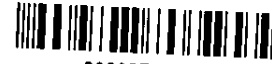


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2002-04-02 12:56:29
Cook County Recorder 183.00



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THIS INSTRUMENT PREPARED BY
AND WHEN RECORDED, RETURN
TO:

Brian S. Short, Esq.
Winstead Sechrest & Minick P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

7971671, 659 DA
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Property of Cook County

TO BE RECORDED IN THE
MORTGAGE RECORDS OF
COOK COUNTY, ILLINOIS

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CE

This Mortgage, Security Agreement and Fixture Financing Statement
also constitutes a Fixture Financing Statement.

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

Loan No. 324247

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage"), executed on March 25, 2002, but to be effective as of March 28, 2002, is entered into between **ARLINGTON, LLC**, an Illinois limited liability company, as Mortgagor ("Mortgagor"), whose address is c/o M&J Wilkow, Ltd., 180 North Michigan Avenue, Suite 200, Chicago, Illinois 60601, for the benefit of **COLUMN FINANCIAL, INC.**, a Delaware corporation, as Mortgagee ("Mortgagee"), whose address is 11 Madison Avenue, 5th Floor, New York, New York 10010-3629, Attention: Edmund Taylor.

WITNESSETH:

THAT FOR AND IN CONSIDERATION OF THE SUM OF TEN AND NO/100 DOLLARS (\$10.00), AND OTHER VALUABLE CONSIDERATION, INCLUDING THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, MORTGAGOR HEREBY IRREVOCABLY MORTGAGES, WARRANTS, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER, AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO AND IN FAVOR OF MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS, all of the following described property, whether now owned or hereafter acquired (collectively, the "Property"):

(A) All that certain real property situated in the County of Cook, State of Illinois, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Land"), together with all of the easements, rights, privileges, franchises,

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tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Mortgagor therein or thereto, either at law or in equity, in possession or in expectancy, now owned or hereafter acquired;

(B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Land (the "Improvements");

(C) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

(D) All furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Mortgagor and now or hereafter located on, attached to or used in or about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Mortgagor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Land or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

(E) All water, water courses, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights and powers which are appurtenant to, located on, under or above or used in connection with the Land or the Improvements, or any part thereof, together (i) with all utilities, utility lines, utility commitments, utility capacity, capital recovery charges, impact fees and other fees paid in connection with same, (ii) reimbursements or other rights pertaining to utility or utility services provided to the Land and/or Improvements and (iii) the present or future use or availability of waste water capacity, or other utility facilities to the extent same pertain to or benefit the Land and/or Improvements, including, without limitation, all reservations of or commitments or letters covering any such use in the future, whether now existing or hereafter created or acquired;

(F) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

(G) All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Mortgagee pursuant to this Mortgage or any other of the Loan Documents (as hereinafter defined), including, without limitation, all funds now or hereafter on deposit in the Reserves (as hereinafter defined);

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(H) All leases, licenses, tenancies, concessions and occupancy agreements of the Land or the Improvements now or hereafter entered into and all rents, royalties, issues, profits, bonus money, revenue, income, rights and other benefits (collectively, the "Rents" or "Rents and Profits") of the Land or the Improvements, or the fixtures or equipment, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future lease (including, without limitation, oil, gas and mineral leases), license, tenancy, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities (the "Security Deposits") that secure performance by the tenants, lessees or licensees, as applicable, of their obligations under any such leases, licenses, concessions or occupancy agreements, whether said cash or securities are to be held until the expiration of the terms of said leases, licenses, concessions or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject, however, to the provisions contained in Section 1.11 hereinbelow;

(I) All contracts and agreements now or hereafter entered into covering any part of the Land or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Land or the Improvements (including plans, specifications, studies, drawings, surveys, tests, operating and other reports, bonds and governmental approvals) or to the management or operation of any part of the Land or the Improvements;

(J) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Land or the Improvements;

(K) All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including, without limitation, trademarks, trade names, service marks and symbols now or hereafter used in connection with any part of the Land or the Improvements, all names by which the Land or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Mortgagor has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Land or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Land or the Improvements (collectively, the "General Intangibles");

(L) All water taps, sewer taps, certificates of occupancy, permits, special permits, uses, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Land or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Land or the Improvements;

(M) All building materials, supplies and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Land or the Improvements;

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(A) All right, title and interest of Mortgagor in any insurance policies or binders now or hereafter relating to the Property, including any unearned premiums thereon;

(A) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

(A) All other or greater rights and interests of every nature in the Land or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Mortgagor.

FOR THE PURPOSE OF SECURING:

(1) The debt evidenced by that certain Promissory Note (such Promissory Note, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements and extensions thereof, is hereinafter referred to as the "Note") of even date with this Mortgage, made by Mortgagor and payable to the order of Mortgagee in the original principal amount of **EIGHTEEN MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$18,250,000.00)** (the "Loan" or the "Loan Amount"), together with interest at a rate per annum of **7.850%** and having a maturity date of **April 11, 2012**;

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the Note, this Mortgage, the Assignment (as hereinafter defined) and such other agreements, documents and instruments, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, and extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") and the payment of all other sums therein covenanted to be paid, including, without limitation, any applicable yield maintenance premiums or prepayment fees;

(3) Any and all future or additional advances (whether or not obligatory) made by Mortgagee to protect or preserve the Property or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Mortgagor's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Mortgagor remains the owner of the Property at the time of such advances) together with interest thereon at the Default Interest Rate (as defined in the Note); and

(4) Any and all other indebtedness now owing or which may hereafter be owing by Mortgagor to Mortgagee, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements and extensions thereof.

(All of the sums referred to in Subsections (1) through (4) above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby"). The principal amount of

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the indebtedness secured hereby shall not exceed three times the original principal amount of the Note.

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns forever, and Mortgagor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof for the purposes and uses herein set forth;

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall have been paid and all other covenants contained in the Loan Documents shall have been performed, then, in such case, this Mortgage shall be satisfied and the estate, right, title and interest of Mortgagee in the Property shall cease, and upon payment to Mortgagee of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, Mortgagee shall release this Mortgage and the lien hereof by proper instrument.

ARTICLE I COVENANTS OF MORTGAGOR

For the purpose of further securing the indebtedness secured hereby and for the protection of the security of this Mortgage, for so long as the indebtedness secured hereby or any part thereof remains unpaid, Mortgagor represents, covenants and agrees as follows:

1.1 Warranties of Mortgagor. Mortgagor, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Mortgagee, its successors and assigns, that:

(a) Mortgagor has good, marketable and indefeasible fee simple title to the Property, subject only to those matters expressly set forth on Exhibit B attached hereto and by this reference incorporated herein (the "Permitted Exceptions"), and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer, encumber and mortgage its interest in the Property in the manner and form hereby done or intended. None of the Permitted Exceptions materially interferes with the security intended to be provided by this Mortgage, the current primary use of the Property or the current ability of the Property to generate income sufficient to service the Loan. Mortgagor will preserve its interest in and title to the Property and will forever warrant and defend the same to Mortgagee against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever, subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure or other enforcement of this Mortgage, and shall inure to the benefit of and be enforceable by Mortgagee in the event Mortgagee acquires title to the Property pursuant to any foreclosure or otherwise;

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(b) No bankruptcy or insolvency proceedings are pending or contemplated by Mortgagor or, to the best knowledge of Mortgagor, against Mortgagor or by or against any endorser, cosigner or guarantor of the Note;

(c) All reports, certificates, affidavits, statements and other data furnished by Mortgagor to Mortgagee in connection with the Loan are true and correct in all material respects as of the date hereof and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading;

(d) The execution, delivery and performance of this Mortgage, the Note and all of the other Loan Documents have been duly authorized by all necessary action to be taken, and are, binding and enforceable against Mortgagor in accordance with the respective terms thereof and do not contravene, result in a breach of or constitute (upon the giving of notice or the passage of time or both) a default under the operating agreement, certificate or articles of incorporation or other organizational documents of Mortgagor or any contract or agreement of any nature to which Mortgagor is a party or by which Mortgagor or any of its property may be bound and do not violate or contravene any law, order, decree, rule or regulation to which Mortgagor is subject;

(e) Mortgagor is not required to obtain any consent, approval or authorization from or to file any declaration or statement with, any governmental authority or the agency in connection with or as a condition to the execution, delivery or performance of this Mortgage, the Note or the other Loan Documents which has not been so obtained or filed;

(f) Mortgagor has obtained or made all necessary (i) consents, approvals and authorizations and registrations and filings of or with all governmental authorities or agencies and (ii) consents, approvals, waivers and notifications of partners, stockholders, members, creditors, lessors and other non-governmental persons and/or entities, in each case, which are required to be obtained or made by Mortgagor in connection with the execution and delivery of, and the performance by Mortgagor of its obligations under, the Loan Documents;

(g) Mortgagor is not an "investment company," or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended;

(h) No part of the proceeds of the indebtedness secured hereby will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulations T, U or X or any other Regulations of such Board of Governors, or for any purpose prohibited by legal requirements or by the terms and conditions of the Loan Documents;

(i) Mortgagor and, if Mortgagor is a partnership, any general partner of Mortgagor, has filed all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, including sales and payroll taxes, payable by Mortgagor and its general partners, if any. Mortgagor and its general partners, if any, believe that their respective tax returns properly

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reflect the income and taxes of Mortgagor and said general partners, if any, for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit;

(j) Mortgagor is not an "employee benefit plan," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA and the assets of Mortgagor do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101;

(k) The Land and the Improvements and the intended use thereof by Mortgagor comply with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property. The Land and Improvements constitute a separate tax parcel for purposes of ad valorem taxation. The Land and Improvements do not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements;

(l) All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or perpetual private easements reflected in the title insurance policy insuring the lien of this Mortgage and approved by Mortgagee (the "Title Insurance Policy");

(m) All streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Land and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Land and the Improvements without further condition or cost to Mortgagor;

(n) All curb cuts, driveways and traffic signals shown on the survey delivered to Mortgagee prior to the execution and delivery of this Mortgage are existing and have been fully approved by the appropriate governmental authority;

(o) There are no judicial, administrative, mediation or arbitration actions, suits or proceedings pending or, to the best of Mortgagor's knowledge, threatened against or affecting Mortgagor (and, if Mortgagor is a partnership, any of its general partners or if Mortgagor is a limited liability company, any member of Mortgagor) or the Property which, if adversely determined, would have a material adverse effect on (a) the Property, (b) the business, prospects, profits, operations or condition (financial or otherwise) of Mortgagor, (c) the enforceability, validity, perfection or priority of the lien of any Loan Document, or (d) the ability of Mortgagor to perform any obligations under any Loan Document (collectively, a "Material Adverse Effect");

(p) As of the date of this Mortgage (i) the Property is free from delinquent water charges, sewer rents, taxes and assessments and from unrepaired damage caused by fire,

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flood, accident or other casualty, and (ii) no part of the Land or the Improvements has been taken in condemnation, eminent domain or like proceeding nor is any such proceeding pending or to Mortgagor's knowledge and belief, threatened or contemplated;

(q) Mortgagor possesses all franchises, patents, copyrights, trademarks, trade names, licenses and permits adequate for the conduct of its business substantially as now conducted;

(r) Except as set forth in the Title Insurance Policy insuring the lien of this Mortgage, no improvements on adjoining properties encroach upon the Property. To the best of Mortgagor's knowledge, the Improvements are structurally sound, in good repair and free of defects in materials and workmanship and have been constructed and installed in substantial compliance with the plans and specifications relating thereto. All major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition;

(s) There are no security agreements or financing statements affecting any of the Property other than the security agreements and financing statements created in favor of Mortgagee;

(t) Mortgagor has delivered a true, correct and complete schedule (the "Rent Roll") of all leases affecting the Property (individually, an "Existing Lease" and collectively, the "Existing Leases") as of the date hereof, which accurately and completely sets forth in all material respects for each such Existing Lease, the following: the name of the tenant, the lease expiration date, extension and renewal provisions, the base rent payable, and the Security Deposit held thereunder. Mortgagor is in compliance with all legal requirements relating to such Security Deposits;

(u) No tenant under any Existing Lease has, as of the date hereof, paid rent more than thirty (30) days in advance, and the rents under such Existing Leases have not been waived, released, or otherwise discharged or compromised;

(v) The Property is free and clear of any mechanics' or material men's liens or liens in the nature thereof, and no rights are outstanding that under law would give rise to any such liens, any of which liens are or may be prior to, or equal with, the lien of this Mortgage, except those which are insured against by the Title Insurance Policy;

(w) No Existing Lease or Contract or easement, right-of-way, permit or declaration (collectively, "Property Agreements") provides any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Mortgage;

(x) Mortgagor has delivered to Mortgagee true, correct and complete copies of all Property Agreements and, to the best of Mortgagor's knowledge, no default exists or would exist, with the passing of time, or the giving of notice, or both, under any Property Agreement which would, in the aggregate, have a Material Adverse Effect;

(y) To the best knowledge of Mortgagor, no offset or any right of offset exists respecting continued contributions to be made by any party to any Property Agreement except as

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expressly set forth herein. Except as previously disclosed to Mortgagee in writing by delivery of the Property Agreement or otherwise, no material exclusions or restrictions on the utilization, leasing or improvement of the Property (including non-compete agreements) exist in any Property Agreement;

(z) All work, if any, to be performed by Mortgagor under each of the Property Agreements has been substantially performed, all contributions to be made by Mortgagor to any party to such Property Agreements have been made, and all other conditions to such party's obligations thereunder have been satisfied;

(aa) The Property is taxed separately without regard to any other real estate and constitutes a legally subdivided lot under all applicable legal requirements (or, if not subdivided, no subdivision or platting of the Property is required under applicable legal requirements), and for all purposes may be mortgaged, conveyed, pledged, hypothecated, assigned or otherwise dealt with as an independent parcel;

(bb) The Property forms no part of any property owned, used or claimed by Mortgagor as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Property is located. Mortgagor hereby disclaims and renounces each and every claim to all or any portion of the Property as a homestead. The Loan evidenced by the Loan Documents is made and transacted solely for business, investment, commercial or other similar purposes;

(cc) There are no outstanding options or rights of first offer or refusal to purchase all or any portion of the Property or Mortgagor's interest therein or ownership thereof;

(dd) Except as otherwise disclosed in writing to Mortgagee prior to the effective date hereof related to the ongoing environmental cleanup and remediation, there are no actions, suits, proceedings or orders of record or of which Mortgagor has notice, and, to the best of Mortgagor's knowledge, there are no inquiries or investigations, pending or threatened, in any such case against, involving or affecting the Property, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, alleging the violation of any federal, state or local law, statute, ordinance, rule or regulation relating to Environmental Laws. Furthermore, Mortgagor has not received any written claim, notice or opinion that the ownership or operation of the Property violates any federal, state or local law, statute, ordinance, rule, regulation, decree, order, and/or permit relating to Environmental Laws, and, to the best of Mortgagor's knowledge, no valid basis for any proceeding, action or claim of such nature exists;

(ee) Each Existing Lease constitutes the legal, valid and binding obligation of Mortgagor and, to the best of Mortgagor's knowledge and belief, is enforceable against the tenant thereof;

(ff) All work to be performed by Mortgagor under the Existing Leases has been substantially performed, all contributions to be made by Mortgagor to the tenants thereunder have been made and all other conditions precedent to each such tenant's obligations thereunder have been satisfied;

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(gg) With the exception of Gateway, Inc. which has vacated its leased premises on the Property, each tenant under an Existing Lease has entered into occupancy of the demised premises;

(hh) To the best of Mortgagor's knowledge and belief, each tenant is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors;

(ii) Except as previously disclosed in writing to Mortgagee, there are no brokerage fees or commissions payable by Mortgagor with respect to the leasing of the space at the Property and there are no management fees payable by Mortgagor with respect to the management of the Property; and

(jj) The representations and warranties contained in this Mortgage, or the review and inquiry made on behalf of Mortgagor therefor, have all been made by persons having the requisite expertise and knowledge to provide such representations and warranties. No statement or fact made by or on behalf of Mortgagor in this Mortgage or in any certificate, document or schedule furnished to Mortgagee pursuant hereto, contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein or herein not misleading (which may be to Mortgagor's best knowledge where so provided herein). There is no fact presently known to Mortgagor which has not been disclosed to Mortgagee which would have a Material Adverse Effect.

1.2 Defense of Title. If, while this Mortgage is in force, the title to the Property or the interest of Mortgagee therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Mortgagor, at Mortgagor's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel reasonably approved by Mortgagee, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest.

1.3 Performance of Obligations. Mortgagor shall pay when due the principal of and the interest on the indebtedness secured hereby including all charges, fees and other sums required to be paid by Mortgagor as provided in the Loan Documents, and shall observe, perform and discharge all obligations and conditions, and comply with all prohibitions, covenants and agreements to be observed, performed or discharged by Mortgagor set forth in the Loan Documents in accordance with their terms. In the event that Mortgagee reasonably determines that Mortgagor is not adequately performing any of its obligations under this Mortgage or under any of the other Loan Documents, Mortgagee may, without limiting or waiving any other rights or remedies of Mortgagee hereunder with ten (10) days prior notice to Mortgagor (unless in Mortgagee's reasonable judgment, any delay occasioned by such notice would potentially further damage the Property or Mortgagee's interest therein), take such steps with respect thereto as Mortgagee shall reasonably deem necessary or proper and any and all costs and expenses reasonably incurred by Mortgagee in connection therewith, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date of notice and demand by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall

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be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.4 Insurance. Mortgagor shall, at Mortgagor's expense, maintain in force and effect on the Property at all times while this Mortgage continues in effect the following insurance:

(a) "All-risk" coverage insurance against loss or damage to the Property from all-risk perils. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Mortgagor from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Mortgagee's election, by reference to such indexes, appraisals or information as Mortgagee determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Mortgagee's approval.

(b) Commercial general liability insurance for personal injury, bodily injury, death and property damage liability in amounts not less than **\$5,000,000.00** per occurrence, **\$6,000,000.00** aggregate (inclusive of umbrella coverage) or such lesser amount as Mortgagee in Mortgagee's sole discretion may accept, for bodily injury, personal injury and property damage. Mortgagee hereby retains the right to periodically review the amount of said liability insurance being maintained by Mortgagor and to require an increase in the amount of said liability insurance should Mortgagee deem an increase to be reasonably prudent under then existing circumstances.

(c) Insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, high pressure piping and machinery, elevators and escalators, if any, and other similar equipment installed in the Improvements, in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements which policies shall insure against physical damage to and loss of occupancy and use of the Improvements arising out of an accident or breakdown covered thereunder.

(d) If the Land or any part thereof is identified by the Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to one hundred percent (100%) of the replacement cost of the Improvements or the maximum amount of flood insurance available, whichever is the lesser.

(e) During the period of any construction on the Land or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value" or "Course of

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Construction" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount approved by Mortgagee and Worker's Compensation Insurance covering all persons engaged in such construction, renovation or alteration.

(f) Rental value or rental income insurance in amounts sufficient to compensate Mortgagor for all Rents and Profits during a period of not less than one (1) year in which the Property may be damaged or destroyed.

(g) Law and ordinance coverage in an amount satisfactory to Mortgagee if the Property, or any part thereof, shall constitute a nonconforming use or structure under applicable zoning ordinances, sub-division and building codes or other laws, ordinances, orders and requirements.

(h) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be reasonably required by Mortgagee against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (i) be issued by companies approved by Mortgagee and licensed to do business in the state where the Property is located, with a claims paying ability rating of "A" or better by Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc., (ii) contain the complete address of the Land (or a complete legal description), (iii) be for a term of at least one (1) year, (iv) contain deductibles no greater than \$25,000.00 or as otherwise required by Mortgagee, and (v) be subject to the approval of Mortgagee (not to be unreasonably withheld) as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates.

Mortgagor shall as of the date hereof deliver to Mortgagee evidence that said insurance policies have been paid current as of the date hereof and certified copies of such insurance policies and original certificates of insurance signed by an authorized agent evidencing such insurance satisfactory to Mortgagee. Mortgagor shall renew all such insurance and deliver to Mortgagee certificates evidencing such renewals at least thirty (30) days before any such insurance shall expire. Without limiting the required endorsements to insurance policies, Mortgagor further agrees that all such policies shall provide that proceeds thereunder shall be payable to Mortgagee, its successors and assigns, pursuant and subject to a mortgagee clause (without contribution) of standard form attached to, or otherwise made a part of, the applicable policy and that Mortgagee, its successors and assigns, shall be named as an additional insured under all liability insurance policies. Mortgagor further agrees that all such insurance policies: (i) shall provide for at least thirty (30) days' prior written notice to Mortgagee prior to any cancellation or termination thereof and prior to any modification thereof which affects the interest of Mortgagee; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Mortgagee in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of such insurance; and (iii) shall either name Mortgagee as an additional insured or waive all rights of subrogation against Mortgagee. The delivery to Mortgagee of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such

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insurance policies by Mortgagor to Mortgagee as further security for the indebtedness secured hereby. In the event of foreclosure of this Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Mortgagor in and to all proceeds payable under such policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Mortgagee or other transferee in the event of such other transfer of title. Approval of any insurance by Mortgagee shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Mortgage or evidence of their renewal as required herein, Mortgagee may, but shall not be obligated to, procure such insurance and Mortgagor shall pay all amounts advanced by Mortgagee, together with interest thereon at the Default Interest Rate (as defined in the Note) from and after the date advanced by Mortgagee until actually repaid by Mortgagor, promptly upon demand by Mortgagee. Any amounts so advanced by Mortgagee, together with interest thereon, shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Mortgagee shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Mortgagee has caused the insurance to be placed with the insurer after failure of Mortgagor to furnish such insurance.

