; (e) whether all Leases are in full force and effect and have not been modified; (or if modified, setting forth all modifications); (f) the date to which the Rents have been paid; (g) whether, to the best knowledge of Borrower, any defaults exist under the Leases and a detailed description of any listed; (h) the security deposit held by Borrower under each Lease and ^{69/} that such amount is the amount required under such Lease; (i) whether there are any defaults (or events which with the passage of time and/or notice would constitute a default) under the Loan Documents and a detailed description of any listed; (j) whether the Loan Documents are in full force and effect; and (k) any other matters reasonably requested by Lender related to the Leases, the Obligations, the Property, or the Loan Documents. For all non-residential properties and promptly upon Lender's request, Borrower shall use its best ^{70/} efforts to deliver a written certification to Lender and Investors from Tenants specified by Lender that: (a) the Leases are in full force and effect; (b) there are no defaults (or events which with the passage of time and/or notice would constitute a default) under their Leases or a detailed description of any listed; (c) none of the Rents have been paid more than one month in advance; (d) there are no offsets or defenses against the Rents or a detailed description of any listed; and (e) any other matters reasonably requested by Lender related to the Leases; provided,

(c) **Inspection of Records.** Borrower shall allow Lender or any person designated by Lender to examine, audit, and make copies of all such books and records and all supporting data at the place where these items are located at all reasonable times after reasonable advance notice; provided that no notice shall be required after any default under the Loan Documents. Borrower shall assist Lender in effecting such examination. Upon five (5) days' prior notice, Lender may inspect and make copies of Borrower's or any general partner of Borrower's income tax returns with respect to the Property for the purpose of verifying any items referenced in this Section.

any general partner of Borrower, or the Property, as Lender may reasonably request and (ii) upon Lender's request, deliver all items required by Section 3.15 in an electronic format (i.e. on computer disks) or by electronic transmission acceptable to Lender. ^{67/}

71/ Borrower shall not have to pay money to a Tenant to obtain such certification, but it will deliver a landlord's certification for any certification it cannot obtain 72/ , and (ii) if Borrower shall obtain an estoppel certificate from a Tenant in the form attached to such Tenant's Lease and such estoppel is reasonably acceptable to Lender, Borrower shall not be obligated to deliver a landlord's certification

71/ (i)

Section 4.01 Expenses and Advances. Borrower shall pay all reasonable appraisal, recording, filing, registration, brokerage, abstract, title insurance (including premiums), title searches and examinations, surveys and similar data and assurances with respect to title, U.C.C. search, escrow, attorneys' (both in-house staff and retained attorneys), engineers', environmental engineers', environmental testing, and architects' fees, costs (including travel), expenses, and disbursements incurred by Borrower or Lender in connection with the granting, closing, servicing, and enforcement of (a) the Loan and Loan Documents or (b) attributable to Borrower as owner of the Property. The term "Costs" shall mean any of the foregoing incurred in connection with (a) any default by Borrower under the Loan Documents, (b) the servicing of the Loan, or (c) the exercise, enforcement, compromise, defense, litigation, or settlement of any of Lender's rights or remedies under the Loan Documents or relating to the Loan or the Obligations. If

ARTICLE IV - ADDITIONAL ADVANCES; EXPENSES; SUBROGATION

Section 3.19 Further Acts. Borrower shall take all necessary actions to (i) keep valid and effective the lien and rights of Lender under the Loan Documents and (ii) protect the lawful owner of the Loan Documents. Promptly upon request by Lender, and at Borrower's sole expense, Borrower shall execute additional instruments and take such actions as Lender reasonably believes are necessary or desirable to (a) maintain or grant Lender a first-priority, perfected lien on the Property, (b) grant to Lender, to the fullest extent permitted by Laws, the right to foreclose on, or transfer title to, the Property non-judicially, (c) correct any error or omission in the Loan Documents, and (d) effect the intent of the Loan Documents, including filing/recording the Loan Documents, additional mortgages, or deeds of trust, financing statements, and other instruments.

Section 3.18 Additional Security. No other security now existing or taken later to secure the Obligations shall be affected by the execution of the Loan Documents and all additional security shall be held as cumulative. The taking of additional security, execution of partial releases, or extension of the time of payment obligations of Borrower shall not diminish the effect and lien of this Instrument and shall not affect the liability or obligations of any maker or guarantor. Neither the acceptance of the Loan Documents nor their enforcement shall prejudice or affect Lender's right to realize upon or enforce any other security now or later held by Lender. Lender may enforce the Loan Documents or any other security in such order and manner as it may determine in its discretion.

Section 3.17 Full Performance Required; Survival of Warranties. All representations and warranties of Borrower in the Loan application or made in connection with the Loan shall survive the execution and delivery of the Loan Documents and shall remain continuing warranties and representations of Borrower.

73/ upon prior written notice to Borrower (except in an emergency or in a situation in which there exists an immediate need to protect the Property),
74/ from Lender
75/ shall

(b) except for defaults listed in the other subsections of this Section 6.01, if Borrower fails to perform or comply with any other provision contained in the Loan Documents and the "Grace Period"; provided, however, that Lender ^{75/ may} extend the Grace Period up to an additional sixty (60) days if Borrower fails to make any payment required under the Loan Documents within one (1) notice of default within any twelve (12) month period, Borrower shall have no further right due and such failure continues for five (5) days after written notice; provided, however, that if Lender gives one (1) notice of default within any twelve (12) month period, Borrower shall have no further right to any notice of monetary default during that twelve (12) month period;

(a) if Borrower fails to make any payment required under the Loan Documents when due and such failure continues for five (5) days after written notice; provided, however, that if Lender gives one (1) notice of default within any twelve (12) month period, Borrower shall have no further right to any notice of monetary default during that twelve (12) month period;

Section 6.01 Events of Default. The following shall be an "Event of Default":

ARTICLE VI - DEFAULTS AND REMEDIES

Sale, transfer or encumbrance of the Property shall be governed by Section 6.2 of the Loan Administration Agreement.

ARTICLE V - SALE, TRANSFER OR ENCUMBRANCE OF PROPERTY

Section 4.02 Subrogation. If any proceeds of the Note were used to extinguish, extend or renew any indebtedness on the Property, then, to the extent of the funds so used, (a) Lender shall be subrogated to all rights, claims, liens, titles and interests existing on the Property held by the holder of such indebtedness and (b) those rights, claims, liens, titles and interests are not waived but rather shall (i) continue in full force and effect in favor of Lender and (ii) be merged with the lien and security interest created by the Loan Documents as cumulative security for the payment and performance of the obligations.

Lender may (but shall not be obligated to) advance sums to pay such amounts or perform such actions. Borrower grants Lender or Trustee the right to enter upon and take possession of the Property to prevent or remedy any such failure and the right to take such actions in Borrower's name. No advance or performance shall be deemed to have cured a default by Borrower. All (a) sums advanced by or payable to Lender per this Section or under applicable Laws, (b) except as expressly provided in the Loan Documents, payments due under the Loan Documents which are not paid in full when due, and (c) all Costs, shall: (i) be deemed demand obligations, (ii) bear interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, until paid if not paid on demand, (iii) be part of, together with such interest, the Obligations, and (iv) be secured by the Loan Documents. Lender, upon making any such advance, shall also be subrogated to rights of the person receiving such advance.

Section 4.02 Subrogation. If any proceeds of the Note were used to extinguish, extend or renew any indebtedness on the Property, then, to the extent of the funds so used, (a) Lender shall be subrogated to all rights, claims, liens, titles and interests existing on the Property held by the holder of such indebtedness and (b) those rights, claims, liens, titles and interests are not waived but rather shall (i) continue in full force and effect in favor of Lender and (ii) be merged with the lien and security interest created by the Loan Documents as cumulative security for the payment and performance of the obligations.

