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02-03485 A

Property of Cook County Clerk's Office

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING STATEMENT

by and between

CATELLUS DEVELOPMENT CORPORATION,

as Borrower

and

TEACHERS INSURANCE AND ANNUITY ASSOCIATION

OF AMERICA,

as Lender

Property Known As

2700 Patriot Boulevard, Glenview, Illinois

(Property Tax Identification Number: 04-22-101-039)

Lawyers Title Insurance Corporation

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EXHIBIT A	Legal Description
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EXHIBIT D	Property Documents

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## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING STATEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING STATEMENT is made this 23 day of July, 2002, by and between CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation ("**Borrower**"), having its principal place of business at 201 Mission Street, San Francisco, California 94105, as mortgagor, and TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, a New York corporation ("**Lender**"), having an address at 730 Third Avenue, New York, New York 10017, as mortgagee.

### RECITALS:

A. Lender agreed to make and Borrower agreed to accept a loan (the "**Loan**") in the maximum principal amount of \$166,880,000.00.

B. To evidence the Loan, Borrower executed and delivered to Lender a Promissory Note (the "**Note**"), dated March 28, 2002, in the principal amount of One Hundred Sixty-Six Million Eight Hundred Eighty Thousand and No/100 Dollars (\$166,880,000.00) (that amount or so much as is outstanding from time to time is referred to as the "**Principal**"), promising to pay the Principal with interest thereon to the order of Lender as set forth in the Note and with the balance, if any, of the Debt being due and payable on April 1, 2012 (the "**Maturity Date**").

C. To secure the Note, this Mortgage conveys, among other things, Borrower's fee interest in the real property located in the City of Glenview, County of Cook, State of Illinois, more particularly described in Exhibit A (the "**Land**").

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1. Definitions. Capitalized terms used in this Mortgage are defined in Exhibit B or in the text with a cross-reference in Exhibit B.

Section 1.2. Rules of Construction. This Mortgage will be interpreted in accordance with the rules of construction set forth in Exhibit C.

## ARTICLE II

### GRANTING CLAUSES

Section 2.1. Encumbered Property. Borrower irrevocably grants, mortgages, warrants, conveys, assigns to Lender, and grants to Lender a security interest in the following property now or in the future owned or held by Borrower (collectively, the "**Property**") for the uses and purposes set forth in this Mortgage, hereby releasing and waiving all rights under and by virtue

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of the homestead laws of the State of Illinois (capitalized terms used in this Section 2.1 and not defined in this Mortgage have the meanings ascribed to them in the Uniform Commercial Code):

- (i) the Land;
- (ii) all buildings and improvements located on the Land (collectively, the "**Improvements**");
- (iii) all easements; rights of way or use, including any rights of ingress and egress; streets, roads, ways, sidewalks, alleys and passages; strips and gores; sewer rights; water, water rights, water courses, riparian rights and drainage rights; air rights and development rights; oil and mineral rights; and tenements, hereditaments and appurtenances, in each instance adjoining or otherwise appurtenant to or benefiting the Land or the Improvements;
- (iv) all General Intangibles (including Software) and Goods, including Fixtures, Equipment and Consumer Goods attached to, contained in or used in connection with the Land or the Improvements (excluding personal property owned by tenants)("'**Fixtures and Personal Property**");
- (v) all agreements, ground leases, grants of easements or rights-of-way, permits, declarations of covenants, conditions and restrictions, disposition and development agreements, planned unit development agreements, cooperative, condominium or similar ownership or conversion plans, management, leasing, brokerage or parking agreements or other material documents affecting the Land, the Improvements or the Fixtures and Personal Property, including the documents described on **Exhibit D** but expressly excluding the Leases (collectively, the "**Property Documents**");
- (vi) all Inventory held for sale, lease or resale or furnished or to be furnished under contracts of service, or used or consumed in the ownership, use or operation of the Land, the Improvements or the Fixtures and Personal Property, and all Documents of title evidencing any part of any of the foregoing;
- (vii) all Accounts, Documents, Goods, Instruments, money, Deposit Accounts, Chattel Paper, Letter-of-Credit Rights, Investment Property, General Intangibles and Supporting Obligations relating to the Property, including all deposits held from time to time by the Accumulations Depository to provide reserves for Taxes and Assessments together with interest thereon, if any (the "**Accumulations**");
- (viii) all awards and other compensation paid after the date of this Mortgage for any Condemnation (the "**Condemnation Awards**");
- (ix) all proceeds of and all unearned premiums on the Policies (the "**Insurance Proceeds**");
- (x) all licenses, certificates of occupancy, contracts, management agreements, operating agreements, operating covenants, franchise agreements, permits and variances relating to the Land, the Improvements or the Fixtures and Personal Property;

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(xi) all books, records and other information, wherever located, which are in Borrower's possession, custody or control or to which Borrower is entitled at law or in equity and which are related to the Property, including all computer hardware and software or other equipment used to record, store, manage, manipulate or access the information;

(xii) all after-acquired title to or remainder or reversion in any of the property described in this Section; all Proceeds (excluding, however, sales or other dispositions of Inventory in the ordinary course of the business of operating the Land or the Improvements), replacements, substitutions, products, accessions and increases within any one or more of the following types of collateral: Goods, Equipment, Inventory, Instruments, Investment Property, Chattel Paper, Letter-of-Credit Rights, Documents, Accounts or General Intangibles, all additions, accessions and extensions to, improvements of and substitutions or replacements for any of the Property described in this Section; and all additional lands, estates, interests, rights or other property acquired by Borrower after the date of this Mortgage for use in connection with the Land or the Improvements, all without the need for any additional mortgage, assignment, pledge or conveyance to Lender but Borrower will execute and deliver to Lender, upon Lender's request, any documents reasonably requested by Lender to further evidence the foregoing.

Section 2.2. [Intentionally Deleted].

Section 2.3. Security Agreement.

(a) The Property includes both real and personal property and this Mortgage is a real property mortgage and also a "security agreement" and a "financing statement" within the meaning of the Uniform Commercial Code. By executing and delivering this Mortgage, Borrower grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that any of the Property may be subject to the Uniform Commercial Code.

(b) This Mortgage constitutes a financing statement filed as a fixture filing in the official records of the county in which the Property is located under the Illinois Uniform Commercial Code with respect to any Property which now or hereafter may become fixtures and for which purpose the following information is set forth:

(i) The Exact Legal Name and address of Debtor is:

Catellus Development Corporation, a Delaware corporation  
201 Mission Street  
San Francisco, CA 94105  
Attention: Michael D. Fisk

(ii) Name and address of Secured Party:

Teachers Insurance and Annuity Association, a New York corporation  
730 Third Avenue  
New York, New York 10017  
Attention: Managing Director  
Mortgage and Real Estate Division

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Region: West

TIAA Appl. #AAA-0326  
M-000517800

(iii) Description of the types (or items) of property covered by this Financing Statement: all of the property described in Section iv-xii of the Section entitled "Encumbered Property" described or referred to herein and included as part of the Property.

(iv) Description of real estate to which collateral is attached or upon which it is located: Described in Exhibit A.

(v) Federal Identification Number of Debtor: 94-2953477.

(vi) Debtor's chief executive office is located in the State of California, and Debtor's state of incorporation is the State of Delaware.

Borrower further acknowledges that (i) this Mortgage covers goods which are or are to become fixtures on the Land; (ii) Lender may file this Mortgage, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property; (iii) any reproduction of this Mortgage or of any other security agreement or financing statement is sufficient as a financing statement; (iv) Borrower is the record owner of such property; and (v) products of collateral are also covered. Except as otherwise provided in the Loan Documents, no financing statement in favor of any secured party other than Lender covering the personal property described herein or any portion thereof is on file in any public office. Borrower will not remove or permit the removal of the collateral or any part thereof without the prior written permission of Lender, provided that obsolete and worn-out articles may be removed concurrently with the replacement or renewal thereof with property of at least equal value or usefulness in the operation of the Property.

Section 2.4. Conditions to Grant. This Mortgage is made on the express condition that if Borrower pays and performs the Obligations in full in accordance with the Loan Documents, the liens created by the Loan Documents will be released at Borrower's expense.

## ARTICLE III

### OBLIGATIONS SECURED

Section 3.1. The Obligations. This Mortgage secures the payment or repayment of the Principal (including the First Disbursement (as defined in the Loan Agreement) and the Subsequent Disbursements (as defined in the Loan Agreement), as advanced from time to time, as evidenced by the Note and the Loan Agreement), the Interest, the Late Charges, the Prepayment Premium, the Expenses, any additional advances made by Lender in connection with the Property or the Loan and all other amounts payable under the Loan Documents (the "Debt") and also secures both the timely payment of the Debt as and when required and the timely performance of all other obligations and covenants to be performed under the Loan Documents (collectively, the "Obligations"). The maximum amount, however, included within the Obligations shall not exceed an amount equal to two times the face amount of the Note.

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## ARTICLE IV

### TITLE AND AUTHORITY

#### Section 4.1. Title to the Property.

(a) Borrower has and will continue to have good and marketable title in fee simple absolute to the Land and the Improvements and good and marketable title to the Fixtures and Personal Property, all free and clear of liens, encumbrances and charges except the Permitted Exceptions. To Borrower's knowledge, there are no facts or circumstances that might give rise to a lien, encumbrance or charge on the Property.

(b) Borrower owns and will continue to own all of the other Property free and clear of all liens, encumbrances and charges except the Permitted Exceptions.

(c) This Mortgage is and will remain a valid and enforceable first lien on and security interest in the Property, subject only to the Permitted Exceptions.

#### Section 4.2. Authority.

(a) Borrower is and will continue to be (i) duly organized, validly existing and in good standing under the Laws of the state or commonwealth in which it was formed, organized or incorporated as set forth in Section 2.3, and (ii) duly qualified to conduct business, in good standing, in the state or commonwealth where the Property is located.

(b) Borrower has and will continue to have all approvals required by Law or otherwise and full right, power and authority to (i) own and operate the Property and carry on Borrower's business as now conducted or as proposed to be conducted; (ii) execute and deliver the Loan Documents; (iii) grant, mortgage, warrant the title to, convey, assign and pledge the Property to Lender pursuant to the provisions of this Mortgage; and (iv) perform the Obligations.

(c) The execution and delivery of the Loan Documents and the performance of the Obligations do not and will not conflict with or result in a default under any Laws or any Leases or Property Documents and do not and will not conflict with or result in a default under any agreement binding upon any party to the Loan Documents.

(d) The Loan Documents constitute and will continue to constitute legal, valid and binding obligations of all parties to the Loan Documents enforceable in accordance with their respective terms.

(e) Borrower has not changed its legal name or its state or commonwealth of incorporation, as set forth in Section 2.3, in the four months prior to the date hereof, except as Borrower has disclosed any such change to Lender in writing and delivered to Lender appropriate Uniform Commercial Code search reports in connection therewith.

(f) Borrower has not (i) merged with or into any other entity or otherwise been involved in any reorganization or (ii) acquired substantially all of the assets of any other entity where Borrower became subject to the obligations of such entity, for a period of one year

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ending on the date hereof, except as Borrower has disclosed any such change, merger, reorganization or acquisition to Lender in writing and delivered to Lender appropriate Uniform Commercial Code search reports in connection therewith.

Section 4.3. No Foreign Person. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

Section 4.4. Litigation. There are no Proceedings or, to Borrower's knowledge, investigations against or affecting Borrower or the Property and, to Borrower's knowledge, there are no facts or circumstances that might give rise to a Proceeding or an investigation against or affecting Borrower or the Property that in either event would have a material adverse affect on the Property or on Lender's interest in the Property or under the Loan Documents.

Borrower will give Lender prompt notice of the commencement of any Proceeding or investigation against or affecting the Property or Borrower which could have a material adverse effect on the Property or on Lender's interest in the Property or under the Loan Documents. Borrower also will deliver to Lender such additional information relating to the Proceeding or investigation as Lender may request from time to time.

## ARTICLE V

### PROPERTY STATUS, MAINTENANCE AND LEASES

#### Section 5.1. Status of the Property.

(a) Borrower has obtained and will maintain in full force and effect all certificates, licenses, permits and approvals that are issued or required by Law or by any entity having jurisdiction over the Property or over Borrower or that are necessary for the Permitted Use, for occupancy and operation of the Property, for the granting of this Mortgage and for the conduct of Borrower's business on the Property in accordance with the Permitted Use.

(b) The Property is and will continue to be serviced by all public utilities required for the Permitted Use of the Property.

(c) All roads and streets necessary for service of and access to the Property for the current or contemplated use of the Property have been completed and are and will continue to be serviceable, physically open and dedicated to and accepted by the Government for use by the public.

(d) The Property is free from damage caused by a Casualty.

(e) All costs and expenses of labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

Section 5.2. Maintenance of the Property. Borrower will maintain the Property in good repair and good and safe condition, suitable for the Permitted Use, including, to the extent necessary, replacing the Fixtures and Personal Property with property at least equal in quality

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and condition to that being replaced and free of liens. Except for any tenant improvements and additions to the Property under any Leases approved by Lender, Borrower will not erect any new buildings, building additions or other structures on the Land or otherwise materially alter the Improvements without Lender's prior consent which may be withheld in Lender's reasonable discretion. The Property will be managed by (i) Borrower or (ii) an affiliate of Borrower or a property manager satisfactory to Lender pursuant to a management agreement satisfactory to Lender and terminable by Borrower upon 30 days notice to the property manager.

Section 5.3. Change in Use. Borrower will use and permit the use of the Property for the Permitted Use and for no other purpose.