1.5 Payment of Taxes. Mortgagor shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 1.6 of this Mortgage, all taxes and assessments which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Mortgagor shall furnish Mortgagee with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such taxes and assessments at least fifteen (15) days prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Mortgagor may in good faith, by appropriate proceedings and upon notice to Mortgagee, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued, (b) Mortgagee determines in its subjective opinion, that such contest suspends the obligation to pay the tax or assessment and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Property or any part thereof or any interest of Mortgagee therein, and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted tax or assessment, Mortgagor deposits in the Impound Account (as hereinafter defined) an amount determined by Mortgagee to be adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Mortgagor shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

1.6 Tax and Insurance Impound Account. Mortgagor shall establish and maintain at all times while this Mortgage continues in effect an impound account (the "Impound Account") with Mortgagee for payment of real estate taxes and assessments and insurance on the Property and as additional security for the indebtedness secured hereby. Mortgagor shall deposit in the Impound Account an amount reasonably determined by Mortgagee to be sufficient (when added

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to the monthly deposits described herein) to pay the next due annual installment of real estate taxes and assessments on the Property at least one (1) month prior to the delinquency date thereof and the next due annual insurance premiums with respect to the Property at least one (1) month prior to the due date thereof. Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Mortgagor shall pay to Mortgagee, concurrently with the monthly payment due under the Note, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which Mortgagor is required to maintain hereunder, each as reasonably estimated and determined by Mortgagee. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Impound Account shall be held by Mortgagee in the Impound Account to pay said taxes, assessments and insurance premiums before the same become delinquent. Mortgagor shall be responsible for ensuring the receipt by Mortgagee, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Account, and so long as no default hereunder or under the other Loan Documents has occurred and is continuing, Mortgagee shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. In making any payment from the Impound Account, Mortgagee shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof. No interest on funds contained in the Impound Account shall be paid by Mortgagee to Mortgagor and any interest or other earnings on funds deposited in the Impound Account shall be solely for the account of Mortgagee. If the total funds in the Impound Account shall exceed the amount of payments actually applied by Mortgagee for the purposes of the Impound Account, such excess may be credited by Mortgagee on subsequent payments to be made hereunder or, at the option of Mortgagee, refunded to Mortgagor. If, however, the Impound Account shall not contain sufficient funds to pay the sums required when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of written notice thereof, deposit with Mortgagee the full amount of any such deficiency.

1.7 Tenant Improvements and Leasing Commissions Reserve. As additional security for the indebtedness secured hereby, Mortgagor shall establish and maintain at all times while this Mortgage continues in effect a reserve (the "TILC Reserve") with Mortgagee for the payment of costs and expenses incurred by Mortgagor for Tenant Improvements and Leasing Commissions. All such sums, together with any interest thereon, are hereinafter collectively referred to as the "TILC Funds". As used herein, the term "Tenant Improvements" shall mean construction or modification of improvements on or installation of fixtures or equipment in the Property as required to be performed by Mortgagor pursuant to the terms of any lease which is hereafter approved or, if such lease does not require approval by Mortgagee, is hereafter entered into by Mortgagor and tenant pursuant to Section 1.12 hereof ("Approved Lease"). As used herein, the term "Leasing Commissions" shall mean reasonable and customary commissions paid to a real estate broker licensed in the state where the Property is located in connection with an Approved Lease, pursuant to commission agreements containing such terms and provisions

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including, without limitation, as to the timing of the payment of the commission, as are then prevailing between third party, unaffiliated owners and brokers for comparable leases of space at properties similar to the Property in the market area in which the Property is located.

(a) Deposits Into the TILC Reserve/Interest on TILC Funds. Commencing with the first monthly payment due under the Note and continuing thereafter on each monthly payment date under the Note, Mortgagor shall pay to Mortgagee, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, a deposit to the TILC Reserve in a monthly amount equal to **\$10,850.00**. To the extent the balance of the TILC Reserve should equal or exceed **\$375,000.00** (the "TILC Cap") then Mortgagor's obligation for monthly deposits under this Section 1.7 shall thereafter be suspended; provided, however, such obligation for monthly deposits shall be reinstated to the extent the balance of the TILC Reserve should ever thereafter be less than the TILC Cap. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the TILC Reserve shall be held by Mortgagee in the TILC Reserve to pay and/or reimburse Mortgagor for the costs and expenses of Tenant Improvements and for paying Leasing Commissions as herein set forth. Interest on the funds contained in the TILC Reserve shall be credited to Mortgagor as provided in Section 4.28 hereof.

(b) Disbursements from the TILC Reserve. So long as no Event of Default hereunder or under the other Loan Documents has occurred and is continuing, and to the extent TILC Funds are available for such purpose, Mortgagee shall, within ten (10) days after receipt of a written request from Mortgagor specifying the amount requested and the applicable Tenant Improvements or Leasing Commissions to be paid for with the requested TILC Funds ("Disbursement Request"), release to Mortgagor TILC Funds in the amount of the Disbursement Request; subject, however, to the following conditions precedent. Mortgagee shall not be required to make advances from the TILC Reserve more frequently than once in any thirty (30) day period. In making any payment from the TILC Reserve, Mortgagee shall be entitled to rely on such request from Mortgagor, and on any bill, statement, or estimate from any third party, without any inquiry into the accuracy, validity or contestability of any such amount.

(i) With respect to a Disbursement Request to pay for Tenant Improvements, Mortgagor shall provide evidence reasonably satisfactory to Mortgagee (including, if requested by Mortgagee, access to the Property by Mortgagee and/or an architect and/or an engineer specified by Mortgagee for the purpose of inspecting the work done, at Mortgagor's expense) that the Tenant Improvements, or such portion thereof, for which the TILC Funds are being requested have been completed in accordance with Section 1.7(c) below. Mortgagor shall submit to Mortgagee copies of invoices for which TILC Funds are being requested, and if required by Mortgagee, shall also submit waivers of lien. Mortgagor shall execute and deliver to Mortgagee a certificate (in form and substance reasonably satisfactory to Mortgagee) that the Tenant Improvements covered by the applicable Disbursement Request comply with, and have fully satisfied, the terms and provisions of Section 1.7(c) below. Mortgagor shall provide Mortgagee with a copy of any and all applicable permanent certificates of occupancy and other governmental permits, if any be required, issued by applicable governmental authorities with respect to the Tenant Improvements, which certificates and permits allow

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the tenant to open for business as contemplated under such lease. Mortgagor shall provide such additional documents, certificates and affidavits as Mortgagee may reasonably request.

(ii) With respect to the final Disbursement Request relative to any Approved Lease, Mortgagor shall provide Mortgagee with (A) an original estoppel certificate, in form and substance satisfactory to Mortgagee executed by the tenant under the Approved Lease for which such request relates, stating that such tenant has accepted the Tenant Improvements, and has occupied the space covered by the Tenant Improvements and that there are no defaults under such lease (nor does there exist any event or conditions, which with the passage of time or the giving of notice, or both, could result in such a default) and addressing such other issues as Mortgagee may reasonably request, (B) if required by Mortgagee, an original subordination, non-disturbance and attornment agreement in form acceptable to Mortgagee executed by the tenant under the Approved Lease in favor of Mortgagee, (C) evidence of payment of rent by the tenant under the Approved Lease, and (D) if required by the local governmental jurisdiction, certificates of occupancy or comparable local certificates or permits with respect to any Tenant Improvements.

(iii) With respect to a Disbursement Request to pay any portion of the Leasing Commissions, Mortgagor shall provide evidence as reasonably requested by Mortgagee that such Leasing Commissions are then due and payable or have been properly paid, and such additional documents, certificates and affidavits as Mortgagee may reasonably request.

(iv) Notwithstanding any provision of this Section 1.7 to the contrary, TILC Funds disbursed with respect to any Approved Lease (i) for Tenant Improvements shall be an amount not to exceed, under any circumstances, the reasonable costs and expenses actually incurred by Mortgagor therefor; and (ii) for Leasing Commissions shall be an amount not to exceed, under any circumstances, the commission actually incurred by Mortgagor therefor which is reasonable and customary for a licensed real estate broker in the market area in which the Property is located.

(c) General Requirements. Mortgagor shall construct and complete all Tenant Improvements within the time periods and as required by, and in accordance with, the Approved Leases. Mortgagor or tenant shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by all applicable laws with regard to the Tenant Improvements, whether necessary for commencement, completion, use or otherwise. Mortgagor shall perform or cause to be performed all work in connection with the Tenant Improvements in a good and workmanlike manner, in compliance with all applicable laws (including, without limitation, any and all applicable life safety laws, Environmental Laws, as hereinafter defined, and laws for the handicapped and/or disabled) and, with respect only to those leases requiring Mortgagee approval, with the plans and specifications approved (in writing) by Mortgagee (which approval shall not be unreasonably withheld or delayed) covering the same, which performance by Mortgagor shall be without regard to the sufficiency of the TILC Funds. Mortgagor covenants and agrees that Tenant Improvements shall be constructed, installed or

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completed, as applicable, free and clear of any and all liens (including mechanic's, materialman's or other liens), claims and encumbrances whatsoever.

1.8 Security Interest in Reserves.

(a) As additional security for the payment and performance by Mortgagor of all duties, responsibilities and obligations under the Note and the other Loan Documents, Mortgagor hereby unconditionally and irrevocably assigns, conveys, pledges, mortgages, transfers, delivers, deposits, sets over and confirms unto Mortgagee, and hereby grants to Mortgagee a security interest in all sums on deposit or due under this Mortgage and the other Loan Documents including, without limitation, (i) the Impound Account, the TILC Reserve, the Replacement Reserve, the Repair Reserve, the Lease Termination Payment Reserve, the Environmental Reserve and any other reserve, if any, set forth on Exhibit C attached hereto and made a part hereof (collectively, the "Reserves"), (ii) the accounts into which the Reserves have been deposited, (iii) all insurance on said accounts, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or hereafter evidencing the Reserves or such accounts, (viii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom), and (ix) all proceeds of the foregoing. Mortgagor hereby authorizes and consents to the account into which the Reserves have been deposited being held in Mortgagee's name or the name of any entity servicing the Note for Mortgagee and hereby acknowledges and agrees that Mortgagee, or at Mortgagee's election, such servicing agent, shall have exclusive control over said account. Notice of the assignment and security interest granted to Mortgagee herein may be delivered by Mortgagee at any time to the financial institution wherein the Reserves have been established, and Mortgagee or such servicing entity, shall have possession of all passbooks or other evidences of such accounts. Mortgagor hereby holds Mortgagee harmless with respect to all risk of loss regarding amounts on deposit in the Reserves, except to the extent that any such loss is caused by the gross negligence or intentional misconduct of Mortgagee. Mortgagor hereby knowingly, voluntarily and intentionally stipulates, acknowledges and agrees that the advancement of the funds from the Reserves as set forth herein is at Mortgagor's direction and is not the exercise by Mortgagee of any right of set-off or other remedy upon a default. If a default shall occur hereunder or under any other of the Loan Documents which is not cured within any applicable grace or cure period, then Mortgagee may, without notice or demand on Mortgagor, at its option: (A) withdraw any or all of the funds (including, without limitation, interest) then remaining in the Reserves and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, reasonable attorneys' fees, costs and expenses) to the indebtedness evidenced by the Note or any other obligations of Mortgagor under the other Loan Documents in such manner as Mortgagee shall deem appropriate in its sole discretion, and the excess, if any, shall be paid to Mortgagor, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, or (C) exercise any other remedies available at law or in equity. No such use or application of the funds contained in the Reserves shall be deemed to cure any default hereunder or under the other Loan Documents.

(b) The Reserves are solely for the protection of Mortgagee and entail no responsibility on Mortgagee's part beyond the payment of the respective costs and expenses in

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accordance with the terms thereof and beyond the allowing of due credit for the sums actually received. Upon assignment of this Mortgage by Mortgagee, any funds in the Reserves shall be turned over to the assignee and any responsibility of Mortgagee, as assignor, with respect thereto shall terminate. The Reserves shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Mortgagee's option and in Mortgagee's discretion, may either be held in a separate account or be commingled by Mortgagee with the general funds of Mortgagee. Upon full payment of the indebtedness secured hereby in accordance with its terms (or if earlier, the completion of the applicable conditions to release of each Reserve to Mortgagee's satisfaction) or at such earlier time as Mortgagee may elect, the balance in the Reserves then in Mortgagee's possession shall be paid over to Mortgagor and no other party shall have any right or claim thereto.

(c) Any amounts received by Mortgagee from Mortgagor may be invested by Mortgagee (or its servicer) for its benefit, and Mortgagee shall not be obligated to pay, or credit, any interest earned thereon to Mortgagor except as may be otherwise specifically provided in this Mortgage.

1.9 Casualty and Condemnation. Mortgagor shall give Mortgagee prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof (collectively, an "Insured Event"). All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Mortgagee. Mortgagee may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries, and Mortgagee is hereby authorized, in its own name or in Mortgagor's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Mortgagor shall from time to time deliver to Mortgagee any instruments required to permit such participation; provided, however, that Mortgagee shall not have the right to participate in the adjustment of any loss which is not in excess of the lesser of (i) ten percent (10%) of the then outstanding principal balance of the Note, and (ii) \$350,000.00. Provided no Event of Default is then continuing hereunder or under any of the other Loan Documents and no event has occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default hereunder or under any of the other Loan Documents, Mortgagee shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, reasonable legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

(a) In the event that Mortgagee receives insurance proceeds or condemnation awards upon the occurrence of an Insured Event in an amount not in excess of the lesser of (i) ten percent (10%) of the then outstanding principal balance of the Note, and (ii) \$350,000.00, (collectively, the "Threshold Amount"), Mortgagor shall repair or restore the Property, and Mortgagee shall, to the extent such insurance proceeds or condemnation awards are available for such purpose, disburse to Mortgagor the amount paid or incurred by Mortgagor as a result of any such Insured Event for costs and expenses incurred by Mortgagor to repair or restore the Property (collectively, the "Casualty Repairs") in accordance with, and satisfaction of, the same

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terms and conditions for disbursement to be used relative to the Replacement Reserve as described on Exhibit C to this Mortgage but as applied to disbursements for Casualty Repairs.

(b) In the event any proceeds or awards from an Insured Event exceed the Threshold Amount but less than sixty percent (60%) of the Improvements located on the Land have been taken or destroyed, then if:

(1) the Property can, in Mortgagee's reasonable judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage by the earlier to occur of the following dates: (i) nine (9) months after the receipt of insurance proceeds or condemnation awards by either Mortgagor or Mortgagee, and (ii) six (6) months prior to the stated maturity date of the Note, and

(2) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property as described in Section 1.9(b)(1) above, and

(3) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by Mortgagor, the full amount of which shall at Mortgagee's option have been deposited with Mortgagee) for such restoration or repair (including, without limitation, for any reasonable costs and expenses of Mortgagee to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Note during such restoration or repair, and

(4) the economic feasibility of the Improvements after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Property and debt service on the indebtedness secured hereby in full with the same coverage ratio (i.e., 1.25:1.0) considered by Mortgagee in its determination to make the Loan, and

(5) Mortgagor shall have delivered to Mortgagee, at Mortgagor's sole cost and expense, an appraisal report from an appraiser, in form and substance satisfactory to Mortgagee appraising the value of the Property as proposed to be restored or repaired to be not less than the appraised value of the Property considered by Mortgagee in its determination to make the Loan (i.e., \$24,500,000.00),

then, Mortgagee shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required to facilitate such restoration or repair, and any funds deposited by Mortgagor therefor, to Mortgagor in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Mortgagee of plans and specifications, contractors and the form of construction contracts and the furnishing to Mortgagee of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors, in form and substance reasonably satisfactory to Mortgagee. Any remaining proceeds shall be applied by Mortgagee for payment of the indebtedness secured hereby in whatever order Mortgagee directs, or released to Mortgagor, in its absolute discretion. Mortgagor shall, in good faith, undertake reasonable efforts to cause the conditions described in this Section 1.9(b) to be fully satisfied (e.g.,

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Mortgagor shall timely make applications for necessary governmental permits, shall order an appropriate appraisal report, etc.). If such conditions are satisfied, Mortgagor shall be obligated to undertake restoration and repair of the damaged improvements subject to the terms of this Section 1.9.

Any disbursement pursuant to this clause (b) of sums by Mortgagee shall, subject to Mortgagor's satisfaction of the provisions hereof, be in a manner to promptly facilitate the restoration or repair of the Property. In the event Mortgagor fails to meet the requirements of this clause (b), then Mortgagee may elect, in its absolute discretion and without regard to the adequacy of Mortgagee's security, to accelerate the maturity date of the Note and declare any and all of the indebtedness secured hereby to be immediately due and payable and apply the remainder of such sums to the payment of the secured indebtedness in whatever order Mortgagee directs in its sole discretion, with any remainder being paid to Mortgagor.

(c) In all other cases, namely, in the event that sixty percent (60%) or more of the Improvements located on the Land have been taken or destroyed Mortgagee may elect, in Mortgagee's absolute discretion and without regard to the adequacy of Mortgagee's security, to (i) accelerate the maturity date of the Note and declare any and all indebtedness secured hereby to be immediately due and payable and apply the remainder of such sums received pursuant to this Section to the payment of the secured indebtedness in whatever order Mortgagee directs in its absolute discretion, with any remainder being paid to Mortgagor, or (ii) make insurance or condemnation proceeds available to Mortgagor for repair or restoration if Mortgagor establishes to the satisfaction of Mortgagee, in its sole discretion, that Mortgagor otherwise satisfies the requirements of Section 1.9(b) above. Should Mortgagee make the election described immediately above in item (ii) of this Section 1.9(c), Mortgagor shall be obligated to undertake restoration and repair of the damaged Improvements consistent with the provisions of this Section 1.9.

(d) Any reduction in the indebtedness secured hereby resulting from Mortgagee's application of any sums received by it hereunder shall take effect only when Mortgagee actually receives such sums and elects to apply such sums to the indebtedness secured hereby and, in any event, the unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Mortgagor shall not be excused in the payment thereof. Partial payments received by Mortgagee, as described in the preceding sentence, shall be applied against the Note consistent with the prepayment provisions described therein for casualty or condemnation proceeds. If Mortgagor undertakes to restore or repair the Property after the occurrence of a casualty or partial taking of the Property as provided above, Mortgagor shall promptly and diligently, at Mortgagor's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and Mortgagor shall pay to Mortgagee all costs and expenses of Mortgagee incurred in administering said rebuilding, restoration or repair, provided that Mortgagee makes such proceeds or award available for such purpose. Mortgagor agrees to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the foregoing assignment to Mortgagee of any award, damage, insurance proceeds, payment or other compensation. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as the

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attorney-in-fact of Mortgagor (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Mortgagor and shall not be affected by any disability or incapacity suffered by Mortgagor subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittance therefor.

1.10 Mechanics' Liens. Mortgagor shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Land or the Improvements; provided, however, that, Mortgagor shall have the right to contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Mortgagee and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Mortgagor shall contest any such claim or demand, Mortgagor shall promptly notify Mortgagee of such contest and thereafter shall, upon Mortgagee's request, promptly provide a bond, cash deposit or other security satisfactory to Mortgagee to protect Mortgagee's interest and security should the contest be unsuccessful. If Mortgagor shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Mortgagee may do so and any and all expenses incurred by Mortgagee, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.11 Assignment of Leases and Rents. Mortgagor acknowledges and confirms that, as additional collateral security for the payment of the indebtedness secured hereby, and cumulative of any and all rights and remedies herein provided, it has executed and delivered to Mortgagee an Assignment of Leases and Rents of even date herewith (the "Assignment"), intending such Assignment to create a present, absolute assignment to Mortgagee of all current or future leases of all or any portion of the Property and Rents. Upon the occurrence of a default under this Mortgage which has not been cured within any applicable grace or cure period, Mortgagee shall be entitled to exercise any or all of the remedies provided in this Mortgage and in the Assignment, including, without limitation, the appointment of a receiver. The Assignment shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property.

1.12 Leases and Licenses.

(a) Mortgagor covenants and agrees that it shall not enter into any lease affecting 5,000 square feet or more of the Property or having a term (including any renewal or extension term) of more than 10 years without the prior written approval of Mortgagee, which approval shall not be unreasonably withheld. The request for approval of each such proposed new lease shall be made to Mortgagee in writing and shall state that, pursuant to the terms of this Mortgage, failure to approve or disapprove such proposed lease within ten (10) business days is deemed approval and Mortgagor shall furnish to Mortgagee (and any loan servicer specified

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from time to time by Mortgagee): (i) such biographical and financial information about the proposed tenant as Mortgagee may require in conjunction with its review, (ii) a copy of the proposed form of lease, and (iii) a summary of the material terms of such proposed lease (including, without limitation, rental terms and the term of the proposed lease and any options). It is acknowledged that Mortgagee intends to include among its criteria for approval of any such proposed lease the following: (i) such lease shall be with a bona-fide arm's length tenant; (ii) such lease shall not contain any rental or other concessions which are not then customary and reasonable for similar properties and leases in the market area of the Land; (iii) such lease shall provide that the tenant pays for its expenses; (iv) the rental shall be at least at the market rate then prevailing for similar properties and leases in the market areas of the Land; and (v) such lease shall contain subordination and attornment provisions in form and content acceptable to Mortgagee. Failure of Mortgagee to approve or disapprove any such proposed lease within ten (10) business days after receipt of such written request and all the documents and information required to be furnished to Mortgagee with such request shall be deemed approval, provided that the written request for approval specifically mentioned the same.