76/ promptly

77/ reasonably

78/ ; provided, however, that if Borrower remedies the factual circumstances that created such false or misleading representation or warranty within thirty (30) days after the earlier to occur of Borrower's discovery of such factual circumstances or Lender's written notice of such false or misleading representation or warranty, then no Event of Default shall be deemed to exist

(f) If Borrower shall fail at any time to obtain, maintain, renew, or keep in force the insurance policies required by Section 3.06 within ten (10) days after written notice;

(i) If any default occurs under the Hazardous Substances Agreement and such default is not cured within any applicable grace period in that document;

(h) If the Property shall be taken, attached, or sequestered on execution or other process of law in any action against Borrower;

(g) If any of the events in Sections 6.01 (e) or (f) shall occur with respect to any managing member of Borrower, (ii) general partner of Borrower or (iii) guarantor of payment or performance of any of the Obligations;

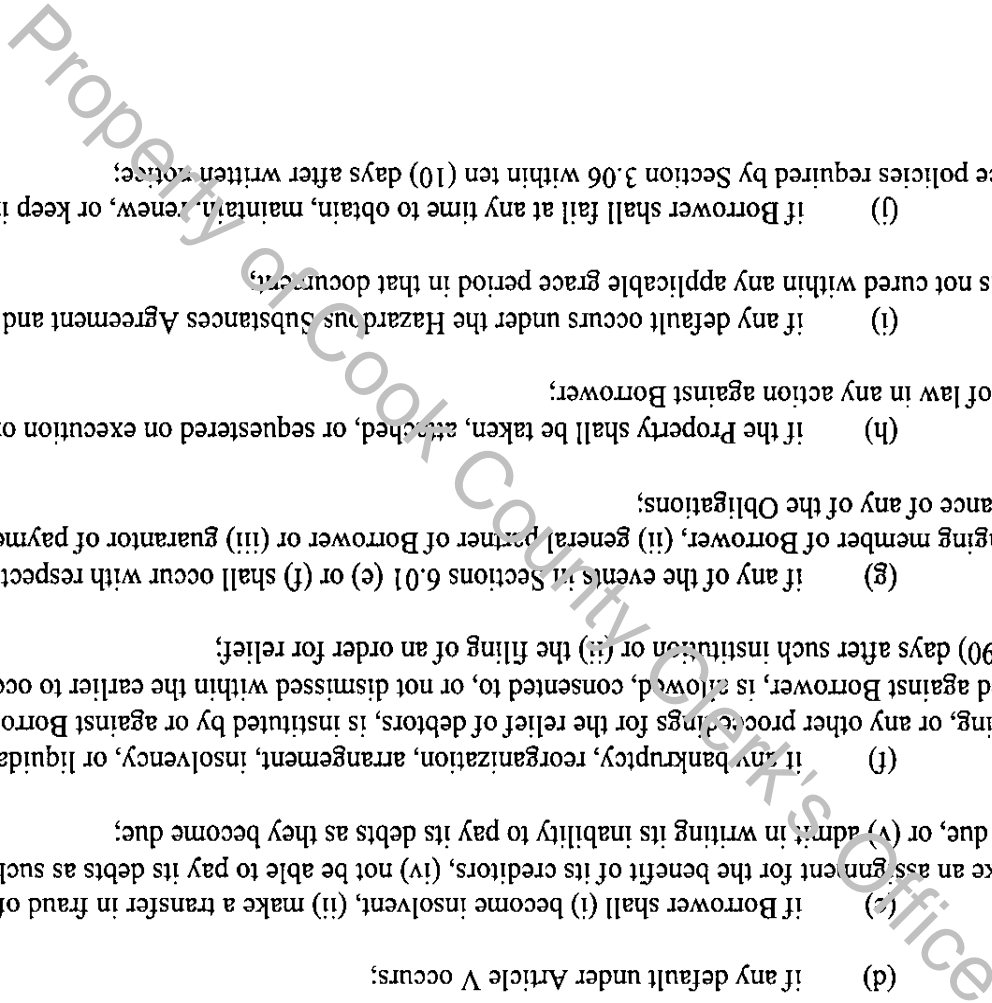
(i) If any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding, or any other proceedings for the relief of debtors, is instituted by or against Borrower, and, if instituted against Borrower, is allowed, consented to, or not dismissed within the earlier to occur of (i) ninety (90) days after such institution or (ii) the filing of an order for relief;

(e) If Borrower shall (i) become insolvent, (ii) make a transfer in fraud of creditors, (iii) make an assignment for the benefit of its creditors, (iv) not be able to pay its debts as such debts become due, or (v) admit in writing its inability to pay its debts as they become due;

(d) If any default under Article V occurs;

(c) If any representation made (i) in connection with the Loan or Obligations or (ii) in the Loan application or Loan Documents shall be false or misleading in any material respect

76/ immediately (for a total of ninety (90) days from the date of default) if (i) Borrower commences and diligently pursues the cure of such default and delivers (within the Grace Period) to Lender a written request for more time and (ii) Lender determines in good faith that (1) such default cannot be cured within the Grace Period but can be cured within ninety (90) days after the default, (2) no lien or security interest created by the Loan Documents will be impaired prior to completion of such cure, and (3) Lender's immediate exercise of any remedies provided hereunder or by law is not necessary for the protection or preservation of the Property or Lender's security interest;



that document
Default under this Instrument unless such default is not cured within any applicable grace period in
; provided, however, that a default under the Subordinate Mortgage shall not constitute an Event of

79/

Obligations; and Borrower and any person so liable waives or shall be deemed to have waived the
security for the Obligations or (B) the solvency of Borrower or any person liable for the payment of the
conservator of the Property without (i) notice to any person, (ii) regard for (A) the adequacy of the
(f) apply for the appointment of a receiver, custodian, trustee, liquidator, or
(e) seek specific performance of any provisions in the Loan Documents;

(i) realize on the Property or (ii) otherwise enforce the Loan Documents;
(d) recover judgment on the Note either before, during or after any proceedings for
the enforcement of the Loan Documents and without any requirement of any action being taken to

Borrower therein and rights of redemption thereof, pursuant to power of sale;
(c) sell for cash or upon credit the Property and all right, title and interest of

not yet due;
by this Instrument shall continue unimpaired and without loss of priority as to the remaining Obligations
foreclose this Instrument for any portion of the Obligations due and the lien and security interest created
(b) judicially or otherwise, (i) completely foreclose this Instrument or (ii) partially

Obligations immediately due and payable;
payable, except for defaults under Section 5.01 (f), (g), or (h) which shall automatically make the
(a) accelerate and declare the entire unpaid Obligations immediately due and

including the following actions:
which are hereby waived), to protect and enforce Lender's rights under the Loan Documents or Laws
time and in any order) permitted under any Laws, without notice, demand, presentment, or protest (all of
may (but shall not be obligated to) take any action (separately, concurrently, cumulatively, and at any
Section 6.02 Lender's Remedies. If an Event of Default occurs, Lender, or any person designated by Lender,

Borrower to provide Lender with the written certifications required by Section 3.11.
failure of a representation in Section 3.11 to be true and correct in all respects; or (iii) the failure of
transaction under ERLISA or (B) a violation of a state statute regulating governmental plans; (ii) the
Loan or any exercise of Lender's rights under the Loan Documents to constitute a non-exempt prohibited
(m) (i) the consummation by Borrower of any transaction which would cause (A) the

shall be consented to by Borrower;
Loan Documents by title, lien, or otherwise shall be upheld by any court of competent jurisdiction or
(l) if any claim of priority (except based upon a Permitted Encumbrance) to the

Instrument 79/;
security agreement covering any part of the Property, whether it be superior or junior in lien to this
(k) if Borrower shall be in default under any other mortgage, deed of trust, or

If Lender exercises any of its rights under Section 6.02(g), Lender shall not (a) be deemed to have entered upon or taken possession of the Property except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose; (b) be deemed a beneficiary or mortgagee in possession by reason of such entry or taking possession; nor (c) be liable (i) to account for any action taken pursuant to such exercise other than for Rents actually received by Lender, (ii) for any loss

(k) take any other action permitted under any Laws.