Section 5.4. Waste. Borrower will not commit or permit any waste (including economic and non-physical waste), impairment or deterioration of the Property or any alteration, demolition or removal of any of the Property without Lender's prior consent which may be withheld in Lender's reasonable discretion.

Section 5.5. Inspection of the Property. Subject to the rights of tenants under the Leases and as otherwise provided under Section 9.2(e) hereof, Lender has the right to enter and inspect the Property on reasonable prior notice, except during the existence of an Event of Default, when no prior notice is necessary. Lender has the right to engage an independent expert to review and report on Borrower's compliance with Borrower's obligations under this Mortgage to maintain the Property, comply with Law and refrain from waste, impairment or deterioration of the Property and the alteration, demolition or removal of any of the Property except as may be permitted by the provisions of this Mortgage. If the independent expert's report discloses material failure to comply with such obligations or if Lender engages the independent expert during the continuation of an Event of Default, then the independent expert's review and report will be at Borrower's expense, payable on demand.

Section 5.6. Leases and Rents.

(a) Borrower assigns the Leases and the Rents to Lender absolutely and unconditionally and not merely as additional collateral or security for the payment and performance of the Obligations, but subject to a license back to Borrower of the right to collect the Rents unless and until an Event of Default occurs at which time the license will terminate automatically, all as more particularly set forth in the Assignment, the provisions of which are incorporated in this Mortgage by reference.

(b) Upon Lender's request, Borrower shall execute and Lender may record, at Lender's election, a document subordinating this Mortgage to the Leases, provided that the subordination will not affect (i) the priority of Lender's entitlement to Insurance Proceeds or Condemnation Awards or (ii) the priority of this Mortgage over intervening liens or liens arising under or with respect to the Leases.

Section 5.7. Parking. Borrower will provide, maintain, police and light parking areas within the Property, including any sidewalks, aisles, streets, driveways, sidewalk cuts and rights-of-way to and from the adjacent public streets, in a manner consistent with the Permitted Use and sufficient to accommodate the greatest of: (i) the number of parking spaces required by Law; (ii) the number of parking spaces required by the Leases and the Property Documents; or

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(iii) 453 parking spaces. The parking areas will be reserved and used exclusively for ingress, egress and parking for Borrower and the tenants under the Leases and their respective employees, customers and invitees and in accordance with the Leases and the Property Documents.

Section 5.8. Separate Tax Lot. The Property is and will remain assessed for real estate tax purposes as one or more wholly independent tax lots, separate from any property that is not part of the Property.

Section 5.9. Changes in Zoning or Restrictive Covenants. Borrower will not, without Lender's prior written consent, which will not be unreasonably withheld: (i) initiate, join in or consent to any change in any Laws pertaining to zoning, any restrictive covenant or other restriction which would restrict the Permitted Uses for the Property; (ii) permit the Property to be used to fulfill any requirements of Law for the construction or maintenance of any improvements on property that is not part of the Property; (iii) permit the Property to be used for any purpose not included in the Permitted Use; or (iv) impair the integrity of the Property as a single, legally subdivided zoning lot separate from all other property.

Section 5.10. Lender's Right to Appear. Lender has the right to appear in and defend any Proceeding brought regarding the Property and to bring any Proceeding, in the name and on behalf of Borrower or in Lender's name, which Lender, in its sole discretion, determines should be brought to protect Lender's interest in the Property.

## ARTICLE VI

### IMPOSITIONS AND ACCUMULATIONS

#### Section 6.1. Impositions.

(a) Subject to Section 6.2 below, Borrower will pay each Imposition at least 15 days before the date (the "Imposition Penalty Date") that is the earlier of (i) the date on which the Imposition becomes delinquent and (ii) the date on which any penalty, interest or charge for non-payment of the Imposition accrues.

(b) Subject to Section 6.2 below, at least 10 days before each Imposition Penalty Date, Borrower will deliver to Lender a receipted bill or other evidence of payment.

(c) Borrower, at its own expense, may contest any Taxes or Assessments, provided that Borrower has paid, under protest, the Taxes or Assessments and, provided further that the following conditions are met:

(i) not less than 30 days prior to the Imposition Penalty Date, Borrower delivers to Lender notice of the proposed contest;

(ii) the contest is by a Proceeding promptly initiated and conducted diligently and in good faith;

(iii) there is no Event of Default then continuing;

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(iv) the Proceeding is permitted under and is conducted in accordance with the Leases and the Property Documents;

(v) the Proceeding does not involve imposition of criminal or civil penalties and sale or forfeiture of the Property and Lender will not be subject to any civil suit; and

(vi) if Borrower cannot pay the Taxes and Assessments under protest, Borrower either deposits with the Accumulations Depository reserves or furnishes a bond or other security satisfactory to Lender, in either case in an amount sufficient to pay the contested Taxes or Assessments, together with all interest and penalties or Borrower pays all of the contested Taxes or Assessments under protest.

## Section 6.2. Accumulations.

(a) Borrower made an initial deposit with either Lender or a mortgage servicer or financial institution designated or approved by Lender from time to time, acting on behalf of Lender as Lender's agent or otherwise such that Lender is the "customer", as defined in the Uniform Commercial Code, of the depository bank with respect to the deposit account into which the Accumulations are deposited, to receive, hold and disburse the Accumulations in accordance with this Section (the "**Accumulations Depository**"). On the first day of each calendar month during the Term Borrower will deposit with the Accumulations Depository an amount equal to one-twelfth (1/12) of the annual Taxes and Assessments as determined by Lender or its designee. At least 45 days before each Imposition Penalty Date, Borrower will deliver to the Accumulations Depository any bills and other documents that are necessary to pay the Taxes and Assessments.

(b) The Accumulations Depository shall apply the Accumulations to the payment of Taxes and Assessments. Any excess Accumulations after payment of Taxes and Assessments will be returned to Borrower or credited against future payments of the Accumulations, at Lender's election or as required by Law. If the Accumulations are not sufficient to pay Taxes and Assessments, Borrower will pay the deficiency to the Accumulations Depository within 5 days of demand. At any time after an Event of Default occurs, Lender may apply the Accumulations as a credit against any portion of the Debt selected by Lender in its sole discretion.

(c) The Accumulations Depository will hold the Accumulations as security for the Obligations until applied in accordance with the provisions of this Mortgage and any agreement among Borrower, Lender and the Accumulations Depository. If Lender is not the Accumulations Depository, the Accumulations Depository will deliver the Accumulations to Lender upon Lender's demand at any time after an Event of Default.

(d) If the Property is sold or conveyed other than by foreclosure or transfer in lieu of foreclosure, all right, title and interest of Borrower to the Accumulations will automatically, and without necessity of further assignment, be held for the account of the new owner, subject to the provisions of this Section and Borrower will have no further interest in the Accumulations.

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(e) The Accumulations Depository has deposited the initial deposit and will deposit the monthly deposits into separate interest bearing account at the Union Bank of California, with interest accruing for the benefit of Borrower with Lender denominated as secured party, all in accordance with an agreement among Borrower, Lender and the Accumulations Depository dated March 28, 2002.

(f) Lender has the right to pay, or to direct the Accumulations Depository to pay, any Taxes or Assessments unless Borrower is contesting the Taxes or Assessments in accordance with the provisions of this Mortgage, in which event any payment of the contested Taxes or Assessments will be made under protest in the manner prescribed by Law or, at Lender's election, will be withheld.

(g) If Lender assigns this Mortgage, Lender will pay, or cause the Accumulations Depository to pay, the unapplied balance of the Accumulations to or at the direction of the assignee. Simultaneously with the payment, Lender and the Accumulations Depository will be released from all liability with respect to the Accumulations and Borrower will look solely to the assignee with respect to the Accumulations. When the Obligations have been fully satisfied, any unapplied balance of the Accumulations will be returned to Borrower.

Section 6.3. Changes in Tax Laws. If a Law requires the deduction of the Debt from the value of the Property for the purpose of taxation or imposes a tax, either directly or indirectly, on the Debt, any Loan Document or Lender's interest in the Property, Borrower will pay the tax with interest and penalties, if any. If Lender determines that Borrower's payment of the tax may be unlawful, unenforceable, usurious or taxable to Lender, the Debt will become immediately due and payable on 60 days prior notice unless the tax must be paid within the 60-day period, in which case, the Debt will be due and payable within the lesser period.

## ARTICLE VII

### INSURANCE, CASUALTY, CONDEMNATION AND RESTORATION

#### Section 7.1. Insurance Coverages.

(a) Borrower will maintain insurance in amounts, and containing such coverages and endorsements not less than as set forth in that certain Caelus Development Corporation and Subsidiary Companies Insurance Program dated October 1, 2001, which was provided to Lender in connection with this Loan (the "Borrower's Insurance Program"). After the date hereof, Lender may require Borrower to maintain such additional insurance amounts, coverages and endorsements as may be reasonable in light of industry standards and which Lender requires of other borrowers with respect to properties comparable to the Property. Borrower shall also maintain insurance covering acts of terrorism, provided such insurance is available at commercially reasonable rates (as determined by Lender annually). If Borrower's blanket coverage is provided by multiple insurers, such terrorism coverage shall be included in policies issued for 80% of the coverage amount given by such insurers.

(b) The insurance, including renewals, required under this Section will be issued on valid and enforceable policies and endorsements satisfactory to Lender (the "Policies"). Each Policy will contain a standard waiver of subrogation and a replacement cost

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endorsement and will provide that Lender will receive not less than 30 days prior written notice of any cancellation, termination or non-renewal of a Policy or any material change other than an increase in coverage and that Lender will be named under a standard mortgage endorsement as loss payee.

(c) The insurance companies issuing the Policies (the "Insurers") must be authorized to do business in the State or Commonwealth where the Property is located, must have been in business for at least 5 years, must carry an A.M. Best Company, Inc. policy holder rating of A- or better and an A.M. Best Company, Inc. financial category rating of Class X or better and must be otherwise satisfactory to Lender. Lender may select an alternative credit rating agency and may impose different credit rating standards for the Insurers. Notwithstanding Lender's right to approve the Insurers and to establish credit rating standards for the Insurers, Lender will not be responsible for the solvency of any Insurer.

(d) Notwithstanding Lender's rights under this Article, Lender will not be liable for any loss, damage or injury resulting from the inadequacy or lack of any insurance coverage.

(e) Borrower will comply with the provisions of the Policies and with the requirements, notices and demands imposed by the Insurers and applicable to Borrower or the Property.

(f) Borrower will pay the Insurance Premiums for each Policy not less than 30 days before the expiration date of the Policy being replaced or renewed and will deliver to Lender an original or, if a blanket policy, a certified copy of each Policy marked "Paid" not less than 15 days prior to the expiration date of the Policy being replaced or renewed.

(g) Borrower will not carry separate insurance concurrent in kind or form or contributing in the event of loss with any other insurance carried by Borrower.

(h) Borrower may carry any of the insurance required under this Section on a blanket or umbrella policy so long as Borrower's Insurance Program remains in full force and effect.

(i) Borrower will give the Insurers prompt notice of any change in ownership or occupancy of the Property. This subsection does not abrogate the prohibitions on transfers set forth in this Mortgage.

(j) If the Property is sold at a foreclosure sale or otherwise is transferred so as to extinguish the Obligations, all of Borrower's right, title and interest in and to the Policies then in force will be transferred automatically to the purchaser or transferee.

(k) Unless Borrower provides Lender with evidence reasonably satisfactory to Lender of the insurance coverage required under this Section 7.1, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Property. This insurance may, but need not, protect Borrower's interest in the Property. The coverage purchased by Lender may not pay any claim made by the Borrower or any claim made against the Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender,



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but only after providing Lender with evidence reasonably satisfactory to Lender that Borrower has obtained insurance as required by this Section 7.1. If Lender purchases insurance for the Property, Borrower will be responsible for the costs of that insurance, including interest at the Default Interest Rate (or such lower maximum rate of interest as shall be legal under applicable law) and any other charges imposed by Lender in connection with the placement of insurance, until the effective date of the cancellation or expiration of such insurance. The costs of the insurance may, at Lender's discretion, be added to the Obligations, and in any event shall be secured by this Mortgage. It is understood and agreed that the costs of insurance obtained by Lender may be more than the costs of insurance the Borrower may be able to obtain on its own.

## Section 7.2. Casualty and Condemnation.

(a) Borrower will give Lender notice of any Casualty which causes damages in excess of \$25,000.00 immediately after it occurs and will give Lender notice of any Condemnation Proceeding immediately after Borrower receives notice of commencement or notice that such a Condemnation Proceeding will be commencing. Borrower immediately will deliver to Lender copies of all documents Borrower delivers or receives relating to the Casualty or the Condemnation Proceeding, as the case may be.

(b) Borrower authorizes Lender, at Lender's option, after an event of Default, to act on Borrower's behalf to collect, adjust and compromise any claims for loss, damage or destruction under the Policies on such terms as Lender determines in Lender's sole discretion. Borrower authorizes Lender to act, at Lender's option, on Borrower's behalf in connection with any Condemnation Proceeding. Borrower will execute and deliver to Lender all documents requested by Lender and all documents as may be required by Law to confirm such authorizations. Nothing in this Section will be construed to limit or prevent Lender from joining with Borrower either as a co-defendant or as a co-plaintiff in any Condemnation Proceeding.

