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Cook County Recorder 162.00



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After recording return to:
Gardner Carton & Douglas
191 N. Wacker, Suite 3700
Chicago, Illinois 60606
Attention: Valerie Haugh

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FINANCING STATEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is given as of March 3, 2003 by 1101 PERIMETER, L.L.C., a Delaware limited liability company which has a mailing address of c/o Hamilton Partners, Inc., 300 Park Boulevard, Suite 270, Itasca, Illinois 60143 ("Borrower"), to ASSOCIATED BANK, NATIONAL ASSOCIATION, a National Banking Association which has an office at 401 E. Kilbourn Avenue, Suite 350, Milwaukee, Wisconsin 53202 ("Lender").

RECITALS

- A. Borrower has executed and delivered to Lender a Mortgage Note dated the date of this Mortgage which is made payable to the order of Lender in the stated principal amount of \$7,052,500.00 and which bears interest until paid (the "Acquisition Note") and a Mortgage Note dated the date of this Mortgage which is made payable to the order of Lender in the stated principal amount of \$2,500,000.00 and which bears interest until paid (the "TI Note" and together with the Acquisition Notes, collectively, the "Notes").
- B. Lender has agreed to make one or more loans to Borrower in the principal amount of the Notes (the "Loan").
- C. Borrower owns the real property described on the attached Exhibit A (the "Premises").
- D. The loan for which the Notes provide evidence, and which is secured by this Mortgage, is a business loan transacted solely for the purpose of carrying on or acquiring the business of Borrower or, if Borrower is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of Borrower.
- E. THE PREMISES ARE NON-HOMESTEAD PROPERTY.
- F. THIS MORTGAGE SECURES OBLIGATIONS INCURRED FOR THE CONSTRUCTION OF IMPROVEMENTS ON LAND.

NOW, THEREFORE, in consideration for the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which Borrower acknowledges:

1. **GRANT OF MORTGAGE.** Borrower gives, grants, bargains, sells, conveys, mortgages, warrants, pledges and confirms to Lender, to secure all of the Obligations, as defined below, all of Borrower's estate, right, title and interest in and to the following (collectively, the "Property"): (a) the Premises; (b) all privileges, hereditaments, appurtenances, rents, leases, issues and profits from and to the Premises; (c) all existing and future buildings, improvements, personal property, fixtures and equipment located at or on the Premises, including the Collateral, as defined below; (d) all Leases and Contracts (as hereinafter defined); and (e) all awards and payments to which Borrower is entitled at any time from insurance or the exercise of the right of eminent domain in connection with the Premises or the Collateral.

2. **SECURITY AGREEMENT.** This Mortgage constitutes a security agreement as defined in the Uniform Commercial Code (the "Code"). Borrower grants to Lender a security interest, as defined in the Code, in the property described on Exhibit C, and all replacements and substitutions for, additions and accessions to, and proceeds from such property (collectively, the "Collateral"). At Lender's sole option, the Collateral shall be regarded as part of

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the Premises at all times, for all purposes and in all proceedings (both legal and equitable), irrespective of whether such item is physically attached to the Premises or any such item is referred to or reflected in a financing statement, and Lender may have the Collateral deemed part of the Premises upon any foreclosure of the Premises.

3. **FINANCING STATEMENT.** THIS MORTGAGE IS AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING for all of the Collateral that is, or that becomes, fixtures. The fixture filing shall be effective from the date of the filing of this Mortgage in the real estate records of the county in which the Premises are situated. Information concerning the security interest created by this instrument may be obtained from Lender, as secured party, as that term is used in the Code, at its address set forth in the first Section of this Mortgage. The address of Borrower, as debtor, as that term is used in the Code, is also set forth in the first Section of this Mortgage.

4. **ASSIGNMENT OF AND ENTITLEMENT TO RENTS AND LEASES.** Borrower grants, transfers and assigns to Lender, with right of reassignment, all of Borrower's rights, title and interest in, under and to any and all of the following: (a) all leases now or hereafter entered into, whether oral or written, which demise any portion of the Premises, together with any and all extensions and renewals of such Leases (collectively, the "Leases"); (b) all security deposits and guarantees of the obligations of the tenants under the Leases (individually a "Tenant" and collectively the "Tenants"); (c) the immediate and continuing right to collect and receive all rents, income, payments and profits arising out of all or any part of the Leases and the Premises (the "Rents"); (d) the right to all proceeds payable to Borrower pursuant to any purchase options on the part of any and all of the Tenants; and (e) all payments derived from any of the foregoing including, but not limited to, claims for and proceeds from (i) the recovery of damages done to the Premises or for the abatement of any nuisance existing on the Premises; (ii) damages resulting from any default under the Leases, whether resulting from acts of insolvency or acts of bankruptcy or otherwise; (iii) lump sum payments for the cancellation of any of the Leases or the waiver of any obligation or term of any of the Leases prior to any expiration date; and (iv) any insurance premiums or ad valorem tax payments made in advance and subsequently reimbursed. The assignment described in this Section (the "Rents Assignment") is made for the purpose of securing the Obligations, as defined below. The Rents Assignment shall constitute a perfect, absolute and present assignment, provided Borrower shall have the right to collect, but not more than one month in advance, all of the Rents and to retain, use and enjoy the Rents and to exercise all other rights (except as limited by this Assignment) and fulfill all other obligations under the Leases unless and until the occurrence of an Event of Default. Nothing contained in the Rents Assignment and no actions taken pursuant to the Rents Assignment including acts or omissions after an Event of Default, shall be construed as constituting Lender a "Mortgagee in Possession" or "in control" of Borrower.

5. **ASSIGNMENT OF OTHER CONTRACTS.** Borrower grants, transfers and assigns to Lender, with right of reassignment, all of Borrower's rights, title and interest in, under and to any and all of the following that now exist or that exist at any time prior to the final satisfaction of the Obligations, as defined below (collectively, the "Contracts"): (a) property management contracts for any or all of the Property, including without limitation the property management contract dated as of _____, 2003 that Borrower has entered into with IP 1101 Perimeter, L.L.C.; (b) contracts between Borrower and any architects and engineers pertaining to the design and construction of improvements to the Property including such contracts described in the construction loan agreement between Borrower and Lender dated as of the date of this Mortgage, and all plans, specifications, drawings and design documents, including all addenda, modifications, change orders and amendments; (c) all construction contracts, subcontracts and material supply contracts pertaining to the design and construction of improvements to the Property including such contracts described in the construction loan agreement between Borrower and Lender dated as of the date of this Mortgage, and (d) all leasing and other similar contracts with agents that relate to the rental or operations of the Property. The other parties to the Contracts, including without limitation any property manager, architect, engineer, contractor, subcontractor, material supplier, leasing agent or other agent, are collectively referred to in this Mortgage as the "Other Contract Parties." This assignment shall include all permits, licenses, approvals, certificates and consents issued prior to, on or after the date of this Mortgage by any governmental or private authority or agency which relate to the Premises, the construction of any improvements to the Property or the Contracts and all payments derived from any of the Contracts including, but not limited to, claims for and proceeds from (i) the recovery of damages done to the Premises or for the abatement of any nuisance existing on the Premises; (ii) damages resulting from any default under any of the Contracts, whether resulting from acts of insolvency or acts of bankruptcy or otherwise; (iii) lump sum payments for the cancellation of any of the Contracts or the waiver of any obligation or term of any of the Contracts prior to any expiration date; and (iv) rights under any payment or performance bonds assuring payment or performance of any of the Contracts. The assignment described in this Section (the "Contracts Assignment") is made for the purpose of securing the Obligations, as defined below. The Contracts Assignment shall constitute a perfect, absolute and present

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assignment, provided Borrower shall have the right to receive and exercise all of the rights, benefits and privileges under the Contracts so long as no Event of Default has occurred. Nothing contained in the Contracts Assignment and no actions taken pursuant to the Contracts Assignment, including acts or omissions after an Event of Default, shall be construed as constituting Lender a "Mortgage in Possession" or "in control" of Borrower.

6. **OBLIGATIONS.** Borrower grants this Mortgage to secure the Obligations, as further defined below, which include but are not limited to all of the following:

(a) **Notes.** Payment of the amounts described in the Notes as extended or modified from time to time.