(j) take all actions permitted under the U.C.C. of the Property State including (i) the right to take possession of all tangible and intangible personal property now or hereafter included within the Property ("Personal Property") and take such actions as Lender deems advisable for the care, protection and preservation of the Personal Property and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower at least five (5) days prior to such action shall constitute commercially reasonable notice to Borrower; or

(i) apply any Deposits to the following items in any order and in Lender's sole discretion: (A) the Obligations, (B) Costs, (C) advances made by Lender under the Loan Documents, and/or (D) Impositions;

(h) release any portion of the Property for such consideration, if any, as Lender may require without, as to the remainder of the Property, impairing or affecting the lien or priority of this Instrument or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall have been actually reduced, and Lender may accept by assignment, pledge, or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder;

(g) with or without entering upon the Property, (i) exclude Borrower and any person from the Property without liability for trespass, damages, or otherwise; (ii) take possession of, and Borrower shall surrender on demand, all books, records, and accounts relating to the Property; (iii) give notice to Tenants or any person, make demand for, collect, receive, sue for, and recover in its own name all Rents and cash collateral derived from the Property; (iv) use, operate, manage, preserve, control, and otherwise deal with every aspect of the Property including (A) conducting its business, (B) insuring it, (C) making all repairs, renewals, replacements, alterations, additions, and improvements to or on it, (D) completing the construction of any Improvements in manner and form as Lender deems advisable, and (E) excising, modifying, enforcing, and terminating new and existing Leases on such terms as Lender deems advisable and evicting any Tenants in default; (v) apply the receipts from the Property to payment of the Obligations, in any order or priority determined by Lender, after first deducting all Costs, expenses, and liabilities incurred by Lender in connection with the foregoing operations and all amounts needed to pay the Impositions and other expenses of the Property, as well as just and reasonable compensation for the services of Lender and its attorneys, agents, and employees; and/or (vi) in every case in connection with the foregoing, exercise all rights and powers of Borrower or Lender with respect to the Property, either in Borrower's name or otherwise;

foregoing and any other objections to the fullest extent permitted by Laws and consents or shall be deemed to have consented to such appointment;

Section 6.06 Additional Provisions as to Remedies. No failure, refusal, waiver, or delay by Lender to exercise any rights under the Loan Documents upon any default or Event of Default shall impair Lender's rights or be construed as a waiver of, or acquiescence to, such or any subsequent default or Event of Default. No recovery of any judgment by Lender and no levy of an execution upon the Property or any other property of Borrower shall affect the lien and security interest created by this Instrument and such liens, rights, powers, and remedies shall continue unimpaired as before. Lender may resort to any security given by this Instrument or any other security now given or hereafter existing to secure the Obligations, in whole or in part, in such portions and in such order as Lender may deem advisable, and no such action shall be construed as a waiver of any of the liens, rights, or benefits granted hereunder. Acceptance of any payment after any Event of Default shall not be deemed a waiver or a cure of such

the Note, which shall be the Default Rate unless prohibited by Laws.

Section 6.05 Application of Proceeds. Any proceeds received from any sale or disposition under Article VI or otherwise, together with any other sums held by Lender or Trustee, shall, except as expressly provided to the contrary, be applied in the order determined by Lender to: (a) payment of all Costs and expenses of any enforcement action, or foreclosure sale, or otherwise, including interest thereon at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, (b) all taxes, Assessments, and other charges unless the Property was sold subject to these items; (c) payment of the Obligations in such order as Lender may elect; (d) payment of any other sums secured or required to be paid by Borrower; and (e) payment of the surplus, if any, to any person lawfully entitled to receive it. Borrower and Lender intend and agree that during any period of time between any foreclosure judgment that may be obtained and the actual foreclosure sale that the foreclosure judgment will not extinguish the Loan Documents or any rights contained therein including the obligation of Borrower to pay all Costs and to pay interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws.

Section 6.04 Rights Pertaining to Sales. To the extent permitted under (and in accordance with) any Laws, the following provisions shall, as Lender may determine in its sole discretion, apply to any sales of the Property under Article VI, whether by judicial proceeding, judgment, decree, power of sale, foreclosure or otherwise: (a) Lender may conduct multiple sales of any part of the Property in separate tracts or in its entirety and Borrower waives any right to require otherwise; (b) any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice; and (c) Lender may acquire the Property and, in lieu of paying cash, may pay by credit against the Obligations the amount of its bid, after deducting therefrom any sums which Lender is authorized to deduct under the provisions of the Loan Documents.

Section 6.03 Expenses. All Costs, expenses, or other amounts paid or incurred by Lender in the exercise of its rights under the Loan Documents, together with interest thereon at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, shall be (a) part of the Obligations, (b) secured by this Instrument, and (c) allowed and included as part of the Obligations in any foreclosure, decree for sale, power of sale, or other judgment or decree enforcing Lender's rights under the Loan Documents.

sustained by Borrower resulting from any failure to lease the Property, or (iii) any other act or omission of Lender except for losses caused by Lender's or Trustee's willful misconduct or gross negligence. Borrower hereby consents to, ratifies, and confirms the exercise by Lender of its rights under this Instrument and appoints Lender as its attorney-in-fact, which appointment shall be deemed to be coupled with an interest and irrevocable, for such purposes.

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Event of Default and such acceptance shall be deemed an acceptance on account only. If Lender has started enforcement of any right by foreclosure, sale, entry, or otherwise and such proceeding shall be discontinued, abandoned, or determined adversely for any reason, then Borrower and Lender shall be restored to their former positions and rights under the Loan Documents with respect to the Property, subject to the lien and security interest hereof.

Section 6.07 Waiver of Rights and Defenses. To the fullest extent Borrower may do so under Laws, Borrower (a) will not at any time insist on, plead, claim, or take the benefit of any statute or rule of law now or later enacted providing for any appraisal, valuation, stay, extension, moratorium, redemption, or any statute of limitations; (b) for itself, its successors and assigns, and for any person ever claiming an interest in the Property (other than Lender), waives and releases all rights of redemption, reinstatement, valuation, appraisal, notice of intention to mature or declare due the whole of the Obligations, all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created under the Loan Documents; (c) shall not be relieved of its obligation to pay the Obligations as required in the Loan Documents nor shall the lien or priority of the Loan Documents be impaired by any agreement renewing, extending, or modifying the time of payment or the provisions of the Loan Documents (including a modification of any interest rate), unless expressly released, discharged, or modified by such agreement. Regardless of consideration and without any notice to or consent by the holder of any subordinate lien, security interest, encumbrance, right, title, or interest in or to the Property, Lender may (a) release any person liable for payment of the Obligations or any portion thereof or any part of the security held for the Obligations or (b) modify any of the provisions of the Loan Documents without impairing or affecting the Loan Documents or the lien, security interest, or the priority of the modified Loan Documents as security for the Obligations over any such subordinate lien, security interest, encumbrance, right, title, or interest.