(c) If Lender elects not to act on Borrower's behalf as provided in this Section, then Borrower promptly will file and prosecute all claims (including Lender's claims) relating to the Casualty and will prosecute or defend (including defense of Lender's interest) any Condemnation Proceeding. Borrower will have the authority to settle or compromise the claims or Condemnation Proceeding, as the case may be, provided that Lender has approved in Lender's reasonable discretion any compromise or settlement that exceeds \$250,000.00. Any check over \$25,000.00 for Insurance Proceeds or Condemnation Awards, as the case may be (the "Proceeds") will be made payable to Lender and Borrower. Borrower will endorse the check to Lender immediately upon Lender presenting the check to Borrower for endorsement or if Borrower receives the check first, will endorse the check immediately upon receipt and forward it to Lender. If any Proceeds are paid to Borrower over \$25,000.00, Borrower immediately will deposit the Proceeds with Lender, to be applied or disbursed in accordance with the provisions of this Mortgage. Lender will be responsible for only the Proceeds actually received by Lender.

Section 7.3. Application of Proceeds. After deducting the costs incurred by Lender in collecting the Proceeds, Lender may, in its sole discretion, (i) apply the Proceeds as a credit against any portion of the Debt selected by Lender in its sole discretion of the Debt; (ii) apply the Proceeds to restore the Improvements, provided that Lender will not be obligated to see to the proper application of the Proceeds and provided further that any amounts released for Restoration will not be deemed a payment on the Debt; or (iii) deliver the Proceeds to Borrower.

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Notwithstanding the foregoing, Proceeds attributable to lost income shall be applied by Lender to payment of Debt Service Payments and any excess shall be returned to Borrower.

Section 7.4. Conditions to Availability of Proceeds for Restoration. Notwithstanding the preceding Section, after a Casualty or a Condemnation (a "**Destruction Event**"), Lender will make the Proceeds (less any costs incurred by Lender in collecting the Proceeds) available for Restoration in accordance with the conditions for disbursements set forth in the Section entitled "**Restoration**", provided that the following conditions are met:

(a) Catellus Development Corporation, a Delaware corporation ("**CDC**"), or the transferee under a Permitted Transfer, if any, continues to be Borrower at the time of the Destruction Event;

(b) no Event of Default under the Loan Documents exists at the time of the Destruction Event;

(c) all Leases in effect immediately prior to the Destruction Event as required in subsection (d) below and all Property Documents in effect immediately prior to the Destruction Event that are essential to the use and operation of the Property either continue in full force and effect or can be immediately replaced notwithstanding the Destruction Event;

(d) the annual Rents (excluding security deposits) under Leases in effect on the date of the Destruction Event are providing debt service coverage for the annual Debt Service Payments of no less than 1.15:1.00 after payment of annual Insurance Premiums, Impositions and operating expenses of the Property (including ground rent, if any), provided that, if the Rents do not provide such debt service coverage, then Borrower expressly authorizes and directs Lender to apply an amount from the Proceeds to reduction of Principal in order to reduce the annual Debt Service Payments sufficiently for such debt service coverage to be achieved. The reduced debt service payments will be calculated using the Fixed Interest Rate and an amortization schedule that will achieve the same proportionate amortization of the reduced Principal over the then remaining Term as would have been achieved if the Principal and the originally scheduled Debt Service Payments had not been reduced. Borrower will execute any documentation that Lender deems reasonably necessary to evidence the reduced Principal and debt service payments.

Section 7.5. Restoration.

(a) If the total Proceeds for any Destruction Event are \$250,000.00 or less and Lender elects or is obligated by Law or under this Article to make the Proceeds available for Restoration, Lender will disburse to Borrower the entire amount received by Lender and Borrower will commence Restoration promptly after the Destruction Event and diligently pursue such Restoration to completion.

(b) If the Proceeds for any Destruction Event exceed \$250,000.00 and Lender elects or is obligated by Law or under this Article to make the Proceeds available for Restoration, Lender will disburse the Proceeds (the "**Restoration Funds**") upon Borrower's request as Restoration progresses, generally in accordance with normal construction lending

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practices for disbursing funds for construction costs, provided that the following conditions are met:

(i) Borrower commences Restoration promptly after the Destruction Event and diligently pursues such Restoration to completion;

(ii) if Lender requests, Borrower delivers to Lender prior to commencing Restoration, for Lender's approval, plans and specifications and a detailed budget for the Restoration;

(iii) Borrower delivers to Lender satisfactory evidence of the costs of Restoration incurred prior to the date of the request, and such other documents as Lender may request including mechanics' and materialmen's lien waivers and title insurance endorsements;

(iv) Borrower pays all costs of Restoration whether or not the Restoration Funds are sufficient and, if at any time during Restoration, Lender determines that the undisbursed balance of the Restoration Funds is insufficient to complete Restoration, Borrower deposits with Lender, as part of the Restoration Funds, an amount equal to the deficiency within 30 days of receiving notice of the deficiency from Lender; and

(v) there is no default under the Loan Documents at the time Borrower requests funds or at the time Lender disburses funds.

(c) If an Event of Default occurs at any time after the Destruction Event, then Lender will have no further obligation to make any remaining Proceeds available for Restoration and may, after notice to Borrower, apply any remaining Proceeds as a credit against any portion of the Debt selected by Lender in its sole discretion.

(d) Lender may elect at any time prior to commencement of Restoration or while work is in progress to retain, at Borrower's expense, an independent engineer or other consultant to review the plans and specifications, to inspect the work as it progresses and to provide reports. If any matter included in a report by the engineer or consultant is unsatisfactory to Lender, Lender may suspend disbursement of the Restoration Funds until the unsatisfactory matters contained in the report are resolved to Lender's satisfaction.

(e) If Borrower fails to commence and complete Restoration in accordance with the terms of this Article, then in addition to the Remedies, Lender may elect to restore the Improvements on Borrower's behalf and reimburse itself out of the Restoration Funds for costs and expenses incurred by Lender in restoring the Improvements, or Lender may apply the Restoration Funds as a credit against any portion of the Debt selected by Lender in its sole discretion.

(f) Lender may commingle the Restoration Funds with its general assets and will not be liable to pay any interest or other return on the Restoration Funds unless otherwise required by Law. Lender will not hold any Restoration Funds in trust. Lender may elect to deposit the Restoration Funds with a depository satisfactory to Lender under a disbursement and security agreement satisfactory to Lender.

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(g) Borrower will pay all of Lender's expenses incurred in connection with a Destruction Event or Restoration. If Borrower fails to do so, then in addition to the Remedies, Lender may from time to time reimburse itself out of the Restoration Funds.

(h) If any excess Proceeds remains after Restoration, Lender may elect, in its sole discretion either to apply the excess as a credit against any portion of the Debt as selected by Lender in its sole discretion or to deliver the excess to Borrower. Notwithstanding the foregoing, if the requirements set forth in Section 7.4(a), (b) and (d) are satisfied, Lender shall deliver the excess Proceeds to Borrower.

## ARTICLE VIII

### COMPLIANCE WITH LAW AND AGREEMENTS

Section 8.1. Compliance with Law. Borrower, the Property, and the use of the Property comply and will continue to comply with Law and with all agreements and conditions necessary to preserve and extend all rights, licenses, permits, privileges, franchises and concessions (including zoning variances, special exceptions and non-conforming uses) relating to the Property or Borrower. Borrower will notify Lender of the commencement of any investigation or Proceeding relating to a possible violation of Law immediately after Borrower receives notice thereof and, will deliver promptly to Lender copies of all documents Borrower receives or delivers in connection with the investigation or Proceeding. Borrower will not alter the Property in any manner that would increase Borrower's responsibilities for compliance with Law.

Section 8.2. Compliance with Agreements. There are no defaults, events of defaults or events which, with the passage of time or the giving of notice, would constitute an event of default under the Property Documents. Borrower will pay and perform all of its obligations under the Property Documents as and when required by the Property Documents. Borrower will cause all other parties to the Property Documents to pay and perform their obligations under the Property Documents as and when required by the Property Documents. Borrower will not amend or waive any provisions of the Property Documents; exercise any options under the Property Documents; give any approval required or permitted under the Property Documents that would adversely affect the Property or Lender's rights and interests under the Loan Documents; cancel or surrender any of the Property Documents; or release or discharge or permit the release or discharge of any party to or entity bound by any of the Property Documents, without, in each instance, Lender's prior approval (excepting therefrom all service contracts or other agreements entered into in the normal course of business that are cancelable upon not more than 30 days notice). Borrower promptly will deliver to Lender copies of any notices of default or of termination that Borrower receives or delivers relating to any Property Document.

### Section 8.3. ERISA Compliance.

(a) Borrower is not, nor will become, an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") that is subject to Title I of ERISA or a "plan" as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code, and the assets of Borrower are not, nor will constitute, "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Code.

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(b) Borrower is not and will continue not to be a “governmental plan” within the meaning of Section 3(32) of ERISA and transactions by or with Borrower are not and will not be subject to any Laws regulating investments of and fiduciary obligations with respect to governmental plans.

## Section 8.4. Compliance with Anti-Terrorism Laws.

(a) Neither Borrower, the Subsidiaries (as defined in the Loan Agreement), any of their respective constituents (other than public shareholders of Borrower), nor (if any portion of the Property is being acquired with proceeds of the Loan) the seller of the Property is or will be any of the following:

(i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224,

(ii) owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, or

(iii) doing any of the following: (x) making or receiving any contribution of funds, goods or services to or for the benefit of any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224, (y) dealing in, or otherwise engaging in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, or (z) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224, or

(iv) a person or entity that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf>.

(b) Borrower covenants and agree to deliver to Lender any certification or other evidence requested from time to time by Lender in its sole discretion, confirming Borrower’s compliance with this Section.

## ARTICLE IX

### ENVIRONMENTAL

Section 9.1. Environmental Representations and Warranties. Except as disclosed in the Environmental Report and to Borrower’s knowledge as of the date of this Mortgage:

(a) no Environmental Activity has occurred or is occurring on the Property other than the use, storage, and disposal of Hazardous Substances which (i) is in the ordinary course of business consistent with the Permitted Use, (ii) is in compliance with all Environmental Laws, and (iii) has not resulted in Material Environmental Contamination of the Property; and

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(b) no Environmental Activity has occurred or is occurring on any property in the vicinity of the Property which has resulted in Material Environmental Contamination of the Property.

## Section 9.2. Environmental Covenants.

(a) Borrower will not cause or permit any Material Environmental Contamination of the Property. Borrower shall investigate, monitor, clean up, contain and/or remediate any Material Environmental Contamination of the Property. In the event Borrower fails to undertake and pursue to completion with reasonable diligence the investigation, monitoring, clean-up, containment and remediation of any Material Environmental Contamination, Lender shall have the right, upon thirty (30) days notice (except in case of emergency and in that case upon such notice as may be reasonable under the circumstances), to undertake and pursue such activities, but Lender shall have no obligation to do so, in which event Borrower shall cooperate with Lender and shall indemnify Lender for the reasonable costs incurred in undertaking and pursuing such activity. Lender shall have such right whether or not action to correct or ameliorate the Material Environmental Contamination is ordered by any court, governmental authority, or other person or entity.

(b) No Environmental Activity will occur on the Property other than the use, storage and disposal of Hazardous Substances which (i) is in the ordinary course of business consistent with the Permitted Use, (ii) is in compliance with all Environmental Laws.

(c) Borrower will notify Lender immediately upon Borrower becoming aware of (i) any Material Environmental Contamination of the Property or (ii) any Environmental Activity with respect to the Property that is not in accordance with the preceding subsection (b). Borrower promptly will deliver to Lender copies of all documents delivered to or received by Borrower regarding the matters set forth in this subsection, including notices of Proceedings or investigations concerning any Material Environmental Contamination of the Property or Environmental Activity in violation of subsection (b) or concerning Borrower's status as a potentially responsible party (as defined in the Environmental Laws). Borrower's notification of Lender in accordance with the provisions of this subsection will not be deemed to excuse any default under the Loan Documents resulting from the violation of Environmental Laws or the Material Environmental Contamination of the Property or Environmental Activity that is the subject of the notice. If Borrower receives notice of a suspected violation of Environmental Laws in the vicinity of the Property that poses a risk of Material Environmental Contamination of the Property, Borrower will give Lender notice and copies of any documents received relating to such suspected violation.

(d) From time to time at Lender's request, Borrower will deliver to Lender any information newly learned and documents newly obtained by to Borrower relating to the environmental condition of the Property since the later of the date hereof or Lender's previous request.

(e) Lender may perform or engage an independent consultant to perform an assessment of the environmental condition of the Property and of Borrower's compliance with this Section no more often than annually, or at any time, either for reasonable cause or after an Event of Default. In connection with the assessment: (i) Lender or consultant may enter and

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inspect the Property and perform tests of the air, soil, ground water and building materials; (ii) Borrower will cooperate and use best efforts to cause tenants and other occupants of the Property to cooperate with Lender or consultant; (iii) Borrower will receive a copy of any final report prepared after the assessment, to be delivered to Borrower not more than 10 days after Borrower requests a copy and executes Lender's standard confidentiality and waiver of liability letter; (iv) Borrower will accept custody of and arrange for lawful disposal of any Hazardous Substances required to be disposed of as a result of the tests; (v) Lender will not have liability to Borrower with respect to the results of the assessment; and (vi) Lender will not be responsible for any damage to the Property resulting from the tests described in this subsection and Borrower will look solely to the consultants to reimburse Borrower for any such damage. The consultant's assessment and reports will be at Borrower's expense (i) if the reports disclose any material adverse change in the environmental condition of the Property from that disclosed in the Environmental Report; (ii) if Lender engaged the consultant when Lender had reasonable cause to believe Borrower was not in compliance with the terms of this Article and, after written notice from Lender, Borrower failed to provide promptly reasonable evidence that Borrower is in compliance; or (iii) if Lender engaged the consultant after the occurrence of an Event of Default.

(f) If Lender has reasonable cause to believe that there is Material Environmental Contamination at the Property, Lender may elect in its sole discretion to reconvey any portion of the Property affected by the Material Environmental Contamination and Borrower will accept the reconveyance.