(b) **Other Payments.** Payment of all other sums, together with interest, as they become due and payable to Lender under the "Loan Documents" which, for purposes of this Mortgage, include this Mortgage, the Notes that certain loan agreement entered into simultaneously herewith between Lender and Borrower ("Loan Agreement") and all other documents which, at any time, secure or provide evidence for Borrower's obligations under the Notes or this Mortgage or which are executed or submitted by an Obligor, as defined below, in connection with the Loan, including all extensions, modifications and renewals of such documents.

(c) **Other Obligations.** Performance and discharge of each and every of the Obligors' obligations, covenants and agreements described in the Loan Documents.

(d) **Costs of Collection.** All costs and expenses to collect and enforce any and all of the Obligations, including reasonable attorneys' fees and expenses.

7. **PRESENT AND FUTURE ADVANCES.** "Obligor," as used in this Mortgage, includes, without limitation, Borrower and all makers, co-makers, endorsers and guarantors of any of the Obligations; provided, however, that any reference to Obligor hereunder that includes the guarantors under that certain Continuing Guaranty shall be subject to the provisions of such Guaranty including without limitation Section 1 thereof. "Obligations," as used in this Mortgage, includes, without limitation, all of the debts, obligations and liabilities of whatever nature or amount, as extended, renewed, modified or amended from time to time, arising out of credit or other financial accommodations previously granted, contemporaneously granted or granted in the future by Lender to or at the request of any Obligor in connection with and/or relating to the Loan, and all covenants, conditions and agreements contained in the Loan Documents and in all other documents which provide evidence for, secure or relate to any of the foregoing and, to the extent not prohibited by law, costs and expenses to collect and enforce the Obligations, including reasonable attorneys' fees and costs. This Mortgage shall continue to be a lien on the Property, as defined below, while any Obligation remains unpaid, regardless of when any Obligation arises, until such time as this Mortgage is released or satisfied of record. Because this Mortgage secures all Obligations of all Obligors to Lender, this Mortgage may secure Obligations in a greater dollar amount than the amount set forth above (provided, however, that the maximum amount to be secured by this Mortgage shall not exceed three times the Loan plus the total amount of all advances made by Lender to protect the Collateral and the security interest and lien created hereby). The amount set forth above is not necessarily, at any time, the actual amount of the Obligations due to Lender and secured by this Mortgage.

8. **REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender that, as of the date of this Mortgage and at all times until Lender has been fully repaid, the following representations and warranties are and shall remain true and correct:

(a) **Title to the Property.** Borrower has clear and marketable title to the Property except only for liens and security interests in favor of Lender and the items described on the attached Exhibit B (collectively, the "Permitted Encumbrances").

(b) **Title to the Collateral.**

(i) Borrower is the true and lawful owner of the Collateral.

(ii) no lien, charge, security interest or encumbrance, other than the Permitted Encumbrances, affects or has attached to the Collateral.

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(iii) No financing statement, other than financing statements in favor of Lender and financing statements that are Permitted Encumbrances, which covers any of the Collateral, is on file in any public office.

(c) Environmental.

(i) Except as otherwise specifically set forth in any environmental reports delivered to Lender regarding the Property prior to the date hereof, to the best of Borrower's knowledge after due inquiry, no real or personal property that secures the Obligations, including the Property, has ever been used either by previous owners or occupants or by Borrower or any other current occupant to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Material other than Permitted Substances, as defined below, no Hazardous Material other than Permitted Substances currently exists on the Property and no Hazardous Material (including Permitted Substances) currently exists in the Property's soil or groundwater.

(ii) Except as otherwise specifically set forth in any environmental reports delivered to Lender regarding the Property prior to the date hereof, to the best of Borrower's knowledge after due inquiry, no portion of the improvements on any real property that secures the Obligations, including the improvements on the Property, has been constructed with asbestos, asbestos-containing materials or urea formaldehyde insulation, and no portion of the improvements on the Property has been constructed with any other chemical or substance, other than Permitted Substances, which has been determined to be a Hazardous Material and/or a hazard to health or the environment.

(iii) Except as otherwise specifically set forth in any environmental reports delivered to Lender regarding the Property prior to the date hereof, to the best of Borrower's knowledge after due inquiry, no real property that secures the Obligations, including the Property, has ever contained any underground storage tanks.

(iv) Except as otherwise specifically set forth in any environmental reports delivered to Lender regarding the Property prior to the date hereof, no Obligor has received or has any knowledge of any summons, citation, directive, letter or other communication, written or oral, from any federal, state or local governmental authority concerning [1] the existence of Hazardous Materials on or in the immediate vicinity of any real or personal property that secures the Obligations, including the Property, or [2] any intentional or unintentional action or omission on the part of Borrower, any Obligor or any occupant of the Property resulting in the disposal, releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Materials onto any real property that secures the Obligations, including the Property, or into waters or other lands.

"Permitted Substances" means products containing quantities of Hazardous Materials, which products are in a quantity and of a type customarily found in parking garages and/or office buildings and which products have and continue to be used, sold, handled, stored, transported and disposed of in compliance with all Environmental Laws.

(v) Except as otherwise specifically set forth in any environmental reports delivered to Lender regarding the Property prior to the date hereof, to the best of Borrower's knowledge after due inquiry, the Premises and Borrower have been and are currently in compliance with all Environmental Laws. All required governmental permits and licenses are in effect, and Borrower is in compliance therewith.

(vi) There have been to the best of Borrower's knowledge no past, and there are no pending or threatened, proceeding, lien, inquiry, action, lien or assertion of potential responsibility to which Borrower is a party or which relate to the Premises, any adjacent property or any off-site facility to which has been sent any Hazardous Material for off-site treatment, recycling, reclamation, reuse, handling, storage or disposal.

Borrower agrees that all of the representations and warranties set forth herein will be true at the closing of the Loan and shall survive the Loan, except as to matters which have been disclosed in writing to and approved by Lender. At Lender's request but subject to the foregoing sentence, Borrower shall reaffirm such representations and warranties in writing.

For purposes of this Mortgage, the term "Environmental Laws" means all federal, state and local statutes, laws, rules, regulations, ordinances, requirements, or rules of common law, including but not limited to those listed or referred to in paragraph (b) below, any judicial or administrative interpretations thereof, and any judicial and administrative consent decrees, orders or judgments, whether now existing or hereinafter promulgated, relating to public health and safety or protection of the environment. For purposes of this Mortgage, the term "Hazardous Material" means any

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above or underground storage tanks, flammables, explosives, accelerants, asbestos, radioactive materials, radon, urea formaldehyde foam insulation, lead-based paint, polychlorinated biphenyls, petroleum or petroleum based or related substances, hydrocarbons or like substances and their additives or constituents, methane, hazardous materials, hazardous wastes, toxic substances or related materials; including, without limitation, substances now or hereafter defined as "hazardous substances", "hazardous materials", "toxic substances", "solid waste", or "hazardous wastes" in The Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601, et seq.); The Toxic Substance Control Act of 1976 as amended, (15 U.S.C. §2601 et seq.); The Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901, et seq.); The Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801, et seq.); The Clean Water Act, as amended (33 U.S.C. §1251, et seq.); The Clean Air Act, as amended (42 U.S.C. §7401 et seq.); the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. and any so-called "Superfund" or "Superlien" law or any other applicable federal, state or local law, common law, code, rule, regulation, or ordinance, presently in effect or hereafter enacted, promulgated or implemented.

(d) Leases and Rents.

(i) Borrower has full right, power and authority to make the Rents Assignment, Borrower has obtained all necessary consents to the Rents Assignment and neither the Rents Assignment nor any exercise by Lender of its rights under the Rents Assignment constitutes a breach under any of the Leases.

(ii) Borrower is now the absolute owner of the lessor's rights under the Leases, with full right and title to assign the Leases and the Rents.

(iii) Borrower has not performed any act or executed any instrument which might prevent Lender from operating under any of the terms and conditions of the Rents Assignment, or which would limit Lender in such operation.

(iv) Except as specifically disclosed to Lender in writing, to Borrower's best knowledge after due inquiry the Leases are valid, are in full force and effect and, except as previously disclosed to and approved by Lender, have not been modified or amended.

(v) Borrower has not entered into any outstanding assignments or pledges of the Leases or the Rents.