(b) All other leases shall be written on the standard form lease (without any material changes) which Mortgagee has approved and shall be on arm's length terms consistent with the terms for similar leases in the market area of the Land, shall provide for free rent only if the same is consistent with prevailing market conditions and shall provide for market rents then prevailing in the market area of the Land. Such leases shall also provide for Security Deposits in reasonable amounts. Mortgagor shall also submit to Mortgagee for Mortgagee's approval, which approval shall not be unreasonably withheld, prior to the execution thereof, any proposed lease, license or occupancy agreement of the Property or any portion thereof that differs materially and adversely from the aforementioned form lease. Mortgagor shall not execute any lease, license or occupancy agreement for all or a substantial portion of the Property, except for an actual occupancy by the tenant, lessee or licensee thereunder, and shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases, licenses and occupancy agreements with respect to the Property, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. In addition to the requirements set forth in Section 1.18(c) of this Mortgage, Mortgagor shall furnish to Mortgagee, within ten (10) days after a request by Mortgagee to do so, a current rent roll, certified by Mortgagor as being true and correct, containing the names of all tenants, lessees and licensees with respect to the Property, the terms of their respective leases, licenses or occupancy agreements, the spaces occupied and the rentals or fees payable thereunder and the amount of each tenant's security deposit. Upon the request of Mortgagee, Mortgagor shall deliver to Mortgagee a copy of each such lease, license and occupancy agreement. Mortgagor shall not do or suffer to be done any act that might result in a default by the landlord, lessor or licensor under any such lease, license or occupancy agreement or allow the tenant, lessee or licensee thereunder to withhold payment or rent and, except as otherwise expressly permitted by the terms of Section 1.13 hereof, shall not further assign any such lease, license or occupancy agreement or any such rents. Mortgagor, at no cost or expense to Mortgagee, shall enforce, short of termination, the performance and observance of each and every condition and covenant of each of the parties under such leases. Mortgagor shall not, without the prior written consent of Mortgagee, modify any of the leases, terminate or accept the surrender of any leases, waive or release any other party from the performance or observance of any obligation or condition under such leases except, with respect only to leases affecting less than 5,000 square

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feet and having a term of ten (10) years or less, in the normal course of business in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Property is located. Mortgagor shall not permit the prepayment of any rents under any of the leases for more than one (1) month prior to the due date thereof.

1.13 Alienation and Further Encumbrances.

(a) Mortgagor acknowledges that Mortgagee has relied upon the principals of Mortgagor and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except as specifically allowed hereinbelow in this Section and notwithstanding anything to the contrary contained in Section 4.5 hereof, in the event that the Property or any part thereof or interest therein shall be sold (including any installment sales agreement), conveyed, disposed of, alienated, hypothecated, leased (except to tenants of space in the Improvements in accordance with the provisions of Section 1.12 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Mortgagor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Mortgagee being first obtained, which consent may be withheld in Mortgagee's sole discretion, then the same shall constitute a default hereunder and Mortgagee shall have the right, at its option, to declare any or all of the indebtedness secured hereby, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article III hereof. If such acceleration is during any period when a prepayment fee is payable pursuant to the provisions set forth in the Note, then, in addition to all of the foregoing, such prepayment fee shall also then be immediately due and payable to the same end as though Mortgagor were prepaying the entire indebtedness secured hereby on the date of such acceleration. For the purposes of this Section, the sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering (whether voluntarily or involuntarily) of all or any portion of the ownership interest in (or, directly or indirectly through constituent parties, any of the ultimate beneficial ownership interest in) Mortgagor shall be deemed to be a transfer of an interest in the Property. Notwithstanding the foregoing, however, transfers or assignments of ownership interests in Mortgagor (or its constituent parties) may be undertaken without the consent of Mortgagee in the following circumstances:

(1) In the case of a Mortgagor which is a limited partnership, up to 49% of the limited partnership interests in Mortgagor shall be freely transferable so long as those persons responsible for the management and control of Mortgagor and the Property remain unchanged following such transfer.

(2) In the case of a Mortgagor which constitutes a limited liability company, up to 49% of the non-managing membership interests in Mortgagor shall be freely transferable so long as those persons responsible for the management and control of Mortgagor and the Property remain unchanged following such transfer.

(3) In the case of a Mortgagor which constitutes a corporation, up to 49% of the aggregate of the issued and outstanding capital stock of Mortgagor may be sold or assigned, taking into account (i) any prior sales or assignments, and (ii) the

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effective change in ownership resulting from any issuance of new shares of capital stock in Mortgagor or its constituent party.

(4) Gifts for estate planning purposes of any individual's interests in Mortgagor or in any of Mortgagor's general partners, members or joint venturers to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, shall not be a default under this Mortgage so long as Mortgagor is reconstituted, if required, following such gift and so long as those persons responsible for the management of the Property and Mortgagor remain unchanged following such gift or any replacement management is approved by Mortgagee.

(5) Involuntary assignments or transfers caused by the death, incompetence or dissolution of Mortgagor, one of its constituent parties or the owner of one of its constituent parties are permitted if: (i) Mortgagor is reconstituted, if required, following such death, incompetence or dissolution, and (ii) those persons responsible for the management and control of Mortgagor and the Property remain unchanged as a result of such death, incompetence or dissolution or any replacement management is approved by Mortgagee.

In all cases where assignment of ownership interests is allowed pursuant to this Section 1.13(a), the proportionate ownership which is proposed to be transferred shall be calculated so as to take into account prior transfers or assignments. Furthermore, the sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering (whether voluntarily or involuntarily) of all or any portion of the ownership interest in (or, directly or indirectly through constituent parties, any of the ultimate beneficial ownership interest in) any guarantor of Mortgagor's obligation hereunder or under any of the other Loan Documents shall constitute a default hereunder and Mortgagee shall have the right to exercise its various remedies described hereinabove; provided, however, ownership interests in any such guarantor may be transferred in a manner consistent with the allowable transfers of ownership interests in Mortgagor described hereinabove.

(b) Notwithstanding the foregoing provisions of this Section, Mortgagee shall consent to a sale, conveyance or transfer of the Property in its entirety (hereinafter, a "Sale") to any person or entity provided that each of the following terms and conditions are satisfied:

(1) No default is then continuing hereunder or under any of the other Loan Documents;

(2) Mortgagor gives Mortgagee written notice of the terms of such prospective Sale not less than sixty (60) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Mortgagee all reasonable information concerning the proposed transferee of the Property (hereinafter, a "Buyer") as Mortgagee would require in evaluating an initial extension of credit to a borrower and pays to Mortgagee a non-refundable application fee in the amount of \$5,000.00 (the "Application Fee"). Mortgagee shall have the right, in its reasonable discretion, to approve or disapprove the proposed Buyer. In determining whether to give or withhold

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its approval of the proposed Buyer, Mortgagee shall consider, among other things, the Buyer's experience and track record in owning and operating facilities similar to the Property, the Buyer's entity structure, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities;

(3) Mortgagor pays Mortgagee, concurrently with the closing of such Sale, a non-refundable assumption fee (the "Assumption Fee") in an amount equal to one percent (1%) of the then outstanding principal balance of the Note;

(4) The Buyer assumes and agrees to pay the indebtedness secured hereby subject to the provisions of Section 4.23 hereof and to perform the covenants of Mortgagor under the Loan Documents, and, prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Mortgagee, such documents and agreements as Mortgagee shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions as Mortgagee may require;

(5) Mortgagor and the Buyer execute, without any cost or expense to Mortgagee, new financing statements or financing statement amendments and any additional documents reasonably requested by Mortgagee;

(6) Mortgagor delivers to Mortgagee, without any cost or expense to Mortgagee, such endorsements to Mortgagee's Title Insurance Policy, hazard insurance endorsements or certificates and other similar materials as Mortgagee may deem necessary at the time of the Sale, all in form and substance satisfactory to Mortgagee, including, without limitation, an endorsement or endorsements to Mortgagee's Title Insurance Policy insuring the lien of this Mortgage, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in Subsection (4) of this Section 1.13(b), with no additional exceptions added to such policy, and insuring that fee simple title to the Property is vested in the Buyer;

(7) Mortgagor executes and delivers to Mortgagee, without any cost or expense to Mortgagee, a release of Mortgagee, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents, through and including the date of the closing of the Sale, which agreement shall be in form and substance satisfactory to Mortgagee and shall be binding upon the Buyer;

(8) Subject to the provisions of Section 4.23 hereof, such Sale is not construed so as to relieve Mortgagor of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale, and Mortgagor executes, without any cost or expense to Mortgagee, such documents and agreements as Mortgagee shall reasonably require to evidence and effectuate the ratification of said personal liability;

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(9) Such Sale is not construed so as to relieve any current guarantor or indemnitor of its obligations under any guaranty or indemnity agreement executed in connection with the Loan and each such current guarantor and indemnitor executes, without any cost or expense to Mortgagee, such documents and agreements as Mortgagee shall reasonably require to evidence and effectuate the ratification of each such guaranty and indemnity agreement, provided that if the Buyer or a party associated with the Buyer approved by Mortgagee in its sole discretion assumes the obligations of the current guarantor or indemnitor under its guaranty or indemnity agreement and the Buyer or such party associated with the Buyer, as applicable, executes, without any cost or expense to Mortgagee, a new guaranty or indemnity agreement in form and substance satisfactory to Mortgagee, then Mortgagee shall release the current guarantor or indemnitor from all obligations arising under its guaranty or indemnity agreement after the closing of such Sale;

(10) The Buyer shall furnish, if the Buyer is a corporation, partnership, or other entity, all documents evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the indebtedness secured hereby, which documents shall include, but not in any way be limited to, certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners or members of the Buyer. The Buyer and such constituent partners, members or shareholders of Buyer (as the case may be), as Mortgagee may require, shall be single-purpose, single asset "bankruptcy remote" entities, whose formation documents shall be approved by counsel to Mortgagee;

(11) The Buyer, if required by Mortgagee, shall furnish an opinion of counsel satisfactory to Mortgagee and its counsel (i) that the Buyer's formation documents provide for the matters described in Section 1.13(b)(10) hereof, (ii) that the assumption of the indebtedness evidenced hereby has been duly authorized, executed and delivered, and that the Loan Documents are valid, binding and enforceable against the Buyer in accordance with their terms, (iii) that the Buyer and any entity which is a controlling stockholder, member or general partner of Buyer, have been duly organized, and are in existence and in good standing, (iv) that the assets of the Buyer will not be consolidated with the assets of any other entity (including the Buyer's general partner or managing member, if any) having an interest in, or affiliation with, the Buyer, in the event of bankruptcy or insolvency of any such entity or such general partner or managing member, and (v) with respect to such other matters, as Mortgagee may request; and

(12) If the Buyer is a single-member limited liability company, Buyer must be formed in the state of Delaware, and the Buyer's operating agreement must provide for the continued existence of the Buyer in the event of the bankruptcy or dissolution of the sole member. The Buyer, if required by Mortgagee, shall also furnish an opinion of counsel satisfactory to Mortgagee and its counsel that if the Buyer is a single-member limited liability company, that (i) the Buyer is a separate legal entity formed in the state of Delaware, (ii) the separate existence of the Buyer shall continue until the cancellation of the certificate of organization; (iii) the Buyer's operating agreement provides for the continued existence of the Buyer in the event of the bankruptcy or dissolution of the sole member, and that such provisions would be

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enforceable notwithstanding the bankruptcy of the sole member; and (iv) any judgment creditor of the sole member may not satisfy its claims against the sole member by asserting a claim against the Property or any other assets of the Buyer.

(13) If required under the operative documents with respect to a Secondary Market Transaction (as hereinafter defined), Mortgagee shall have received evidence in writing from the Rating Agency (as hereinafter defined) to the effect that the proposed transfer will not result in a re-qualification, reduction, downgrade or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction or, if no such rating has been issued, in Mortgagee's good faith judgment, such transfer shall not have an adverse effect on the level of rating obtainable in connection with the Loan;

(14) Mortgagor shall reimburse Mortgagee for all of Mortgagee's reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and Rating Agency fees and expenses) incurred or anticipated to be incurred by Mortgagee in connection with a Sale including, without limitation, Mortgagee's determination of whether Mortgagor has satisfied all of the conditions and requirements set forth in this Section 1.13(b); and

(15) Mortgagor's obligations under the contract of sale pursuant to which such Sale, conveyance or transfer is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section 1.13(b).

1.14 Payment of Utilities, Assessments, Charges, Etc. Mortgagor shall pay when due all utility charges which are incurred by Mortgagor or which may become a charge or lien against any portion of the Property for gas, electricity, water and sewer services furnished to the Land and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Land and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

1.15 Access Privileges and Inspections. Mortgagee and the agent, representatives and employees of Mortgagee shall, subject to the rights of tenants, have full and free access to the Land and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Mortgagor relating to the Property. Mortgagor shall lend assistance to all such agents, representatives and employees of Mortgagee.

1.16 Waste; Alteration of the Property. Mortgagor shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Mortgagor shall maintain the Property in good condition and repair. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld). Without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld), Mortgagor shall not commence construction of any improvements on the Land other than improvements required for the maintenance or repair of the Property.

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1.17 Zoning/Use. Without the prior written consent of Mortgagee, Mortgagor shall not seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Land or the Improvements. Mortgagor shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Land or the Improvements. Mortgagor shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property. Mortgagor shall keep all licenses, permits, franchises, certificates of occupancy, consents, and other approvals necessary for the operation of the Property in full force and effect. Mortgagor shall operate the Property as a retail center for so long as the indebtedness secured hereby is outstanding. If, under applicable zoning provisions, the use of all or any part of the Land or the Improvements is or becomes a nonconforming use, Mortgagor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Mortgagee. Further, without Mortgagee's prior written consent (which consent shall not be unreasonably withheld), Mortgagor shall not file or subject any part of the Land or the Improvements to any declaration of condominium or cooperative or convert any part of the Land or the Improvements to a condominium, cooperative or other form of multiple ownership and governance.

1.18 Financial Statements and Books and Records. Mortgagor shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Mortgagee and its duly authorized representatives shall have the right to examine, copy and audit Mortgagor's records and books of account at all reasonable times. So long as this Mortgage continues in effect, Mortgagor shall provide to Mortgagee, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which must be certified to Mortgagee as being true and correct by Mortgagor or the entity to which they pertain, as applicable, be prepared in accordance with generally accepted accounting principles consistently applied and be in form and substance acceptable to Mortgagee:

- (a) copies of all tax returns filed by Mortgagor, within thirty (30) days after the date of filing;
- (b) quarterly operating statements for the Property, within forty-five (45) days after the end of each March, June, September and December, provided operating statements shall be delivered monthly for the first twelve (12) full calendar months of the Note and shall be provided within thirty (30) days of the end of each month during this period;
- (c) current rent rolls for the Property, within forty-five (45) days after the end of each March, June, September and December, provided, rent rolls shall be delivered monthly for the first twelve (12) full calendar months of the Note and shall be provided within thirty (30) days of the end of each month during this period;
- (d) annual balance sheets for the Property and annual financial statements for Mortgagor, the Manager of Mortgagor, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the Loan, within sixty (60) days after the end of each calendar year; and

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(e) such other information with respect to the Property, Mortgagor, the principals, members or general partners in Mortgagor, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the Loan, which may be requested from time to time by Mortgagee, within a reasonable time after the applicable request.

If any of the aforementioned materials are not furnished to Mortgagee within the applicable time periods, Mortgagor shall pay to Mortgagee a late fee of \$250.00. Further, if any of the aforementioned materials are not furnished to Mortgagee within the applicable time periods, or Mortgagee is reasonably dissatisfied with the contents of any of the foregoing, in addition to any other rights and remedies of Mortgagee contained herein, Mortgagee shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Mortgagee, in which event Mortgagor agrees to pay, or to reimburse Mortgagee upon demand for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit. Mortgagor agrees that any and all materials furnished hereunder are the property of Mortgagee (and Mortgagee's servicer) and may be released and made available to such parties as Mortgagee or its servicer deems appropriate, including any Rating Agency responsible for rating securities issued in any Secondary Market Transaction (as such terms are defined in Section 4.32 hereof).

1.19 Further Documentation. Mortgagor shall, on the request of Mortgagee in Mortgagee's reasonable discretion and at the expense of Mortgagor, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in any of the other Loan Documents and promptly execute, acknowledge, deliver and record or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents or as may be deemed advisable by Mortgagee to protect, continue or preserve the liens and security interests hereunder, including, without limitation, security instruments, financing statements and continuation statements.

1.20 Payment of Costs.

(a) Payment. Mortgagor shall pay all reasonable costs and expenses of every character incurred in connection with the closing of the Loan or otherwise attributable or chargeable to Mortgagor as the owner of the Property, including, without limitation, appraisal fees, recording fees, documentary, stamp, mortgage or intangible taxes, brokerage fees and commissions, title policy premiums and title search fees, uniform commercial code/tax lien/litigation search fees, escrow fees and reasonable attorneys' fees.

(b) Advances to Protect Property. Without limiting or waiving any other rights and remedies of Mortgagee hereunder, if Mortgagee reasonably determines that Mortgagor is not adequately performing or has failed to perform any of its obligations, covenants or agreements contained in this Mortgage or in any of the other Loan Documents and such inadequacy or failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Mortgagee's interest in the Property or Mortgagee's right to enforce its security, then Mortgagee may, at its option, with or without notice to Mortgagor, make any appearances, disburse or advance any

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sums and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage or to remedy the failure of Mortgagor to perform its covenants and agreements (without, however, waiving any default of Mortgagor). Mortgagor agrees to pay on demand all expenses of Mortgagee reasonably incurred with respect to the foregoing (including, but not limited to, reasonable fees and disbursements of counsel), together with interest thereon at the Default Interest Rate (as defined in the Note) from and after the date of notice and demand from Mortgagee until reimbursement thereof by Mortgagor. Any such expenses so incurred by Mortgagee, together with interest thereon as provided above, shall be additional indebtedness of Mortgagor secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The necessity for any such actions and of the amounts to be paid shall be determined by Mortgagee in its sole and absolute discretion. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Mortgagor hereby acknowledges and agrees that the remedies set forth in this Section 1.20(b) shall be exercisable by Mortgagee, and any and all payments made or costs or expenses incurred by Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor with interest thereon at the Default Interest Rate (as defined in the Note), notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Mortgagee after the filing by Mortgagor of a voluntary case or the filing against Mortgagor of an involuntary case pursuant to or within the meaning of the Bankruptcy Reform Act of 1978, as amended (the "Act"), Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Mortgagor, Mortgagee, any guarantor or indemnitor, the secured indebtedness or any of the Loan Documents. This indemnity shall survive payment in full of the indebtedness secured hereby. This Section 1.20(b) shall not be construed to require Mortgagee to incur any expenses, make any appearances or take any actions.

1.21 Security Interest. This Mortgage is also intended to encumber and create a security interest in, and Mortgagor hereby grants to Mortgagee a security interest in all Reserves (as hereinabove defined), fixtures, chattels, accounts, equipment, inventory, contract rights, general intangibles and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Land or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Land and the Improvements. The foregoing security interest shall also cover Mortgagor's leasehold interest in any of the foregoing property which is leased by Mortgagor. Notwithstanding the foregoing, all of the foregoing property shall be owned by Mortgagor and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Mortgagee. Mortgagor shall promptly replace all of the Collateral subject to the lien or security interest of this Mortgage when worn out or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Mortgagee, remove from the Land or the Improvements any of the Collateral subject to the lien or security interest of this Mortgage except such as is replaced by an article of equal suitability and value as

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above provided, owned by Mortgagor free and clear of any lien or security interest except that created by this Mortgage and the other Loan Documents and except as otherwise expressly permitted by the terms of Section 1.13 of this Mortgage. All of the Collateral shall be kept at the location of the Land except as otherwise required by the terms of the Loan Documents. Mortgagor shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

1.22 Security Agreement. This Mortgage constitutes both a real property mortgage and a "security agreement" between Mortgagor and Mortgagee with respect to the Collateral in which Mortgagee is granted a security interest hereunder, and, cumulative of all other rights and remedies of Mortgagee hereunder, Mortgagee shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Mortgagor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Mortgagee may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Mortgagee's reasonable attorneys' fees and legal expenses), together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Mortgagee until actually paid by Mortgagor, shall be paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. If notice is required by law, Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Mortgagor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Mortgagor. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section 1.22 shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the foreclosure sale as provided in Section 3.1(e) hereof upon giving the same notice with respect to the sale of the Property hereunder as is required under said Section 3.1(e). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Mortgagee pursuant to any applicable Uniform Commercial Code:

(a) In the event of a foreclosure sale, the Property may, at the option of Mortgagee, be sold as a whole; and

(b) It shall not be necessary that Mortgagee take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and

(c) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee.

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Mortgagor will not change the principal place of business or chief executive office set forth below, or change the state of its organization or registration, or change its name, without in each instance the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, delayed or conditioned. Mortgagee's consent will, however, be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Mortgagee's security interest in the Collateral as a result of such changes. The name, principal place of business and chief executive office of Mortgagor (as Debtor under any applicable Uniform Commercial Code), as of the date hereof, are:

Arlington, LLC
c/o M&J Wilkow, Ltd.
180 North Michigan Avenue
Suite 200
Chicago, Illinois 60601
Attn: Marc R Wilkow

The name and address of Mortgagee (as Secured Party under any applicable Uniform Commercial Code), as of the date hereof, are:

Colon Financial, Inc.
11 Madison Avenue
5th Floor
New York, New York 10010-3629
Attention: Edmund Taylor

The record owner of the Property is Arlington, LLC, an Illinois limited liability company.