## ARTICLE X

### FINANCIAL REPORTING

#### Section 10.1. Financial Reporting.

(a) Borrower will deliver to Lender within 120 days after the close of each Fiscal Year an annual financial statement (the "**Annual Financial Statement**") for Borrower, the Subsidiaries (to the extent that financial statements are separately prepared for the Subsidiaries), and for the Property for the Fiscal Year, which will include a comparative balance sheet, a cash flow statement, an income and expense statement, a detailed breakdown of all receipts and expenses and all supporting schedules. The Annual Financial Statement will be:

- (i) certified by an officer of Borrower; and
- (ii) separate and distinct from any consolidated statement or report for Borrower or any other entity or any other property.

Section 10.2. Certificate of Good Standing. Upon request, Borrower will cause to be delivered to Lender, together with the annual financial statement required to be delivered hereunder, or as otherwise requested by Lender from time to time, a certificate of good standing from its state or commonwealth of organization.

Section 10.3. Annual Budget. Not more than 120 days after the end of each Fiscal Year, Borrower will deliver to Lender a detailed comparative budget (the "**Budget**") for the Property for the next succeeding Fiscal Year showing anticipated operating expenses,

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Insurance Premiums, Impositions, leasing commissions, capital improvement costs, tenant improvement costs and any other information Lender requests. Borrower waives any defense or right of offset to the Obligations, and any claim or counterclaim against Lender, arising out of any discussions between Borrower and Lender regarding any Budget delivered to Lender or the resolution of any disagreements relating to a Budget including any defense, right of offset, claim or counterclaim alleging in substance, that by virtue of such delivery, discussions or resolution, Lender has interfered with, influenced or controlled Borrower or the operations at the Property.

## ARTICLE XI

### EXPENSES AND DUTY TO DEFEND

#### Section 11.1. Payment of Expenses.

(a) Borrower is obligated to pay all fees and expenses (the "Expenses") incurred by Lender, including attorneys' fees and expenses related to (i) the preparation, execution, acknowledgement, delivery and recording or filing of the Loan Documents; (ii) any Proceeding or other claim asserted against Lender in connection with the Loan; (iii) any inspection, assessment, survey and test permitted under the Loan Documents; (iv) any Destruction Event; (v) the preservation of Lender's security interest, Lender's security and the exercise of any rights or remedies available at Law, in equity or otherwise; (vi) the Leases and the Property Documents; and (vii) any Proceeding in or for bankruptcy, insolvency, reorganization or other debtor relief or similar Proceeding relating to Borrower, the Property or any person liable under any guarantee, indemnity or other credit enhancement delivered in connection with the Loan. Notwithstanding the foregoing, Borrower shall not be required to pay Expenses incurred as a result of Lender's negligence or default under the Loan Documents or expenses incurred by Lender for routine loan servicing.

(b) Borrower will pay the Expenses within twenty (20) days of notice from Lender, together with any applicable interest, premiums or penalties. If Lender pays any of the Expenses, Borrower will reimburse Lender the amount paid by Lender immediately upon demand, together with interest on such amount at the Default Interest Rate from the date Lender paid the Expenses through and including the date Borrower reimburses Lender. The Expenses together with any applicable interest, premiums or penalties constitute a portion of the Debt secured by this Mortgage.

Section 11.2. Duty to Defend. If Lender or any of its trustees, officers, participants, employees or affiliates is a party in any Proceeding relating to the Property, Borrower or the Loan, Borrower will indemnify and hold harmless the party and will defend the party with attorneys and other professionals retained by Borrower and approved by Lender. If Lender reasonably determines that the interests of Lender and Borrower in any action or Proceeding conflict in such a manner and to such an extent as to require, consistent with applicable standards of professional responsibility, the retention of separate counsel, Lender may elect to engage its own attorneys and other professionals, at Borrower's expense, to defend or to assist in the defense of the party. In all events, case strategy will be determined by Lender if Lender so elects and no Proceeding will be settled without Lender's prior approval which may be withheld in its sole discretion.



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## ARTICLE XII

### TRANSFERS, LIENS AND ENCUMBRANCES

#### Section 12.1. Prohibitions on Transfers, Liens and Encumbrances.

(a) Borrower acknowledges that in making the Loan, Lender is relying to a material extent on the business expertise and net worth of Borrower and on the continuing interest that Borrower has in the Property. Accordingly, except as specifically set forth in this Mortgage, Borrower (i) will not effect a Transfer without Lender's prior approval, which may be withheld in Lender's sole discretion and (ii) will keep the Property free from all liens and encumbrances other than the lien of this Mortgage, the Permitted Exceptions, and any other lien approved by Lender in Lender's sole discretion. A "**Transfer**" is defined as any sale, grant, lease (other than bona fide third-party space leases with tenants), conveyance, assignment or other transfer of, or any encumbrance or pledge against, the Property, any interest in the Property or Borrower, in each instance whether voluntary or involuntary, direct or indirect, by operation of law or otherwise and including the grant of an option or the execution of an agreement relating to any of the foregoing matters.

(b) Borrower represents, warrants and covenants that Borrower is a Delaware corporation and a publicly-traded company whose shares are listed on The New York Stock Exchange.

#### Section 12.2. Permitted Transfers.

(a) Notwithstanding the prohibitions regarding Transfers, a Permitted Transfer may occur without Lender's prior consent, provided that the following conditions are met:

(i) at least 30 days prior to the proposed Permitted Transfer, Borrower delivers to Lender a notice that is sufficiently detailed to enable Lender to determine that the proposed Permitted Transfer complies with the terms of this Section;

(ii) there is no Event of Default under the Loan Documents either when Lender receives the notice or when the proposed Permitted Transfer occurs;

(iii) the proposed Permitted Transfer will not result in a violation of any of the covenants contained in the Section entitled, "**ERISA Compliance**" or in the Section entitled, "**Compliance with Anti-Terrorism Laws**;"

(iv) the proposed Permitted Transfer will not result in a violation of Laws pertaining to anti-terrorism (other than those referenced in the Section entitled, "**Compliance with Anti-Terrorism Laws**") or money laundering and Borrower will deliver to Lender such documentation of compliance as Lender requests in its sole discretion;

(v) when Lender receives the notice and when the proposed Permitted Transfer occurs, the transferee has never been an adverse party to Lender in any litigation to which Lender was a party; the transferee has never defaulted on a loan from Lender or on any

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contract or other agreement with Lender; and the transferee has never threatened litigation against Lender (for purposes of this subsection "transferee" includes the transferee's constituent entities at all levels and "Lender" includes Lender's subsidiaries);

(vi) Borrower pays all of Lender's expenses relating to the Transfer including Lender's attorneys' fees;

(vi) Lender is satisfied that the Property will continue to be managed by a manager satisfactory to Lender; and

(vii) Lender has made and advanced the Subsequent Disbursements.

(b) Upon compliance with the conditions set forth in the preceding subsection, the following Transfers (the "**Permitted Transfers**") may occur without Lender's prior consent:

(i) a one-time sale of Borrower's interest in the Property to an unaffiliated bona fide purchaser, but only so long as those properties then security for the Obligations are simultaneously transferred to the transferee, and provided that the following conditions are met:

(A) the transferee has a net worth of at least \$250,000,000.00;

(B) the transferee is a well-reputed investor, developer or manager of first-class commercial real estate comparable to the Property;

(C) the transferee has expressly assumed Borrower's obligations under the Loan Documents and any other documents encumbering the Property that are essential to the on-going use, operation and management of the Property;

(D) Borrower has delivered to Lender evidence satisfactory to Lender that subsequent to the Transfer, the Property will be managed by an experienced and well-reputed property manager of first-class commercial real estate comparable to the Property;

(E) Borrower pays to Lender a transfer fee of one-half percent (1/2%) of the outstanding principal balance of the Loan; and

(F) Borrower delivers to Lender a substitute environmental indemnity delivered to Lender, executed by a substitute indemnitor, satisfactory to Lender in its sole discretion, in which case Borrower will be released from liability under the Environmental Indemnity Agreement.

(ii) a one-time transfer of Borrower's interest in the Property to a qualified Real Estate Investment Trust (the "**REIT**") controlled by CDC, but only so long as: (A) those properties then security for the Obligations are simultaneously transferred to the REIT, (B) there is no increase in risks associated with Lender's ability to enforce its rights and remedies under the other Mortgages (as defined in the Loan Agreement) related to any or all anti-deficiency statutes or single-action legislation, (C) the conditions set forth in Subsections 12.2(b)(i)(C) and (D) above, as applicable, are met, (D) Borrower shall remain liable under the

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Environmental Indemnity Agreement, and (E) Borrower shall remain liable with respect to the limitation of liability provisions of Article XV of this Mortgage.

(iii) a one-time transfer of Borrower's interest in the Property to a wholly-owned subsidiary corporation or limited liability company of CDC, but only so long as: (A) there is no increase in risks associated with Lender's ability to enforce its rights and remedies under the other Mortgages (as defined in the Loan Agreement) related to any or all anti-deficiency statutes or single-action legislation, (B) the conditions set forth in Subsections 12.2(b)(i)(C) and (D) above, as applicable, are met, (C) CDC shall deliver to Lender, upon request, an instrument, satisfactory to Lender, from CDC with respect to the Environmental Indemnity Agreement, and if applicable from any other the guarantors or sureties of the Environmental Indemnity Agreement acknowledging the Transfer and ratifying their continued obligations under the indemnity, guaranty or surety instrument, as the case may be, (D) CDC shall deliver to Lender, upon request, an instrument, satisfactory to Lender, from CDC with respect to the limitation of liability provisions of Article XV of this Mortgage, and if applicable from any other the guarantors or sureties of the such provisions acknowledging the Transfer and ratifying their continued obligations under such provisions, as the case may be, and (E) Borrower shall deliver to Lender all documents and agreements reasonably required by Lender to evidence the Transfer, to otherwise acknowledge and confirm Borrower and transferee's obligations under the Loan Documents and all documents and agreements executed and delivered in connection with the Loan, and to include the transferee within any contribution agreement executed and delivered in connection with the Loan.

(c) Notwithstanding Subsection 12.2(a) above, the Transfer of the shares of Borrower shall be Permitted Transfers so long as the shares of Borrower are publicly traded. If the Transfer of shares of Borrower results in a delisting of Borrower, without a relisting on a public exchange or NASDAQ (a "Delisting Event"), such Transfer shall also be a Permitted Transfer so long as (i) at the time of the Delisting Event, Borrower or the successor entity following such Delisting Event complies with the standards set forth in Subsections 12.2(b)(i)(A), (B), (C), (D) and (F) above, as applicable. In addition, further transfers of the interests in Borrower after the Delisting Event shall be Permitted Transfers, provided, however, if such Transfers result in a change of control in Borrower, the Transfers shall not be Permitted Transfers unless the conditions set forth in Subsections 12.2(b)(i)(A), (B), (C), (D) and (F) above, as applicable, are met. For the purpose of this Subsection 12.2(c), (x) the calculation of the net worth of Borrower or successor referenced in Subsection 12.2(b)(i)(A) shall be based on the fair market value of the assets of the Borrower or successor entity, and (y) with reference to Subsection 12.2(b)(i)(D), Borrower agrees that the such requirement shall be a condition as well as an ongoing covenant.

Section 12.3. Right to Contest Liens. Borrower, at its own expense, may contest the amount, validity or application, in whole or in part, of any mechanic's, materialmen's or environmental liens in which event Lender will refrain from exercising any of the Remedies, provided that the following conditions are met:

(a) Borrower delivers to Lender notice of the proposed contest not more than 30 days after the lien is filed;

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(b) the contest is by a Proceeding promptly initiated and conducted in good faith and with due diligence;

(c) there is no Event of Default then continuing other than the Event of Default arising from the filing of the lien;

(d) the Proceeding suspends enforcement of collection of the lien, imposition of criminal penalties and sale or forfeiture of the Property and Lender will not be subject to any civil suit;

(e) the Proceeding is not in violation of with the Leases and the Property Document;

(f) Borrower sets aside reserves or furnishes a bond or other security satisfactory to Lender, in either case in an amount sufficient to pay the claim giving rise to the lien, together with all interest and penalties, or Borrower pays the contested lien under protest; and

(g) with respect to an environmental lien, Borrower is using best efforts to mitigate or prevent any deterioration of the Property resulting from the alleged violation of any Environmental Laws or the alleged Environmental Activity.