ARTICLE VII - SECURITY AGREEMENT

Section 7.01 Security Agreement. This Instrument constitutes both a real property mortgage and a "security agreement" within the meaning of the U.C.C. The Property includes real and personal property and all tangible and intangible rights and interest of Borrower in the Property. Borrower grants to Lender, as security for the Obligations, a security interest in the Personal Property to the fullest extent that the same may be subject to the U.C.C. Borrower authorizes Lender to file any financing or continuation statements and amendments thereto relating to the Personal Property without the signature of Borrower if permitted by Laws.

ARTICLE VIII - LIMITATION ON PERSONAL LIABILITY AND INDEMNITIES

Section 8.01 Limited Recourse Liability. The provisions of Paragraph 8 and Paragraph 9 of the Note^{80/} are incorporated into this Instrument as if such provisions were set forth in their entirety in this Instrument.

^{80/} Section 11 of the Loan Administration Agreement

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Section 8.02 General Indemnity. Borrower agrees that while Lender has no liability to any person in tort or otherwise as lender and that Lender is not an owner or operator of the Property, Borrower shall, at its sole expense, protect, defend, release, indemnify and hold harmless (“**indemnify**”) the Indemnified Parties (defined below) from any Losses (defined below) imposed on, incurred by, or asserted against the Indemnified Parties, directly or indirectly, arising out of or in connection with the Property, Loan, or Loan Documents, including Losses; provided, however, that the foregoing indemnities shall not apply to any Losses caused by the gross negligence or willful misconduct of the Indemnified Parties ^{81/}. The term “**Losses**” shall mean any claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, Costs, expenses, fines, penalties, charges, fees, judgments, awards, and amounts paid in settlement of whatever kind including attorneys’ fees (both in-house staff and retained attorneys) and all other costs of defense. The term “**Indemnified Parties**” shall mean (a) Lender, (b) any prior owner or holder of the Note, (c) any existing or prior servicer of the Loan, (d) the officers, directors, shareholders, partners, members, employees and trustees of any of the foregoing, and (e) the heirs, legal representatives, successors and assigns of each of the foregoing.

Section 8.03 Transaction Taxes Indemnity. Borrower shall, at its sole expense, indemnify the Indemnified Parties from all Losses imposed upon, incurred by, or asserted against the Indemnified Parties or the Loan Documents relating to Transaction Taxes.

Section 8.04 ERISA Indemnity. Borrower shall, at its sole expense, indemnify the Indemnified Parties against all Losses imposed upon, incurred by, or asserted against the Indemnified Parties (a) as a result of a Violation, (b) in the investigation, defense, and settlement of a Violation, (c) as a result of a breach of the representations in Section 3.11 or default thereunder, (d) in correcting any prohibited transaction or the sale of a prohibited loan, and (e) in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender’s sole discretion.

Section 8.05 Environmental Indemnity. Borrower and other persons, if any, have executed and delivered the Hazardous Substances Agreement.

Section 8.06 Duty to Defend, Costs and Expenses. Upon request, whether Borrower’s obligation to indemnify Lender arises under Article VIII or in the Loan Documents, Borrower shall defend the Indemnified Parties (in Borrower’s or the Indemnified Parties’ name) by attorneys and other professionals ^{82/} approved by the Indemnified Parties. Notwithstanding the foregoing, the Indemnified Parties may, in their sole discretion, engage their own attorneys and professionals to defend or assist them and, at their option, their attorneys shall control the resolution of any claims or proceedings. Upon demand, Borrower shall pay or, in the sole discretion of the Indemnified Parties, reimburse and/or indemnify the Indemnified Parties for all Costs imposed on, incurred by, or asserted against the Indemnified Parties by reason of any items set forth in this Article VIII and/or the enforcement or preservation of the Indemnified Parties’ rights under the Loan Documents. Any amount payable to the Indemnified Parties under this Section shall (a) be deemed a demand obligation, (b) be part of the Obligations, (c) bear interest at the applicable interest rate specified in the Note, which shall be the

^{81/} or to any Losses that arise as a result of the acts or omissions of the transferee following a transfer pursuant to Section 5.03 of this Instrument

^{82/} reasonably

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Default Rate unless prohibited by Laws, until paid if not paid on demand, and (d) be secured by this Instrument.

Section 8.07 Recourse Obligation and Survival. Notwithstanding anything to the contrary in the Loan Documents and in addition to the recourse obligations in the Note ^{83/}, the obligations of Borrower under Sections 8.03, 8.04, 8.05, and 8.06 shall be a full recourse obligation of Borrower, shall not be subject to any limitation on personal liability in the Loan Documents ^{84/}, and shall survive (a) repayment of the Obligations, (b) any termination, satisfaction, assignment or foreclosure of this Instrument, (c) the acceptance by Lender (or any nominee) of a deed in lieu of foreclosure, (d) a plan of reorganization filed under the Bankruptcy Code, or (e) the exercise by the Lender of any rights in the Loan Documents. Borrower's obligations under Article VIII shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal by any insurance carrier to perform any obligation under any applicable insurance policy.

ARTICLE IX - ADDITIONAL PROVISIONS

Section 9.01 Usury Savings Clause. All agreements in the Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid under the Loan Documents for the use, forbearance, or detention of money exceed the highest lawful rate permitted by Laws. If, at the time of performance, fulfillment of any provision of the Loan Documents shall involve transcending the limit of validity prescribed by Laws, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If Lender shall ever receive as interest an amount which would exceed the highest lawful rate, the receipt of such excess shall be deemed a mistake and (a) shall be canceled automatically or (b) if paid, such excess shall be (i) credited against the principal amount of the Obligations to the extent permitted by Laws ^{85/} or (ii) rebated to Borrower if it cannot be so credited under Laws. Furthermore, all sums paid or agreed to be paid under the Loan Documents for the use, forbearance, or detention of money shall to the extent permitted by Laws be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Obligations does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Obligations for so long as the Obligations are outstanding.

Section 9.02 Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted under the Loan Documents shall be in writing and shall be validly given if sent by a nationally-recognized courier that obtains receipts, delivered personally by a courier that obtains receipts, or mailed by United States certified mail (with return receipt requested and postage prepaid) addressed to the applicable person as follows:

^{83/} Loan Administration Agreement

^{84/} (but shall be subject to the recourse limitation set forth in Section 11.4 of the Loan Administration Agreement)

^{85/} without payment of a Prepayment Premium

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If to Borrower:

AMB-SGP CIF-ILLINOIS, L.P.
c/o AMB Property Corporation
Pier 1, Bay 1
San Francisco, California 94111
Attention: Gayle P. Starr, Vice President

With a copy of notices sent to Borrower to:

MORRISON & FOERSTER LLP
755 Page Mill Road
Palo Alto, California 94304
Attention: Philip J. Levine, Esq.

If to Lender:

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA
Prudential Capital Group
Two Ravinia Drive, Suite 1400
Atlanta, Georgia 30346-2110
Attention: Mortgage Loan Customer Service
Reference Loan Nos. 6 101 144 and 6 104 291

With a copy of notices sent to Lender to:

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA
Prudential Capital Group
Two Ravinia Drive, Suite 1400
Atlanta, Georgia 30346-2110
Attention: Regional Counsel
Reference Loan Nos. 6 101 144 and 6 104 291

Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed receipt. Any party may periodically change its address for notice and specify up to two (2) additional addresses for copies by giving the other party at least ten (10) days' prior ^{86/} notice.