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

1.24 Compliance with Laws.

(a) Mortgagor shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological

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requirements, even if such compliance shall require structural changes to the Property; provided, however, that, Mortgagor may, upon providing Mortgagee with security satisfactory to Mortgagee, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Mortgagor shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any lease of or any other agreement applicable to the Property or any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

(b) Mortgagor agrees that the Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 and all other state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("Access Laws"). Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

1.25 Additional Taxes. In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Mortgage or the indebtedness secured hereby or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable in full, sixty (60) days from the giving of such notice in which event no prepayment fee shall be due and owing.

1.26 Mortgagor's Waivers. To the full extent permitted by law, Mortgagor agrees that Mortgagor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the indebtedness secured hereby prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. To the full extent permitted by law, Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any

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federal, state or local law now or hereafter in effect, the administration of estates of decedents or any other matters whatsoever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Property, for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Mortgagee under the terms of this Mortgage to the payment of the indebtedness secured hereby out of the proceeds of sale of the Property in preference to every other claimant whatever. Mortgagor, for Mortgagor and Mortgagor's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily with and upon the advice of competent counsel waives, releases, relinquishes and forever forgoes: (a) all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the secured indebtedness (except such notices as are specifically provided for herein); (b) all right to a marshaling of the assets of Mortgagor, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; (c) all rights and periods of redemption provided under 735 ILCS 5/15-1601(b) or any other applicable law; and (d) all present and future statutes of limitations as a defense to any action to enforce the provisions of this Mortgage or to collect any of the indebtedness secured hereby to the fullest extent permitted by law and agrees that it shall not solicit or aid the solicitation of the filing of any Petition (as hereinafter defined) against Mortgagor, whether acting on its own behalf or on behalf of any other party. Without limiting the generality of the foregoing, Mortgagor shall not (i) provide information regarding the identity of creditors or the nature of creditors' claims to any third party unless compelled to do so by order of a court of competent jurisdiction or by regulation promulgated by a governmental agency; or (ii) pay the legal fees or expenses of any creditor or interest holder in Mortgagor with respect to any matter whatsoever.

1.27 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) **MORTGAGOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF ILLINOIS OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS MORTGAGE OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION PRESIDING OVER COOK COUNTY, ILLINOIS, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (iv) AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF MORTGAGEE TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). TO THE FULL EXTENT PERMITTED BY LAW, MORTGAGOR FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO MORTGAGOR AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 4.4 HEREOF, AND CONSENTS AND AGREES THAT**

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SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

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

1.28 Contractual Statute of Limitations. Mortgagor hereby agrees that any claim or cause of action by Mortgagor against Mortgagee, or any of Mortgagee's directors, officers, employees, agents, accountants or attorneys, based upon, arising from or relating to the indebtedness secured hereby, or any other matter, cause or thing whatsoever, whether or not relating thereto, occurred, done, omitted or suffered to be done by Mortgagee or by Mortgagee's directors, officers, employees, agents, accountants or attorneys, whether sounding in contract or in tort or otherwise, shall be barred unless asserted by Mortgagor by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within one (1) year after Mortgagor first acquires or reasonably should have acquired knowledge of the first act, occurrence or omission upon which such claim or cause of action, or any part thereof, is based and service of a summons and complaint on an officer of Mortgagee or any other person authorized to accept service of process on behalf of Mortgagee, within thirty (30) days thereafter. Mortgagor agrees that such one (1) year period of time is reasonable and sufficient time for a borrower to investigate and act upon any such claim or cause of action. The one (1) year period provided herein shall not be waived, tolled or extended except by the specific written agreement of Mortgagee. This provision shall survive any termination of this Mortgage or any of the other Loan Documents.

1.29 Management. The management of the Property shall be by either: (a) Mortgagor or an entity affiliated with Mortgagor approved by Mortgagee for so long as Mortgagor or said affiliated entity is managing the Property in a first class manner, or (b) a professional property management company approved by Mortgagee (any such person or entity which manages the Property, other than Mortgagor, is hereinafter referred to as the "Manager"). Any such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Mortgagee. Each and any manager approved by Mortgagee (whether such manager is an entity affiliated with Mortgagor or is a professional property management company) shall enter into a written agreement in recordable form with Mortgagee subordinating any liens in favor of such manager to the lien of this Mortgage. In no event shall any Manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Mortgagee. In the event (x) of default

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hereunder or under any management contract then in effect, which default is not cured within any applicable grace or cure period, or (y) of a change in control (fifty percent or more) of the ownership of Manager or if Manager provides cause for termination, including, without limitation, gross negligence, willful misconduct or fraud, Mortgagee shall have the right to terminate, or direct Mortgagor to terminate, such management contract at any time and, in any such event of termination of the management contract, to retain, or to direct Mortgagor to retain, a new management agent approved by Mortgagee. Any such successor manager shall be either the current property manager of the Property, M&J Wilkow, Ltd., which is approved as the initial Manager of the Property, or a reputable management company having a senior executive with at least seven (7) years' experience in the management of retail properties in the state where the Property is located, shall be the manager of at least five (5) projects comparable to the Property and shall be reasonably acceptable to Mortgagee. Mortgagor further covenants and agrees that Mortgagor shall require the Manager (or any successor managers) to maintain at all times during the term of this Mortgage worker's compensation insurance as required by applicable governmental authorities or legal requirements.

1.30 Hazardous Materials and Environmental Concerns.

(a) Mortgagor hereby represents and warrants to Mortgagee, after due inquiry and investigation, that, as of the date hereof: (i) to the best of Mortgagor's knowledge, information and belief and except as disclosed to Mortgagee in the Phase I Environmental Assessment related to the Property dated February 7, 2002 prepared by National Assessment Corporation (Project No. 01-7685.1)(the "Environmental Report"), the Property is and has been in full compliance with, all local, state or federal laws, rules and regulations pertaining to environmental regulation, contamination, remediation or human health or safety (including the regulation or remediation of Hazardous Substances as defined below) (collectively, "Environmental Laws"), all as amended; (ii) to the best of Mortgagor's knowledge, information and belief and except as set forth in the Environmental Report, no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, radon, lead-based paint, flammable explosives, radioactive materials, infectious substances or raw materials which may include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, manufactured, generated, stored, processed, transported to or from, or disposed of on or Released or discharged from the Property (including soil and groundwater beneath the Property) except for those substances used by Mortgagor or the tenants on the Property in the ordinary course of their business and in compliance with all Environmental Laws; (iii) except as set forth in the Environmental Report, the Property is not subject to any private or governmental lien or judicial, administrative or other notice or action relating to Hazardous Substances or noncompliance with Environmental Laws, nor is Mortgagor aware of any basis for such lien, notice or action; (iv) there are no underground storage tanks or other underground storage receptacles (whether active or abandoned) used to store Hazardous Substances on the Property; (v) except as set forth in the Environmental Report, Mortgagor has received no notice of, and to the best of Mortgagor's knowledge and belief, there does not exist any investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Mortgagor know of any basis

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for such investigation, action, proceeding or claim; (vi) Mortgagor has received no notice that, and, to the best of Mortgagor's knowledge and belief there has been no claim by any party that, any use, operation or condition of the Property has caused any nuisance, trespass or any other liability or adverse condition on any other property, nor does Mortgagor know of any basis for such notice or claim; and (vii) except as set forth in the Environmental Report, to the best of Mortgagor's knowledge, there are no present or past environmental conditions or events on or near the Property that could be reasonably anticipated to materially adversely affect the value of the Property. As used herein, Mortgagor's knowledge shall include, but shall not be limited to, the findings set forth in the Environmental Report.

(b) Mortgagor shall keep or cause the Property to be kept free from Hazardous Substances (except to the extent such substances are (A) in compliance with all Environmental Laws and previously disclosed to Mortgagee pursuant to the Environmental Report, or (B) used by Mortgagor and the tenants on the Property in the ordinary course of their business and in compliance with all Environmental Laws) and in full compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all tenants (except those substances used by tenants in the ordinary course of their activities and in compliance with all Environmental Laws), invitees and trespassers, and, without limiting the generality of the foregoing, during the term of this Mortgage, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos. If required by Mortgagee or under any Environmental Law, Mortgagor shall maintain an Operations and Maintenance Program ("O&M Program") for the management of asbestos, lead-based paint, radon or any other Hazardous Substances at the Property.

(c) Mortgagor shall promptly notify Mortgagee if Mortgagor shall become aware of (i) any Release or threatened Release of Hazardous Substances at, on, under, from or affecting or threatening to affect the Property (except those substances used by Mortgagor or tenants in the ordinary course of their business or activities, respectively, and in compliance with all Environmental Laws), (ii) any lien or filing of lien, action or notice affecting or threatening to affect the Property or Mortgagor resulting from any violation or alleged violation of Environmental Law, (iii) any investigation, inquiry or proceeding concerning Mortgagor or the Property pursuant to any Environmental Law or otherwise relating to Hazardous Substances, or (iv) any occurrence, condition or state of facts which would render any representation or warranty in this Section incorrect in any respect if made at the time of such discovery. Further, immediately upon receipt of the same, Mortgagor shall deliver to Mortgagee copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential non-compliance with any Environmental Laws in connection with the Property or presence or existence of any Hazardous Substances at, on, about, under, within, near or in connection with the Property (except those substances used in the ordinary course of its business and in compliance with all Environmental Laws). Mortgagor shall, promptly and when and as required, at Mortgagor's sole cost and expense, take all actions as shall be necessary or advisable for compliance with the terms of this Section 1.30 or for the remediation of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment, remedial and response actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Mortgagee) and shall further pay or cause to be paid, at no expense to Mortgagee, all

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remediation, response, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Mortgagor fails to do so (1) Mortgagee may, but shall not be obligated to, undertake remediation at the Property or other affected property necessary to bring the Property into conformance with the terms of Environmental Laws, and (2) Mortgagor hereby grants to Mortgagee and its agents and employees access to the Property and a license to do all things Mortgagee shall deem necessary to bring the Property into conformance with Environmental Laws. Any and all costs and expenses reasonably incurred by Mortgagee in connection therewith, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. **MORTGAGOR COVENANTS AND AGREES, AT MORTGAGOR'S SOLE COST AND EXPENSE, TO INDEMNIFY, DEFEND (AT TRIAL AND APPELLATE LEVELS, AND WITH ATTORNEYS, CONSULTANTS AND EXPERTS ACCEPTABLE TO MORTGAGEE), AND HOLD MORTGAGEE HARMLESS FROM AND AGAINST ANY AND ALL LIENS, DAMAGES, LOSSES, LIABILITIES, OBLIGATIONS, SETTLEMENT PAYMENTS, PENALTIES, ASSESSMENTS, CITATIONS, DIRECTIVES, CLAIMS, LITIGATION, DEMANDS, DEFENSES, JUDGMENTS, SUITS, PROCEEDINGS, COSTS, DISBURSEMENTS AND EXPENSES OF ANY KIND OR OF ANY NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS', CONSULTANTS' AND EXPERTS' FEES AND DISBURSEMENTS ACTUALLY INCURRED IN INVESTIGATING, DEFENDING, SETTLING OR PROSECUTING ANY CLAIM, LITIGATION OR PROCEEDING) WHICH MAY AT ANY TIME BE IMPOSED UPON, INCURRED BY OR ASSERTED OR AWARDED AGAINST MORTGAGEE OR THE PROPERTY, AND ARISING DIRECTLY OR INDIRECTLY FROM OR OUT OF: (A) THE PRESENCE, RELEASE OR THREAT OF RELEASE OF ANY HAZARDOUS SUBSTANCES ON, IN, UNDER, AFFECTING OR THREATENING TO AFFECT ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS, REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF MORTGAGOR; (B) THE VIOLATION OF ANY ENVIRONMENTAL LAWS RELATING TO OR AFFECTING OR THREATENING TO AFFECT THE PROPERTY, WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF MORTGAGOR; (C) THE FAILURE BY MORTGAGOR TO COMPLY FULLY WITH THE TERMS AND CONDITIONS OF THIS SECTION 1.30; (D) THE BREACH OF ANY REPRESENTATION OR WARRANTY CONTAINED IN THIS SECTION 1.30; OR (E) THE ENFORCEMENT OF THIS SECTION 1.30, INCLUDING, WITHOUT LIMITATION, THE COST OF ASSESSMENT, CONTAINMENT AND/OR REMOVAL OF ANY AND ALL HAZARDOUS SUBSTANCES ON AND/OR FROM ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS, THE COST OF ANY ACTIONS TAKEN IN RESPONSE TO THE PRESENCE, RELEASE OR THREAT OF RELEASE OF ANY HAZARDOUS SUBSTANCES ON, IN, UNDER OR AFFECTING ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS TO PREVENT OR MINIMIZE SUCH RELEASE OR THREAT OF RELEASE SO THAT IT DOES NOT MIGRATE OR OTHERWISE CAUSE OR THREATEN DANGER TO PRESENT OR FUTURE PUBLIC HEALTH, SAFETY, WELFARE OR THE**

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ENVIRONMENT, AND COSTS INCURRED TO COMPLY WITH THE ENVIRONMENTAL LAWS IN CONNECTION WITH ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS. THE INDEMNITY SET FORTH IN THIS SECTION 1.30(c) SHALL ALSO INCLUDE ANY DIMINUTION IN THE VALUE OF THE SECURITY AFFORDED BY THE PROPERTY OR ANY FUTURE REDUCTION IN THE SALES PRICE OF THE PROPERTY BY REASON OF ANY MATTER SET FORTH IN THIS SECTION 1.30(c), AND ANY AND ALL LIENS, DAMAGES, LOSSES, LIABILITIES, OBLIGATIONS, SETTLEMENT PAYMENTS, PENALTIES, ASSESSMENTS, CITATIONS, DIRECTIVES, CLAIMS, LITIGATION, DEMANDS, DEFENSES, JUDGMENTS, SUITS, PROCEEDINGS, COSTS, DISBURSEMENTS OR EXPENSES OF ANY KIND OR OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATING TO INJURY OR DEATH DUE TO EXPOSURE FROM HAZARDOUS SUBSTANCES THAT MAY BE PRESENT OR RELEASED AT, ON, UNDER OR FROM THE PROPERTY. THE FOREGOING INDEMNITY SHALL SPECIFICALLY NOT INCLUDE ANY SUCH COSTS RELATING TO EITHER (I) HAZARDOUS SUBSTANCES WHICH ARE INITIALLY PLACED ON, IN OR UNDER THE PROPERTY AFTER FORECLOSURE OR OTHER TAKING OF TITLE TO THE PROPERTY BY MORTGAGEE, OR (II) THOSE COSTS RELATING TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF MORTGAGEE. MORTGAGEE'S RIGHTS UNDER THIS SECTION SHALL SURVIVE PAYMENT IN FULL OF THE INDEBTEDNESS SECURED HEREBY AND SHALL BE IN ADDITION TO ALL OTHER RIGHTS OF MORTGAGEE UNDER THIS MORTGAGE, THE NOTE AND THE OTHER LOAN DOCUMENTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN THE EVENT THERE IS NO EVENT OF DEFAULT HEREUNDER OR NO EVENT HAS OCCURRED WHICH, WITH THE GIVING OF NOTICE OR THE PASSAGE OF TIME OR BOTH, WOULD CONSTITUTE AN EVENT OF DEFAULT HEREUNDER, THE RIGHTS AND OBLIGATIONS OF MORTGAGOR UNDER THIS SECTION 1.30(C) SHALL TERMINATE ON THE FOURTH (4TH) ANNIVERSARY OF THE DATE OF THE PAYMENT IN FULL OF THE INDEBTEDNESS DUE UNDER THE NOTE.

(d) Upon Mortgagee's request, at any time after the occurrence of an Event of Default hereunder or at such other time as Mortgagee has reasonable grounds to believe that Hazardous Substances are or have been handled, generated, stored, processed, transported to or from, or released or discharged from or disposed of on or around the Property (other than in the normal course of Mortgagor's or the tenants' business or activities, respectively, and in compliance with all Environmental Laws) or that Mortgagor, any tenant or the Property may be in violation of Environmental Laws, Mortgagor shall provide, at Mortgagor's sole cost and expense, an environmental site assessment or environmental compliance audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Mortgagee to determine (i) whether there has been a Release or threatened Release of Hazardous Substances at, on, under, or from the Property onto adjoining properties, and (ii) if the Property is in full compliance with Environmental Laws (including as to asbestos containing material and lead-based paint). If Mortgagor fails to provide such assessment or audit within thirty (30) days after such request, Mortgagee may order the same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Property and a license to undertake such assessment or audit. The cost of such assessment or audit, together with interest thereon at the

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Default Interest Rate (as defined in the Note) from the date of notice and demand by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(e) Without limiting the foregoing, Mortgagee and its authorized representatives may, during normal business hours and at its own expense, inspect the Property and Mortgagor's records related thereto for the purpose of determining compliance with Environmental Laws and the terms and conditions of this Section 1.30; provided, Mortgagee shall not unreasonably interfere with the business of the tenants on the Property.

(f) As used herein, the term "Release" or "Released" shall include, without limitation, any intentional or unintentional placing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, discarding or abandoning of any Hazardous Substance.

Mortgagor hereby represents, warrants and certifies that: (i) there are no underground storage tanks located on, under or about the Property which are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.) and federal regulations promulgated thereunder, as now or hereafter amended; and (ii) there is no facility located on or at the Property which is subject to the reporting requirements of Section 312 of the Federal Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 11001 et seq.) and the federal regulations promulgated thereunder, as now or hereafter amended, as "facility" is defined in RPTA.

1.31 Indemnification; Subrogation.

(a) **MORTGAGOR SHALL INDEMNIFY, DEFEND AND HOLD MORTGAGEE HARMLESS AGAINST: (i) ANY AND ALL CLAIMS FOR BROKERAGE, LEASING, FINDER'S OR SIMILAR FEES WHICH MAY BE MADE RELATING TO THE PROPERTY OR THE SECURED INDEBTEDNESS WITH THE EXCEPTION OF THE BROKERAGE COMMISSION TO BE PAID BY MORTGAGEE TO DRAPER AND KRAMER IN CONJUNCTION WITH THE LOAN, (ii) ANY AND ALL LIABILITY, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, ACTIONS, SUITS, LIENS, CHARGES, ENCUMBRANCES, COSTS AND EXPENSES (INCLUDING MORTGAGEE'S ATTORNEYS' FEES, TOGETHER WITH REASONABLE APPELLATE COUNSEL FEES, IF ANY) OF WHATEVER KIND OR NATURE WHICH MAY BE ASSERTED AGAINST, IMPOSED ON OR INCURRED BY MORTGAGEE UNDER ANY LEASE OR OCCUPANCY AGREEMENT, FOR ANY LOSS ARISING FROM A FAILURE OR INABILITY TO COLLECT RENTS AND PROFITS OR IN CONNECTION WITH THE SECURED INDEBTEDNESS, THIS MORTGAGE, THE PROPERTY, OR ANY PART THEREOF, OR THE EXERCISE BY MORTGAGEE OF ANY RIGHTS OR REMEDIES GRANTED TO IT UNDER THIS MORTGAGE, AND ANY DEFAULT UNDER THIS MORTGAGE, (iii) ANY LIENS (WHETHER JUDGMENTS, MECHANICS', MATERIALMEN'S OR OTHERWISE), CHARGES AND ENCUMBRANCES FILED AGAINST THE PROPERTY, AND (iv) ANY CLAIMS AND DEMANDS FOR DAMAGES OR INJURY, INCLUDING**

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CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR WRONGFUL DEATH, ARISING OUT OF OR IN CONNECTION WITH ANY ACCIDENT OR FIRE OR OTHER CASUALTY ON THE REAL ESTATE OR THE IMPROVEMENTS OR ANY NUISANCE OR TRESPASS MADE OR SUFFERED THEREON, INCLUDING, IN ANY CASE, ATTORNEYS' FEES, COSTS AND EXPENSES AS AFORESAID, WHETHER AT PRETRIAL, TRIAL OR APPELLATE LEVEL FOR ANY CIVIL, CRIMINAL OR ADMINISTRATIVE PROCEEDINGS. SHOULD MORTGAGEE INCUR ANY LIABILITY UNDER THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS, THE AMOUNT THEREOF, INCLUDING, WITHOUT LIMITATION, COSTS, EXPENSES AND REASONABLE ATTORNEYS' FEES, TOGETHER WITH INTEREST THEREON AT THE DEFAULT INTEREST RATE (AS DEFINED IN THE NOTE) FROM THE DATE INCURRED BY MORTGAGEE UNTIL ACTUALLY PAID BY MORTGAGOR, SHALL BE IMMEDIATELY DUE AND PAYABLE TO MORTGAGEE BY MORTGAGOR ON DEMAND AND SHALL BE SECURED HEREBY AND BY ALL OF THE OTHER LOAN DOCUMENTS SECURING ALL OR ANY PART OF THE INDEBTEDNESS EVIDENCED BY THE NOTE. HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO OBLIGATE MORTGAGOR TO INDEMNIFY, DEFEND AND HOLD HARMLESS MORTGAGEE FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, ACTIONS, SUITS, COSTS AND EXPENSES ENACTED AGAINST, IMPOSED ON OR INCURRED BY MORTGAGEE BY REASON OF MORTGAGEE'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. THIS INDEMNITY SHALL SURVIVE PAYMENT IN FULL OF THE INDEBTEDNESS SECURED HEREBY.

(b) Mortgagee may engage the services of attorneys if it is made a party defendant to any litigation (or threatened action or claim) or to enforce the terms of this Mortgage or to protect its rights hereunder, and in the event of any such engagement, Mortgagor shall pay Mortgagee's reasonable attorneys' fees (together with reasonable appellate counsel fees, if any), consultants' fees, experts' fees and expenses reasonably incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor. All references to "attorneys" in this Subsection and elsewhere in this Mortgage shall include without limitation any attorney or law firm engaged by Mortgagee, and all references to "fees and expenses" in this Subsection and elsewhere in this Mortgage shall include without limitation any fees of such attorney or law firm.