(vi) Except as specifically disclosed to Lender in writing, to Borrower's best knowledge after due inquiry there are no existing defaults under the provisions of the Leases on the part of any party to the Leases, and there has been no act or omission that would constitute such a default on the giving of notice or the passage of time or both.

(vii) None of the Rents have been waived, anticipated, discounted, compromised or released, except as otherwise permitted in this Mortgage.

(viii) To Borrower's best knowledge after due inquiry, none of the Tenants has any defences, set-offs or counterclaims against Borrower.

(e) Contracts.

(i) Borrower has full right, power and authority to make the Contracts Assignment, Borrower has obtained all necessary consents to the Contracts Assignment and neither the Contracts Assignment nor any exercise by Lender of its rights under the Contracts Assignment constitutes a breach under any of the Contracts currently in effect (the "Current Contracts").

(ii) Borrower has provided true and correct copies of all of the Current Contracts to Lender.

(iii) Borrower has not performed any act or executed any instrument which might prevent Lender from operating under any of the terms and conditions of the Contracts Assignment, or which would limit Lender in such operation.

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(iv) Except as specifically disclosed to Lender in writing, to Borrower's best knowledge after due inquiry the Current Contracts are valid, are in full force and effect and, except as previously disclosed to and approved by Lender, have not been modified or amended.

(v) Borrower has not entered into any outstanding assignments or pledges of the Contracts.

(vi) Except as specifically disclosed to Lender in writing, to Borrower's best knowledge after due inquiry there are no existing defaults under the provisions of the Current Contracts on the part of any party to the Current Contracts, and there has been no act or omission that would constitute such a default on the giving of notice or the passage of time or both.

(vii) To Borrower's best knowledge after due inquiry, none of the Other Contract Parties has any defenses, set-offs, counterclaims against Borrower.

(viii) To Borrower's best knowledge after due inquiry, none of the Other Contract Parties has any claims for payments in connection with the Current Contracts except as described in the Current Contracts.

(f) Enforceability of Loan Documents.

(i) Each Obligor has the legal power and authority to execute, deliver and perform the Loan Documents each has signed.

(ii) The Loan Documents have been duly executed by all appropriate parties other than the Lender.

(iii) Each of the Loan Documents is a valid, binding and legally enforceable obligation in accordance with its terms of the Obligor signing it.

(iv) The execution, delivery and performance of the Loan Documents and the creation of liens in the Loan Documents do not require the consent or approval of any governmental body or other regulatory authority and do not violate or conflict with any law, rule, regulation, order, writ, judgment, decree, determination or award currently in effect by which an Obligor or an Obligor's property is bound or any agreement, indenture or undertaking to which an Obligor is a party or by which an Obligor or any Obligor's properties may be bound or affected.

(v) Borrower is not aware and/or has no knowledge that Lender has not acted in good faith in the negotiation of the Loan Documents.

(vi) There are no oral agreements or understandings, or written agreements or understandings that predate this Mortgage, by or between Lender and any Obligor, or any usage of trade or course of dealing among the parties that would, in any case, define, qualify or supplement the terms of any of the Loan Documents.

(g) Entity Matters. If an Obligor is an entity (business organization):

(i) It [1] is the form of entity described elsewhere in the Loan Documents including, if applicable, in the opening paragraph of this Mortgage; [2] is duly organized and existing under the laws of the state of its organization or incorporation; [3] is in good standing to do business in the State of Illinois if necessary for the conduct of its operations in the State of Illinois; [4] has not been administratively dissolved or filed articles of dissolution; [5] has not taken any action which would cause it to dissolve or failed to take any action if such failure would require its dissolution; [6] has the power, authority, rights and franchises to own property and to carry on its business as now conducted; and [7] is duly qualified and in good standing in each state in which the character of the properties owned by it, or the conduct of its business, makes such qualification necessary.

(ii) The execution, delivery and performance of the Loan Documents are duly authorized and do not violate or conflict with any term or provision of its organizational documents.

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(h) Other Agreements in Favor of Lender.

(i) All representations, warranties and certifications in the Loan Documents are true and correct in all material respects.

(ii) No Event of Default exists or would exist upon the giving of notice or the passage of time or both.

(iii) The representations made in Borrower's application for the Loan, including all supporting documents, were at the time given and remain true and correct in all material respects.

(i) Litigation. No litigation, arbitration or other proceeding is pending or, to Borrower's knowledge, threatened involving any Obligor or any Obligor's property or otherwise materially affecting any Obligor or any Obligor's property; no Obligor is the subject of any voluntary or involuntary bankruptcy, insolvency or receivership proceedings; no Obligor has made an assignment for the benefit of creditors; and no Obligor is in default under any order, writ, injunction or decree of any court or governmental regulatory authority.

(j) Other Delinquencies.

(i) No Obligor is or would be upon the giving of notice or the passage of time or both, in default of a material provision of any agreement, instrument, order, writ, judgment or decree to which an Obligor is a party or to which an Obligor or an Obligor's property is bound or affected.

(ii) No Borrower has delinquent income, payroll, sales, real estate or personal property taxes owing any governmental entity or agency, and each Obligor has timely filed all federal, state, and local tax returns. No tax liens or judgments exist which would result in a lien attaching to any of the Property.

(k) Changes. Since Borrower's application for the Loan, there has been no:

(i) Unremedied substantial adverse change in the financial or other condition of an Obligor, and Borrower has the ability to repay Borrower's obligations to Lender and Lender.

(ii) Change, if Borrower is an entity, in the ownership of Borrower (including the number or identity of its owners or their percentage of ownership), and Borrower's management (officers, directors and the like) or in the form of Borrower's business organization.

(iii) Material change in the operation of Borrower, including the type of business operated by Borrower.

(l) Zoning. The Property complies with all zoning and other governmental permit requirements and is zoned for the use to which Borrower intends to put it.

(m) Name. The name specified for Borrower in this Mortgage and each other of the Loan Documents is the complete and correct legal name of Borrower. If Borrower is one or more individuals, each name so specified for Borrower is the complete and correct name (other than one or more middle initials may have been substituted for one or more middle names) either specified on Borrower's birth certificate or given to Borrower at the time of any legal name change.

(n) Generally. Borrower has disclosed to Lender all material information available to Borrower that is necessary to assure that the representations and warranties made in this Mortgage are not misleading.

9. **AFFIRMATIVE COVENANTS.** From the date of this Mortgage until payment in full of the Notes, unless Lender otherwise gives its advance written consent, Borrower shall or shall cause to be done, at its sole cost and expense the following:

(a) Payment and Performance.

(i) Pay all sums due under the Loan Documents when and as they become due and payable in accordance with the terms of the Loan Documents.

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(ii) Cause each Obligor to comply with all covenants and agreements in the Loan Documents.

(iii) Cause each Obligor to ensure that the certifications and representations set forth in the Loan Documents are and remain materially true and correct at all times, as if given from time to time, during the term of the Loan subject to the Borrower's ability to disclose in writing to Lender and Lender's right to approve any matters which would cause such representations to be untrue and/or incorrect.

(b) Loan Documents. Execute and deliver from time to time to Lender all other conveyances and instruments as Lender requests to ensure that the Property is subject to the lien of this Mortgage on the public record.

(c) Escrows. Pay:

(i) In escrow to Lender an amount (in monthly fractional payments), which Lender reasonably estimates to be sufficient to enable Lender to pay at least 30 days before they become due [1] all taxes, assessments, and other similar charges levied against the Property, and [2] all insurance premiums on any required policy or policies of insurance under this Mortgage.

(ii) To Lender, within five days following demand, such additional amounts as are necessary to allow these items to be paid in full when due.

(iii) Any amount by which the actual taxes and/or insurance premiums exceed the amount collected in escrow by Lender.

Lender may commingle escrowed funds with Lender's general funds. No interest shall be paid on escrowed funds. Lender shall not be obliged to make a payment from any escrow account more than twice a year. Lender may make such payments by delivering a check to the appropriate tax collecting authority or official or insurer. Lender shall have no liability for under-estimating any escrowed amounts.

(d) Condition and Repair. Keep the Property in good usable condition and repair, restore or replace damaged, obsolete or destroyed improvements and fixtures, pay all bills for repairs and replacements and any and all expenses related to the Property so that no lien may be created against the Property, and exhibit upon demand, at Lender's office, evidence of such payment.

(e) Ordinances. Comply with all laws, ordinances and regulations that affect the Property.