Section 12.4. Permitted Future Subordinate Financing. Borrower may obtain a subordinate loan (the "Subordinate Loan") from a lender (the "Subordinate Lender") satisfactory to Lender, provided the following conditions are met:

(a) not less than 30 days prior to the scheduled closing of the proposed Subordinate Loan, Borrower delivers to Lender a detailed notice concerning the proposed Subordinate Loan;

(b) the Subordinate Loan is evidenced by subordinate loan documents satisfactory to Lender (the "Subordinate Loan Documents");

(c) the Subordinate Lender delivers to Lender a subordination of mortgage or intercreditor agreement satisfactory to Lender that provides, among other things, that:

(i) the Subordinate Loan Documents, all advances made under the Subordinate Loan Documents and all rights of the Subordinate Lender will be expressly subordinate in priority and payment to the lien of this Mortgage and to all of Lender's rights and interests under the Loan Documents, including to the lien of and Lender's rights and interests under the Loan Documents as revised to evidence any restructuring or refinancing of the Loan;

(ii) the Subordinate Lender shall be a REIT controlled by CDC in which CDC shall maintain at least a 75% ownership interest, and the Subordinate Lender will not sell or assign the Subordinate Loan Documents and will not sell participations in the Subordinate Loan, except to CDC or a subsidiary of CDC in which CDC owns, directly or indirectly, a minimum ownership interest of at least 75%;

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(iii) the Subordinate Lender will send Lender copies of all default notices under the Subordinate Loan Documents and will permit Lender to cure any defaults under the Subordinate Loan Documents if Lender in its sole discretion elects to do so;

(iv) the Subordinate Lender will not exercise any remedy available to Subordinate Lender at Law, in equity or otherwise without Lender's prior written consent which may be withheld in Lender's sole discretion;

(v) the Subordinate Lender will not increase the principal amount of the Subordinate Loan or increase the interest rate payable for the Subordinate Loan or shorten the maturity thereof without the Lender's prior written consent, which consent may be withheld in Lender's sole discretion; provided, however, upon prior notice to Lender, the Subordinate Lender may agree to an increase in the principal amount of the Subordinate Loan or an increase in the interest rate payable for the Subordinate Loan so long as (A) the sum of the then outstanding principal balance of the Loan and the then increased principal balance of the Subordinate Loan, as compared to the then current appraised value of the Properties (as defined in the Loan Agreement) pursuant to an appraisal satisfactory to Lender dated not more than one (1) year prior to the date of the scheduled closing of the proposed increase in the Subordinate Loan, does not exceed one hundred percent (100%), (B) the Debt Service Coverage Ratio (calculated pursuant to the Loan Agreement) for the Debt Service Payments plus the debt service payments for the increased Subordinate Loan, cannot be less than 1.00:1.00, and (C) the maturity date for the Subordinate Loan must always be at least one (1) year after the Maturity Date;

(vi) the Subordinate Lender will not amend any terms of the Subordinate Loan Documents except only as set forth in item (v) above without Lender's prior written consent which may be granted or withheld in Lender's sole discretion;

(vii) the Subordinate Lender will have no right, in any circumstances, to terminate any Leases of the Property, and, if Lender permits Subordinate Lender to exercise its remedies and Subordinate Lender forecloses, Subordinate Lender will not terminate any of the Leases then affecting the Property;

(viii) the Subordinate Lender will transfer to Lender all rights and claims Subordinate Lender may have in any bankruptcy reorganization, insolvency, conservatorship or relief of debtors Proceeding affecting Borrower;

(ix) in the event that the Subordinate Lender collects any funds under circumstances that are inconsistent with the provisions hereof and, upon a default, any funds collected by the Subordinate Lender will be held in trust for Lender;

(xi) the limitation of liability set forth in Section 15.1 shall not apply and the Loan shall be fully recourse in the event that prior to the repayment of the Debt, the Subordinate Lender commences a bankruptcy or insolvency proceeding against Borrower;

(xii) any event of default (except only a failure to pay the full principal of the Subordinate Loan within twenty-five (25) days of the date when due (whether at maturity, by

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acceleration or otherwise)) under the Subordinate Loan Documents shall be an Event of Default; and

(xiii) the Subordinate Lender shall waive any rights to marshalling of assets, proration of security interests, and/or similar equitable protection;

(d) the Subordinate Loan shall have: (i) a maturity date that extends beyond the Maturity Date at least one (1) year after the Maturity Date, (ii) a principal amount which when added to the then outstanding Allocated Loan Proceeds (as defined in the Loan Agreement) of the Loan for the Property does not exceed one hundred percent (100%) of the then current appraised value of the Property pursuant to an appraisal satisfactory to Lender dated not more than one (1) year prior to the date of the scheduled closing of the proposed Subordinate Loan, and (iii) has aggregate debt service payments that, if added to the aggregate Debt Service Payments for the Loan (multiplied by the Allocated Loan Proceeds for the Property divided by the original Principal of the Loan), do not result in a Debt Service Coverage Ratio that is less than 1.00:1.00;

(e) there is no Event of Default under the Loan Documents either when Lender receives notice of the proposed Subordinate Loan or at closing of the Subordinate Loan; and

(f) Borrower pays all of Lender's costs and expenses relating to the Subordinate Loan, including Lender's attorneys' fees

## ARTICLE XIII

### ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS

#### Section 13.1. Further Assurances.

(a) Borrower will execute, acknowledge and deliver to Lender or to any other entity Lender designates any additional or replacement documents and perform any additional actions that Lender determines are reasonably necessary to evidence, perfect or protect Lender's first lien on and prior security interest in the Property or to carry out the intent or facilitate the performance of the provisions of the Loan Documents.

(b) Borrower appoints Lender as Borrower's attorney-in-fact to perform, at Lender's election, any actions and to execute and record any of the additional or replacement documents referred to in this Section, in each instance only at Lender's election and only to the extent Borrower has failed to comply with the terms of this Section.

#### Section 13.2. Estoppel Certificates.

(a) Within ten (10) days of Lender's request, Borrower will deliver to Lender or to any entity Lender designates a certificate certifying (i) the original principal amount of the Note; (ii) the unpaid principal amount of the Note; (iii) the Fixed Interest Rate; (iv) the amount of the then current Debt Service Payments; (v) the Maturity Date; (vi) the date a Debt Service Payment was last made; (vii) that, to Borrower's knowledge except as may be disclosed in the

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statement, there are no defaults or events which, with the passage of time or the giving of notice, would constitute an Event of Default; and (viii) to Borrower's knowledge there are no offsets or defenses against any portion of the Obligations except as may be disclosed in the statement.

(b) If Lender requests and at Lender's expense, Borrower will use its best efforts to promptly deliver to Lender or to any entity Lender designates a certificate from each party to any Property Document, certifying that the Property Document is in full force and effect with no defaults or events which, with the passage of time or the giving of notice, would constitute an event of default under the Property Document and that there are no defenses or offsets against the performance of its obligations under the Property Document; provided, however if Lender makes such request more than once per year, then the expenses of Borrower to be paid by Lender may include a reasonable charge to compensate Borrower for its administrative time.

(c) If Lender requests and at Lender's expense, Borrower will use its best efforts to promptly deliver to Lender, or to any entity Lender designates, a certificate from each tenant under a Lease then affecting the Property, certifying to any facts regarding the Lease as Lender may require, including that the Lease is in full force and effect with no defaults or events which, with the passage of time or the giving of notice, would constitute an event of default under the Lease by any party, that the rent has not been paid more than one month in advance and that the tenant claims no defense or offset against the performance of its obligations under the Lease; provided, however if Lender makes such request more than once per year, then the expenses of Borrower to be paid by Lender may include a reasonable charge to compensate Borrower for its administrative time.

Section 13.3. Credit Enhancements. Borrower will maintain in good standing all credit enhancement documents delivered to Lender in connection with the Loan throughout the Term or such shorter period as Borrower and Lender may have agreed to in writing. Credit enhancement documents include any letters of credit, cash deposits, pledges, guarantees or indemnities delivered to Lender in connection with the Loan but excluding any letters of credit, promissory notes or cash deposits delivered to Lender as good faith or standby fees in connection with Lender's agreement to make the Loan. If the provider of any credit enhancement document becomes insolvent, commences or is the target of a Proceeding in bankruptcy or ceases to exist or if Lender determines that the provider's insolvency is imminent, Borrower will deliver to Lender a replacement credit enhancement document within 5 Business Days of the date insolvency is known, the Proceeding in bankruptcy is filed, the cessation occurs or Lender gives Borrower notice that Lender has determined the provider's insolvency is imminent. The replacement credit enhancement document will be satisfactory to Lender from an alternate provider satisfactory to Lender. Upon receipt of the replacement, Lender will deliver promptly to Borrower the credit enhancement document being replaced.

## ARTICLE XIV

### DEFAULTS AND REMEDIES

Section 14.1. Events of Default. The term "Event of Default" means the occurrence of any of the following events:

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(a) if Borrower fails to pay any amount due, as and when required, under any Loan Document and the failure continues for a period of 5 days;

(b) if Borrower makes a general assignment for the benefit of creditors or generally is not paying, or is unable to pay, or admits in writing its inability to pay, its debts as they become due; or if Borrower or any other party commences any Proceeding (A) relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, in each instance with respect to Borrower; (B) seeking to have an order for relief entered with respect to Borrower; (C) seeking attachment, distraint or execution of a judgment with respect to Borrower; (D) seeking to adjudicate Borrower as bankrupt or insolvent; (E) seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to Borrower or Borrower's debts; or (F) seeking appointment of a Receiver, trustee, custodian, conservator or other similar official for Borrower or for all or any substantial part of Borrower's assets, provided that if the Proceeding is commenced by a party other than Borrower or any of Borrower's general partners or members, Borrower will have 120 days to have the Proceeding dismissed or discharged before an Event of Default occurs;

(c) if Borrower is in default beyond any applicable grace and cure period under any other mortgage, deed of trust, deed to secure debt or other security agreement encumbering the Property whether junior or senior to the lien of this Mortgage;

(d) if a Transfer occurs except in accordance with the provisions of this Mortgage;

(e) if Borrower abandons the Property or ceases to operate the Property with the intent to abandon;

(f) if there is a default under the provisions of this Mortgage entitled, "**Compliance with Anti-Terrorism Laws;**" and

(g) if there is a default in the performance of any other provision of any Loan Document or if there is any inaccuracy or falsehood in any representation or warranty contained in any Loan Document as of the date made, which in either case is not remedied within 30 days after Borrower receives notice thereof, provided that if the default, inaccuracy or falsehood is of a nature that it cannot be cured within the 30-day period and during that period Borrower commences to cure, and thereafter diligently continues to cure, the default, inaccuracy or falsehood, then the 30-day period will be extended for a reasonable period not to exceed 120 days after the notice to Borrower.

## Section 14.2. Remedies.

(a) If an Event of Default occurs, Lender may take any of the following actions (the "**Remedies**") without notice to Borrower:

(i) declare all or any portion of the Debt immediately due and payable ("**Acceleration**");

(ii) pay or perform any Obligation;

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(iii) institute a Proceeding for the specific performance of any Obligation;

(iv) apply for and obtain the appointment of a Receiver to be vested with the fullest powers permitted by Law, without bond being required, which appointment may be made ex parte, as a matter of right and without regard to the value of the Property, the amount of the Debt or the solvency of Borrower or any other person liable for the payment or performance of any portion of the Obligations;

(v) directly, by its agents or representatives or through a Receiver appointed by a court of competent jurisdiction, enter on the Land and Improvements, take possession of the Property, dispossess Borrower and exercise Borrower's rights with respect to the Property, either in Borrower's name or otherwise;

(vi) institute a Proceeding for the foreclosure of this Mortgage for all or any Property, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;

(vii) exercise any and all rights and remedies granted to a secured party under the Uniform Commercial Code, and

(viii) pursue any other right or remedy available to Lender at law, in equity or otherwise.

(b) During the continuation of an Event of Default, the license granted to Borrower in the Loan Documents to collect Rents will terminate automatically without any action required of Lender. To the extent permitted under applicable law, and pursuant to the provisions of 765 ILCS 5/31.5, the mere recordation of the Assignment entitles Lender immediately to collect and receive Rents upon the occurrence and during the continuance of an Event of Default, as defined in Section 14.1, without first taking any acts of enforcement under applicable law, including providing notice to Borrower, filing foreclosure proceedings, or seeking the appointment of a receiver. To the extent permitted under applicable law, and pursuant to the provisions of 765 ILCS 5/31.5, Lender's right to the Rents does not depend on whether or not Lender takes possession as permitted under Section 14.7(a)(iv), therefore, in Lender's sole discretion, Lender may choose to collect Rents either with or without taking possession of the Property.

## Section 14.3. General Provisions Pertaining to Remedies.

(a) The Remedies are cumulative and may be pursued by Lender concurrently or otherwise, at such time and in such order as Lender may determine in its sole discretion and without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower.

(b) The enumeration in the Loan Documents of specific rights or powers will not be construed to limit any general rights or powers or impair Lender's rights with respect to the Remedies.

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(c) If Lender exercises any of the Remedies, Lender will not be deemed a mortgagee-in-possession unless Lender has elected affirmatively to be a mortgagee-in-possession.

(d) Lender will not be liable for any act or omission of Lender in connection with the exercise of the Remedies, except and only to the extent of Lender's negligence.

(e) Lender's right to exercise any Remedy will not be impaired by any delay in exercising or failure to exercise the Remedy and the delay or failure will not be construed as extending any cure period or constitute a waiver of the default or Event of Default.

(f) If an Event of Default occurs, Lender's payment or performance or acceptance of payment or performance will not be deemed a waiver or cure of the Event of Default.

(g) Lender's acceptance of partial payment or receipt of Rents will not extend or affect any grace period or constitute a waiver of a default or Event of Default or constitute a rescission of Acceleration, but will be credited against the Debt.

Section 14.4. [Intentionally Deleted].

Section 14.5. General Provisions Pertaining to Receiver and other Remedies.

(a) If an Event of Default occurs, any court of competent jurisdiction will, upon application by Lender, appoint a Receiver as designated in the application and issue an injunction prohibiting Borrower from interfering with the Receiver, collecting Rents, disposing of any Rents or any part of the Property, committing waste or doing any other act that will tend to affect the preservation of the Leases, the Rents and the Property and Borrower approves the appointment of the designated Receiver or any other Receiver appointed by the court. Borrower agrees that the appointment may be made *ex parte* and as a matter of right to Lender, either before or after sale of the Property, without further notice, and without regard to the solvency or insolvency, at the time of application for the Receiver, of the person or persons, if any, liable for the payment of any portion of the Debt and the performance of any portion of the Obligations and without regard to the value of the Property or whether the Property is occupied as a homestead and without bond being required of the applicant.