(c) A waiver of subrogation shall be obtained by Mortgagor from its insurance carrier and, consequently, Mortgagor waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, for loss of or damage to Mortgagor, the Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

1.32 Covenants with Respect to Indebtedness, Operations and Fundamental Changes of Mortgagor. Mortgagor represents, warrants and covenants as of the date hereof and until such time as the indebtedness secured hereby is paid in full, that Mortgagor:

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(a) does not own and will not own any encumbered asset other than (i) the Property, and (ii) incidental personal property necessary for the operation of the Property;

(b) is not engaged and will not engage in any business other than the ownership, management and operation of the Property;

(c) will not enter into any contract or agreement with any member, manager, general partner, principal or affiliate of Mortgagor or any affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties other than an affiliate;

(d) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the secured indebtedness, and (ii) unsecured trade and operational debt incurred in the ordinary course of business not outstanding for more than sixty (60) days with trade creditors and in amounts as are normal and reasonable under the circumstances; no debt whatsoever may be secured (senior, subordinate or pari passu) by the Property except the Indebtedness;

(e) has not made and will not make any loans or advances to any third party (including any member, manager, general partner, principal or affiliate of Mortgagor, or any guarantor);

(f) is and will be solvent and pay its debts from its assets as the same shall become due;

(g) has done or caused to be done and will do all things necessary to preserve its existence and corporate, limited liability company and partnership formalities (as applicable), and will not, nor will any partner, limited or general, shareholder or member thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, certificate, articles of incorporation, by-laws, articles of organization, operating agreement or regulations in a manner which adversely affects Mortgagor's, or any such partner's, member's or shareholder's existence as a single-purpose, single-asset "bankruptcy remote" entity;

(h) will conduct and operate its business as presently conducted and operated;

(i) will maintain books and records and bank accounts separate from those of its affiliates, including its general partners, principals and members;

(j) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Mortgagor, any constituent party of Mortgagor, any guarantor or any affiliate of any constituent party or guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks from any other entity;

(k) will file its own tax returns;

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(l) will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(m) will not, nor will any member, manager, shareholder, partner, principal or affiliate, seek the dissolution or winding up, in whole or in part, of Mortgagor;

(n) will not enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any entity;

(o) will not commingle the funds and other assets of Mortgagor with those of any member, manager, general partner, principal or affiliate or any other person;

(p) has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person;

(q) has, and any general partner or managing member of Mortgagor has, at all times since their respective formation observed all legal and customary formalities regarding their respective formation and will continue to observe all legal and customary formalities;

(r) does not and will not hold itself out to be responsible for the debts or obligations of any other person;

(s) upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Mortgagor, Mortgagor shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. 105 or any other provision of the Act, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Mortgagee to enforce any rights of Mortgagee against any guarantor or indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise; and

(t) if Mortgagor is a limited partnership or a limited liability company, the general partner or managing member (the "SPC Entity") shall be a corporation whose sole asset is its interest in Mortgagor and the SPC Entity will at all times comply, and will cause Mortgagor to comply, with each of the representations, warranties, and covenants contained in this Section 1.32 as if such representation, warranty or covenant was made directly by the SPC Entity. If Mortgagor is a corporation, Mortgagor itself shall comply with each of the representations, warranties and covenants contained in this Section 1.32 as an SPC Entity.

1.33 Litigation. Mortgagor will give prompt written notice to Mortgagee of any litigation or governmental proceedings pending or threatened (in writing) against Mortgagor which might reasonably be expected to have a Material Adverse Effect.

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1.34 ERISA.

(a) Mortgagor shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Mortgagee of any of its rights under the Note, this Mortgage or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Mortgagor further covenants and agrees to deliver to Mortgagee such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Mortgagee in its sole discretion, that (i) Mortgagor is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (ii) Mortgagor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

(1) Equity interests in Mortgagor are publicly offered securities within the meaning of 29 C.F.R. Section 2510.3-101(b)(2);

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

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

(c) MORTGAGOR SHALL INDEMNIFY MORTGAGEE AND DEFEND AND HOLD MORTGAGEE HARMLESS FROM AND AGAINST ALL CIVIL PENALTIES, EXCISE TAXES, OR OTHER LOSS, COST, DAMAGE AND EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS AND COSTS INCURRED IN THE INVESTIGATION, DEFENSE AND SETTLEMENT OF CLAIMS AND LOSSES INCURRED IN CORRECTING ANY PROHIBITED TRANSACTION OR IN THE SALE OF A PROHIBITED LOAN, AND IN OBTAINING ANY INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION UNDER ERISA THAT MAY BE REQUIRED, IN MORTGAGEE'S SOLE DISCRETION) THAT MORTGAGEE MAY INCUR, DIRECTLY OR INDIRECTLY, AS A RESULT OF A DEFAULT UNDER THIS SECTION 1.34. THIS INDEMNITY SHALL SURVIVE ANY TERMINATION, SATISFACTION OR FORECLOSURE OF THIS MORTGAGE.

1.35 Defeasance.

(a) Notwithstanding anything to the contrary contained in the Note, this Mortgage or the other Loan Documents, at any time after the second (2nd) anniversary of the date that is the "startup day," within the meaning of Section 860G(a)(9) of the Internal Revenue Code of 1986, as amended from time to time or any successor statute (the "Code"), of a "real estate mortgage investment conduit" ("REMIC") within the meaning of Section 860D of the Code, that holds the Note and this Mortgage and provided (unless Mortgagee shall otherwise

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consent, in its sole discretion) no default has occurred and is continuing hereunder or under any of the other Loan Documents, Mortgagor shall have the right to obtain the release of the Property from the lien of this Mortgage and the other Loan Documents upon the satisfaction of each of the following conditions precedent (such transaction being referred to herein as a "Defeasance"):

(1) not less than thirty (30) days' prior written notice to Mortgagee specifying a regular Payment Date under the Note (the "Release Date") on which the Defeasance Collateral (hereinafter defined) is to be delivered;

(2) the remittance to Mortgagee on the related Release Date of interest accrued and unpaid on the outstanding principal amount of the Note to and including the Release Date and the scheduled amortization payment due on such Release Date, together with all other amounts then due and payable under the Note, this Mortgage and the other Loan Documents;

(3) the delivery on or prior to the Release Date to Mortgagee of:

(A) an amount equal to that which is sufficient to purchase U.S. Government Securities (hereinafter defined) that provide for payments prior, but as close as possible, to all successive monthly Payment Dates (as defined in the Note) occurring after the Release Date including the payment made on the Maturity Date, with each such payment being equal to or greater than the amount of the corresponding installment of principal, interest and, if applicable, the fee of the Servicer required to be paid hereunder and/or under the Note (the "Defeasance Collateral"), each of which shall be duly endorsed by the holder thereof as directed by Mortgagee or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Mortgagee (including, without limitation, such instruments as may be required by the depository institution holding such securities to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to create a first priority security interest therein in favor of Mortgagee in conformity with all applicable state and federal laws governing granting of such security interests;

(B) a pledge and security agreement, in form and substance satisfactory to Mortgagee, creating a first priority security interest in favor of Mortgagee in the Defeasance Collateral (the "Defeasance Security Agreement"), which Defeasance Security Agreement shall (i) provide, among other things, that any excess received by Mortgagee from the Defeasance Collateral over the amounts payable by Mortgagor hereunder shall be refunded to Mortgagor promptly after each Payment Date, and (ii) be included within the definition of "Mortgage" for purposes of each Loan Document from and after the date of its execution;

(C) a certificate of an authorized representative of Mortgagor certifying that the requirements set forth in this Section 1.35(a) have been satisfied;

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(D) an opinion of counsel for Mortgagor in form and substance satisfactory to Mortgagee to the effect that Mortgagee has a perfected first priority security interest in the Defeasance Collateral and the Defeasance Security Agreement is enforceable against Mortgagor in accordance with its terms;

(E) an opinion of counsel for Mortgagee, prepared and delivered by counsel for the Servicer at Mortgagor's reasonable expense, stating that any trust formed as a REMIC in connection with any Secondary Market Transaction (as defined in Section 4.32 hereof) will not fail to maintain its status as a REMIC as a result of such Defeasance;

(F) a certificate from a firm of independent public accountants acceptable to Mortgagee certifying that the Defeasance Collateral is sufficient to satisfy the requirements of Section 1.35(a)(3)(A) hereinabove;

(G) a proposed release of the Property from this Mortgage, the Assignment and any UCC Financing Statements relating thereto (for execution by Mortgagee) in a form appropriate for cancellation of such documents in the jurisdiction in which the Property is located; and

(H) such other certificates, documents or instruments as Mortgagee may reasonably request.

(4) the payment by Mortgagor to Mortgagee of all reasonable out-of-pocket costs and expenses (including, without limitation, attorneys' and accountant's fees and disbursements, and Rating Agency fees and expenses, if any) incurred or anticipated to be incurred by Mortgagee in connection with the satisfaction of the conditions and requirements described in this Section 1.35.

(b) Upon compliance with the requirements of this Section 1.35, the Property shall be released from the lien of this Mortgage, the Assignment and any UCC Financing Statements related thereto, the obligations hereunder and under the other Loan Documents with respect to the Property shall no longer be applicable and the Defeasance Collateral shall be the sole source of collateral securing the Note and all other obligations under the Loan Documents. Mortgagee shall apply the Defeasance Collateral and the payments received therefrom to the payment of all scheduled principal and interest payments (the "Scheduled Defeasance Payments") due on all successive Payment Dates under the Note after the Release Date including the payment due on the Maturity Date (as defined in the Note). Mortgagor, pursuant to the Defeasance Security Agreement or other appropriate document, shall direct that the payments received from the Defeasance Collateral shall be made directly to Mortgagee and applied to satisfy the obligations of Mortgagor under the Note and the Defeasance Security Agreement.

(c) In connection with the release of the Property in accordance with this Section 1.35, if Mortgagor shall continue to own any assets other than the Defeasance Collateral, Mortgagor shall establish or designate a single-purpose, bankruptcy-remote successor entity acceptable to Mortgagee (the "Successor Trustor"), with respect to which a non-consolidation opinion satisfactory in form and substance to Mortgagee has been delivered to Mortgagee (if

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such non-consolidation opinion was required of Mortgagor in connection with the origination of the indebtedness secured hereby) in which case Mortgagor shall transfer and assign to the Successor Trustor all obligations, rights and duties under the Note and the Defeasance Security Agreement, together with the pledged Defeasance Collateral. The Successor Trustor shall assume the obligations of Mortgagor under the Note and the Defeasance Security Agreement pursuant to an assumption agreement satisfactory to Mortgagee in its sole discretion. As a condition to such assignment and assumption, Mortgagor shall (i) deliver to Mortgagee an opinion of counsel in form and substance and delivered by counsel satisfactory to Mortgagee in its sole discretion stating, among other things, that such assumption agreement is enforceable against Mortgagor and such successor entity in accordance with their respective terms, and (ii) pay all costs and expenses incurred by Mortgagee or its agents in connection with such assignment and assumption (including, without limitation, the review of the proposed transferee and the preparation of the assumption agreement and related documentation). Upon such assumption, Mortgagor shall be relieved of its obligations hereunder, under the other Loan Documents and under the Defeasance Security Agreement other than those obligations which are specifically intended to survive the termination, satisfaction or assignment of this Mortgage or the exercise of Mortgagee's rights and remedies hereunder.

(d) Upon the release of the Property in accordance with this paragraph, Mortgagor shall have no further right to prepay the Note pursuant to the other provisions of this paragraph or otherwise. In connection with the conditions set forth in Section 1.35(a)(3)(A) above, Mortgagor hereby appoints Mortgagee as its agent and attorney-in-fact for the purpose of purchasing the Defeasance Collateral with funds provided by Mortgagor. Mortgagor shall pay any and all expenses incurred in the purchase of the Defeasance Collateral and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of this paragraph.

(e) As used herein, the term "U.S. Government Securities" shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (i) direct obligations of the United States of America for the full and timely payment of which its full faith and credit is pledged, or (ii) to the extent acceptable to the Rating Agency (hereinafter defined), other "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

(f) Notwithstanding the provisions of clauses (a)-(c) above, if at any time following the third (3rd) anniversary of the First P&I Date (as defined in the Note) Mortgagor delivers to Mortgagee a written notice pursuant to Section 1.35(a)(i) above specifying a Defeasance Election Date, and, if as a result of delays by Mortgagee in including the Loan in a Secondary Market Transaction, Mortgagor is unable due to REMIC restrictions to exercise its right to Defeasance on the specified Defeasance Election Date, then Mortgagor may prepay the Note on the specified Defeasance Election Date, in accordance with Section 1.2(e) of the Note. Any such permitted prepayment made on or prior to the Lockout Expiration Date (as defined in the Note) shall be accompanied with payment of Required Yield Maintenance.

1.36 Partial Release. Subject to the provisions of this Section 1.36, and so long as Mortgagor is not in default under any of the Loan Documents, Mortgagee agrees to not unreasonably withhold its consent to a release (a "Partial Release") of an unimproved portion of

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the Property consisting of approximately 0.05 acres and located generally in the area adjacent to the northwest end of the portion of the Property known as Phase II, next to McDonald's, the exact dimensions and configuration of which is to be approved by Mortgagee (the "Release Lot"). Mortgagee's provision of a Partial Release shall be expressly subject to the satisfaction (in the reasonable determination of Mortgagee) of each and every of the following conditions precedent (singularly and collectively referred to as the "Partial Release Conditions"):

(a) Any and all sums then due and payable to Mortgagee under the Loan Documents shall be fully paid (including, without limitation, principal and interest under the Note and all sums constituting the Reserves and any other escrow required under the Loan Documents) and no Event of Default (as described in Article II herein) shall exist and be continuing, nor shall Mortgagee have given Mortgagor notice of any uncured event or condition which, with the passage of time or the giving of notice (or both), could result in an Event of Default if not cured by Mortgagor.

(b) At least thirty (30) days prior to the effective date of any proposed Partial Release, Mortgagor shall prepare and deliver to Mortgagee (at Mortgagor's sole cost and expense) a proposed re-plat of the Release Lot and the unreleased portion of the Property and a survey plat and field notes for the Release Lot and for the remainder of the Property, all prepared by a licensed surveyor or engineer (which surveys shall comply with Mortgagee's survey requirements for Mortgage loans and shall, among other matters, depict the exact location of the Release Lot relative to the remainder of the Property, the location of all applicable title matters and such other matters as Mortgagee may reasonably request). Such replats shall, in all respects, be subject to Mortgagee's approval.

(c) Mortgagor must provide satisfactory evidence to Mortgagee of the following matters: (i) that the Release Lot and the balance of the Property shall comply with all federal, state and local environmental, land use and zoning laws (including, without limitation, minimum lot size, parking regulations, set-back lines, density requirements, lot coverage ratios, frontage, subdivision, site plan approval and access to a public right-of-way); (ii) that all required notices have been given and consents obtained in connection with the proposed Partial Release, including (without limitation) the consent of any governmental entity and any indemnitor; (iii) that Mortgagor has filed with the appropriate governmental authority the proper documentation to have the Release Lot and the unreleased portion of the Property assessed as a separate tax parcel with respect to all property taxes and assessments within two (2) years of the conveyance of the Release Lot; (iv) that access to the remainder of the Property following the Partial Release to any previously dedicated streets and utilities shall not be impaired and that the construction of any future improvements on the Release Lot shall not impair the visibility or use of the remainder of the Property; and (v) that the future uses of the Release Lot will not violate any exclusivity provision in any Lease pertaining to the Property nor any covenant, restriction, condition or other title matter then encumbering the Property. Notwithstanding anything to the contrary contained herein, until such time as Mortgagor can provide Mortgagee with proper evidence that the Release Lot and the unreleased portion of the Property are assessed as separate tax parcels with respect to all property taxes and assessments, Mortgagor shall be obligated to escrow in the Impound Account pursuant to Section 1.6 hereof, sufficient sums to pay the taxes and assessments applicable to both the Release Lot and the unreleased portion of the Property

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and shall be obligated to fully comply with the provisions of Section 1.5 and Section 1.6 hereof related to both pieces of the Property.

(d) Mortgagee must have been provided complete information with respect to the proposed parking for the unreleased portion of the Property both immediately following the Partial Release and thereafter, which such proposed parking arrangement must be legally adequate for the remainder of the Property and otherwise satisfactory to Mortgagee in all respects and must include (i) a temporary parking arrangement reasonably convenient to the unreleased portion of the Property during the pendency of any construction on the Release Lot, (ii) a final parking arrangement after completion of any anticipated Improvements on the Release Lot, (iii) an insurable easement arrangement acceptable to Mortgagee in all respects with respect to both the temporary and permanent parking arrangement, which parking facility will be without cost or expense to the owner of the unreleased portion of the Property, and (iv) a new loan policy of title insurance (or, as may be acceptable to Mortgagee, an endorsement to the existing loan policy of title insurance) providing title coverage to Mortgagee with respect to such easement estate without exception except as may be approved by Mortgagee and without any exception for liens.

(e) Prior to the effective date of the proposed Partial Release, Mortgagor shall encumber the Release Lot with a recorded development or similar agreement (in form and substance satisfactory to Mortgagee) covering such matters as mutual parking and access, maintenance, shared utilities, drainage and other similar issues and containing appropriate restrictions on the type, construction, location, height and use of any improvements then existing or thereafter to be constructed on the Release Lot (and which restrictions shall include, among other matters required by Mortgagee, approval by Mortgagee of the plans and specifications relating to such improvements).

(f) Mortgagee shall have received, to the extent reasonably deemed necessary or desirable by Mortgagee, evidence in writing from the Rating Agency to the effect that the proposed Partial Release will not result in a requalification, reduction, downgrade or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction (hereinafter defined) or, if no such rating has been issued, in Mortgagee's good faith judgment, such Partial Release shall not have an adverse affect on the level of rating attainable in connection with the Loan.

(g) The Release Lot shall be conveyed, contemporaneously with the Partial Release, such that Mortgagor shall continue to satisfy each of the requirements described in Section 1.32 hereof following such Partial Release. Without limiting the generality of the foregoing, Mortgagor acknowledges and agrees that, after the provision of the Partial Release, Mortgagor shall own no other asset other than the Property (excluding the Release Lot) but including the new easement rights to be provided to Mortgagor as described in this Section 1.36.

(h) No proposed Partial Release shall (i) deny any unreleased portion of the Property reasonable access to public streets, roads or utilities, (ii) unreasonably divide any portion or tract of the remainder of the Property into strips or parcels, (iii) vest ownership of any Release Lot into more than one owner, or (iv) otherwise negatively impact in any manner

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whatsoever (whether due to the configuration of the Release Lot, any proposed Improvements thereof or otherwise) the remainder of the Property.

(i) Mortgagor shall submit a prepared partial release instrument (the "Partial Release Instrument") in form and substance satisfactory to Mortgagee and any information necessary for Mortgagee to process the Partial Release Instrument, including a lot and block or metes and bounds description of the Release Lot, the name and address of the title insurance company to whose attention the Partial Release Instrument should be directed, numbers that reference the Partial Release Instrument (i.e., tax parcel numbers, title company order numbers, release numbers, etc.), the date when the Partial Release is to become effective, the name and address of the prospective purchaser of the Release Lot and such other documents and information as Mortgagee may reasonably request. The Partial Release Instrument shall be delivered, in escrow, by Mortgagee to the title company so designated, to be held, released, delivered and recorded in accordance with Mortgagee's escrow instructions, which shall require the satisfaction of all Partial Release Conditions. In no event shall the execution and delivery of a Partial Release Instrument effect any of Mortgagee's obligations under this Mortgage or the other Loan Documents.

(j) Mortgagor shall deliver to Mortgagee (i) an updated title report or commitment (issued by the title company that insured the lien of the Mortgage) reflecting that no additional title matters cover the Property other than the title matters set forth in the Title Insurance Policy, (ii) an endorsement to the Title Policy bringing the date of the Title Policy to the date of the Partial Release and evidencing the continued first lien priority of the Mortgage (and with no such additional title matters) subject, however, to the Partial Release and additional easement coverage described hereinabove, and (iii) a new policy of title insurance, other endorsements or other information as Mortgagee may require.

(k) All reasonable costs and expenses incurred by Mortgagee (and any servicer of the Loan) in connection with the completion (and verification of completion) of all Partial Release Conditions, payment of all required fees of any Rating Agency and relative to the review, approval and execution of any Partial Release, shall be paid by Mortgagor prior to and as a condition of the execution of any Partial Release Instrument, including (but not limited to) reasonable attorneys' fees, all costs and expenses of Mortgagee (and any servicer of the Loan) incurred in connection with obtaining any engineering reports, opinions and consents, Rating Agency letters and any endorsement to the Title Policy. All recording fees and taxes are to be paid by Mortgagor.

(l) The satisfaction of such other conditions precedent as Mortgagee may reasonably require.

ARTICLE II **EVENTS OF DEFAULT**

2.1 Events of Default. The occurrence of any of the following events shall be a default hereunder:

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(a) Mortgagor fails to timely make (i) any payment under the Note when due, or (ii) any regularly scheduled monthly deposit into a Reserve under this Mortgage or any of the other Loan Documents when due; provided, however, Mortgagor shall have a five (5) day grace period for the timely payment of any amounts due under the Note prior to the enforcement of any acceleration rights as set forth in the Note.

(b) Mortgagor fails to punctually perform any other covenant, agreement, obligation, term or condition hereof which requires payment of any money to Mortgagee and such failure continues for five (5) days after written notice is provided to Mortgagor thereof; provided, however, no such notice, opportunity to cure or grace period shall be applicable with respect to the sums described in Section 2.1(a) hereinabove except as applicable to the grace period granted to Mortgagor prior to the enforcement of the acceleration rights of Mortgagee as set forth in subsection (a) above.