(f) Liens. Keep the Property free from all liens and encumbrances except as otherwise specifically provided in this Mortgage; provided, however, that if Borrower in good faith believes that such lien, charge or encumbrance is contestable, Borrower shall have the right to contest such lien, charge or encumbrance provided (i) Borrower provides adequate security to Lender (which may include a bond or title indemnity) to secure such contest; (ii) Borrower diligently initiates and continues contests such lien, charge or encumbrance; and (iii) if Borrower is unsuccessful in its contest, Borrower immediately pays in full such lien, charge or encumbrance including any penalties and interest due thereon.

(g) Collateral.

(i) Use the Collateral solely for business purposes, either for Borrower's own use or as the equipment and furnishings leased or furnished by Borrower, as landlord, to tenants of the Premises.

(ii) Keep the Collateral on the Premises or at other locations preapproved in writing by Lender.

(iii) From time to time provide Lender on request with itemizations of all of the Collateral, and such itemizations shall describe the location of the Collateral.

(iv) On demand, deliver to Lender all financing statements and other documents which Lender requires from time to time to establish, perfect and continue perfection of Lender's security interest in the Collateral and to protect the priority of Lender's security interest.

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(v) Give advance written notice of any proposed change in Borrower's name, identity, principal place of business or structure, only make such a change with the advance written consent of Lender and execute and deliver to Lender prior to or concurrently with such change all additional financing statements and other documents which Lender requires in connection with such change.

(vi) Pay all expenses of renewing the financing statements of record if any such financing statement shall expire by reason of statutory law prior to the termination of this Mortgage.

(h) Environmental.

(i) Comply and cause all users and occupants of the real and personal property that secures the Obligations, including without limitation the Property, to comply with all federal, state and local laws, rules, regulations and orders with respect to the use, discharge, generation, removal, transportation, storage and handling of Hazardous Materials, underground storage tanks and other environmental matters, immediately remove any Hazardous Materials other than Permitted Substances discovered on the real or personal property, or both, that secures the Obligations, including without limitation the Property, and pay or cause to be paid all costs associated with such removal.

(ii) Commence and diligently pursue such actions in a manner allowed by law that are necessary to remove any Hazardous Materials, other than Permitted Substances, that are found at any time to exist on the real or personal property, or both, that secures the Obligations, including without limitation the Property, or in the soil or groundwater of any such real property and to remediate such property.

(iii) Keep all real and personal property that secures the Obligations, including without limitation the Property, free of any lien imposed pursuant to any federal, state or local law, rule, regulation or order in connection with the existence of Hazardous Materials or underground storage tanks.

(iv) Notify Lender at any time it becomes aware of and/or believes that there may be Hazardous Materials in or around any of the real or personal property that secures the Obligations, including without limitation the Property.

(v) Cure the cause of any summons, citation, directive, letter or other communication, written or oral, concerning any environmental matter issued by any federal, state or local governmental authority to any Obligor related to any real or personal property, or both, that secures the Obligations, including without limitation the Property, during the period described in such communication.

(vi) Borrower shall provide such information and certifications which Lender may reasonably request from time to time to insure Borrower's compliance with this Indemnity. To investigate Borrower's compliance with Environmental Laws and with this Indemnity, Lender shall have the right, but not the obligation, at reasonable times to enter upon the Premises upon reasonable prior notice to Borrower, take samples, review Borrower's books and records, interview Borrower's employees and officers, and conduct such other activities as Lender, at its sole discretion, deems appropriate to ensure Borrower's compliance. Borrower shall cooperate fully in the conduct of such an audit. If Lender decides to conduct such an audit because of (i) pending or threatened, proceeding, lien, inquiry, action, lien or assertion of potential responsibility; (ii) Lender's considering taking possession of or title to the Premises after default by Borrower; (iii) a material change in the use of the Premises which, in Lender's opinion, increases the risk of noncompliance with Environmental Laws; or (iv) the introduction of Hazardous Materials other than Permitted Substances to the Premises; then Borrower shall pay within five days of demand all costs and expenses connected with such audit, which, until paid, shall become amounts due under the Notes and shall bear interest at the Default Rate under the Notes. Nothing in this Indemnity shall give or be construed as giving Lender the right to direct or control Borrower's actions in complying with Environmental Laws.

(i) Leases.

(i) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement of the Leases to be performed by Borrower.

(ii) Use its best efforts to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Tenants.

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(iii) Deliver to Lender, upon request, executed copies of any and all other and future leases upon all or any part of the Premises.

(iv) Make, execute and deliver to Lender upon demand, and at any time or times, any and all assignments and other instruments required by Lender to assign the Leases and the Rents or to carry out the purposes and intents of the Rents Assignment.

(v) Give prompt notice to Lender of any notice received from any tenant of default on the part of Borrower with respect to any of the Leases, together with an accurate and complete copy of any such notice.

(vi) Short of termination of any of the Leases, enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Leases to be performed by each of the Tenants; provided that any consent by Lender to a termination of a Lease due to a default by the tenant thereunder shall not be unreasonably withheld or delayed by Lender.

(vii) Appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any of the Leases or the obligations, duties or liabilities of Borrower under any of the Leases, and pay all costs and expenses of Lender, including attorneys' fees, in any such action or proceeding in which Lender, in its sole discretion or as compelled by law, may appear.

(viii) Upon an Event of Default and demand by Lender, transfer to Lender all security deposits held by Borrower in connection with the Leases. All security deposits transferred to Lender shall become the absolute property of Lender to be applied in accordance with the provisions of the Leases. Lender may hold such deposits without any allowance of interest. Until Lender makes such demand and the deposits are paid over to Lender, Lender assumes no responsibility to the Tenants for such deposits. After such deposits are paid over to Lender, Lender shall be responsible for the return of such deposits to the Tenants which paid such deposits in an amount not to exceed the amount of deposit received by Lender on the account of each of the Tenants.

(ix) Pay immediately upon demand all sums expended by Lender pursuant to the Rents Assignment together with interest on such sums according to the rate specified in the Notes. Such sums shall be added to the indebtedness and shall be part of the Obligations.

(x) At all times during the Term of the Notes, in the event that any Tenant at the Property exercises a termination option and/or otherwise enters into an agreement with Borrower to terminate its lease (which agreement to terminate shall require Lender's approval), any and all such termination fees and penalties paid by such Tenant shall be deposited into an escrow held by Lender to be used to reimburse Borrower for the completion of tenant improvements and leasing commissions for all space in the Property. Such tenant improvements and leasing commissions shall be made only pursuant to an Approved Lease (as defined in the Loan Agreement). Releases will be made to Borrower as requested by Borrower, but no more than once per month, to reimburse Borrower for funds actually advanced by Borrower to pay contractors and materials suppliers for the costs associated with tenant improvements and/or to pay leasing commissions. A release will occur on or before the date 15 days after the date Borrower presents to Lender paid receipts and lien waivers from all contractors, materials suppliers, brokers and agents who have performed work in connection with the tenant improvements since the prior release from the escrow and/or a lien waiver and invoice from the broker to which a leasing commission is due. The amount of such release shall not exceed the lesser of (x) the aggregate amount of such paid receipts, or (y) the amounts presently held in the escrow. The escrow will bear interest for the benefit of Borrower at the rate typically paid by Lender for short-term deposit accounts of similar size and amounts. *Provided no Event of Default has occurred under the Loan Documents, Borrower shall have the right to request that the amounts held in the escrow be applied as a prepayment of the outstanding principal amount of the Loan, subject to the payment of any prepayment premium due hereunder and/or under the Loan Documents (including without limitation any interest rate swap agreement). If there occurs any Event of Default under the Loan Documents Lender shall have the right, at its option, to have any or all of the funds in the escrow to be applied against any amounts payable to Lender as of such date (without suspending or reducing payments required under the Loan Documents).*

(j) Contracts.

(i) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement of the Contracts to be performed by Borrower.

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(ii) Use its best efforts to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Other Contract Parties.

(iii) Deliver to Lender, upon request, executed copies of any and all other and future Contracts.

(iv) Make, execute and deliver to Lender upon demand, and at any time or times, any and all assignments and other instruments required by Lender to assign the Contracts or to carry out the purposes and intents of the Contracts Assignment.