Section 9.03 Sole Discretion of Lender. Except as otherwise expressly stated, whenever Lender's judgment, consent, or approval is required or Lender shall have an option or election under the Loan Documents, such judgment, the decision as to whether or not to consent to or approve the same, or the exercise of such option or election shall be in the sole and absolute discretion of Lender.

Section 9.04 Applicable Law and Submission to Jurisdiction. The Loan Documents shall be governed by and construed in accordance with the laws of the Property State and the applicable laws of the United States of America. Without limiting Lender's right to bring any action or proceeding against Borrower or the Property relating to the Obligations (an "Action") in the courts of other jurisdictions, Borrower irrevocably (a) submits to the jurisdiction of any state or federal court in the Property State, (b) agrees that any Action may be heard and determined in such court, and (c) waives, to the fullest extent permitted by Laws, the defense of an inconvenient forum to the maintenance of any Action in such jurisdiction.

^{86/} written

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Section 9.05 Construction of Provisions. The following rules of construction shall apply for all purposes of this Instrument unless the context otherwise requires: (a) all references to numbered Articles or Sections or to lettered Exhibits are references to the Articles and Sections hereof and the Exhibits annexed to this Instrument and such Exhibits are incorporated into this Instrument as if fully set forth in the body of this Instrument; (b) all Article, Section, and Exhibit captions are used for convenience and reference only and in no way define, limit, or in any way affect this Instrument; (c) words of masculine, feminine, or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa; (d) no inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion of this Instrument; (e) all obligations of Borrower hereunder shall be performed and satisfied by or on behalf of Borrower at Borrower's sole expense; (f) the terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to"; (g) the terms "Property," "Land," "Improvements," and "Personal Property" shall be construed as if followed by the phrase "or any part thereof"; (h) the term "Obligations" shall be construed as if followed by the phrase "or any other sums secured hereby, or any part thereof"; (i) the term "person" shall include natural persons, firms, partnerships, corporations, governmental authorities or agencies, and any other public or private legal entities; (j) the term "provisions," when used with respect hereto or to any other document or instrument, shall be construed as if preceded by the phrase "terms, covenants, agreements, requirements, and/or conditions"; (k) the term "lease" shall mean "tenancy, subtenancy, lease, sublease, or rental agreement," the term "lessor" shall mean "landlord, sublandlord, lessor, and sublessor," and the term "Tenants" or "lessee" shall mean "tenant, subtenant, lessee, and sublessee"; (l) the term "owned" shall mean "now owned or later acquired"; (m) the terms "any" and "all" shall mean "any or all"; and (n) the term "on demand" or "upon demand" shall mean "within five (5) business days after written notice" ^{87/} .

Section 9.06 Transfer of Loan. Lender may, at any time, (i) sell, transfer or assign the Loan Documents and any servicing rights with respect thereto or (ii) grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (collectively, the "Securities"). Lender may forward to any purchaser, transferee, assignee, servicer, participant, or investor in such Securities (collectively, "Investors"), any Rating Agency rating such Securities and any prospective Investor, all documents and information which Lender now has or may later acquire relating to the Obligations, Borrower, any Guarantor, any indemnitor(s), the Leases, and the Property, whether furnished by Borrower, any Guarantor, any indemnitor(s) or otherwise, as Lender determines advisable. Borrower, any Guarantor and any indemnitor agree to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Section including the delivery of an estoppel certificate in accordance with Section 3.16 and such other documents as may be reasonably requested by Lender. Borrower shall also furnish any consent of Borrower, any Guarantor and any indemnitor to Lender in order to permit Lender to furnish such Investors or such prospective Investors or such rating agency with any and all information concerning the Property, the Leases, the financial condition of Borrower, any Guarantor and

^{87/} ; and (o) the terms "immediately and promptly" shall mean "within five (5) business days"

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any indemnitor as may be reasonably requested by Lender, any Investor, any prospective Investor or any rating agency and which may be complied with without undue expense. ^{88/}

Section 9.07 Miscellaneous. If any provision of the Loan Documents shall be held to be invalid, illegal, or unenforceable in any respect, this shall not affect any other provisions of the Loan Documents and such provision shall be limited and construed as if it were not in the Loan Documents. If title to the Property becomes vested in any person other than Borrower, Lender may, without notice to Borrower, deal with such person regarding the Loan Documents or the Obligations in the same manner as with Borrower without in any way vitiating or discharging Borrower's liability under the Loan Documents or being deemed to have consented to the vesting. If both the lessor's and lessee's interest under any Lease ever becomes vested in any one person, this Instrument and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and Lender shall continue to have and enjoy all its rights and privileges as to each separate estate. Upon foreclosure of this Instrument, none of the Leases shall be destroyed or terminated as a result of such foreclosure, by application of the doctrine of merger or as a matter of law, unless Lender takes all actions required by law to terminate the Leases as a result of foreclosure or sale. All of Borrower's covenants and agreements under the Loan Documents shall run with the land and time is of the essence. Borrower appoints Lender as its attorney-in-fact, which appointment is irrevocable and shall be deemed to be coupled with an interest, with respect to the execution, acknowledgment, delivery, filing or recording for and in the name of Borrower of any of the documents listed in Sections 3.04, 3.19, 4.01 and 6.02. The Loan Documents cannot be amended, terminated, or discharged except in a writing signed by the party against whom enforcement is sought. No waiver, release, or other forbearance by Lender will be effective unless it is in a writing signed by Lender and then only to the extent expressly stated. The provisions of the Loan Documents shall be binding upon Borrower and its heirs, devisees, representatives, successors, and assigns including successors in interest to the Property and inure to the benefit of Lender and its heirs, successors, substitutes, and assigns. Where two or more persons have executed the Loan Documents, the obligations of such persons shall be joint and several, except to the extent the context clearly indicates otherwise. The Loan Documents may be executed in any number of counterparts with the same effect as if all parties had executed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any Loan Document which is not of public record, and, in the case of any mutilation, upon surrender and cancellation of the Loan Document, Borrower will issue, in lieu thereof, a replacement Loan Document, dated the date of the lost, stolen, destroyed or mutilated Loan Document containing the same provisions. Any reviews, inspections, reports, approvals or similar items conducted, made or produced by or on behalf of Lender with respect to Borrower, the Property or the Loan are for loan underwriting and servicing purposes only, and shall not constitute an acknowledgment, representation or warranty of the accuracy thereof, or an assumption of liability with respect to Borrower, Borrower's contractors, architects, engineers, employees, agents or invitees, present or future tenants, occupants or owners of the Property, or any other party.

^{88/} Notwithstanding anything to the contrary contained in this Section 9.06, Borrower shall not be required to pay any direct costs in connection with any transfer of the Loan pursuant to the terms of this Section 9.06.

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Section 9.08 Entire Agreement. Except as provided in Section 3.17, (a) the Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the Loan and supersede all prior written or oral understandings and agreements with respect to the Loan including the Loan application and Loan commitment and (b) Borrower is not relying on any representations or warranties of Lender except as expressly set forth in the Loan Documents. In the event of any conflict between the provisions of this Instrument and the provisions of the Loan Administration Agreement, the provisions of the Loan Administration Agreement shall control.

Section 9.09 WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN, THIS INSTRUMENT OR THE OTHER LOAN DOCUMENTS OR ANY ALLEGED ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Section 9.10 Commingling of Funds. Any and all sums collected or retained by Lender hereunder (including insurance and condemnation proceeds and any amounts paid by Borrower to Lender as provided for herein and under the Loan Administration Agreement), shall not be deemed to be held in trust, and Lender may commingle any and all such funds or proceeds with its general assets and shall not be liable for the payment of any interest or other return thereon, except to the extent otherwise required by law.