(c) Mortgagor fails to provide insurance as required by Section 1.4 hereof or fails to perform any covenant, agreement, obligation, term or condition set forth in Section 1.16 or Section 1.30 hereof.

(d) Mortgagor fails to perform any other covenant, agreement, obligation, term or condition set forth herein or under the Note (to the extent non-monetary in nature), other than those otherwise described in this Section 2.1, and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Mortgagee to Mortgagor; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Mortgagor commences to cure such default promptly after receipt of notice thereof from Mortgagee, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional ninety (90) days.

(e) Any representation or warranty made herein, in or in connection with any application or commitment relating to the Loan, or in any of the other Loan Documents to Mortgagee by Mortgagor, by any principal, managing member or general partner in Mortgagor or by any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan is false or misleading in any material respect at the time made.

(f) There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbrancing of the Property, Mortgagor or its owners, or any portion thereof or any interest therein, in violation of Section 1.13 hereof.

(g) A default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

(h) Mortgagor, any principal, general partner or managing member (as applicable) in Mortgagor or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in

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bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer for Mortgagor, for any such principal, general partner or managing member of Mortgagor or for any such indemnitor or guarantor or for a substantial part of the assets of Mortgagor, of any such principal, general partner or managing member of Mortgagor or of any such indemnitor or guarantor, or shall commence any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

(i) A petition ("Petition") is filed or any case, proceeding or other action is commenced against Mortgagor, against any principal, general partner or managing member of Mortgagor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or a court of competent jurisdiction enters an order for relief against Mortgagor, against any principal, general partner or managing member of Mortgagor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan, as debtor, or an order, judgment or decree is entered appointing, with or without the consent of Mortgagor, of any such principal, general partner or managing member of Mortgagor or of any such indemnitor or guarantor, a receiver, trustee, custodian or similar officer for Mortgagor, for any such principal, general partner or managing member of Mortgagor or for any such indemnitor or guarantor, or for any substantial part of any of the properties of Mortgagor, of any such principal, general partner or managing member of Mortgagor or of any such indemnitor or guarantor, and if any such event shall occur, such Petition, case, proceeding, action, order, judgment or decree shall not be dismissed within ninety (90) days after being commenced.

(j) Mortgagor solicits or aids the solicitation of the filing of any Petition against Mortgagor including, without limitation: (i) providing information regarding the identity of creditors or the nature of creditors' claims to any third party unless compelled to do so by order of a court of competent jurisdiction or by regulation promulgated by a governmental agency, or (ii) paying the legal fees or expenses of any creditor or of interest holder in Mortgagor with respect to any matter whatsoever.

(k) The Property or any part thereof shall be taken on execution or other process of law in any action against Mortgagor.

(l) Mortgagor abandons all or a portion of the Property.

(m) The holder of any lien or security interest on the Property (without implying the consent of Mortgagee to the existence or creation of any such lien or security interest), whether superior or subordinate to this Mortgage or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set

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forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(n) The Property, or any part thereof, is subjected to actual or threatened waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby and Mortgagee determines (in its subjective determination as it relates to actual waste and in its reasonable determination as it relates to threatened waste) that it is not adequately protected from any loss, damage or risk associated therewith.

(o) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Mortgagor, any of its principal(s), general partner(s) or managing member(s).

(p) Any failure by Mortgagor to timely initiate and continue the funding of all rental and revenue from the Property to the Clearing Account (as described in the Cash Management Agreement) in the circumstances and at the time required pursuant to the Cash Management Agreement.

ARTICLE III REMEDIES

3.1 Remedies Available. If there shall occur a default under this Mortgage, and such default has not been cured within any applicable grace or cure period, then this Mortgage is subject to foreclosure as provided by law and Mortgagee may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Mortgagor), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.

(b) Entry on the Property. Without in any way curing or waiving any default of Mortgagor, either in person or by agent or by court-appointed receiver, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law, unless such notice and process is waivable, in which case Mortgagor hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Mortgagee's judgment to complete any unfinished construction on the Land, to preserve and/or enhance the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof, and all sums expended by Mortgagee therefor, together with interest thereon at the Default Interest Rate (as defined in the Note), shall be immediately due and payable to Mortgagee by Mortgagor on demand and shall be secured

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hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue for or otherwise collect the Rents and Profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, all in such order as Mortgagee in its discretion may determine.

(d) Appointment of Receiver. Upon, or at any time prior or after instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application, *ex parte*, to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Mortgagor and without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Mortgagor or any person or persons liable for the payment of the indebtedness secured hereby, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Mortgagee, but nothing herein is to be construed to deprive Mortgagee of any other right, remedy or privilege Mortgagee may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of the Rents and Profits pursuant to other terms and provisions of this Mortgage or the Assignment. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 3.3 below. Such receivership shall, at the option of Mortgagee, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Mortgage or deed in lieu of foreclosure.

(e) Foreclosure. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the indebtedness secured hereby, pursuant to the statutes in such case made and provided, and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Mortgagee. In the event foreclosure proceedings are instituted or filed by Mortgagee, all expenses incident to such proceedings, including, but not limited to, reasonable attorneys' fees and costs, shall be paid by Mortgagor and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate (as defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Mortgagee under the Loan Documents, may be bid by Mortgagee in the event of a foreclosure sale hereunder. Mortgagee may, by following the procedures and satisfying the requirements prescribed by law, foreclose on only a portion of the

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Property and, in such event, said foreclosure shall not affect the lien of the Mortgage on the remaining portion of the Property not foreclosed.

(f) Judicial Remedies. Proceed by suit or suits, at law or in equity, instituted by Mortgagee, to foreclose the liens and security interests of this Mortgage as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Mortgagee or its assigns may become the purchaser of the Property. This remedy shall be cumulative of any other non-judicial remedies available to Mortgagee with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Mortgagee.

(g) Other. Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

3.2 Application of Proceeds. To the fullest extent permitted by law, the proceeds of any sale under this Mortgage shall be applied, to the extent funds are so available, to the following items in such order as Mortgagee in its discretion may determine:

(a) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Mortgagee's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, reasonable attorneys', accountants', appraisers', auctioneers', managers' and other professionals' fees, title charges and transfer taxes.

(b) To payment of all sums expended by Mortgagee under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Interest Rate (as defined in the Note).

(c) To payment of the secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate (as defined in the Note) and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Mortgagee chooses in its sole discretion.

(d) The remainder, if any, of such funds shall be disbursed to Mortgagor or to the person or persons legally entitled thereto.

3.3 Right and Authority of Receiver or Mortgagee in the Event of Default; Power of Attorney. Upon the occurrence of a default hereunder, which default is not cured within any applicable grace or cure period, and entry upon the Property pursuant to Section 3.1(b) hereof or appointment of a receiver pursuant to Section 3.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Mortgagee's or the receiver's sole discretion, all at Mortgagor's expense, Mortgagee or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of

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any and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Mortgagor and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Mortgagee may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Mortgagee's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Mortgagee may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Mortgagee may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Mortgagee as attorney-in-fact and agent of Mortgagor or in its own name as Mortgagee, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter into such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Mortgagee may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Mortgagor or Mortgagee; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Mortgagee by this Mortgage; and (r) do any acts which Mortgagee in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Mortgagee may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any lessee, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Mortgagor or Mortgagee, at the request of Mortgagee, to pay all amounts owing under any lease, contract, concession, license or other agreement to Mortgagee without proof of the default relied upon. Any such lessee or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Mortgagor in so doing) any request, notice or demand by Mortgagee for the payment to Mortgagee of any Rents and Profits or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any default under this Mortgage or under any of the other Loan Documents has actually occurred or is then existing. Mortgagor hereby constitutes and appoints Mortgagee, its assignees, successors, transferees and nominees, as Mortgagor's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Mortgagor's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any indebtedness secured hereby is outstanding. Any money advanced by Mortgagee in connection with any

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action taken under this Section 3.3, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date of making such advancement by Mortgagee until actually paid by Mortgagor, shall be a demand obligation owing by Mortgagor to Mortgagee and shall be secured by this Mortgage and by every other instrument securing the secured indebtedness.

3.4 Occupancy After Foreclosure. In the event there is a foreclosure or comparable sale or sales hereunder and at the time of such sale or sales, Mortgagor or Mortgagor's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Mortgagor (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Mortgagee or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Land is located.

3.5 Notice to Account Debtors. Mortgagee may, at any time after a default hereunder, which default is not cured within any applicable grace or cure period, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Mortgagor included in the Property to pay Mortgagee directly. Mortgagor shall at any time or from time to time upon the request of Mortgagee provide to Mortgagee a current list of all such account debtors and obligors and their addresses.

3.6 Cumulative Remedies. All remedies contained in this Mortgage are cumulative and Mortgagee shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Mortgagee and may be exercised in any order and as often as occasion therefor shall arise. No act of Mortgagee shall be construed as an election to proceed under any particular provisions of this Mortgage to the exclusion of any other provision of this Mortgage or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Mortgagee. No delay or failure by Mortgagee to exercise any right or remedy under this Mortgage shall be construed to be a waiver of that right or remedy or of any default hereunder. Mortgagee may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.7 Payment of Expenses. Mortgagor shall pay on demand all of Mortgagee's expenses reasonably incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Mortgagee until actually paid by Mortgagor at the Default Interest Rate (as defined in the Note), and the same shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

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ARTICLE IV MISCELLANEOUS TERMS AND CONDITIONS

4.1 Time of Essence. Time is of the essence with respect to all provisions of this Mortgage.

4.2 Release of Mortgage. If and when Mortgagor has paid all of the secured indebtedness as the same becomes due and payable, or there is a Defeasance regarding the lien of this Mortgage in accordance with, and in satisfaction of, the provisions of Section 1.35 of this Mortgage, then, and in such event only, all rights under this Mortgage shall terminate, except for those provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Mortgagee in due form at Mortgagor's cost. Mortgagor shall be responsible for the recordation of such release and payment of any recordation costs associated therewith.

4.3 Certain Rights of Mortgagee. Without affecting Mortgagor's liability for the payment of any of the indebtedness secured hereby, Mortgagee may from time to time and without notice to Mortgagor: (a) release any person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of the indebtedness secured hereby; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby; (d) recover any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Mortgage or any agreement subordinating the lien hereof.

4.4 Notices. Any notice, report, demand or other instrument authorized or required to be given or furnished hereunder or as required by law ("Notices") shall be in writing and shall be given as follows: (a) by hand delivery; (b) by deposit in the United States mail as first class certified mail, return receipt requested, postage paid; (c) by overnight nationwide commercial courier service; or (d) by telecopy transmission (other than for notices of default) with a confirmation copy to be delivered by duplicate notice in accordance with any of clauses (a)-(c) above, in each case, addressed to the party intended to receive the same at the following address(es):

Mortgagee: Column Financial, Inc.
 11 Madison Avenue
 5th Floor
 New York, New York 10010-3629
 Attention: Edmund Taylor
 Telecopier: (212) 325-8106
 Re: Annex of Arlington,
 Arlington Heights, Illinois
 Loan Amount: \$18,250,000.00

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with copies to: Credit Suisse First Boston Mortgage Capital LLC
Legal & Compliance Department
One Madison Avenue
New York, New York 10010
Attention: Pamela L. McCormack, Esq.
Telecopier: (917) 326-7805
Re: Annex of Arlington,
Arlington Heights, Illinois
Loan Amount: \$18,250,000.00

Property of Cook County Clerk's Office

Servicer: ORIX Real Estate Capital Markets, LLC
1717 Main Street
12th Floor
Dallas, Texas 75201
Attention: Wesley Wolf
Telecopier: (214) 237-2046
or any successor servicer of the Loan.
Re: Annex of Arlington,
Arlington Heights, Illinois
Loan Amount: \$18,250,000.00

Mortgagor: Arlington, LLC
c/o M&J Wilkow, Ltd.
180 North Michigan Avenue
Suite 200
Chicago, Illinois 60601
Attention: Marc R. Wilkow
Telecopier: (312) 726-1468

with a copy to: Neal Gerber & Eisenberg
Two North LaSalle Street
Chicago, Illinois 60602
Attention: Douglas M. Ellis, Esq.
Telecopier: (312) 269-1747

Any party may change the address to which any such Notice is to be delivered to any other address within the United States of America, by furnishing ten (10) days written notice of such change to the other parties in accordance with the provisions of this Section 4.4. All notices, demands and requests shall be effective upon personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. The inability to deliver Notices because of a changed address of which no Notice was given, or rejection or refusal to accept any Notice offered for delivery shall be deemed to be receipt of the Notice as of the date of such inability to deliver or rejection or refusal to accept delivery. Notice for either party may be given by its respective counsel. Additionally, notice from Mortgagee may also be given by the Servicer.

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4.5 Successors and Assigns. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Mortgagor and the successors and assigns of Mortgagor, including all successors in interest in and to all or any part of the Property, and shall inure to the benefit of Mortgagee and its successors and assigns and shall constitute covenants running with the land. If Mortgagor consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Mortgagor.

4.6 Severability. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision.

4.7 Gender. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

4.8 Waiver, Discontinuance of Proceedings. Mortgagee may waive any single default by Mortgagor hereunder without waiving any other prior or subsequent default, and may remedy any default by Mortgagor hereunder without waiving the default remedied. Neither the failure or delay by Mortgagee in exercising any right, power or remedy upon any default by Mortgagor hereunder shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Acceptance by Mortgagee of any payment in an amount less than the amount then due on any of the secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

4.9 Section Headings. The headings of the sections and paragraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

4.10 **GOVERNING LAW. THIS MORTGAGE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, PROVIDED THAT TO THE EXTENT THAT ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING.**

4.11 Counting of Days. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Land is located, the period shall be deemed to end on the next succeeding business day. The term "business day" or "Business Day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

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4.12 Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Mortgagee at Mortgagor's request and Mortgagee shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

4.13 Unsecured Portion of Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Mortgage.

4.14 Cross Default. A default hereunder which has not been cured within any applicable grace or cure period shall be a default under each of the other Loan Documents.

4.15 Interest After Sale. In the event the Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by law, the sum for which the same shall have been sold shall, for purposes of redemption (if applicable pursuant to the laws of the state in which the Property is located), bear interest at the Default Interest Rate (as defined in the Note).

4.16 Construction of this Document. This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

4.17 No Merger. It is the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Property.

4.18 Rights With Respect to Junior Encumbrances. Any person or entity purporting to have or to take a junior mortgage or other lien upon the Property or any interest therein shall be subject to the rights of Mortgagee to amend, modify, increase, vary, alter or supplement this Mortgage, the Note or any of the other Loan Documents, to extend the maturity date of the indebtedness secured hereby, to increase the amount of the indebtedness secured hereby, to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Mortgage losing its priority over the rights of any such junior lien.

4.19 Mortgagee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor or the principals, members or general partners in Mortgagor, or their respective creditors or property, Mortgagee, to the extent permitted by law, shall be entitled to file such

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proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire secured indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

4.20 After-Acquired Property. All property acquired by Mortgagor after the date of this Mortgage which by the terms of this Mortgage shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Mortgagor and without further mortgage, deed, conveyance or assignment become subject to the lien and security interest created by this Mortgage.

4.21 No Representation. By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Mortgagee pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Mortgagee.

4.22 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page.

4.23 Personal Liability. Notwithstanding anything to the contrary contained in this Mortgage, the liability of Mortgagor and its general partners for the indebtedness secured hereby and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in Section 1.5 of the Note; provided, however, that nothing herein shall be deemed to be a waiver of any right which Mortgagee may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured hereby or to require that all collateral shall continue to secure all indebtedness owing to Mortgagee in accordance with the Note, this Mortgage and the other Loan Documents.

4.24 Recording and Filing. Mortgagor will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges. Mortgagor shall reimburse Mortgagee, or its servicing agent, for the costs incurred in obtaining a tax service company to verify the status of payment of taxes and assessments on the Property.

4.25 Entire Agreement and Modifications. This Mortgage and the other Loan Documents contain the entire agreements between the parties and supersede any prior agreements (oral or written), and may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted.

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4.26 Maximum Interest. The provisions of this Mortgage and of all agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of demand or acceleration of the maturity of the Note or otherwise, shall the amount paid, or agreed to be paid ("Interest") to Mortgagee for the use, forbearance, retention or detention of the money loaned under the Note exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, performance or fulfillment of any provision hereof or of any agreement between Mortgagor and Mortgagee shall, at the time performance or fulfillment of such provision shall be due, exceed the limit for Interest prescribed by law or otherwise transcend the limit of validity prescribed by applicable law, then ipso facto the obligation to be performed or fulfilled shall be reduced to such limit, and if, from any circumstance whatsoever, Mortgagee shall ever receive anything of value deemed Interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive Interest shall be applied to the reduction of the principal balance owing under the Note in the inverse order of its maturity (whether or not then due) or at the option of Mortgagee be paid over to Mortgagor, and not to the payment of Interest and in such a case no prepayment fee shall be due and owing. All Interest (including any amounts or payments judicially or otherwise under law deemed to be Interest) contracted for, charged, taken, reserved, paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Note, including any extensions and renewals thereof until payment in full of the principal balance of the Note so that the Interest thereon for such full term will not at any time exceed the maximum amount permitted by applicable law. This Section will control all agreements between Mortgagor and Mortgagee.

4.27 Application of Default Interest Rate Not a Waiver. Application of the Default Interest Rate (as defined in the Note) shall not be deemed to constitute a waiver of any default or any rights or remedies of Mortgagee under this Mortgage, any other Loan Document or applicable legal requirements, or a consent to any extension of time for the payment or performance of any obligation with respect to which the Default Interest Rate (as defined in the Note) may be invoked.

4.28 Interest Payable by Mortgagee. Mortgagee shall cause funds in the TILC Reserve and the Replacement Reserve (the "Funds") to be deposited into interest bearing accounts of the type customarily maintained by Mortgagee or its servicing agent for the investment of similar reserves, which accounts may not yield the highest interest rate then available. The Funds shall be held in an account in Mortgagee's name (or such other account name as Mortgagee may elect) at a financial institution or other depository selected by Mortgagee (or its servicer) in its sole discretion (collectively, the "Depository Institution"). Mortgagor shall earn no more than an amount of interest on the Funds equal to an amount determined by applying to the average monthly balance of such Funds the quoted interest rate for the Depository Institution's money market savings account, as such rate is determined from time to time (such allocated amount being referred to as "Mortgagor's Interest"). Mortgagee or its Depository Institution shall be entitled to report under Mortgagor's Federal tax identification number, the Mortgagor's Interest on the Funds. If the Depository Institution does not have an established money market savings account (or if an interest rate for such account cannot otherwise be determined in connection with the deposit of such Funds), a comparable interest rate quoted by the Depository Institution and acceptable to Mortgagee (or its servicer) in its reasonable discretion shall be used. The

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amount of Mortgagor's Interest allocated to Funds shall be added to the balance in the TILC Reserve and the Replacement Reserve and shall be disbursed for payment of the items for which other Funds in the TILC Reserve and the Replacement Reserve are to be disbursed. Furthermore, reference is also made to Section C-1 on Exhibit C of this Mortgage with respect to the inclusion of certain additional monies from the Cash Collateral Account (as defined in the Cash Management Agreement) within the term "Funds" for purposes of this Section 4.28.

4.29 Further Stipulations. The additional covenants, agreements and provisions set forth in Exhibit C attached hereto, if any, shall be a part of this Mortgage and shall, in the event of any conflict between such further stipulations and any of the other provisions of this Mortgage, be deemed to control.

4.30 Relationship of the Parties. The relationship between Mortgagor and Mortgagee is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

4.31 Fixture Filing. This Mortgage shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures. The mailing address of Mortgagor and the address of Mortgagee from which information concerning the security interests may be obtained are set forth in Section 1.22 above.

4.32 Cooperation with Rating Agencies and Investors. Mortgagor covenants and agrees that in the event Mortgagee decides to include the Loan as an asset of a Secondary Market Transaction, Mortgagor shall (a) at Mortgagee's request, meet with representatives of the Rating Agencies and/or investors to discuss the business and operations of the Property, and (b) permit Mortgagee or its representatives to provide related information to the Rating Agencies and/or investors, and (c) cooperate with the reasonable requests of the Rating Agencies and/or investors in connection with all of the foregoing. For purposes hereof, a "Secondary Market Transaction" shall be (a) any sale or assignment of this Mortgage, the Note and the other Loan Documents to one or more investors as a whole loan; (b) a participation of the Loan to one or more investors; (c) any deposit of this Mortgage, the Note and the other Loan Documents with a trust or other entity which may sell certificates or other instruments to investors evidencing an ownership interest in the assets of such trust or other entity; or (d) any other sale, assignment or transfer of the Loan or any interest therein to one or more investors. If at any time during which the Loan is an asset of a securitization or is otherwise an asset of any rated transaction, "Rating Agency" shall mean the rating agency or rating agencies that from time to time rate the securities, certificates or other instruments issued in connection with such securitization or other transaction.

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IN WITNESS WHEREOF, Mortgagor, intending to be legally bound hereby, has duly executed this Mortgage to be effective as of the date set forth in the first paragraph hereof.

MORTGAGOR:

ARLINGTON, LLC,
an Illinois limited liability company

By: **ARLINGTON MANAGER, INC.,**
an Illinois corporation,
its Manager

By: 

Name: Marc R. Wilkow
Title: President

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STATE OF ILLINOIS)
)
COUNTY OF COOK) ss.