(b) The Receiver will be vested with the fullest powers permitted by Law including all powers necessary or usual in similar cases for the protection, possession and operation of the Property and all the powers and duties of Lender as a mortgagee-in-possession as provided in this Mortgage and may continue to exercise all the usual powers and duties until the Receiver is discharged by the court. The powers of a Receiver listed in 735 ILCS 5/15-1704 shall be added to all the powers of the Receiver listed in this Mortgage subject to any express limitations on such powers in this Mortgage.

(c) In addition to the Remedies and all other available rights, Lender or the Receiver may take any of the following actions:

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(i) take exclusive possession, custody and control of the Property and manage the Property so as to prevent waste;

(ii) require Borrower to deliver to Lender or the Receiver all keys, security deposits, operating accounts, prepaid Rents, past due Rents, the Books and Records and all original counterparts of the Leases and the Property Documents;

(iii) collect, sue for and give receipts for the Rents and, after paying all expenses of collection, including reasonable receiver's, broker's and attorney's fees, apply the net collections to any portion of the Debt selected by Lender in its sole discretion;

(iv) enter into, modify, extend, enforce, terminate, renew or accept surrender of Leases and evict tenants except that in the case of a Receiver, such actions may be taken only with the written consent of Lender as provided in this Mortgage and in the Assignment;

(v) enter into, modify, extend, enforce, terminate or renew Property Documents except that in the case of a Receiver, such actions may be taken only with the written consent of Lender as provided in this Mortgage and in the Assignment;

(vi) appear in and defend any Proceeding brought in connection with the Property and bring any Proceeding to protect the Property as well as Borrower's and Lender's respective interests in the Property (unless any such Proceeding has been assigned previously to Lender in the Assignment, or if so assigned, Lender has not expressly assigned such Proceeding to the Receiver and consented to such appearance or defense by Receiver); and

(vii) perform any act in the place of Borrower that Lender or the Receiver deems necessary (A) to preserve the value, marketability or rentability of the Property; (B) to increase the gross receipts from the Property; or (C) otherwise to protect Borrower's and Lender's respective interests in the Property.

(d) Borrower appoints Lender as Borrower's attorney-in-fact, at Lender's election, to perform any actions and to execute and record any instruments necessary to effectuate the actions described in this Section, in each instance only at Lender's election and only to the extent Borrower has failed to comply with the provisions of this Section.

Section 14.6. General Provisions Pertaining to Foreclosures. The following provisions will apply to any Proceeding to foreclose pursuant to a judgment of foreclosure and sale:

(a) Lender's right to institute a Proceeding to foreclose will not be exhausted by a Proceeding or a sale that is defective or not completed or by conducting separate sales of portions of the Property;

(b) any sale may be postponed or adjourned by Lender by public announcement at the time and place appointed for the sale without further notice;

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(c) with respect to sale pursuant to a judgment of foreclosure and sale, the Property may be sold as an entirety or in parcels, at one or more sales, at the time and place, on terms and in the order that Lender deems expedient in its sole discretion;

(d) if a portion of the Property is sold pursuant to this Article, the Loan Documents will remain in full force and effect with respect to any unpaid portion of the Debt and this Mortgage will continue as a valid and enforceable first lien on and security interest in the remaining portion of the Property, subject only to the Permitted Exceptions, without loss of priority and without impairment of any of Lender's rights and remedies with respect to the unpaid portion of the Debt;

(e) Lender may bid for and acquire the Property at a sale and, in lieu of paying cash, may credit the amount of Lender's bid against any portion of the Debt selected by Lender in its sole discretion after deducting from the amount of Lender's bid the expenses of the sale, costs of enforcement and other amounts that Lender is authorized to deduct at Law, in equity or otherwise; and

(f) Lender's receipt of the proceeds of a sale will be sufficient consideration for the portion of the Property sold and Lender will apply the proceeds as set forth in this Mortgage.

Section 14.7. Application of Proceeds. Lender may apply the proceeds of any sale of the Property pursuant to a judgment of foreclosure and sale and any other amounts collected by Lender in connection with the exercise of the Remedies to payment of the Debt in such priority and proportions as Lender may determine in its sole discretion or in such priority and proportions as required herein or required by Law.

Section 14.8. Power of Attorney. Borrower appoints Lender as Borrower's attorney-in-fact to perform any actions necessary and incidental to exercising the Remedies after an Event of Default.

Section 14.9. Tenant at Sufferance. If Lender or a Receiver enters the Property in the exercise of the Remedies and Borrower is allowed to remain in occupancy of the Property, Borrower will pay to Lender or the Receiver, as the case may be, in advance, a reasonable rent for the Property occupied by Borrower. If Borrower fails to pay the rent, Borrower may be dispossessed by the usual Proceedings available against defaulting tenants.

Section 14.10. Compliance with Illinois Mortgage Foreclosure Law.

(a) If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1110, et seq. (the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

(b) Without in any way limiting any of Lender's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, Lender shall also have all rights, remedies, powers and authorities permitted to the

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holder of a mortgage under the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Lender any rights, remedies, powers or authorities upon default of Borrower which are more limited than what would be vested in Lender under the Act in the absence of said provision, Lender shall have what would be vested under the Act.

(c) Without limitation, all expenses (including attorneys' fees and expenses) incurred by Lender, to the extent reimbursable under 735 ILCS 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any judgment of foreclosure, shall be added to the indebtedness secured by this Mortgage and included in the judgment of foreclosure.

## ARTICLE XV

### LIMITATION OF LIABILITY

#### Section 15.1 Limitation of Liability.

(a) Notwithstanding any provision in the Loan Documents to the contrary, except as set forth in subsections (b) and (c), if Lender seeks to enforce the collection of the Debt, Lender will foreclose this Mortgage instead of instituting suit on the Note. If a lesser sum is realized from a foreclosure of this Mortgage and sale of the Property than the then outstanding Debt, Lender will not institute any Proceeding against Borrower, the Subsidiaries (as defined in the Loan Agreement), the general partners, if any, of either of them (individually, a "**Borrower Party**" and collectively, the "**Borrower Parties**") for or on account of the deficiency, except as set forth in subsections (b) and (c).

(b) The limitation of liability in subsection (a) will not affect or impair (i) the lien of this Mortgage or Lender's other rights and Remedies under the Loan Documents, including Lender's right as mortgagee or secured party to commence an action to foreclose any lien or security interest Lender has under the Loan Documents; (ii) the validity of the Loan Documents or the Obligations; (iii) Lender's rights under any Loan Document that are not expressly non-recourse; or (iv) Lender's right to present and collect on any letter of credit or other credit enhancement document held by Lender in connection with the Obligations.

(c) The following are excluded and excepted from the limitation of liability in subsection (a) and Lender may recover personally against Borrower and its general partners, if any, for the following:

(i) all losses suffered and liabilities and expenses incurred by Lender relating to any intentional and material fraud or misrepresentation or omission by a Borrower Party or any of Borrower Parties' partners, members, officers, directors, shareholders or principals in connection with (A) the performance of any of the conditions to Lender making the Loan; (B) any inducements to Lender to make the Loan; (C) the execution and delivery of the Loan Documents; (D) any certificates, representations or warranties given in connection with the Loan; or (E) Borrower Parties' performance of the Obligations;

(ii) all Rents derived from the Property after a default under the Loan Documents and initiation by Lender of the remedies provided in the Loan Documents and all moneys that, on the date such a default occurs, are on deposit in one or more accounts used by or

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on behalf of a Borrower Party relating to the operation of the Property, except to the extent properly applied to payment of Debt Service Payments, Impositions, Insurance Premiums and any reasonable and customary expenses incurred by Borrower in the operation, maintenance and leasing of the Property or delivered to Lender;

(iii) (A) the cost of remediation of any Material Environmental Contamination affecting the Property, (B) any diminution in the value of the Property arising from any Material Environmental Contamination affecting the Property to the extent that such diminution results in a shortfall on debt payment and (C) any other losses suffered and liabilities and expenses incurred by Lender relating to a default under the Article entitled "**Environmental**,"

(iv) all security deposits collected by a Borrower Party or any of Borrower Parties' predecessors and not refunded to Tenants in accordance with their respective Leases, applied in accordance with the Leases or Law or delivered to Lender, and all advance rents collected by Borrower or any of Borrower's predecessors and not applied in accordance with the Leases or delivered to Lender as applicable in item (ii) above;

(v) the replacement cost of any Fixtures or Personal Property removed from the Property after a default and during the continuation of a noticed non-monetary default;

(vi) all losses suffered and liabilities and expenses incurred by Lender relating to any acts or omissions by Borrower that constitute intentional waste on the Property;

(vii) all protective advances and other payments made by Lender pursuant to express provisions of the Loan Documents to protect Lender's security interest in the Property or to protect the assignment of the property described in and effected by the Assignment, but only to the extent that the Rents, less any amounts paid to Lender, would have been sufficient to permit a Borrower Party to make the payment and a Borrower Party failed to do so;

(viii) all mechanics' or materialmen's or similar liens relating to work performed on or materials delivered to the Property prior to Lender exercising its Remedies, but only to the extent Lender had advanced funds to pay for the work or materials;

(ix) all Proceeds that are not applied in accordance with this Mortgage or not paid to Lender as required under this Mortgage;

(x) all losses suffered and liabilities and expenses incurred by Lender relating to a Transfer that is not permitted under the Section entitled "**Permitted Transfers**" (except relating to a Transfer that is not permitted under Subsection 12.2(a)(iv));

(xi) all losses suffered and liabilities incurred by Lender relating to forfeiture of the Property to the Government in connection with Borrower's violation of Law, and all losses suffered and liabilities and expenses incurred by Lender relating to any default under any of the provisions in the Section of this Mortgage entitled, "**Compliance with Anti-Terrorism Laws**;" and

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(xii) all losses suffered and liabilities and expenses incurred by Lender relating to any default by Borrower under any of the provisions of this Mortgage relating to ERISA including the prohibition on any Transfer that results in a violation of ERISA.

(d) Nothing under subparagraph (a) above will be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code or under any other Law relating to bankruptcy or insolvency to file a claim for the full amount of the Debt or to require that all collateral will continue to secure all of the Obligations in accordance with the Loan Documents.

(e) The limitation of liability set forth in this Section 15.01 shall not apply and the Loan shall be fully recourse in the circumstances described in Section 12.4(c)(xi) of this Mortgage.

## ARTICLE XVI

### WAIVERS

**Section 16.1. WAIVER OF STATUTE OF LIMITATIONS. BORROWER WAIVES THE RIGHT TO CLAIM ANY STATUTE OF LIMITATIONS AS A DEFENSE TO BORROWER'S PAYMENT AND PERFORMANCE OF THE OBLIGATIONS.**

**Section 16.2. WAIVER OF NOTICE. BORROWER WAIVES THE RIGHT TO RECEIVE ANY NOTICE FROM LENDER WITH RESPECT TO THE LOAN DOCUMENTS EXCEPT FOR THOSE NOTICES THAT LENDER IS EXPRESSLY REQUIRED TO DELIVER PURSUANT TO THE LOAN DOCUMENTS OR REQUIRED BY LAW.**

**Section 16.3. WAIVER OF MARSHALLING AND OTHER MATTERS. BORROWER WAIVES THE BENEFIT OF ANY RIGHTS OF MARSHALLING OR ANY OTHER RIGHT TO DIRECT THE ORDER IN WHICH ANY OF THE PROPERTY WILL BE (i) SOLD; OR (ii) MADE AVAILABLE TO ANY ENTITY IF THE PROPERTY IS SOLD PURSUANT TO A JUDGMENT OF FORECLOSURE AND SALE. BORROWER ALSO WAIVES THE BENEFIT OF ANY LAWS RELATING TO APPRAISEMENT, VALUATION, STAY, EXTENSION, REINSTATEMENT, MORATORIUM, HOMESTEAD AND EXEMPTION RIGHTS OR A SALE IN INVERSE ORDER OF ALIENATION.**

**Section 16.4. WAIVER OF TRIAL BY JURY. BORROWER WAIVES TRIAL BY JURY IN ANY PROCEEDING BROUGHT BY, OR AGAINST, OR COUNTERCLAIM OR CROSS-COMPLAINT ASSERTED BY OR AGAINST, LENDER RELATING TO THE LOAN, THE PROPERTY DOCUMENTS OR THE LEASES.**

**Section 16.5. WAIVER OF COUNTERCLAIM. BORROWER WAIVES THE RIGHT TO ASSERT A COUNTERCLAIM OR CROSS-COMPLAINT, OTHER THAN COMPULSORY OR MANDATORY COUNTERCLAIMS OR CROSS-COMPLAINTS, IN ANY PROCEEDING LENDER BRINGS AGAINST BORROWER RELATING TO THE LOAN, INCLUDING ANY PROCEEDING TO ENFORCE REMEDIES.**

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**Section 16.6. WAIVER OF JUDICIAL NOTICE AND HEARING.** BORROWER WAIVES ANY RIGHT BORROWER MAY HAVE UNDER LAW TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THE LOAN DOCUMENTS TO LENDER AND BORROWER WAIVES THE RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN DOCUMENTS ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING.

**Section 16.7. WAIVER OF SUBROGATION.** BORROWER WAIVES ALL RIGHTS OF SUBROGATION TO LENDER'S RIGHTS OR CLAIMS RELATED TO OR AFFECTING THE PROPERTY OR ANY OTHER SECURITY FOR THE LOAN UNTIL THE LOAN IS PAID IN FULL AND ALL FUNDING OBLIGATIONS UNDER THE LOAN DOCUMENTS HAVE BEEN TERMINATED.