Section 9.11 Meeting Ratio Requirements. In those cases under Sections 3.07(c) and 3.08(d) of this Instrument where a minimum ratio of Net Operating Income to Debt Service exists, in the event that the ratio of Net Operating Income to Debt Service (as determined by Lender in its sole discretion) is below the required levels, Borrower shall have the right, subject to payment of the Prepayment Premium calculated in accordance with the provisions set forth in the Note, to pay Lender the amount necessary to increase the ratio of Net Operating Income to Debt Service to the required level, so long as Lender has also received satisfactory evidence that this ratio of Net Operating Income to Debt Service will be maintained for the next succeeding twelve (12) months following such partial prepayment.

ARTICLE X - LOCAL LAW PROVISIONS

Section 10.01 Additional Remedies. In addition to the remedies set forth in Article VI hereof, Lender, at Lender's option, may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorneys' fees, costs of documentary evidence, abstracts and title reports.

Section 10.02 Illinois Mortgage Foreclosure Law. Lender shall be entitled to the following benefits, among others, pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101) (the "Act"):

- (a) **Benefits to Act.** Borrower and Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently

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existing prior to such repeal, as though the same were incorporated herein by express reference.

- (b) **Insurance.** Wherever provision is made in this Instrument for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of the Lender shall continue in the Lender as judgment creditor or mortgagee until confirmation of sale.
- (c) **Protective Advances.** All advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings authorized by this Instrument or by the Act (collectively, "Protective Advances"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by this Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note. This Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Instrument is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:
- (i) determination of the amount of indebtedness secured by this Instrument at any time;
 - (ii) the indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
 - (iii) if right of redemption has not been waived by the Borrower in this Instrument, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;
 - (iv) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
 - (v) application of income in the hands of any receiver or Lender in possession; and
 - (vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

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- (d) **Lender in Possession.** In addition to any provision of this Instrument authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Instrument, all powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the Act.

Section 10.03 Release. Upon payment of all sums secured by this Instrument, Lender shall cancel this Instrument. Borrower shall pay Lender's reasonable costs incurred in canceling this Instrument.

Section 10.04 Attorneys' Fees. As used herein, "attorneys' fees" shall mean "reasonable attorneys' fees."

Section 10.05 Future Advances. Upon request of Borrower, Lender, at Lender's sole option within twenty years from the date of this Instrument, may make future advances to Borrower ("Future Advances"). Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Instrument, not including sums advanced in accordance herewith to protect the security of this Instrument, exceed two hundred percent (200%) of the original amount of the Note plus interest thereon and any disbursements made for the payment of taxes, levies or insurance on the property encumbered by this Instrument with interest on such disbursements at the Default Rate.

Section 10.06 Waiver of Rights of Redemption and Reinstatement. Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement of any rights or remedies of Lender under this Instrument, but hereby waives the benefit of such laws and the benefit of any homestead or other exemptions which it may now or hereafter from time to time have with respect to the Property or the Obligations hereby secured. Borrower for itself and all creditors, mortgagees, trustees, lienholders and other persons or entities who may claim through or under it waives any and all right to have the property and estates comprising the Property, or any part thereof, marshalled upon any foreclosure or other disposition (whether or not the entire Property be sold as a unit, and whether or not any parcels thereof be sold as a unit or separately) of any kind or nature of the Property, or any part thereof, or interest therein, and agrees that any court having jurisdiction to foreclose or otherwise enforce the liens granted and security interests created by this Instrument may order the Property sold as an entirety. On behalf of Borrower, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Instrument, and on behalf of all other persons to the maximum extent permitted by applicable law, Borrower hereby waives any and all rights (x) of redemption from any foreclosure, or other disposition of any kind or nature of the Property, or any part thereof, or interest therein, under or pursuant to rights herein granted to Lender, and (y) to reinstatement of the indebtedness hereby secured, including, without limitation, any right to reverse any acceleration of such indebtedness pursuant to 735 ILCS 5/15-1602. Borrower further waives and releases (a) all errors, defects, and imperfections in any proceedings instituted by Lender under the Note, this Instrument or any of the Loan Documents, (b) all benefits that might accrue to the Borrower by virtue of any present or future laws exempting the Property, or any part of the proceeds arising from any

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sale thereof, from attachment, levy, or sale under civil process, or extension, exemption from civil process, or extension of time for payment, and (c) all notices not specifically required by this Instrument of default, or of Lender's exercise, or election to exercise, any option under this Instrument. All waivers by Borrower in this Instrument have been made voluntarily, intelligently and knowingly by Borrower after Borrower has been afforded an opportunity to be informed by counsel of Borrower's choice as to possible alternative rights. Borrower's execution of this Instrument shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

Section 10.07 Illinois Responsible Property Transfer Act Disclosure. The Property is exempt from the disclosure requirements of the Responsible Property Transfer Act (765 ILCS 90/1) and no disclosure document is required to be filed thereunder because the Property (a) does not contain one or more facilities which are subject to reporting under Section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11022) and federal regulations promulgated thereunder; and (b) does not contain underground storage tanks which require registration with the State of Illinois Fire Marshall.

Section 10.08 Leasing and Management Agreements. Borrower covenants and agrees that all agreements to pay leasing commissions (a) shall provide that the obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement, (b) shall be subordinate to the lien of this Instrument, and (c) shall not be enforceable against Lender. Borrower shall furnish Lender with evidence of the foregoing which is in all respects satisfactory to Lender. Borrower further covenants and agrees that any property management agreement and operating agreement for the Property, whether now in effect or entered into hereafter by Borrower, with a property manager or operator, shall contain a "no lien" provision whereby, to the maximum extent permitted by law, the property manager or operator waives and releases, and to the extent that the above is not permitted by applicable law, subordinates to the lien hereof, any and all mechanics' lien rights that it or anyone claiming through or under it may have pursuant to 770 ILCS 60/1. Such property management agreement or operating agreement or a short form thereof shall, at Lender's request, be recorded with the Office of the Recorder of Deeds for the county in which the Property is located. In addition, Borrower shall cause the property manager or operator to enter into a subordination agreement with Lender, in recordable form, whereby the property manager subordinates its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Instrument. Borrower's failure to require the "no lien" provision or the subordination agreement described herein shall constitute an Event of Default under this Instrument.

Section 10.09 Costs. In the event it should become necessary for Lender to employ legal counsel to collect the Obligations, or to enforce Lender's rights under this Instrument, Borrower agrees to pay all reasonable fees and expenses of Lender including, without limitation, reasonable attorneys' fees for the services of such counsel whether or not suit be brought.

ARTICLE XI - ASSIGNMENT OF LEASES

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Section 11.01 Assignment of Rents. Borrower absolutely, irrevocably and unconditionally assigns and transfers the Leases and the Rents to Lender, whether now due, past due or to become due, and gives to and confers upon Lender the immediate and continuing right, power and authority to collect such Rents, and apply the same to the Indebtedness or the satisfaction of any of the Obligations. Borrower irrevocably appoints Lender its agent to, at any time, demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in the name of Borrower or in the name of Lender, for all such Rents. Neither the foregoing assignment of Rents to Lender or the exercise by Lender of any of its rights or remedies under this Instrument shall be deemed to make Lender 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 part thereof, unless and until Lender, in person or by its own agent, assumes actual possession thereof, nor shall appointment of a Receiver for the Property by any court at the request of Lender or by agreement with Borrower or the entering into possession of the Property or any part thereof by such Receiver be deemed to make Lender a "mortgagee-in-possession" otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part thereof.