I, Christine Sudicky, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT MARC R. WILKOW, personally known to me to be the President of ARLINGTON MANAGER, INC., an Illinois corporation, the Manager of ARLINGTON, LLC, an Illinois limited liability company, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and deed and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal on March 25, 2002.

CHRISTINE SUDICKY

Notary Public

[S E A L]

My Commission Expires:

Oct. 13, 2002

EXHIBIT LIST

- Exhibit A - Legal Description
- Exhibit B - Permitted Exceptions
- Exhibit C - Additional Stipulations



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EXHIBIT A

Legal Description

Street Address: 1-115 West Rand Road, Arlington Heights, Illinois 60004

Permanent Tax Identification Numbers: 03-17-302-074-000
03-17-302-075-000
03-17-302-077-000

PARCEL 1:

That part of Lot 2 in Hardee's Rand Road Subdivision, being a subdivision of parts of the West 1/2 of the Southwest 1/4 of Section 17, and the East 1/2 of the Southeast 1/4 of Section 18, lying southwesterly of the center line of Rand Road, all in Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded July 16, 1986 as Document 86297345, and a 0.019 acre parcel south of said Lot 2, described as follows:

Beginning at the easterly most corner of said Lot 2; thence South 42 degrees 02 minutes 44 seconds West, 568.13 feet to a Southerly line of said Lot 2; thence North 89 degrees 47 minutes 42 seconds West, 28.95 feet along the said Southerly line of said Lot 2, to a point 96.40 feet, as measured along said Southerly line, east of a corner of said Lot 2; thence North 47 degrees 49 minutes 39 seconds West, 186.71 feet to a South line of said Lot 2; thence North 89 degrees 47 minutes 42 seconds West, 27.62 feet along the last described South line to a point 373.47 feet, as measured on said South line, east of the West line of the Southwest 1/4 of Section 17, aforesaid; thence North 47 degrees 57 minutes 52 seconds West, 194.53 feet; thence North 31 degrees 32 minutes 09 seconds West, 157.43 feet to a Westerly line of said Lot 2; thence North 42 degrees 00 minutes 35 seconds East along said Westerly line, 10.87 feet to a Southwesterly line of said Lot 2; thence North 47 degrees 59 minutes 25 seconds West along said Southwesterly line, 325 feet to a Northwest line of said Lot 2; thence North 42 degrees 00 minutes 35 seconds East along said Northwest line, 550.00 feet to the South line of Rand Road (said South line also being the northeasterly line of said Lot 2); thence South 47 degrees 59 minutes 25 seconds East along said South line, 246.30 feet to a corner of Lot 1 in Hardee's Rand Road Subdivision, aforesaid; thence South 42 degrees 00 minutes 35 seconds West, 230.00 feet; thence South 47 degrees 59 minutes 25 seconds East, 175 feet; thence North 42 degrees 00 minutes 35 seconds East, 250 feet to the South line of Rand Road; thence South 47 degrees 59 minutes 25 seconds East, 478.67 feet to the place of beginning, all in Cook County, Illinois.

PARCEL 2:

A perpetual non-exclusive easement established pursuant to a grant of easement dated July 10, 1990 and recorded July 26, 1990 as Document 90359319 over, across and upon the following described property for use and maintenance of a storm water retention pond for the benefit of Parcel 1:

PARCEL 2A: (Arlington Grove Portion)

That part of the West 1/2 of the Southwest 1/4 of Section 17 and the East 1/2 of the Southeast 1/4 of Section 18, lying southwesterly of the center line of Rand Road, all in Township 42 North, Range 11, East of the Third Principal Meridian described as follows:

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Commencing at the most southwesterly corner of Lot 2 in Hardee's Subdivision, being a subdivision of parts of the West 1/2 of the Southwest 1/4 of said Section 17 and the East 1/2 of the Southeast 1/4 of said Section 18, lying southwesterly of the center line of Rand Road, according to the plat thereof recorded July 16, 1986 as Document 86297345, said point being on a line 900 feet north of and parallel with the South line of the East 1/2 of the Southeast 1/4 of said Section 18, a distance of 90.69 feet West of the East line of the Southeast 1/4 of said Section 18; thence North 42 degrees 02 minutes 18 seconds East along the West line of said Lot 2, a distance of 120 feet for a point of beginning; thence North 03 degrees 44 minutes 40 seconds West, 142 feet; thence North 02 degrees 08 minutes 16 seconds East, 127.88 feet; thence North 42 degrees 02 minutes 18 seconds East, 48 feet to a point on the West line of said Lot 2; thence South 47 degrees 57 minutes 42 seconds East along the West line of Lot 2 for a distance of 183.80 feet to a bend point of said Lot 2; thence South 42 degrees 02 minutes 18 seconds West along the West line of said Lot 2 for a distance of 245.13 feet to the point of beginning, in Cook County, Illinois; and

PARCEL 2B: (Southeast Portion)

That part of the Lot 2 in Hardee's Rand Road Subdivision, being a subdivision of parts of the West 1/2 of the Southwest 1/4 of Section 17 and the East 1/2 of the Southeast 1/4 of Section 18 lying southwesterly of the center line of Rand Road, all in Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded July 16, 1986 as Document 86297345, described as follows:

Beginning at the most southwesterly corner of said Lot 2, said point being on a line 900 feet north of and parallel with the South line of the East 1/2 of the Southeast 1/4 of said Section 18, 90.69 feet West of the East line of the Southeast 1/4 of said Section 18; thence North 42 degrees 02 minutes 18 seconds East along the Westerly line of said Lot 2 for a distance of 354.43 feet; thence South 31 degrees 32 minutes 09 seconds East, 157.43 feet; thence South 47 degrees 57 minutes 52 seconds East, 194.53 feet to a point on the Southerly line of said Lot 2; thence North 89 degrees 46 minutes 28 seconds West along the Southerly line of said Lot 2 for a distance of 373.47 feet to a bend point on the Southerly line of said Lot 2, said point being on the West line of the Southwest 1/4 of said Section 17; thence South 89 degrees 49 minutes 58 seconds West along the Southerly line of said Lot 2 for a distance of 90.69 feet to the point of beginning, in Cook County, Illinois.

PARCEL 3:

Lot 1 in the Annex of Arlington Phase II, being a subdivision in the West 1/2 of the Southwest 1/4 of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded June 23, 1999 as Document 99569378, in Cook County, Illinois (excepting therefrom that part conveyed to the State of Illinois, Department of Transportation by Warranty Deed dated December 13, 1999 and recorded January 25, 2000 as Document 00062458 and more particularly described as follows:

PARCEL A:

That part of Lot 1 in the Annex of Arlington Phase II, being a subdivision in the West 1/2 of the Southwest 1/4 of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded June 23, 1999 as Document 99569378, described as follows: Beginning at the most northerly corner of said Lot 1; thence South 47 degrees 57 minutes 52 seconds East along the Northeasterly line of said Lot 1, being also the Southwesterly line of Rand Road per Document 12592035, 428.04 feet to the northeast corner of

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said Lot 1; thence South 00 degrees 01 minutes 28 seconds West along the East line of said Lot 1, being also the West line of Arlington Heights Road, 20.19 feet to an intersection with a line 15.00 feet, as measured at right angles, southwesterly of and parallel with the Northeasterly line of said Lot 1; thence North 47 degrees 57 minutes 52 seconds West along said last described parallel line, 441.56 feet to the Northwesterly line of said Lot 1; thence North 42 degrees 03 minutes 40 seconds East along the Northwesterly line of said Lot 1, 15.00 feet to the point of beginning, in Cook County, Illinois.

PARCEL B:

That part of Lot 1 in the Annex of Arlington Phase II, being a subdivision in the West 1/2 of the Southwest 1/4 of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded June 23, 1999 as Document 99569378, described as follows: Commencing at the northeast corner of said Lot 1; thence South 00 degrees 01 minutes 28 seconds West along the East line of said Lot 1, being also the West line of Arlington Heights Road, 20.19 feet to an intersection with a line 15.00 feet, as measured at right angles, southwesterly of and parallel with the Northeasterly line of said Lot 1; thence North 47 degrees 57 minutes 52 seconds West along said last described parallel line, 13.46 feet to a point of beginning at the intersection of said last described parallel line with a line 10.00 feet, as measured at right angles, west of and parallel with the East line of said Lot 1; thence continuing North 47 degrees 57 minutes 52 seconds West parallel with the Northeasterly line of said Lot 1, 40.00 feet; thence South 23 degrees 58 minutes 12 seconds East, 73.09 feet to a point on a line 10.00 feet, as measured at right angles, west of and parallel with the East line of said Lot 1, said point being 40.00 feet south of the point of beginning; thence North 00 degrees 01 minutes 28 seconds East parallel with the East line of said Lot 1, 40.00 feet to the point of beginning, in Cook County, Illinois.

PARCEL 4:

An easement for the benefit of Parcel 1 as created by Easement Agreement dated April 1, 1999 and recorded April 5, 1999 as Document 99322489 from Cosmopolitan Bank and Trust Company, as Successor Trustee to First Bank of Oak Park, as Trustee under Trust Agreement dated June 19, 1973 and known as Trust Number 10095, to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated July 20, 1994 and known as Trust Number 118561-01, and Arlington, LLC, an Illinois limited liability company, for the purpose of parking and for ingress and egress over the following described land:

The North 88 feet of the South 738.33 feet of the East 155.00 feet (except that part thereof taken for widening of Arlington Heights Road) of that part of the West 1/2 of the Southwest 1/4 of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, lying south of the center of Rand Road, in Cook County, Illinois.

PARCEL 5:

An easement for the benefit of Parcels 1 and 3 as created by Easement Agreement dated March 31, 1999, and recorded April 5, 1999, as Document 99322488 from American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated July 20, 1994, and known as Trust Number 118561-01 and Arlington, LLC., an Illinois limited liability company, for the purpose of parking and for ingress and egress, over the property fully described therein.

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PARCEL 6:

An easement for Parcels 1 and 3 as created by Easement Agreement dated June 3, 1999, and recorded June 14, 1999, as Document 99569377 from American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated July 20, 1994, and known as Trust Number 118561-01 and Arlington, LLC, an Illinois limited liability company, for the purpose of utility easements over the property fully described therein.

PARCEL 7:

Easements for the benefit of Parcels 1 and 3 as created by Declaration of Grant of Driveway, Utility and Cross Access Easements recorded July 7, 1994, as Document 94592544, made by the Travelers Insurance Company, a Corporation of Connecticut, to the owners of record of those certain adjoining parcels, and the terms, provisions and conditions contained therein.

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EXHIBIT B

Permitted Exceptions

1. Provisions contained in Deed recorded December 4, 1950 as Document 14964822, reciting that such conveyance is subject to that part of the North 33 feet of the South 933 feet of the West 1/2 of the Southwest 1/4 of said Section 17 that falls within the land to be left open for use as a public road, as depicted on Plat of Survey dated February 14, 2002, last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

(Affects the South 33 feet of the East 134.09 feet of the West 402.81 feet, as measured on the Northmost South line, of the land of Parcel 1)

2. Easement granted to Commonwealth Edison Company and Illinois Bell Telephone Company recorded February 24, 1986 as Document 86074384. (Affects Parcel 1)

Partial Easement Disclaimer recorded August 8, 1994 as Document 94699903 made by the Commonwealth Edison Company.

Partial Release of Easement recorded August 22, 1994 as Document 94740238 made by Ameritech.

As depicted on Plat of Survey dated February 14, 2002, last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

3. Ordinance recorded January 24, 1973 as Document 22197231, pro rating the cost of the construction of a sanitary sewer in Arlington Heights.

4. Terms, provisions, conditions, restrictions and limitations contained in an Onsite Utility Maintenance Agreement dated September 29, 1988 and recorded November 4, 1988 as Document Number 88511320, by and between Harris Bank Hinsdale, as Trustee under Trust Agreement dated November 12, 1987 and known as Trust Number L-1757, (Owner) and The Village of Arlington Heights, whereby the Owner agrees to maintain all sanitary sewerage facilities, storm sewers, water mains and appurtenances thereto.

(Affects that part of Parcel 1 falling in the plat of The Enclave recorded as Document 89189371)

5. Conditions and Restrictions dated July 21, 1986 and recorded July 22, 1986 as Document 86308674, from Bank of Ravenswood, as Trustee under Trust Agreement dated December 18, 1984, also known as Trust No. 25-6836, and Harcon Foods, Inc., relating to roadway easement, parking easements, walkway easement, utility easements, repair easements and such rights and duties as between the parties as further set forth therein.

(Affects Parcel 1)

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As depicted on Plat of Survey dated February 14, 2002, last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

6. Declaration of Agreement and Grant of Easement dated February 9, 1994 and recorded February 14, 1994 as Document 94141291 and amended by instrument recorded December 12, 1994 as Document 95292999 by and between The Travelers Insurance Company, a Connecticut corporation, and the Arlington Heights Enclave Condominiums Association, an Illinois not-for-profit corporation, a nonexclusive and perpetual easement for ingress and egress over, upon and across that portion of the land, which is specifically identified on the "site plan", which is attached to and made a part of said instrument, and the terms and conditions contained therein.

(Affects Parcels 1 and 2)

7. Rights of the public, the State of Illinois and the municipality in and to the South 33 feet of the land which falls in public road.

(Affects the South 33 feet of the West 268.72 feet, as measured along the Northernmost South line, of the land)

As depicted on Plat of Survey dated February 14, 2002, last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

(Affects Parcel 1)

8. Agreement Concerning Public Sidewalk Located on the Land, dated May 5, 1986 and recorded May 20, 1986 as Document 86200217, between Bank of Ravenswood, as Trustee under Trust Number 25-6836, and The Village of Arlington Heights.

(Affects Parcel 1)

9. A 30 foot building line from the East and Easterly lot lines of Lot 8, as shown in plat of Arlington Grove Subdivision recorded as Document 87677623.

(Affects Parcel 2A)

As depicted on Plat of Survey dated February 14, 2002 and last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

10. Non-exclusive easement for serving the subdivision and other property with electric, communication, sewer, water, gas and drainage service, reserved for and granted to The Village of Arlington Heights and other governmental authorities having jurisdiction of the land and those public utility companies operating for the franchise from The Village, including, but not limited to, the Commonwealth Edison Company, the Illinois Bell Telephone Company, the Northern Illinois Gas Company, Cablenet and their respective successors and assigns, jointly and severally, as shown on plat of Arlington Grove Subdivision recorded December 29, 1987 as Document 87677623.

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(Affects Parcel 2A)

11. Easement over nonbuilding areas of Lot 8 for the benefit of other owners, as created and set out in Plat of Subdivision recorded December 29, 1987 as Document 87677623.

(Affects Parcel 2A)

12. (A) Terms, provisions and conditions relating to the easements described in Parcel 2, 4, 5, 6 and 7 contained in the instrument creating such easements.

(B) Rights of the owner, or owners, of the adjoining land to the concurrent use of the easements.

(Affects Parcels 2, 4, 5, 6 and 7)

13. Part of the land has been subdivided by the plat of The Enclave recorded April 27, 1989 as Document 89189371, relative thereto we note the following:

A. Building lines, covenants, conditions and restrictions as shown on plat.

B. A blanket utility easement, as shown on plat of The Enclave Subdivision recorded April 27, 1989 as Document 89189371, is reserved for and granted to The Village of Arlington Heights, an Illinois municipal corporation, Grantee, and to those public utility companies, operating under franchise from the Grantee, including, but not limited to, the Commonwealth Edison Company, the Illinois Bell Telephone Company, the Northern Illinois Gas Company, Cablenet and their successors and assigns over, upon, along, under and through all areas shown hereon as "Lot 5 in The Enclave".

(Affects a portion of Parcel 1)

14. Terms and conditions of Declaration of Grant of Driveway, Utility and Cross Access Easements recorded July 7, 1994 as Document 94592544 made by The Travelers Insurance Company, a corporation of Connecticut, First Amendment recorded April 5, 1999 as Document 99322485.

As depicted on Plat of Survey dated February 14, 2002, last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

15. Electric Facilities Agreement recorded July 12, 1994 as Document 94606879 made by The Travelers Insurance Company to the Commonwealth Edison Company granting an easement for public utility purposes to install electric facilities.

As depicted on Plat of Survey dated February 14, 2002, last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

16. Onsite Utility and Roadway Agreement recorded as Document 85208638 made by Bank of Ravenswood as Trustee under Trust Agreement dated December 15, 1985 and known as Trust Number 25-6836 and The Village of Arlington Heights.

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17. Terms, provisions and conditions contained in the Ordinance of The Village of Arlington Heights recorded May 6, 1994 as Document 94411078 and Document 94898546 recorded October 20, 1994 concerning an amendment to a planned unit development.

18. Declaration of grant of cross access easements made by and between Arlington, LLC, and American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated July 20, 1994 and known as Trust Number 118561-01, Grantors and Motorola, Inc., Grantee recorded April 5, 1999 as Document No. 99322485 over the land.

As depicted on Plat of Survey dated February 14, 2002, last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

19. Terms and conditions of Declaration of Utility Easement recorded June 14, 1999 as Document 99569377 American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated July 20, 1994 known as Trust Number 118561-01, Grantor and Arlington LLC, Grantee.

(For further particulars, see record.)

20. Terms and conditions of Reciprocal Declaration of Grant of Parking Easements made by and between Arlington, LLC and American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated July 20, 1994 and known as Trust Number 118561-01 recorded/filed April 5, 1999 as Document No. 99322488 affecting part of the land, and the terms and provisions contained therein.

As depicted on Plat of Survey dated February 14, 2002, last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

21. Easement in favor of The Village of Arlington Heights, and its/their respective successors and assigns, to install, operate and maintain all equipment necessary for the purpose of serving the land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the plat recorded/filed as Document No. 99569378, affecting all of Lot 1 in the Annex of Arlington Phase II except under the building structures.

(Affects Parcel 3)

22. Covenants and restrictions contained in the Deed recorded August 31, 1937 as Document No. 12048140.

(Affects part of Parcel 3 and other property)

23. Unrecorded grant ordained by the Highway Commissioner of the Township of Wheeling dated June 28, 1924 between Commonwealth Edison and the Highway Commissioner of the Township of Wheeling, to maintain overhead electric service to the existing buildings and adjoining properties, by an undisclosed amount per letter from Commonwealth Edison to Chicago Title dated July 21, 1997.

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(Affects part of Parcel 3)

24. Unrecorded easement in favor of public and quasi-public utilities for the right to maintain and repair a telephone pedestal, utility poles, overhead wires, metal light standard, monitor wells and sanitary manholes, together with the right of access thereto as disclosed by Plat of Survey Number 8237 prepared by Gremley and Biedermann, Inc. dated February 3, 1982 and recertified February 19, 1999.

(Affects Parcel 4)

25. Declaration of grant of driveway and cross access easements made by and between Arlington, LLC and American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated July 20, 1994 and known as Trust Number 118561-01 recorded/filed April 5, 1999 as Document No. 99322487 affecting part of the land, and the terms and provisions contained therein.

(Affects Parcel 3)

As depicted on Plat of Survey dated February 14, 2002, last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

26. Sidewalk easement in favor of The Village of Arlington Heights as contained in the document entitled "Resolution Accepting a Declaration of Grant of Sidewalk Easement" recorded May 5, 1999 as Document 99432614 and affecting the Northerly part of Lot 1, as more particularly described therein.

As depicted on Plat of Survey dated February 14, 2002, last revised March 19, 2002, prepared by Edward J. Molloy & Associates, Ltd., Edward J. Molloy, P.L.S. No. 1617.

27. Memorandum of Agreement recorded January 16, 2001 as Document 0010034774 made by Pinnacle Towers, Inc., Lessor and Nextel West Corp., a Delaware corporation for a standard water tower lease.
28. Terms, provisions, conditions and limitations set forth in the Redevelopment Agreement made by and between The Village of Arlington Heights and M & J Wilkow, Ltd. and General Electric Capital Corporation recorded November 13, 1996 as Document 96866795.

Terms, provisions, conditions and limitations set forth in the Amended and Restated Redevelopment Agreement made by and between The Village of Arlington Heights and M & J Wilkow, Ltd. and General Electric Capital Corporation recorded May 5, 1999 as Document 99432623.