**Section 16.8. GENERAL WAIVER.** BORROWER ACKNOWLEDGES THAT (A) BORROWER IS A KNOWLEDGEABLE BORROWER OF COMMERCIAL FUNDS AND EXPERIENCED REAL ESTATE DEVELOPERS OR INVESTORS WHO UNDERSTAND FULLY THE EFFECT OF THE ABOVE PROVISIONS; (B) LENDER WOULD NOT MAKE THE LOAN WITHOUT THE PROVISIONS OF THIS ARTICLE; (C) THE LOAN IS A COMMERCIAL OR BUSINESS LOAN UNDER THE LAWS OF THE STATE OR COMMONWEALTH WHERE THE PROPERTY IS LOCATED NEGOTIATED BY LENDER AND BORROWER AND THEIR RESPECTIVE ATTORNEYS AT ARMS LENGTH AND THE LOAN IS SECURED BY A MORTGAGE ON REAL ESTATE UNDER 815 ILCS 205.4 (1); AND (D) ALL WAIVERS BY BORROWER IN THIS ARTICLE HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER BORROWER FIRST HAS BEEN INFORMED BY COUNSEL OF BORROWER'S OWN CHOOSING AS TO POSSIBLE ALTERNATIVE RIGHTS, AND HAVE BEEN MADE AS AN INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A KNOWN RIGHT AND PRIVILEGE. THE FOREGOING ACKNOWLEDGEMENT IS MADE WITH THE INTENT THAT LENDER AND ANY SUBSEQUENT HOLDER OF THE NOTE WILL RELY ON THE ACKNOWLEDGEMENT.

**Section 16.9. ILLINOIS STATUTORY WAIVERS.** BORROWER, ON BEHALF OF ITSELF AND ALL PERSONS NOW OR HEREAFTER INTERESTED IN THE PROPERTY, VOLUNTARILY AND KNOWINGLY HEREBY ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE EITHER AGRICULTURAL REAL ESTATE (AS DEFINED IN THE ACT), OR RESIDENTIAL REAL ESTATE (AS DEFINED IN THE ACT). BORROWER ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE ACT ANY AND ALL RIGHTS OF REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION



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PROVIDED FOR IN 735 ILCS 5/15-1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT, AND BORROWER WAIVES, TO THE EXTENT PERMITTED BY LAW, BORROWER'S STATUTORY RIGHT OF REINSTATEMENT AS EXPRESSED AT 735 ILCS 5/15-1602.

## ARTICLE XVII

### NOTICES

Section 17.1. Notices. All acceptances, approvals, consents, demands, notices, requests, waivers and other communications (the "Notices") required or permitted to be given under the Loan Documents must be in writing and (a) delivered personally by a process server providing a sworn declaration evidencing the date of service, the individual served, and the address where the service was made; (b) sent by certified mail, return receipt requested; or (c) delivered by nationally recognized overnight delivery service that provides evidence of the date of delivery, with all charges prepaid (for next morning delivery if sent by overnight delivery service), addressed to the appropriate party at its address listed below:

If to Lender:

Teachers Insurance and Annuity  
Association of America  
730 Third Avenue  
New York, New York 10017  
Attention: Managing Director  
Mortgage and Real Estate Division  
Region: West

Application #AAA-0326  
Mortgage M#000517800

with a courtesy  
copy to:

Teachers Insurance and  
Annuity Association of America  
730 Third Avenue  
New York, New York 10017  
Attention: Vice President and Chief Counsel  
Mortgage and Real Estate Law

Application #AAA-0326  
Mortgage M#000517800

If to Borrower:

Catellus Development Corporation  
201 Mission Street  
San Francisco, California 94105  
Attention: Michael D. Fisk

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with a courtesy  
copy to:

Orrick, Herrington & Sutcliffe LLP  
400 Sansome Street  
San Francisco, California 94111  
Attention: M.J. Pritchett, Esq.

Lender and Borrower each may change from time to time the address to which Notices must be sent, by notice given in accordance with the provisions of this Section. All Notices given in accordance with the provisions of this Section will be deemed to have been received on the earliest of (i) actual receipt; (ii) Borrower's rejection of delivery; or (iii) 3 Business Days after having been deposited in any mail depository regularly maintained by the United States postal service, if sent by certified mail, or 1 Business Day after having been deposited with a nationally recognized overnight delivery service, if sent by overnight delivery or on the date of personal service, if served by a process server.

Section 17.2. Change in Borrower's Name or Place of Business. Borrower will notify Lender in writing prior to any change in Borrower's legal name, place of business, and/or State of organization, including as a result of, or in connection with, any Transfer, including a Permitted Transfer.

## ARTICLE XVIII

### MISCELLANEOUS

Section 18.1. Applicable Law. This Mortgage is governed by and will be construed in accordance with the Laws of the state or commonwealth in which the Property is located without regard to conflict of law provisions, except to the extent that the Uniform Commercial Code requires otherwise.

Section 18.2. Usury Limitations. Borrower and Lender intend to comply with all Laws with respect to the charging and receiving of interest. Any amounts charged or received by Lender for the use or forbearance of the Principal to the extent permitted by Law, will be amortized and spread throughout the Term until payment in full so that the rate or amount of interest charged or received by Lender on account of the Principal does not exceed the Maximum Interest Rate. If any amount charged or received under the Loan Documents that is deemed to be interest is determined to be in excess of the amount permitted to be charged or received at the Maximum Interest Rate, the excess will be deemed to be a prepayment of Principal when paid, without premium, and any portion of the excess not capable of being so applied will be refunded to Borrower. If during the Term the Maximum Interest Rate, if any, is eliminated, then for purposes of the Loan, there will be no Maximum Interest Rate.

Section 18.3. Lender's Discretion. Wherever under the Loan Documents any matter is required to be satisfactory to Lender, Lender has the right to approve or determine any matter or Lender has an election, Lender's approval, determination or election will be made in Lender's reasonable discretion unless expressly provided to the contrary.

Section 18.4. Unenforceable Provisions. If any provision in the Loan Documents is found to be illegal or unenforceable or would operate to invalidate any of the Loan Documents,

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then the provision will be deemed expunged and the Loan Documents will be construed as though the provision was not contained in the Loan Documents and the remainder of the Loan Documents will remain in full force and effect.

Section 18.5. [Intentionally Deleted].

Section 18.6. Relationship Between Borrower and Lender; No Third Party Beneficiaries.

(a) Lender is not a partner of or joint venturer with Borrower or any other entity as a result of the Loan or Lender's rights under the Loan Documents; the relationship between Lender and Borrower is strictly that of creditor and debtor. Each Loan Document is an agreement between the parties to that Loan Document for the mutual benefit of the parties and no entities other than the parties to that Loan Document will be a third party beneficiary or will have any claim against Lender or Borrower by virtue of the Loan Document. As between Lender and Borrower, any actions taken by Lender under the Loan Documents will be taken for Lender's protection only, and Lender has not and will not be deemed to have assumed any responsibility to Borrower or to any other entity by virtue of Lender's actions.

(b) All conditions to Lender's performance of its obligations under the Loan Documents are imposed solely for the benefit of Lender. No entity other than Lender will have standing to require satisfaction of the conditions in accordance with their provisions or will be entitled to assume that Lender will refuse to perform its obligations in the absence of strict compliance with any of the conditions.

Section 18.7. Partial Reconveyances or Releases, Extensions, Waivers. Lender may: (i) permit the reconveyance of any part of the Property or release any entity obligated for the Obligations; (ii) extend the time for payment or performance of any of the Obligations or otherwise amend the provisions for payment or performance by agreement with any entity that is obligated for the Obligations or that has an interest in the Property; (iii) accept additional security for the payment and performance of the Obligations; and (iv) waive any entity's performance of an Obligation, release any entity or individual now or in the future liable for the performance of the Obligation or waive the exercise of any Remedy or option. Lender may exercise any of the foregoing rights without notice, without regard to the amount of any consideration given, without affecting the priority of the Loan Documents, without releasing any entity not specifically released from its obligations under the Loan Documents, without releasing any guarantor(s) or surety(ies) of the Obligations, without effecting a novation of the Loan Documents and, with respect to a waiver, without waiving future performance of the Obligation or exercise of the Remedy waived.

Section 18.8. Service of Process. Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, return receipt requested, to Borrower at its address from time to time as set forth in the Article entitled "Notices."

Section 18.9. Entire Agreement. Oral agreements or commitments between Borrower and Lender to lend money, to extend credit or to forbear from enforcing repayment of a debt, including promises to extend or renew the debt, are not enforceable. Any agreements between Borrower and Lender relating to the Loan are contained in the Loan Documents, which contain

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the complete and exclusive statement of the agreements between Borrower and Lender, except as Borrower and Lender may later agree in writing to amend the Loan Documents. The language of each Loan Document will be construed as a whole according to its fair meaning and will not be construed against the party by or for whom it was drafted.

Section 18.10. No Oral Amendment. The Loan Documents may not be amended, waived or terminated orally or by any act or omission made individually by Borrower or Lender but may be amended, waived or terminated only by a written document signed by the party against which enforcement of the amendment, waiver or termination is sought.

Section 18.11. Severability. The invalidity, illegality or unenforceability of any provision of any of the Loan Documents will not affect any other provisions of the Loan Documents, which will be construed as if the invalid, illegal or unenforceable provision never had been included.

Section 18.12. Covenants Run with the Land. Subject to the restrictions on transfer contained in the Article entitled "**TRANSFERS, LIENS AND ENCUMBRANCES**," all of the covenants of this Mortgage and the Assignment run with the Land, will bind all parties hereto and all tenants and subtenants of the Land or the Improvements and their respective heirs, executors, administrators, successors and assigns, and all occupants and subsequent owners of the Property, and will inure to the benefit of Lender and all subsequent holders of the Note and this Mortgage.

Section 18.13. Time of the Essence. Time is of the essence with respect to Borrower's payment and performance of the Obligations.

Section 18.14. Subrogation. If the Principal or any other amount advanced by Lender is used directly or indirectly to pay off, discharge or satisfy all or any part of an encumbrance affecting the Property, then Lender is subrogated to the encumbrance and to any security held by the holder of the encumbrance, all of which will continue in full force and effect in favor of Lender as additional security for the Obligations.

Section 18.15. Joint and Several Liability. If Borrower consists of more than one person or entity, the obligations and liabilities of each such person or entity under this Mortgage are joint and several.

Section 18.16. Successors and Assigns. The Loan Documents bind the parties to the Loan Documents and their respective successors, assigns, heirs, administrators, executors, agents and representatives and inure to the benefit of Lender and its successors, assigns, heirs, administrators, executors, agents and representatives.

Section 18.17. Duplicates and Counterparts. Duplicate counterparts of any of the Loan Documents, other than the Note, may be executed and together will constitute a single original document.

Section 18.18. Lost or Destroyed Note. If the Note is lost, mutilated, destroyed or stolen, Borrower will deliver to Lender a new, substitute note containing the same provisions as the

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Note, provided that Borrower is furnished with reasonably satisfactory evidence of the loss, mutilation, destruction or theft of the Note.

Section 18.19. Future Advances. This Mortgage is granted to secure future advances made by Lender to Borrower. Lender hereby binds itself to make advances subject to and in accordance with the terms of the Note and this Mortgage, and the parties acknowledge and agree that all future advances shall be a lien from the time this Mortgage is recorded, as provided in 735 ILCS 5/15-1302(b)(1).

Section 18.20. Subordination of Management Agreement. Any property management agreement for or relating to all or any part of the Premises, whether now or hereafter entered into hereafter by Mortgagor or any agent of the Premises, whether now or hereafter entered into hereafter by Mortgagor or any agent of the Premises, shall contain a subordination provision whereby the property manager shall contain a lien to the lien of this Mortgage and the Loan Documents any and all mechanics' lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law (including, without limitation, 770 ILCS 60/0.01). Such property management agreement or a short form thereof including such subordination shall, at Mortgagee's request, be recorded with the Office of the Recorder of Deeds for the county in which the Premises are located. Mortgagor's failure to cause any of the foregoing to occur shall constitute a default under Section 14.1(vii) of this Mortgage.

IN WITNESS WHEREOF, Borrower has executed and delivered this Mortgage as of the date first set forth above.

CATELLUS DEVELOPMENT CORPORATION,  
a Delaware corporation

By: Catellus Commercial Development  
Corporation, a Delaware corporation, its agent

By: 

Michael D. Fisk,  
Vice President, Finance

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## Exhibit A

### LEGAL DESCRIPTION

Real property in the City of Glenview, County of Cook, State of Illinois, with an address of 2700 Patriot Boulevard, described as follows:

See Attached

Real Estate Tax No.04-22-101-039

Property of Cook County Clerk's Office

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## Parcel 1

Lot 1 of Prairie Glen Corporate Campus, Phase 1, Unit 1, a resubdivision of a portion of Lot 4 in Glenview Naval Air Station Subdivision No. 2, being a subdivision of part of Sections 15, 21, 22, 23, 26, 27, 28 and 34, Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

## Parcel 2:

Easement for the benefit of Parcel 1 for ingress and egress over the North 40 Feet of Lot 2 of Prairie Glen Corporate Campus, Phase 1, Unit 1, a resubdivision of a portion of Lot 4 in Glenview Naval Air Station Subdivision No. 2, being a subdivision of part of Sections 15, 21, 22, 23, 26, 27, 28 and 34, Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois, as created by said resubdivision recorded as Document Number 0010389642.

PROPERTY OF COOK COUNTY CLERK'S OFFICE

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Property of Cook County Clerk's Office

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## Exhibit B

### DEFINITIONS

“Acceleration” is defined in Section 14.2(a)(i).

“Accumulations” is defined in Section 2.1(vii).

“Accumulations Depository” is defined in Section 6.2(a).

“Allocated Loan Proceeds” is defined in the Loan Agreement.

“Annual Financial Statement” is defined in Section 10.1(a).