(v) Give prompt notice to Lender of any notice received from any of the Other Contract Parties of default on the part of Borrower with respect to any of the Contracts, together with an accurate and complete copy of any such notice.

(vi) Enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Contracts to be performed by each of the Other Contract Parties.

(vii) Include, in all future Contracts, the collateral assignment of such Contracts to Lender in accordance with the provisions of an assignment document approved by Lender.

(viii) Include, in all Contracts between Borrower and any of Borrower's affiliates, the right of cancellation on 30 days' prior written notice without any claim against the Property.

(ix) Appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any of the Contracts or the obligations, duties or liabilities of Borrower under any of the Contracts, and pay all costs and expenses of Lender, including attorneys' fees, in any such action or proceeding in which Lender, in its sole discretion or as compelled by law, may appear.

(x) Pay immediately upon demand all sums expended by Lender pursuant to the Contracts Assignment together with interest on such sums according to the rate specified in the Notes. Such sums shall be added to the indebtedness and shall be part of the Obligations.

(k) Financial Statements, Rent Rolls and Operating Statements.

(i) Cause, within 120 days after the end of each of Borrower's fiscal years until this Mortgage is satisfied, Borrower, and, if Borrower is a partnership, each of Borrower's general partners, to furnish to Lender certified financial statements (including a balance sheet and income statement).

(ii) At the same time, provide to Lender [1] a certified rent roll for the improvements on the Premises and [2] certified operating statements for such improvements which include at least gross income (itemized as to source), operating expenses (itemized), depreciation charges and net income before and after federal taxes.

(iii) Provide, as required by Lender in its reasonable discretion, such rent rolls, financial statements and operating statements to Lender more frequently.

If Lender is not provided with such documents or the rent rolls when required, Lender shall have the right, in addition to any other rights and remedies, to audit the applicable books and records at Borrower's expense. Such documents shall be in form reasonably satisfactory to Lender. As used in this Subsection, a document is "certified" if it contains, or is appended to, a statement that states that it is, to the best knowledge of the person signing such certification, true and correct and it is signed by the subject individual personally, a general partner, member or officer of a subject entity, a certified public accounting firm engaged by the subject individual or entity or the subject individual's or entity's property manager. If such statement is executed by a certified public accounting firm or a property manager, it shall be deemed to be made by the subject individual or entity rather than the accounting firm or property manager.

(l) Inspections and Reviews. Allow Lender the right at all reasonable hours and upon reasonable notice to inspect the Property and provide to Lender free access to Borrower's premises for the purpose of such inspection.

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(m) Taxes.

(i) Pay, before they become delinquent all taxes, special and other assessments and other charges which are levied or assessed at any time by virtue of any law or assessment against any or all of the following: [1] Borrower; [2] the Property; provided that such payments shall be made through funds held by Lender pursuant to Section 9(c) hereof; [3] Lender as a result of the Loan (other than ordinary income taxes payable by Lender); [4] Lender's interest in the Property; and [5] the Obligations.

(ii) Upon request or according to any schedule set by Lender, deliver to Lender receipts showing the timely payment of such taxes, assessments and charges.

(iii) Pay all such taxes, assessments and charges under protest as provided by law despite any contest of any such taxes, assessments and charges.

(n) Insurance.

(i) Keep the Property insured against direct loss or damage occasioned by fire, extended coverage perils and such other hazards as Lender reasonably requires from time to time by written notice to Borrower provided that Lender shall not require earthquake and/or terrorism insurance unless such insurance is customarily required to be carried by lenders of properties similar to the Property. Such insurance shall be issued in an amount without co-insurance at least equal to the full value of the Collateral and improvements to the Property.

(ii) Maintain general public liability insurance and worker's compensation insurance with coverages and in amounts Lender reasonably requires from time to time by written notice to Borrower.

(iii) Purchase federal flood insurance in amounts and coverages satisfactory to Lender if, at any time during the term of the Loan, FEMA Form 91-93 (or any replacement form) shows that any portion of the Property or other collateral that secures the Loan is located within a special flood hazard area.

(iv) Maintain the foregoing insurance with insurers approved by Lender; pay all insurance premiums when due; ensure that all policies contain a mortgagee loss payable clause (or other clause(s) required by Lender) in favor of Lender, in form and content reasonably acceptable to Lender; deposit originals of all insurance policies covering the property with Lender; and promptly give written notice of loss to all insurers and Lender.

(v) Pay to Lender, subject to Section 13, any property insurance proceeds received, directly or indirectly, by an Obligor.

(vi) Without any limiting any of the provisions contained herein and/or Lender's rights hereunder, in the event that Borrower does not fulfill its requirements to carry the required insurance hereunder and/or to provide the Lender with proof of such insurance, Lender may, but is not obligated to, purchase such insurance at Borrower's expense to protect Lender's interests in and to the Property. This insurance may, but need not, protect Borrower's interests. The coverage obtained by Lender may not pay any claim that is made by or against Borrower in connection with the Property. If Borrower complies with the requirements hereunder and subsequently provides evidence of the required insurance hereunder, Borrower may cancel any of such insurance purchased by Lender. Borrower shall be responsible for any and all costs of any insurance purchased by Lender hereunder, including interest (at the Default Rate of Interest) thereon, and any other charges that Lender may impose in connection with the placement of such insurance, until the effective date of the cancellation of the insurance or payment of such amounts due. These costs, including interest and other charges, may be added to the outstanding principal balance of the Notes, at Lender's option. The cost of such insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

(o) Condemnation Proceeds. Pay to Lender, subject to Section 13, all compensation received for any taking by condemnation proceedings of (including payments in compromise) and damages for any injury to all or part of Property.

(p) Notice of Defaults. Give written notice to Lender of any Event of Default within 15 days of learning of such Event of Default.

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10. **NEGATIVE COVENANTS.** From the date of this Mortgage until payment in full of the Notes, unless Lender otherwise gives its advance written consent, no Obligor shall:

(a) **Liens.** Create, incur, permit or assume any mortgage, pledge, lien, charge or encumbrance of all or any part of the Property except for the Permitted Encumbrances; provided, however, that if Borrower in good faith believes that such lien, charge or encumbrance is contestable, Borrower shall have the right to contest such lien, charge or encumbrance provided (i) Borrower provides adequate security to Lender (which may include a bond or title indemnity) to secure such contest; (ii) Borrower diligently initiates and continues contests such lien, charge or encumbrance; and (iii) if Borrower is unsuccessful in its contest, Borrower immediately pays in full such lien, charge or encumbrance including any penalties and interest due thereon.

(b) **Transfers.** Permit Borrower to sell (including any installment sale), convey, lease, assign, encumber or otherwise dispose of or transfer, directly or indirectly, all or any part of the Property, whether legal or equitable and whether voluntary or involuntary. Notwithstanding the foregoing, Borrower may enter into leases for tenant space provided such leases are made in the ordinary course of business. As used in this Mortgage, the phrase "in the ordinary course of business" means conduct that occurs before an Event of Default that is commercially reasonable, in accordance with customary leasing and property management practices in the community in which the Premises are located and intended to enhance the value of the Property.

(c) **Control.** Without the prior written consent of Lender:

(i) Except for Permitted Transfers, permit or take any act or make any omission that would have the effect of directly or indirectly changing the ownership or control of Borrower, including without limitation, if Borrower is an entity, the sale (including any installment sale), conveyance, assignment or other transfer by it or any of its equity holders of any equity or voting interest or the issuance of any equity or voting interest of any class or type by it to any person or entity or entities so as to change the now existing proportionate ownership and control interests of the existing equity holders.

(ii) Obtain any financing which, or any part of which, will be secured by a lien against or assignment of any equity interest in Borrower.

No consent to any such transfer shall constitute consent to any further such act. Lender may require Borrower to pay the entire unpaid balance of the Obligations upon the occurrence of any unpermitted transfer. Any consent to any transfer, if given in Lender's sole discretion, may be conditioned upon an increase in the interest rate, payment change, change in maturity or principal reduction.