Section 11.02 Collection Rights. Notwithstanding anything to the contrary contained herein or in the Note ^{89/}, so long as no Event of Default shall have occurred, Borrower shall have a license, revocable upon the occurrence of an Event of Default to collect and receive all Rents, as a trust fund, to be applied to the extent such items are then due and payable, before using any part of the Rents for any other purpose: first to the payment of the Installments before penalty or interest is due thereon, second to the cost of such insurance and of such maintenance and repairs as is required by the terms of the Loan Administration Agreement and this Instrument, third to the satisfaction of all obligations of Borrower, as landlord, under the Leases, and fourth to the payment of the Indebtedness and thereafter to retain, use and enjoy the same and to otherwise exercise all rights with respect thereto, subject to the terms hereof. Upon the occurrence of an Event of Default, Lender shall have the right, on written notice to Borrower, to terminate and revoke the license hereinafter granted to Borrower and shall have the complete right and authority then or thereafter to exercise and enforce any and all of its rights and remedies provided herein or by law or at equity.

Section 11.03 Power of Attorney. Effective automatically upon the occurrence of an Event of Default and continuously thereafter, and without the necessity of the execution of any further documents or instruments, Borrower hereby constitutes and appoints Lender as Borrower's true and lawful attorney, coupled with an interest, in the name, place and stead of Borrower: (i) to collect, demand, sue for, attach, levy, recover and receive all Rents due and payable by tenants pursuant to the Leases and to give proper notices, receipts, releases and acquittances therefor and after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Lender, of the Obligations, notwithstanding that the amount owing thereunder may not then be due and payable or that the Obligations are adequately secured, and Borrower does hereby authorize and direct such tenants to deliver such payment to Lender in accordance with the foregoing; and (ii) to subject and subordinate at any time and from time to time, the Leases to the lien of this Instrument or any other Loan Documents or any other mortgage or Instrument on or to any ground lease of the Property, or to request or require such subordination, where such reservation, option or authority was reserved under the Leases to Borrower, or in any case, where Borrower otherwise would have the right, power or privilege so to do. Borrower hereby ratifies and

^{89/} or the Loan Administration Agreement

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confirms all acts that Lender shall do or cause to be done by virtue of the powers granted hereby and warrants that Borrower has not, on or any time prior to the date hereof, exercised any such right of subordination under clause (ii) above and covenants not to exercise any such right except as may be required by Lender. The power of attorney hereunder granted is irrevocable and continuing, shall survive the insolvency or dissolution of Borrower, and such rights, powers and privileges shall be exclusive in Lender, its successors and assigns so long as any part of Obligations shall remain unpaid.

ARTICLE XII - SPECIAL PROVISIONS

Section 12.01 Cross Default and Notice Provisions. Borrower, CIF-I and CIF-California are the current obligees under the Other Notes in favor of Lender, and Borrower, CIF-I and CIF-California have also made in favor of Lender certain deeds of trust, mortgages and deeds to secure debt in favor of Lender on the Other Properties. Any default under any of the Loan Documents shall constitute a default under all of the additional Loan Documents and under all of the Other Loan Documents. In the event of a default under any of the Loan Documents, Borrower hereby acknowledges and agrees that: (A) Lender shall only be obligated to send one (1) notice of default to either Borrower, CIF-I or CIF-California; and (B) said notice shall be deemed notice to each of Borrower, CIF-I and CIF-California under all of the Loan Documents.

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IN WITNESS WHEREOF, the undersigned has executed this Instrument as of the day first set forth above.

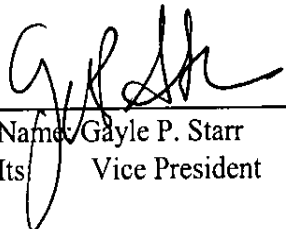
STATE OF ILLINOIS

BORROWER:

AMB-SGP CIF-ILLINOIS, L.P., a Delaware limited partnership

By: AMB PROPERTY II, L.P., a Delaware limited partnership, its general partner

By: AMB Property Holding Corporation, a Maryland corporation, its general partner


By: 
Name: Gayle P. Starr
Its: Vice President

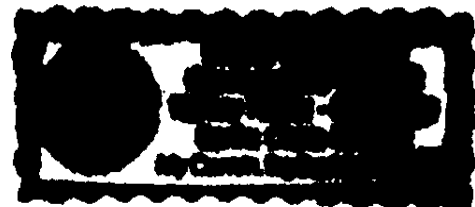
STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

This the 18TH day of June, 2001, personally appeared Gayle P. Starr personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), to the entity upon behalf of which the person(s) acted, executed this Instrument.

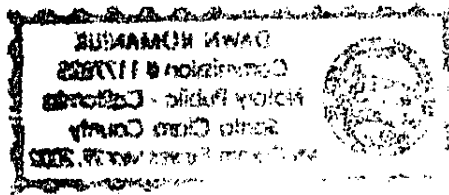
[SEAL]


Name: Dawn Romanuk
Title or Rank: Senior Legal Ass't
Serial Number: 1177825



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EXHIBIT " A "

PARCEL 1:

LOT 1 IN FOUR COLUMNS RESUBDIVISION IN ELK GROVE VILLAGE, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN ELK GROVE VILLAGE COOK COUNTY, ILLINOIS ACCORDING TO THE PLAT OF SOUTH RESUBDIVISION RECORDED JULY 30, 1980 AS DOCUMENT 25530614, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 DATED AUGUST 27, 1980, AND RECORDED AUGUST 29, 1980, AS DOCUMENTS 25566450 AND 25566451 FOR A 10 FOOT WIDE AND 15 FOOT WIDE UNDERGROUND EASEMENT TO INSTALL PIPES, LINES, WIRES AND CONDUITS TO PROVIDE SEWER, WATER, DRAINAGE, ELECTRICITY, NATURAL GAS, TELEPHONE AND OTHER UTILITIES GRANTED BY CHRYSLER CORPORATION TO LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST NO. 102563 UNDER THE FOLLOWING DESCRIBED TRACT:

08 34 402 050

THAT PART OF LOT 269 IN CENTEX INDUSTRIAL PARK UNIT 151, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 269; THENCE EASTWARD ALONG THE NORTH LINE OF SAID LOT 269, ALSO BEING THE SOUTH LINE OF ARTHUR AVENUE, NORTH 89 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 716.56 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 3 DEGREES 38 MINUTES 41 SECONDS WEST, A DISTANCE OF 143.38 FEET; THENCE NORTH 89 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 15.04 FEET; THENCE NORTH 3 DEGREES 38 MINUTES 41 SECONDS EAST, A DISTANCE OF 143.38 FEET TO A POINT ON THE SAID NORTH LINE OF LOT 269; THENCE WESTWARD ALONG THE SAID NORTH LINE, SOUTH 89 DEGREES 30 MINUTES 00 SECONDS WEST, A DISTANCE OF 15.04 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

THAT PART OF LOT 269 IN CENTEX INDUSTRIAL PARK UNIT 151, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 269, THENCE EASTWARD ALONG THE NORTH LINE OF SAID LOT 269, ALSO BEING THE SOUTH LINE OF ARTHUR AVENUE, NORTH 89 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 339.52 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 112.00 FEET; THENCE NORTH 89 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 12.00 FEET; THENCE SOUTH 00 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 31.00 FEET; THENCE NORTH 89 DEGREES 30 MINUTES 00 SECONDS WEST, A DISTANCE OF 10.00 FEET; THENCE NORTH 00 DEGREES 30 MINUTES 00 SECONDS WEST, A DISTANCE OF 41.00 FEET; THENCE SOUTH 89 DEGREES 30 MINUTES 00 SECONDS WEST, A DISTANCE OF 12.00 FEET; THENCE NORTH 00 DEGREES 30 MINUTES 00 SECONDS WEST, A DISTANCE OF 102.00 FEET TO A POINT ON THE SAID NORTH LINE OF LOT 269; THENCE WESTWARD ALONG THE SAID NORTH LINE, SOUTH 89 DEGREES 30 MINUTES 00 SECONDS WEST, A DISTANCE OF 10.00 FEET TO POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

1281 Arthur Avenue, Cook County, IL 10599934

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PARCEL 3:

NON-EXCLUSIVE UTILITY, DRAINAGE, SEWER AND WATER AND RAILROAD SIDING EASEMENTS FOR THE BENEFIT OF PARCEL 1 CREATED BY THE PLATS OF SUBDIVISION RECORDED AS DOCUMENTS 25530614 AND 21360549.