“Assessments” is defined as all assessments now or hereafter levied, assessed or imposed against the Property.

“Assignment” is defined as the Assignment of Leases and Rents dated of even date with this Mortgage made by Borrower for the benefit of Lender.

“Bankruptcy Code” means Title 11 of the United States Code.

“Borrower” is defined in the introductory paragraph.

“Borrower Party” is defined in Section 15.1.

“Borrower Parties” is defined in Section 15.1.

“Business Days” is defined as any day on which commercial banks are not authorized or required by Law to close in New York, New York.

“Casualty” is defined as damage to or destruction of the Property by fire or other casualty.

“Code” is defined as the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

“Condemnation” is defined as the permanent or temporary taking of all or any portion of the Property, or any interest therein or right accruing thereto, by the exercise of the right of eminent domain (including any transfer in lieu of or in anticipation of the exercise of the right), inverse condemnation or any similar injury or damage to or decrease in the value of the Property, including severance and change in the grade of any streets.

“Condemnation Awards” is defined in Section 2.1(viii).

“Condemnation Proceeding” is defined as a Proceeding that could result in a Condemnation.

“CDC” is defined in Section 7.4(a).

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“**CPA**” is defined as an independent certified public accountant satisfactory to Lender.

“**Debt**” is defined in Section 3.1.

“**Debt Service Coverage Ratio**” is defined in the Loan Agreement.

“**Debt Service Payments**” is defined as the monthly installments of principal and interest payable by Borrower to Lender as set forth in the Note.

“**Default Interest Rate**” is defined as the lower of 10.05% per annum or the Maximum Interest Rate, if any.

“**Destruction Event**” is defined in Section 7.4.

“**Environmental Activity**” is defined as any actual abatement, cleanup, disposal, generation, handling, manufacture, possession, release, remediation, removal, storage, transportation, treatment or use of any Hazardous Substances.

“**Environmental Indemnity Agreement**” is defined as that certain Environmental Indemnity Agreement, dated March 28, 2002, executed and delivered by Borrower in favor of Lender in conjunction with this Mortgage with respect to the Property.

“**Environmental Laws**” is defined as all Laws pertaining to health, safety, protection of the environment, natural resources, conservation, wildlife, waste management, Environmental Activities and pollution.

“**Environmental Report**” is defined as those certain Phase I/Compliance report(s) dated February 21, 2002, by Property Solutions.

“**ERISA**” is defined in Section 8.3(a).

“**Event of Default**” is defined in Section 14.1.

“**Executive Order No. 13224**” is defined as the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, relating to “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism.”

“**Expenses**” is defined in Section 11.1(a).

“**First Disbursement**” is defined in the Loan Agreement.

“**Fiscal Year**” is defined as any calendar year or partial calendar year during the Term.

“**Fixed Interest Rate**” is defined as 7.05% per annum.

“**Fixtures and Personal Property**” is defined in Section 2.1(iv).

“**Government**” is defined as any federal, state or municipal governmental or quasi-governmental authority including executive, legislative or judicial branch, division and any

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subdivision or agency of any of them and any entity to which any of them has delegated authority.

**"Hazardous Substances"** is defined as (i) any by product, chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws, as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity", (ii) any petroleum, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources, and (iii) any underground storage tanks.

**"Imposition Penalty Date"** is defined in Section 6.1(a).

**"Impositions"** is defined as all Taxes, Assessments, ground rent, if any, water and sewer rents, fees and charges, levies, permit, inspection and license fees and other dues, charges or impositions, including all charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, maintenance and similar charges and charges for utility services, in each instance whether now or in the future, directly or indirectly, levied, assessed or imposed on the Property or Borrower and whether levied, assessed or imposed as excise, privilege or property taxes.

**"Improvements"** is defined in Section 2.1(ii).

**"Insurance Premiums"** is defined as all present and future premiums and other charges due and payable on policies of fire, rental value and other insurance covering the Property and required pursuant to the provisions of this Mortgage.

**"Insurance Proceeds"** is defined in Section 2.1(iv).

**"Insurers"** is defined in Section 7.1(c).

**"Interest"** is defined as the amount of fixed interest payable under the Note at the Fixed Interest Rate and any other sums which could be deemed to be interest under Law.

**"Land"** is defined in the Recitals.

**"Late Charge"** is defined in the Note.

**"Law"** is defined as all present and future codes, constitutions, cases, opinions, rules, manuals, regulations, determinations, laws, orders, ordinances, requirements and statutes, as amended, of any Government that affect or that may be interpreted to affect the Property, Borrower or the Loan, including amendments and all guidance documents and publications promulgated thereunder.

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“**Leases**” is defined as all present and future leases, subleases, licenses and other agreements for the use and occupancy of the Land and Improvements, any related guarantees and including any use and occupancy arrangements created pursuant to Section 365(h) of the Bankruptcy Code or otherwise in connection with the commencement or continuation of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar Proceedings, or any assignment for the benefit of creditors, in respect of any tenant or other occupant of the Land and Improvements.

“**Lender**” is defined in the introductory paragraph.

“**Letter of Credit Agreement**” is defined in the Loan Agreement.

“**Loan**” is defined in the Recitals.

“**Loan Agreement**” is defined as the Loan Agreement dated March 28, 2002, made by Borrower and Lender.

“**Loan Documents**” is defined as the Note, the Loan Agreement, this Mortgage, the Mortgages (as defined in the Loan Agreement, except this Mortgage), the Assignments (as defined in the Loan Agreement), the UCC-1 Financing Statements, the Tax Escrow Agreement, the Letter of Credit Agreement, if any the Cash Deposit Pledge and Security Agreement, and all documents now or hereafter executed by Borrower or held by Lender relating to the Loan, including all amendments but excluding the Environmental Indemnity Agreement and any other indemnities or guaranties in connection with the Loan.

“**Material Environmental Contamination**” is defined as an Environmental Activity such that the failure to clean up, contain or remediate the Hazardous Substances related to such Environmental Activity is more likely than not to constitute a violation of one or more Environmental Laws, including any violation which may exist whether or not any court or governmental authority has ordered the clean up, containment or remediation of the Hazardous Substances.

“**Maturity Date**” is defined in the Recitals.

“**Maximum Interest Rate**” is defined as the maximum rate of interest, if any, permitted by Law to be charged with respect to the Loan as the maximum rate may be increased or decreased from time to time.

“**Mortgage**” is defined as this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing Statement.

“**Note**” is defined in the Recitals.

“**Note Payments**” is defined in the Note.

“**Notices**” is defined in Section 17.1.

“**Obligations**” is defined in Section 3.1.

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**“Permitted Exceptions”** is defined as taxes not yet due and payable, permitted mechanics’ and materialmen’s liens being contested in accordance with the terms hereof, and other permitted matters shown in Schedule B, Part 1 and 2 of the title insurance policy insuring the lien of this Mortgage.

**“Permitted Transfers”** is defined in Section 12.2(b).

**“Permitted Use”** is defined as general office and uses incidentally and directly related to such use.

**“Policies”** is defined in Section 7.1(b).

**“Prepayment Premium”** is defined in the Note.

**“Principal”** is defined in the Recitals.

**“Proceeding”** is defined as a pending or threatened action, claim or litigation before a legal, equitable or administrative tribunal having proper jurisdiction.

**“Proceeds”** is defined in Section 7.2(c).

**“Property”** is defined in Section 2.1.

**“Property Documents”** is defined in Section 2.1(v).

**“Receiver”** is defined as a receiver, custodian, trustee, liquidator or conservator of the Property.

**“REIT”** is defined in Section 12.2(b)(ii).

**“Remedies”** is defined in Section 14.2(a).

**“Rents”** is defined as all present and future rents, prepaid rents, percentage, participation or contingent rents, issues, profits, proceeds, parking fees, revenues and other consideration accruing under or in connection with the Leases or otherwise derived from the use and occupancy of the Land or the Improvements, including tenant contributions to expenses, security deposits, royalties and contingent rent, if any, all other fees, accounts, accounts receivable or payments paid to or for the benefit of Borrower, including liquidated damages after a default under a lease, any termination, cancellation, modification or other fee or premium payable by tenant after cancellation of a lease and the proceeds of any rental insurance, and any payments received pursuant to Sections 502(b) or 365 of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or other occupant of the Land or the Improvements and all claims as a creditor in connection with any of the foregoing.

**“Restoration”** is defined as the restoration of the Property after a Destruction Event as nearly as possible to its condition immediately prior to the Destruction Event, in accordance with the plans and specifications, in a first-class workmanlike manner using materials substantially

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equivalent in quality and character to those used for the original improvements, in accordance with Law and free and clear of all liens, encumbrances or other charges other than this Mortgage and the Permitted Exceptions. In the case of a condemnation, restoration shall also include the acquisition of facilities if necessary to restore the Property to its functional equivalent prior to the Destruction Event.

**“Restoration Funds”** is defined in Section 7.5(b).

**“Subordinate Lender”** is defined in Section 12.4.

**“Subordinate Loan”** is defined in Section 12.4.

**“Subordinate Loan Documents”** is defined in Section 12.4(b).

**“Subsequent Disbursements”** is defined in the Loan Agreement.

**“Tax Escrow Agreement”** is defined as the Real Estate Tax Pledge and Security Agreement dated March 28, 2002, made by and among Borrower, Lender and Northmarq Capital, Inc., a Minnesota corporation.

**“Taxes”** is defined as all present and future real estate taxes and/or personal property taxes, if any, levied, assessed or imposed against the Property.

**“Term”** is defined as the scheduled term of this Mortgage commencing on the date Lender makes the first disbursement of the Loan and terminating on the Maturity Date.

**“Transfer”** is defined in Section 12.1(a).

**“Uniform Commercial Code”** is defined as the Uniform Commercial Code as in effect from time to time in the jurisdiction where the Land is located or, to the extent required by the Uniform Commercial Code, where the Borrower is located, as applicable.

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## Exhibit C

### RULES OF CONSTRUCTION

(a) References in any Loan Document to numbered Articles or Sections are references to the Articles and Sections of that Loan Document. References in any Loan Document to lettered Exhibits are references to the Exhibits attached to that Loan Document, all of which are incorporated in and constitute a part of that Loan Document. Article, Section and Exhibit captions used in any Loan Document are for reference only and do not describe or limit the substance, scope or intent of that Loan Document or the individual Articles, Sections or Exhibits of that Loan Document.

(b) The terms "include", "including" and similar terms are construed as if followed by the phrase "without limitation."

(c) The terms "Land", "Improvements", "Fixtures and Personal Property", "Condemnation Awards", "Insurance Proceeds" and "Property" are construed as if followed by the phrase "or any part thereof."

(d) Any agreement by or duty imposed on Borrower in any Loan Document to perform any obligation or to refrain from any act or omission constitutes a covenant running with the ownership or occupancy of the Land and the Improvements, which will bind all parties hereto and their respective successors and assigns, and all lessees, subtenants and assigns of same, and all occupants and subsequent owners of the Property, and will inure to the benefit of Lender and all subsequent holders of the Note and this Mortgage and includes a covenant by Borrower to cause its partners, members, principals, agents, representatives and employees to perform the obligation or to refrain from the act or omission in accordance with the Loan Documents. Any statement or disclosure contained in any Loan Document about facts or circumstances relating to the Property, Borrower or the Loan constitutes a representation and warranty by Borrower made as of the date of the Loan Document in which the statement or disclosure is contained.

(e) The term "to Borrower's knowledge" is construed as meaning to the best of the knowledge of Michael D. Fisk, Monica Lim, Michael Bradish, Jeffrey Smoot, Jennifer Bregman and Jenny Crane, which Borrower represents are all the persons in Borrower's organization with management responsibility which have knowledge of the Property.

(f) The singular of any word includes the plural and the plural includes the singular. The use of any gender includes all genders.

(g) The terms "person," "party" and "entity" include natural persons, firms, partnerships, limited liability companies and partnerships, corporations and any other public or private legal entity.

(h) The term "provisions" includes terms, covenants, conditions, agreements and requirements.

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(i) The term "amend" includes modify, supplement, renew, extend, replace or substitute and the term "amendment" includes modification, supplement, renewal, extension, replacement and substitution.

(j) Reference to any specific Law or to any document or agreement, including the Note, this Mortgage, any of the other Loan Documents, the Leases and the Property Documents includes any future amendments to the Law, document or agreement, as the case may be.

(k) No inference in favor of or against a party with respect to any provision in any Loan Document may be drawn from the fact that the party drafted the Loan Document.

(l) The term "certificate" means the sworn, notarized statement of the entity giving the certificate, made by a duly authorized person satisfactory to Lender affirming the truth and accuracy of every statement in the certificate. Any document that is "certified" means the document has been appended to a certificate of the entity certifying the document that affirms the truth and accuracy of everything in the document being certified. In all instances the entity issuing a certificate must be satisfactory to Lender.

(m) Any appointment of Lender as Borrower's attorney-in-fact is irrevocable and coupled with an interest. Lender may appoint a substitute attorney-in-fact. Borrower ratifies all actions taken by the attorney-in-fact but, nevertheless, if Lender requests, Borrower will specifically ratify any action taken by the attorney-in-fact by executing and delivering to the attorney-in-fact or to any entity designated by the attorney-in-fact all documents necessary to effect the ratification.

(n) Any document, instrument or agreement to be delivered by Borrower will be in form and content satisfactory to Lender.

(o) All obligations, rights, remedies and waivers contained in the Loan Documents will be construed as being limited only to the extent required to be enforceable under the Law.

(p) The unmodified word "days" means calendar days.

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## Exhibit D

PROPERTY DOCUMENTS

None

Property of Cook County Clerk's Office

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