First Amendment recorded May 5, 1999 as Document 99432624
Second Amendment recorded May 5, 1999 as Document 99432625
Third Amendment recorded May 5, 1999 as Document 99432626
Fourth Amendment recorded May 5, 1999 as Document 99432627

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EXHIBIT C

Additional Stipulations

- C-1 Cash Management Stipulations. Mortgagor, Mortgagee and any Manager have, of even date herewith, entered into that certain Cash Management Agreement (the "Cash Management Agreement") of even date herewith which, upon the inception and during the continuation of a Sweep Period (as defined in the Cash Management Agreement), provides for the disposition of Rents and Profits from the Property. It is specifically agreed that (i) the Cash Management Agreement is one of the Loan Documents (as defined in this Mortgage), and (ii) during a Sweep Period, the Clearing Account, the Cash Collateral Account and all other Accounts and Sub-Accounts (as such terms are described or defined in the Cash Management Agreement) shall be included within the Reserves (as defined in this Mortgage). The Reserves and any disbursement therefrom shall be subject to both this Mortgage, the Cash Management Agreement and the other Loan Documents. During any Sweep Period (as defined in the Cash Management Agreement), all references in this Mortgage to the Impound Account and to the other Reserves shall be deemed to refer to the Sub-Account of the Cash Collateral Account (as defined in the Cash Management Agreement) into which the proceeds of each such Reserve have been deposited pursuant to the Cash Management Agreement. During any Sweep Period, all payments from Mortgagor to Mortgagee with respect to Reserves shall be made by disbursement from the Clearing Account or as otherwise provided in the Cash Management Agreement. During any Sweep Period, all sums held in the Cash Collateral Account prior to being allocated into the Sub-Accounts shall also be considered "Funds" for purposes of Section Error! Reference source not found. hereof and shall bear interest to be added to the Cash Collateral Account in accordance with that provision; provided, however, once such monies in the Cash Collateral Account have been allocated to Sub-Accounts pursuant to the terms of the Cash Management Agreement, such Sub-Accounts shall bear interest for the ultimate benefit of Mortgagor only to the extent required by Section Error! Reference source not found. hereof or by the Cash Management Agreement.
- C-2 Repair Reserve. Prior to the execution of this Mortgage, Mortgagee has caused the Property to be inspected and such inspection has revealed that the Property is in need of certain maintenance, repairs and/or remedial or corrective work. Contemporaneously with the execution hereof, Mortgagor has established with the Mortgagee a reserve in the amount of \$12,500.00 (the "Repair Reserve") by depositing such amount with Mortgagee. Mortgagor shall cause each of the items described in that certain engineering report (the "Engineering Report") dated January 3, 2002, and prepared by National Assessment Corporation, relative to the Property, copies of which have been provided to, and receipt of which is hereby acknowledged by, Mortgagor (the "Deferred Maintenance") to be completed, performed and corrected to the satisfaction of Mortgagee and as necessary to bring the Property into compliance with all applicable laws, ordinances, rules and regulations on or before one year from the effective date hereof, as such time period may be extended by Mortgagee in its sole discretion. So long as no default hereunder or under the other Loan Documents has occurred and is continuing beyond any applicable notice and cure periods (i) all sums in the Repair Reserve shall be held by Mortgagee in the Repair Reserve to pay the costs and expenses of completing the Deferred Maintenance, and (ii) Mortgagee shall, to the extent funds are available for such purpose in the Repair Reserve, disburse to Mortgagor the amount paid or incurred by Mortgagor in completing, performing or correcting the Deferred Maintenance upon (a) the receipt by Mortgagee of a written request from Mortgagor for disbursement from the Repair Reserve which shall include a certification by Mortgagor that the applicable item of Deferred Maintenance has been completed in accordance with the terms of this Mortgage, (b) delivery to Mortgagee of invoices, receipts or other evidence satisfactory to Mortgagee verifying the costs of the Deferred Maintenance to be reimbursed, and (c) for disbursement requests for any single item of Deferred Maintenance that is structural in nature, delivery to Mortgagee of (1) affidavits, lien waivers or other evidence reasonably satisfactory to Mortgagee showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Property have been paid all amounts due for labor and materials furnished to the Property; (2) a certification from an inspecting architect or other third party acceptable to Mortgagee describing the completed Deferred Maintenance and verifying the completion of such Deferred Maintenance and the value of the completed

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Deferred Maintenance; and (3) a new (or amended) certificate of occupancy for the portion of the Improvements covered by such Deferred Maintenance, if said new certificate of occupancy is required by law, or a certification by Mortgagor that no new certificate of occupancy is required by law. Mortgagee shall not be required to make advances from the Repair Reserve more frequently than one time in any calendar month. In making any payment from the Repair Reserve, Mortgagee shall be entitled to rely on such request from Mortgagor without any inquiry into the accuracy, validity or contestability of any such amount. No interest or other earnings on the funds contained in the Repair Reserve shall be paid to Mortgagor and any interest or other earnings on funds deposited into the Repair Reserve shall be solely for the account of Mortgagee. In the event that the amounts on deposit or available in the Repair Reserve are inadequate to pay the costs of the Deferred Maintenance, Mortgagor shall pay the amount of such deficiency. Notwithstanding anything to the contrary contained herein, in the event that any amounts remain on deposit in the Repair Reserve after Mortgagor is properly reimbursed out of the Repair Reserve for the amount paid or incurred by Mortgagor in completing or performing Deferred Maintenance to the satisfaction of Mortgagee in accordance with the terms of this Exhibit C-2, Mortgagee shall disburse the remaining funds to Mortgagor minus any applicable interest which shall be solely for the account of Mortgagee.

- C-3 Replacement Reserve. As additional security for the indebtedness secured hereby, Mortgagor shall establish and maintain at all times while this Mortgage continues in effect a replacement reserve (the "Replacement Reserve") with Mortgagee for payment of costs and expenses incurred by Mortgagor in connection with capital improvements, repairs and replacements performed at the Property, including, but not limited to, the performance of work to the roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, exterior walls, exterior doors and doorways, windows, carpets, appliances, fixtures, elevators and mechanical and HVAC equipment (collectively, the "Repairs"). Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Mortgagor shall pay to Mortgagee, concurrently with the monthly payment due under the Note, a deposit to the Replacement Reserve in an amount equal to \$2,467.00 per month. So long as no default hereunder or under the other Loan Documents has occurred and is continuing beyond any applicable notice and cure periods, (i) all sums in the Replacement Reserve shall be held by Mortgagee in the Replacement Reserve to pay the costs and expenses of Repairs, and (ii) Mortgagee shall, to the extent funds are available for such purpose in the Replacement Reserve, disburse to Mortgagor the amount paid or incurred by Mortgagor in performing such Repairs within ten (10) days following: (a) the receipt by Mortgagee of a written request from Mortgagor for disbursement from the Replacement Reserve and a certification by Mortgagor to Mortgagee that the applicable item of Repair has been completed; (b) the delivery to Mortgagee of invoices, receipts or other evidence verifying the cost of performing the Repairs; and (c) for disbursement requests (i) in excess of \$20,000.00 with respect to any single Repair, or (ii) for any single Repair that is structural in nature, delivery to Mortgagee of (1) affidavits, lien waivers or other evidence reasonably satisfactory to Mortgagee showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Property have been paid all amounts due for labor and materials furnished to the Property; (2) a certification from an inspecting architect or other third party acceptable to Mortgagee describing the completed Repairs and verifying the completion of the Repairs and the value of the completed Repairs; and (3) a new (or amended) certificate of occupancy for the portion of the Improvements covered by such Repairs, if said new certificate of occupancy is required by law, or a certification by Mortgagor that no new certificate of occupancy is required by law. Mortgagee shall not be required to make advances from the Replacement Reserve more frequently than one time in any calendar month. In making any payment from the Replacement Reserve, Mortgagee shall be entitled to rely on such request from Mortgagor without any inquiry into the accuracy, validity or contestability of any such amount. Mortgagee may, at Mortgagor's expense (not to exceed \$2,500.00 annually), make or cause to be made during the term of this Mortgage an annual inspection of the Property to determine the need, as determined by Mortgagee in its reasonable judgment, for further Repairs of the Property. In the event that such inspection reveals that further Repairs of the Property are required, Mortgagee shall provide Mortgagor with a written description of the required Repairs and Mortgagor shall complete such Repairs to the reasonable satisfaction of Mortgagee within ninety (90) days after the receipt of such description from Mortgagee, or such later date as may be approved by Mortgagee in its sole discretion. Interest or other earnings on the funds contained in the Replacement Reserve shall be credited to Mortgagor as provided in

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Section Error! Reference source not found. hereof. In the event that the amounts on deposit or available in the Replacement Reserve are inadequate to pay the cost of the Repairs, Mortgagor shall pay the amount of such deficiency.

C-4 Environmental Reserve. Prior to the execution of this Mortgage, Mortgagee has caused the Property to be inspected and such inspection has revealed that the Property is in need of certain maintenance, repairs and/or remedial or corrective work relative to environmental concerns. Contemporaneously with the execution hereof, Mortgagor has established with Mortgagee a reserve in the amount of \$123,000.00 (the "Environmental Reserve") by depositing such amount with Mortgagee. Mortgagor shall cause each of the items described in the Environmental Report (as defined in Section 1.30 hereof) relative to the Property, copies of which have been provided to, and receipt of which is hereby acknowledged by, Mortgagor (the "Environmental Work") to be completed, performed, remediated and corrected to the satisfaction of Mortgagee and as necessary to bring the Property into compliance with all applicable laws, ordinances, rules and regulations on or before one year from the effective date hereof, such time period to be extended in increments of six (6) months if Mortgagor shall provide evidence to Mortgagee that the Environmental Work cannot be completed within said one (1) year but Mortgagor has commenced to complete same promptly and diligently from the effective date hereof, and after such extension works to complete same with reasonable diligence. Notwithstanding the foregoing, Mortgagor shall in any event complete the Environmental Work within two (2) years of the effective date hereof, subject to further extensions granted by Mortgagee in its sole discretion. The Environmental Work includes, without limitation, the completion of all required remediation and clean-up of the contaminated groundwater on the Property as noted in the Environmental Report. So long as no default hereunder or under the other Loan Documents has occurred and is continuing (i) all sums in the Environmental Reserve shall be held by Mortgagee in the Environmental Reserve to pay the costs and expenses of completing the Environmental Work, and (ii) Mortgagee shall, to the extent funds are available for such purpose in the Environmental Reserve, disburse to Mortgagor the amount paid or incurred by Mortgagor in completing, performing, remediating or correcting the Environmental Work upon compliance with the following disbursement conditions:

- (a) the receipt by Mortgagee of a written request from Mortgagor for disbursement from the Environmental Reserve which shall include a certification by Mortgagor that the applicable item of Environmental Work has been completed in accordance with the terms of this Mortgage;
- (b) delivery to Mortgagee of invoices, receipts or other evidence satisfactory to Mortgagee verifying the costs of the Environmental Work to be reimbursed;
- (c) for disbursement requests (i) in excess of \$20,000.00 with respect to any single item of Environmental Work or (ii) for any single item of Environmental Work that is structural in nature, delivery to Mortgagee of (1) affidavits, lien waivers or other evidence reasonably satisfactory to Mortgagee showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Property have been paid all amounts due for labor and materials furnished to the Property; and (2) a certification from an inspecting architect, environmental consultant or other third party acceptable to Mortgagee describing the completed Environmental Work and verifying the completion of such Environmental Work and the value of such completed Environmental Work.
- (d) the Environmental Work is otherwise satisfactory to Mortgagee and its legal counsel,
- (e) as same relates solely to the request to release the final twenty (20.0%) of the funds in the Environmental Reserve, (i) Mortgagor shall provide Mortgagee with a copy of the No Further Action Letter from the State of Illinois acknowledging that the Environmental Work has been completed to its satisfaction and in accordance with all Illinois and federal environmental laws and no further remediation or clean-up is required of Mortgagor, and (ii) Mortgagee shall receive a revised environmental assessment certifying that all necessary remediation has been undertaken on the Property.

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Mortgagee shall not be required to make advances from the Environmental Reserve more frequently than one time in any calendar month. In making any payment from the Environmental Reserve, Mortgagee shall be entitled to rely on such request from Mortgagor without any inquiry into the accuracy, validity or contestability of any such amount. No interest or other earnings on the funds contained in the Environmental Reserve shall be paid to Mortgagor and any interest or other earnings on funds deposited into the Environmental Reserve shall be solely for the account of Mortgagee. In the event that the amounts on deposit or available in the Environmental Reserve are inadequate to pay the costs of the Environmental Work, Mortgagor shall pay the amount of such deficiency.

C-5 Lease Termination Payment Reserve.

- (a) For purposes of this Mortgage, the capitalized terms defined in this Section shall have the meanings ascribed to them as follows:
- (i) "Lease Termination Expenditure" shall mean the costs and expenses incurred by Mortgagor for payment of leasing commissions, lease buy-outs and expenditures related to repairs, replacements and improvements to Lease Termination Space in connection with releasing such Lease Termination Space.
 - (ii) "Lease Termination Payment" shall mean any amounts paid in consideration of an early lease termination including, without limitation, payments made under leases containing early lease termination options in favor of tenants thereunder, in connection with the exercise of such tenant's lease termination rights. Amounts paid for rent and other charges in respect of periods prior to the lease termination date shall be excluded from the Lease Termination Payment.
 - (iii) "Lease Termination Payment Reserve" shall have the meaning set forth in subparagraph (b) below.
 - (iv) "Lease Termination Space" shall mean any space at the Improvements subject to a lease as to which a Lease Termination Payment is received.
- (b) As additional security for the indebtedness secured hereby, Mortgagor shall establish and maintain at all times while this Mortgage continues in effect a reserve (the "Lease Termination Payment Reserve") with Mortgagee for payment of Lease Termination Expenditures. Notwithstanding any provision of this Mortgage or the other Loan Documents to the contrary, Mortgagor shall, within one (1) business day of receipt thereof, deliver all Lease Termination Payments (or cause the property manager to deliver all such Lease Termination Payments) to Mortgagee for deposit in the Lease Termination Payment Reserve.
- (c) (1) Mortgagor shall pay all Lease Termination Expenditures without regard to the amount then available in the Lease Termination Payment Reserve. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, and, subject to the provisions of this Mortgage, Mortgagee shall, to the extent funds are available for such purpose in the Lease Termination Payment Reserve, apply any portion of each Lease Termination Payment held in the Lease Termination Payment Reserve in payment of the Lease Termination Expenditures incurred with respect to the corresponding Lease Termination Space. Mortgagee shall disburse amounts for Lease Termination Expenditures within 10-days of Mortgagor's satisfaction of the following conditions and the provision of suitable documentation relative thereto: (i) a new lease has been fully executed and approved by Mortgagee pursuant to the terms hereof with respect to all or any portion of the Lease Termination Space, (ii) Mortgagee has received written notice at least ten (10) days prior to the due date of any payment relating to Lease Termination Expenditures undertaken pursuant to such new lease or, if Mortgagor makes timely payment therefor, not more than forty-five (45) days after Mortgagor has made such payment; (iii) Mortgagor furnishes Mortgagee with a written disbursement request for the payment or reimbursement of such Lease Termination Expenditures; (iv) Mortgagor shall have theretofore furnished Mortgagee with satisfactory

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evidence of the progress and/or completion of tenant improvement work, the cost of tenant improvement work, satisfactory evidence that any and all completed tenant improvement work complies with law, lien waivers for lienable work, copies of bills, invoices and other reasonable documentation as may be required by Mortgagee to substantiate the use of such funds and establish that the Lease Termination Expenditures which are the subject of such disbursement request represent completed or partially completed capital work and improvements performed at all or any portion of the applicable Lease Termination Space; and (v) there are sufficient funds available in the Lease Termination Payment Reserve.

(2) Notwithstanding anything contained herein to the contrary, Mortgagee shall disburse to Mortgagor any portion of any Lease Termination Payment remaining on deposit in the Lease Termination Payment Reserve promptly after (i) the related Lease Termination Space has been fully leased pursuant to a lease approved by Mortgagee (if such approval is required hereunder) to an unrelated, third-party tenant for a net effective rent which is at an arm's length competitive market rate; (ii) such tenant has taken possession of such Lease Termination Space and the obligation to pay rent under the related lease shall have commenced; and (iii) such tenant shall have delivered an estoppel certificate confirming that it has accepted such Lease Termination Space, that Mortgagor has completed any construction obligations under the related lease and that the obligation to pay rent thereunder has commenced; and (iv) Mortgagee shall have been provided evidence that such tenant's actual payment of rental has commenced.

(3) Mortgagor shall be entitled to additionally request disbursement from the Lease Termination Payment Reserve to perform capital improvements to the Property which do not otherwise qualify for disbursement hereunder. Any such request for disbursement for other capital improvements may be granted or withheld at Mortgagee's sole discretion and, if granted, shall be conditioned upon such capital improvements being approved by Mortgagee if such approval is so required under this Mortgage. Provided that (i) Mortgagee has consented to such disbursement, (ii) Mortgagee has received written notice at least ten (10) days prior to the due date of any payment relating to such capital improvement expenditure or if Mortgagor makes timely payment therefor, not more than forty-five (45) days after Mortgagor has made such payment; (iii) Mortgagor furnishes Mortgagee with a written disbursement request for the payment or reimbursement of such capital expenditures; (iv) Mortgagor shall have theretofore furnished Mortgagee with satisfactory evidence of the progress and/or completion of any capital improvement work, satisfactory evidence that any and all completed capital improvement work complies with law, lien waivers for lienable work, copies of bills, invoices and other reasonable documentation as may be required by Mortgagee to substantiate the use of such funds; and (v) there are sufficient funds available in the Lease Termination Payment Reserve, Mortgagee shall make such disbursement to Mortgagor for payment of such capital improvement expenditures or reimbursement of Mortgagor's payment thereof, within ten (10) days after receipt of the documentation required in connection therewith.

(4) Mortgagee shall not be required to make advances from the Lease Termination Payment Reserve more frequently than once in any thirty (30) day period. In making any payment from the Lease Termination Payment Reserve, Mortgagee shall be entitled to rely on such request from Mortgagor without any inquiry into the accuracy, validity or contestability of any such amount. Mortgagee may (but without any obligation to do so), at Mortgagor's expense, make or cause to be made during the term of this Mortgage an inspection of the Property to verify the scope, nature and quality of the work for which payment is being requested from the Lease Termination Payment Reserve.

(d) The Lease Termination Payment Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Mortgagee's option and in Mortgagee's discretion, may either be held in a separate account or be commingled by Mortgagee with the general funds of Mortgagee. The Lease Termination Payment Reserve is solely for the protection of Mortgagee and entails no responsibility on Mortgagor's part beyond the payment of the costs and expenses described in this Section in accordance with the terms hereof and beyond

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allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the Lease Termination Payment Reserve are inadequate to pay the cost of any Lease Termination Expenditure, Mortgagor shall pay the amount of such deficiency. Upon assignment of this Mortgage by Mortgagee, any funds in the Lease Termination Payment Reserve shall be turned over to the assignee and any responsibility of Mortgagee, as assignor, with respect thereto shall terminate. If there is a default under this Mortgage which is not cured within any applicable grace or cure period, Mortgagee may, but shall not be obligated to, apply at any time the balance then remaining in the Lease Termination Payment Reserve against the indebtedness secured hereby in whatever order Mortgagee shall subjectively determine. No such application of the Lease Termination Payment Reserve shall be deemed to cure any default hereunder.

- (e) Notwithstanding anything seemingly to the contrary in this Section C-5, Mortgagor shall not be entitled to terminate or agree to terminate any existing lease in consideration for a Lease Termination Payment or otherwise without first obtaining Mortgagee's prior written consent.

C-6 Sports Authority Reserve.

- (a) Contemporaneously with the execution of this Mortgage, Mortgagor has established with the Mortgagee a reserve in the amount of \$1,500.00 (the "Sports Authority Reserve"), by depositing such amount with Mortgagee. The Sports Authority Reserve shall be held by Mortgagee as additional security for the Loan. So long as the Disbursement Conditions (hereinafter defined) are timely satisfied, all of the Sports Authority Reserve (as described below) shall be released to Mortgagor upon ten (10) business days prior written request by Mortgagor to Mortgagee. Such written request by Mortgagor must include the written information and verifications described hereinbelow in satisfaction of the Disbursement Conditions.
- (b) As used herein, the term "Disbursement Conditions" shall collectively refer to the following conditions to Mortgagor's right to receive any funds from the Sports Authority Reserve:
 - (i) The Sports Authority, Inc., a Delaware corporation ("The Sports Authority") pursuant to the Lease (the "Sports Authority Lease") dated October 8, 1993, as amended, by and between Mortgagor's predecessor in interest, as landlord, and The Sports Authority, as tenant, shall have delivered either (a) a tenant estoppel for the benefit of Mortgagee signifying to all matters reasonably satisfactory to Mortgagee including that such tenant is in occupancy, open for business and paying rent, that the leased space is complete and acceptable to tenant and that no defaults are currently existing with respect to the Sports Authority Lease and no matters exist that with the passage of time or notice would qualify as a default under such Lease including that there are no roof leaks on the premises covered by the Sports Authority Lease; or (b) other written evidence reasonably satisfactory to Mortgagee that (i) the roof leaks in the receiving area of the leased premises as noted in the Tenant Estoppel Certificate dated March 18, 2002 delivered by The Sports Authority for the benefit of Mortgagee have been repaired to the satisfaction of The Sports Authority, and (ii) Mortgagee has completed such roof repairs in compliance with the terms and conditions set forth in Exhibit C-2 above.
 - (ii) No default shall have occurred and be continuing hereunder or under any of the other Loan Documents; and
 - (iii) Mortgagee's further confirmation of the satisfaction of all Disbursement Conditions by site-visitation or other means as Mortgagee may elect.
- (c) Mortgagor hereby grants to Mortgagee, as additional security for payment of the indebtedness secured hereby, a security interest in the Sports Authority Reserve. The Sports Authority Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but at Mortgagee's option and in Mortgagee's discretion, may either be held in a separate account or be commingled by Mortgagee with the general funds of Mortgagee. No

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interest or other earnings on the funds contained in the Sports Authority Reserve shall be paid to Mortgagor and any interest or other earnings on funds deposited into the Sports Authority Reserve shall be solely for the account of Mortgagee. The Sports Authority Reserve is solely for the protection of Mortgagee and entails no responsibility on Mortgagee's part beyond the disbursement and application in accordance with the terms hereof. Upon assignment of this Mortgage by Mortgagee, any funds in the Sports Authority Reserve shall be turned over to the assignee and any responsibility of Mortgagee, as assignor, with respect thereto shall terminate. If there is a default under this Mortgage which is not cured within any applicable grace or cure period, Mortgagee may, but shall not be obligated to, apply at any time the balance then remaining in the Sports Authority Reserve against the indebtedness secured hereby in whatever order Mortgagee shall subjectively determine. No such application of the Sports Authority Reserve shall be deemed to cure any default hereunder. Upon the earliest to occur of full payment of the indebtedness secured hereby in accordance with its terms or such earlier time as Mortgagee may elect, the balance of the Sports Authority Reserve then in Mortgagee's possession shall be paid over to Mortgagor and no other party shall have any right or claim thereto.

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