For the purposes of this Section 10(c) a "Permitted Transfer" shall mean any sale or transfer of the interests in Borrower and/or any sale or transfer of the interests in the managing member of Borrower provided that at the time of such sale or transfer and upon completion of such sale or transfer: (a) Allan J. Hamilton and Ronald C. Lunt directly or indirectly have an ownership interest in and control the management and daily activities of the managing member of Borrower and the Borrower; (b) no uncured default exists, or would exist upon the giving of notice or passage of time or both, under the terms of the Loan Documents; (c) all guarantors of the Obligations affirm in writing their continuing obligations under the applicable guaranty(s); (d) Lender is reimbursed for its reasonable expenses associated with such transaction, including without limitation, attorney's fees and expenses; and (e) Borrower and its members comply with such other requirements as Lender may reasonably impose.

(d) **Waste.** Commit or permit waste upon the Property or do or permit any act which would weaken, diminish or impair the Property.

(e) **Alteration or Removal.** Except for work done in connection with tenant improvements under an Approved Lease (as defined in the Loan Agreement), remove, demolish, or materially alter, or permit the removal, demolition or material alteration of, any part of the Property without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed, except Borrower may, without prior consent, (i) remove a fixture provided the fixture is promptly replaced with another fixture of at least equal utility and quality; (ii) remove obsolete property; and/or (iii) remove property subject to a casualty subject to fulfillment of the provisions of Section 13.

(f) **Collateral.** Except as otherwise provided in this Mortgage,

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(i) Grant a security interest, or otherwise convey any interest, in any of the Collateral to any person or entity other than Lender. Notwithstanding the foregoing, until otherwise advised by Lender, Borrower may sell inventory that is part of the Collateral, if any, in the ordinary course of business (as defined above) on customary business terms and at usual prices and may collect as Lender's agent the sums due on accounts receivable and contract rights that are part of the Collateral, if any.

(ii) Remove the Collateral from the Premises or other locations preapproved in writing by Lender without the prior written consent of Lender.

(g) Environmental.

(i) Install or permit to be installed or to exist in or on any real or personal property that secures the Obligations, including without limitation the Property, other than Permitted Substances, any asbestos, asbestos-containing materials or urea formaldehyde insulation or any other chemical or any substance which has been determined to be a Hazardous Material.

(ii) Cause or permit to exist, as a result of an intentional or unintentional act or omission on the part of Borrower or any user or occupant of the real or personal property, or both, that secures the Obligations, including without limitation the Property, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of any Hazardous Substances onto the real property that secures the Obligations, including without limitation the Premises, or into waters or other lands.

(h) Leases and Contracts. Except in the ordinary course of business (as defined above):

(i) Enter into any lease for all or any part of the Premises or any of the Contracts.

(ii) Modify, extend, renew or in any way alter the terms of any of the Leases or the Contracts.

(iii) Terminate or accept a surrender of any of the Leases or the Contracts.

(iv) Anticipate the Rents by more than one month.

(v) Permit any assignment or sublease of all or any part of any interest under any of the Leases or the Contracts.

(vi) Waive, excuse, condone or in any manner release or discharge any of the Tenants or the Other Contract Parties of or from their obligations, covenants, conditions and agreements under their Leases or the Contracts, including the Tenant's obligation to pay the Rents in the manner and at the place and time specified in the Leases.

(vii) Borrow against, pledge, or assign any amounts payable under the Leases or the Contracts.

(viii) Consent to a subordination or assignment of the interest of the Tenants under the Leases to any party other than Lender.

(ix) Despite any provision in any of the Leases or the Contracts, transfer or convey fee title to the Premises to any Tenant or any of the Other Contract Parties.

If this Mortgage is given in connection with a construction loan from Lender to Borrower, and the terms of any construction loan agreement between Lender and Borrower is more restrictive with respect to any of the Contracts, such terms shall prevail over the terms of this Subsection.

(i) Burdensome Agreements. Enter into any agreement or other commitment if the execution, delivery or performance of such agreement or commitment would constitute a breach of any of the covenants or agreements contained in this Mortgage (other than a purchase contract provided that Borrower satisfies the Loan at the time of any sale or a commitment for refinancing if Borrower is able to pay and does pay any prepayment premium or yield maintenance premium required by the Notes at the time of the refinancing).

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- (j) Merger. Consolidate or merge with any other company.

11. **REPLACEMENT OF THE COLLATERAL.** If Borrower, in Borrower's sound discretion, determines that any item of the Collateral has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Property, Borrower may, at Borrower's expense, remove and dispose of it and, if necessary or desirable, for the use and function of the Property, substitute and install other items not necessarily having the same function, provided that such removal and substitution shall not impair the operating utility and unity of the Premises. All substituted items shall be deemed a part of the Premises and subject to the lien of this Mortgage. Any amounts received or allowed Borrower upon the sale or other disposition of the removed items of Collateral shall be applied first against the cost of acquisition and installation of the substituted items.

12. **INSURANCE.** Each insurer that provides policies pursuant to the terms of this Mortgage is authorized and directed to make payments for loss directly to Lender unless Lender otherwise agrees in writing. All proceeds from such insurance shall be applied as described in the following Section. In the event of foreclosure of this Mortgage or other transfer of title to the Property, all right, title and interest of Borrower in and to any insurance then in force shall pass to the purchaser or grantee or, at the option of Lender, may be surrendered for a refund; however, Lender's interest shall not be affected by any such transfer.

13. **CONDEMNATION AND INSURANCE PROCEEDS.**

(a) Notice. Borrower shall give immediate notice to Lender of any material damage to or destruction of all or any part of the Improvements. Additionally, Borrower shall give Lender immediate written notice of the actual or threatened commencement of any proceedings by any governmental body for the purpose of taking or otherwise affecting by condemnation, eminent domain or otherwise all or any part of the Property, including any easement or any appurtenances to the Premises or the severance of any part of the Premises and consequential damage and change in grade of streets (in any such event, a "condemnation"). Borrower shall, with its notice of a condemnation and upon receipt after such notice, deliver to Lender copies of any and all papers served in connection with any such proceedings. Any damage or condemnation notice shall describe the nature and extent of such damage, destruction or taking.

(b) Authority to Use Proceeds. Condemnation and insurance proceeds (in either case, the "proceeds") may, at Borrower's election, be applied to the outstanding principal balance of the Obligations provided that Borrower pays any applicable prepayment premium or yield maintenance premium. Alternatively, if the cost of restoring, replacing, rebuilding or repairing (in any such instance a "repair") any damage to the Property is less than 50% of the cost of replacement of all of the Property, or if less than one-third of the leasable area of the improvements on the Property is condemned or taken by eminent domain, Borrower may elect to use the proceeds to repair the Property provided all of the following are true:

(i) The Improvements can be rebuilt to be substantially similar to those financed to date and can, with the repair and any further construction that will be or were originally anticipated to be paid for out of the proceeds of the Loan, be operated for the purpose utilized or contemplated prior to such damage, destruction or taking.

(ii) No Event of Default, as defined below, exists or would exist upon the giving of notice or the passage of time or both.

(iii) The appraised value of the Property after the repair will not have been reduced from its appraised value as of the date of this Mortgage or the loan-to-value ratio for the Loan after completion will be no more than the loan-to-value ratio for the Loan as of the date of this Mortgage.

(iv) Tenants under leases of the Property are acceptable to Lender and provide for sufficient gross annual fixed rental income to cover all annual operating expenses of the Property, including payment of all principal and interest under the Notes, and such tenants are obligated to occupy the Property without any abatement or adjustment of rental payments (other than temporary abatements during the period of repair).

(v) Any damage or destruction was not the intentional act of Borrower.

(vi) Upon Lender's demand, Borrower deposits with Lender any sums necessary to make up any deficiency between the actual costs of the work and the amount of the proceeds.

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Borrower shall make its election concerning the proceeds in a written notice to Lender no later than 30 days after Borrower receives notice of such damage or condemnation.

If Borrower does not have the right to elect to repair, Borrower fails to make its election as required or Borrower elects to use the proceeds for repair and any of the foregoing conditions are not met, the proceeds shall be, in Lender's sole discretion, either applied to the outstanding principal balance of the Obligations, with any applicable prepayment premium or yield maintenance premium to be paid by Borrower, or used to repair the Property in whole or in part.