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EXHIBIT " A "

PARCEL 1:

LOT 262 IN CENTEX INDUSTRIAL PART UNIT 146, BEING A SUBDIVISION IN SECTION 34, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

NON-EXCLUSIVE UTILITY, SEWER AND DRAINAGE EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE PLATS OF SUBDIVISION RECORDED AS DOCUMENTS 21283896, 21183845 AND 21360549.

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1455 Estes Avenue, Cook County, IL

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EXHIBIT " A "

PARCEL 1:

LOT 266 IN CENTEX INDUSTRIAL PARK UNIT 150, BEING A SUBDIVISION IN THE NORTH 1/2 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE PLATS OF SUBDIVISION RECORDED AS DOCUMENTS 21283896, 21183845 AND 21360549.

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1450 Greenleaf Avenue, Cook County, IL

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EXHIBIT "A"

PARCEL 1:

LOT 267 IN CENTEX INDUSTRIAL PARK UNIT 150, BEING A SUBDIVISION IN THE NORTH 1/2 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2.

NON-EXCLUSIVE UTILITY, SEWER AND DRAINAGE EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE PLATS OF SUBDIVISION RECORDED AS DOCUMENTS 21283896, 21183845 AND 21360549.

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1500 Greenleaf Avenue, Cook County, IL

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EXHIBIT " A "

PARCEL 1:

LOTS 31 AND 32 AND THE EAST 64 FEET OF LOT 33 IN NORTHBROOK EDENS INDUSTRIAL PARK SUBDIVISION UNIT 3 IN THE NORTHWEST 1/4 OF SECTION 5 AND THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE UTILITY AND DRAINAGE EASEMENTS FOR THE BENEFIT OF PARCEL 1 CREATED BY THE PLAT OF SUBDIVISION RECORDED AS DOCUMENT 21088185.

04 05 102 018

04 06 202020

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3550-3600 Woodhead Drive, Cook County, IL

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Exhibit B

DESCRIPTION OF PERSONAL PROPERTY SECURITY

1. All machinery, apparatus, goods, equipment, materials, fittings, fixtures, chattels, and tangible personal property, and all appurtenances and additions thereto and betterments, renewals, substitutions, and replacements thereof, owned by Borrower, wherever situate, and now or hereafter located on, attached to, contained in, or used or usable in connection with the real property described in Exhibit A attached hereto and incorporated herein (the "**Land**"), and all improvements located thereon (the "**Improvements**") or placed on any part thereof, though not attached thereto, including all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, electrical, lighting, plumbing, ventilating, air-conditioning, refrigerating, incinerating and/or compacting plants, systems, fixtures and equipment, elevators, hoists, stoves, ranges, vacuum and other cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, ducts, conduits, dynamos, engines, compressors, generators, boilers, stokers, furnaces, pumps, tanks, appliances, equipment, fittings, and fixtures.

2. All funds, accounts, deposits, instruments, documents, contract rights, general intangibles, notes, and chattel paper arising from or by virtue of any transaction related to the Land, the Improvements, or any of the personal property described in this Exhibit B.

3. All permits, licenses, franchises, certificates, and other rights and privileges now held or hereafter acquired by Borrower in connection with the Land, the Improvements, or any of the personal property described in this Exhibit B.

4. All right, title, and interest of Borrower in and to the name and style by which the Land and/or the Improvements is known, including trademarks and trade names relating thereto (excluding, however, any interest in or rights to the "AMB" tradename and trademark).

5. All right, title, and interest of Borrower in, to, and under all plans, specifications, maps, surveys, reports, permits, licenses, architectural, engineering and construction contracts, books of account, insurance policies, and other documents of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale, or operation of the Land and/or the Improvements.

6. All interests, estates, or other claims or demands, in law and in equity, which Borrower now has or may hereafter acquire in the Land, the Improvements, or the personal property described in this Exhibit B.

7. All right, title, and interest owned by Borrower in and to all options to purchase or lease the Land, the Improvements, or any other personal property described in this Exhibit B, or any portion thereof or interest therein, and in and to any greater estate in the Land, the Improvements, or any of the personal property described in this Exhibit B.

8. All of the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance relating thereto, which Borrower now has or may hereafter acquire in the Land, the Improvements, or any of the personal property

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described in this Exhibit B, or any portion thereof or interest therein, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of such property, including without limitation, any award resulting from a change of any streets (whether as to grade, access, or otherwise) and any award for severance damages.

9. All right, title, and interest of Borrower in and to all contracts, permits, certificates, licenses, approvals, utility deposits, utility capacity, and utility rights issued, granted, agreed upon, or otherwise provided by any governmental or private authority, person or entity relating to the ownership, development, construction, operation, maintenance, marketing, sale, or use of the Land and/or the Improvements, including all of the Borrower's rights and privileges hereto or hereafter otherwise arising in connection with or pertaining to the Land and/or the Improvements, including, without limiting the generality of the foregoing, all water and/or sewer capacity, all water, sewer and/or other utility deposits or prepaid fees and/or all water and/or sewer and/or other utility tap rights or other utility rights, any right or privilege of Borrower under any loan commitment, lease, contract, Declaration of Covenants, Restrictions and Easements or like instrument, Developer's Agreement, or other agreement with any third party pertaining to the ownership, development, construction, operation, maintenance, marketing, sale, or use of the Land and/or the Improvements.

AND ALL PROCEEDS AND PRODUCTS OF THE FOREGOING PERSONAL PROPERTY DESCRIBED IN THIS EXHIBIT E.

A PORTION OF THE ABOVE DESCRIBED GOODS ARE OR ARE TO BE AFFIXED TO THE REAL PROPERTY DESCRIBED IN EXHIBIT A.

THE BORROWER IS THE RECORD TITLE HOLDER AND OWNER OF THE REAL PROPERTY DESCRIBED IN EXHIBIT A.

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Exhibit C
PERMITTED ENCUMBRANCES

All those items listed as recorded exceptions to title in Schedule B of the ALTA lender's policy of title insurance issued to Lender by CHICAGO TITLE INSURANCE COMPANY insuring the lien of this Instrument.

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Exhibit D

LIST OF MAJOR TENANTS

- I. Any Tenant whose premises are larger than 100,000 rentable square feet.

Property of Cook County Clerk's Office

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EXHIBIT " A "

PARCEL 1:

LOT 268 IN CENTEX INDUSTRIAL PARK UNIT 150 BEING A SUBDIVISION IN THE NORTH 1/2 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE WEST 67.33 FEET (AS MEASURED ALONG THE NORTH LINE THEREOF) OF LOT 285 IN CENTEX INDUSTRIAL PARK UNIT 165 BEING A SUBDIVISION IN THE NORTH 1/2 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

68 34 201 010

08 34 201 022

1550 Greenleaf Avenue, Cook County, IL 10599934