(c) Assignment of Claims and Power of Attorney to Collect. Any and all of the proceeds awarded or payable to the present and all subsequent owners of the Premises (including any award from the United States government or any other governmental body at any time after the allowance of any claim, the ascertainment of the amount of such claim and the issuance of the award for payment of such claim) are assigned by Borrower to Lender. Borrower irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact with full power of substitution for Borrower and in Borrower's name, place and stead to collect and receive the proceeds, which power shall be deemed coupled with an interest and shall be irrevocable and unconditional. Notwithstanding the foregoing, Lender shall allow Borrower to negotiate settlement of, or make claim for, such claims and proceeds (subject to Lender's reasonable approval of the manner of making and prosecuting such claim and the amount of any settlement), provided no Event of Default, as defined below, exists or would exist upon the giving of notice or the passage of time or both and Borrower uses all reasonable efforts to collect the fair value of such claims; however, all of the proceeds shall be paid to Lender to be disbursed pursuant to this Section.

(d) Repair. If Borrower properly and timely elects to repair the Property, or if the right to elect belongs to Lender pursuant to this Section and Lender elects to have Borrower repair the Property, Borrower shall cause the Improvements to be repaired as nearly as possible to their value, condition and character immediately prior to such damage, destruction or condemnation. Such repair shall be effected promptly. If this is a construction loan and the damage or condemnation occurs during any construction term of the Loan, Borrower shall notify Lender if it appears that such repair may delay completion of construction beyond the completion date specified in the Loan Documents. Neither damage to or destruction of the improvements nor condemnation shall excuse a failure to complete the improvements on or before any required completion date unless a delay in completion shall specifically be approved at the time in writing by Lender.

Any repair shall be done under the supervision of an architect acceptable to Lender and pursuant to specifications approved by Lender. The proceeds shall be held by Lender for such purposes and shall from time to time be disbursed to defray the costs of such repair under such safeguards and controls as Lender reasonably requires to assure completion in accordance with the approved plans and specifications and free of liens or claims. Borrower shall, upon demand, deposit with Lender any sums necessary to make up any deficiency between the actual costs of the work and the amount of the proceeds and shall provide such lien waivers and completion bonds as Lender reasonably requires. If the proceeds are to be used pursuant to this Section to repair the Property, Lender may, upon five days' prior written notice to Borrower, do all acts which Borrower fails or refuses to do and which Lender determines in its reasonable discretion are necessary to accomplish that purpose, including using funds deposited by Borrower with Lender for any purpose and advancing additional funds. All such additional funds shall constitute Obligations.

If the Property is to be repaired, Lender shall return to Borrower any excess of the proceeds above the amount necessary to complete such repairs provided that no Event of Default exists or would occur upon the giving of notice or the passage of time or both.

(e) Application Against Balance. If the proceeds are not to be used to repair the Property: [1] Lender's obligation, if any, to make further advances shall cease; [2] at Lender's option, the Loan shall mature and become immediately due and payable; [3] Lender shall apply the proceeds against the Obligations as described in the Notes; and [4] Lender shall return to Borrower any excess of the proceeds above the amount necessary to satisfy the Obligations. Borrower shall pay any applicable prepayment premium or yield maintenance premium at the time of any such application against the Obligations.

14. **SUBROGATION.** Lender is subrogated to all rights, remedies, claims and liens of any person or Obligor satisfied in whole or part from any portion of the proceeds of any Obligation. Lender is also subrogated to the lien of any mortgage, other lien or security interest discharged in whole or in part by any portion of the proceeds of any

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Obligation.

15. INDEMNIFICATIONS.

(a) Generally. Except for the gross negligence and/or willful misconduct of Lender, Borrower shall irrevocably defend, indemnify and hold harmless Lender and its employees, agents, successors and assigns (the "Indemnified Parties") from and against any and all claims, demands, losses, damages, liabilities, judgments, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees and costs) which the Indemnified Parties, or any of them, may or might incur with respect to or in connection with any or all of the following:

(i) The investigation, defense and settlement of claims incurred by, or asserted against, the Indemnified Parties as a result of or in connection with the presence, remediation or removal of any Hazardous Substances on the real or personal property, or both, that secures the Obligations, including without limitation the Property, or as a result of or in connection with other activities prohibited or required in connection with environmental matters. If Lender takes title to or possession of all of the Property, the foregoing indemnity in this Section 15(a)(i) shall not apply to any loss incurred thereafter by Lender that Borrower establishes is the result of a release of Hazardous Substances caused by Lender's affirmative action and/or gross negligence as owner and operator of the Property or a release first occurring after date upon which Lender takes title to or possession of all of the Property; provided, however, that the indemnity shall otherwise remain in full force and effect. For purposes of this section, a release of Hazardous Substances shall be presumed not to be caused by Lender if (a) the Borrower caused or contributed in any way to the release, or (b) any similar release of like Hazardous Substances occurred before Lender took title or possession.

(ii) The Leases, or under or by reason of the Rents Assignment, including without limitation any and all claims and demands whatsoever which may be asserted against any or all of the Indemnified Parties or the Property by reason of any alleged obligation or undertaking on any of their parts to perform or discharge any of the terms, covenants or agreements contained in the Leases (including claims by any Obligor, the Tenants and others).

(iii) The Contracts or under or by reason of the Contracts Assignment, including without limitation, any and all claims and demands whatsoever which may be asserted against any or all of the Indemnified Parties or the Property by reason of any alleged obligation or undertaking on any of their parts to perform or discharge any of the terms, covenants or agreements contained in the Contracts (including claims by any Obligor, the Other Contract Parties and others).

(iv) Any acts or omissions of any Obligor, their assigns, agents or any combination of them.

(b) Satisfaction of Obligations. Borrower shall bear, pay and discharge as and when they become due and payable, any and all judgments or claims for damages, penalties or other amounts for which the Indemnified Parties become liable, shall hold the Indemnified Parties harmless against all claims, losses, damages, liabilities, costs and expenses, and shall assume the burden and expense of defending (with Lender's counsel if Lender so chooses) all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the events and occurrences described in this Section.

(c) Survival. **THESE INDEMNIFICATIONS ARE SEPARATE AGREEMENTS OF BORROWER WHICH SHALL SURVIVE ANY TERMINATION, SATISFACTION, ASSIGNMENT OR FORECLOSURE OF THIS MORTGAGE OR THE ACCEPTANCE OF A DEED IN LIEU OF FORECLOSURE.**

16. INSPECTIONS. Borrower authorizes Lender and its employees and agents, and grants them an irrevocable and non-exclusive license, to enter the Property upon reasonable notice and at reasonable times (except following an Event of Default) and to make or cause to be made, at Borrower's expense and in such manner and at such times as Lender may require, inspections, audits and appraisal of (a) books, records and papers in the custody or control of Borrower or others that relate to the financial or business conditions of Borrower, any Obligor or any combination of them, including the making of copies of and extracts from such books, records and papers, (b) the assets of Borrower, any Obligor (subject to the limitations on certain assets of Obligors as set forth in the Guaranty) or any combination of them, including inspections related to the condition of the Property and (c) the Property for Hazardous Substances as provided in Section 9(h)(vi) hereof.

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17. **EVENTS OF DEFAULT.** As used in this Mortgage, any one or more of the following shall constitute an "Event of Default" (in addition to Events of Default defined elsewhere in this Mortgage):

(a) **Payments.** Any payment required under the Notes is not made when due and such default is not cured on or before the date five days after the date Lender gives written notice of such default to Borrower, or an Obligor fails to make any other payment Obligation when due and such default is not cured after any required notice and before the expiration of any applicable grace period described in any document which secures or provides for such Obligation.

(b) **Representations and Warranties.** An Obligor makes a representation or warranty in the Loan Documents, or elsewhere, to Lender which is false or misleading in any material respect when made, or if any such representation or warranty made prior to or contemporaneously with the execution and delivery of this Mortgage proves untrue or misleading in any material respect.

(c) **Death.** Any Obligor or a surety for any Obligation dies or ceases to exist unless a substitute obligor reasonably acceptable to Lender assumes all of such Obligor's obligations within 120 days of such death.

(d) **Non-Monetary.** Except as otherwise specified in any of the Loan Documents for the breach of any covenant or agreement described in such document, Borrower fails to observe or perform or breaches any of the covenants or agreements contained in this Mortgage and such failure or breach remains uncured for 15 days after written notice to Borrower; however, if the failure or breach cannot be cured using Borrower's best efforts within such 15-day period but could, with additional time, be cured using Borrower's best efforts and the failure or breach was not an intentionally wrongful act or omission of Borrower, such 15-day cure period shall be extended for the period reasonably necessary to cure if (and for such period as) (i) Borrower uses its best efforts during such 15-day period; (ii) Borrower continues to use its best efforts to cure after such 15-day period; and (iii) such best efforts are adequate to ensure a cure.

(e) **Other Agreements.** The breach of any agreement by an Obligor in favor of Lender which is not cured within any applicable cure period specified in such agreement.

(f) **Leases.** A default by Borrower, as landlord, under any lease of all or any part of the Property which is not cured within 30 days after written notice from Lender to Borrower.

(g) **Hazardous Substances.** Any Hazardous Materials, other than Permitted Substances, are found at any time to exist on the Property or in its soil or groundwater and Borrower fails to commence and diligently pursue such actions as are necessary to remove such Hazardous Materials from the Property in a manner allowed by law.

(h) **Government Directives.** Any summons, citation, directive, letter or other communication, written or oral, shall be issued by any federal, state or local governmental authority as described in Subsection 9(h)(v) or any other matter relating to the condition of the Property and Borrower fails to cure the cause of such communication during the lesser of (i) the period described in Subsection 17(d) or (ii) the period described in such communication during the period described in Subsection 17(d).

(i) **Insolvency.** Any Obligor (i) makes a general assignment for the benefit of creditors; (ii) admits in writing its, his or her inability to pay debts as they become due; (iii) files a petition by which it, he or she becomes the subject of bankruptcy or insolvency proceedings; (iv) is adjudicated bankrupt or insolvent; (v) files a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation; (vi) files an answer admitting or fails to contest the material allegations of a petition against it, him or her in any such proceeding; (vii) seeks, consents to or acquiesces in the appointment of any trustee, receiver or liquidator for such Obligor or any material part of its, his or her properties; (viii) suspends its, his or her business or discontinues such business as a going concern; or (ix) is charged with a felony or any serious crime.

(j) **Involuntary Insolvency Proceedings.** Any involuntary proceeding is filed against an Obligor which seeks any reorganization, bankruptcy, arrangement, composition, readjustments, liquidation, dissolution, receivership or similar relief under any present or future statute, law or regulation which is not dismissed within 60 days of the date filed.

(k) **Transfers of the Property.** Any breach of Subsection 10(b) of this Mortgage.

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18. ACCELERATION AND REMEDIES.

(a) Acceleration. Upon the occurrence of an Event of Default, all Obligations secured by this Mortgage, including all amounts which may be or have been advanced by Lender to protect the security of this Mortgage ("Advances") shall, at the option of Lender and without further notice, which notice Borrower expressly waives, be immediately due and payable.

(b) Generally. Lender may enforce or collect such Obligations and Advances in any manner and by the exercise of any remedy available at law or equity now existing or existing at the time of the Event of Default or enforcement including, without limitation, through a suit at law or by a foreclosure of this Mortgage. The judgment or decree in any suit brought to foreclose this Mortgage may include, in the sole discretion of Lender, all of the Obligations, including default interest at the applicable default interest rates described in the Notes or other documents which provide evidence for the Obligations.

Lender will have all of the rights and remedies provided to it under this Mortgage and under any and all applicable laws. Such rights and remedies include, without limitation, the right to: (a) make protective advances to pay costs to protect, preserve and restore the Property, or to preserve the lien and priority of this Mortgage, or enforce this Mortgage; (b) pay attorney's fees and other costs in connection with the exercise of Lender's rights, foreclosure of this Mortgage and other litigation and administrative proceedings to which Lender may be or become a party; (c) pay all costs and expenses in connection with a judgment of foreclosure or expenses deductible from the proceeds of sale as provided by applicable law; (d) obtain a shortened redemption period or, if the mortgaged property is abandoned, seek a shortened redemption or reinstatement period; (e) obtain possession of the Property; (f) obtain all rents, issues and profits arising out of any leases and rights of occupancy of any portion of the Premises; (g) have a receiver appointed pursuant to applicable law; (h) apply proceeds of any foreclosure sale in accordance with the provisions of applicable law; and (i) apply any money or securities that constitute deposits made to or held by Lender or any depository pursuant to any provision of this Mortgage toward payment of the Obligations.

(c) Intentionally Deleted.

(d) Waivers. Borrower shall not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law, including but not by way of limitation, any Homestead Exemption Law, or any so-called "Moratorium Law," which is in force at any time; and shall not claim, take or insist upon any benefit or advantage of or from any law which provides for the valuation or appraisal of all or any part of the Property prior to any sale of sales of the Property to be made pursuant to any provision of this Mortgage or to the decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem all or any part of the Premises or which relates to the marshaling of assets upon a foreclosure sale or other action to enforce this Mortgage. Borrower expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of Borrower which acquire any interest or title to all or any part of the Property or beneficial interests in Borrower subsequent to the date of this Mortgage. Any and all rights of redemption of Borrower and of all other persons are and shall be deemed to be waived to the fullest extent permitted by the provisions of any applicable law or replacement statute. Borrower shall not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy of Lender and shall permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted. If Borrower is a trustee, it represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Borrower's beneficiaries, as well as all other persons mentioned above. Borrower agrees that no action to enforce the lien or any provision of this Mortgage will be subject to any defense which would not be good and valid in an action upon the Notes. Borrower acknowledges that the Property does not constitute agricultural real estate or residential real estate. To the extent permitted by applicable law, Borrower waives any and all right of redemption pursuant to Section 5/15-1601(b) of the Act.

(e) Collateral. Lender shall, with respect to any part of the Property which constitutes property of the type governed by the Code, have all rights, options and remedies of a secured party under the Code including, without limitation, the right, on the Event of Default, to the possession of all or part of any such property, and the right, on the Event of Default, to enter, without legal process, any premises where any such property may be found. Any requirement of the Code for reasonable notification, including any notice of any intended disposition of the Collateral, shall be met by mailing written notice to Borrower at Borrower's last known address at least 10 days prior to the sale or

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other event for which such notice is required. Lender may give such notice by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the Premises or by private notice. Notice as described in this Subsection shall be deemed commercially reasonable. The expenses of retaking, selling and otherwise disposing of such property, including reasonable attorneys' fees and legal expenses, shall constitute Obligations and shall be payable upon demand with interest at the interest rate applicable to the Notes at the time the expense is incurred.

(f) Lien And Set-Off of Borrower's Credit Balances. Borrower grants Lender a security interest and lien, without any limitation, in any property, credit balance, escrow or other money, now or hereafter owed Borrower by Lender, and Lender may, at any time after the occurrence of an Event of Default, without notice or demand, set off any such property, credit balance, escrow or other money against any Obligations whether or not due.

(g) Receiver. Upon the commencement or during the pendency of an action to foreclose this Mortgage or enforce any other remedies of Lender, and without regard to the adequacy or inadequacy of the Property as security for the Obligations, whether or not waste is being committed or occurring, Lender may seek and the Court may appoint a receiver of the Property (including any homestead interest) to serve without bond and take possession of the Property and collect the Rents and all payments required to be made pursuant to or by virtue of any lease, to hold and apply such funds received as directed by the court, and to exercise such other powers as may be granted until the receivership ceases.

(h) Authority of Lender to Perform For Borrower. If Borrower fails to perform any of the agreements to repair or maintain the Property as set forth in the Loan Documents within 15 days after written notice from Lender, or such shorter period as will be required in the event of an emergency, or if Borrower fails to perform any obligation in the Loan Documents which is intended to protect the physical condition or Borrower's or Lender's interest in the real or personal property (or both) securing the Loan, Lender may perform or cause them to be performed by or on behalf of Borrower. The repairs or restoration described in this Subsection include without limitation the repair or restoration of any condition requiring repair or restoration under any agreement between Lender and Borrower, including covenants in this Mortgage, and removal and remediation of Hazardous Substances. Any amounts paid by Lender pursuant to this Subsection shall bear interest at the appropriate default interest rate computed from the date of Lender's expenditure to date of Borrower's repayment and be secured by this Mortgage. Borrower shall repay on demand any such amounts paid by Lender. Lender has no duty to inquire as to the validity of any tax, assessment, or other claim or expense against Property, and a receipt for payment of any such amount shall be conclusive of the validity and amount of such claim or expense.

(i) Reserve Account. As a condition of curing any default under any agreement between Lender and Borrower regarding the condition or repair of the Property, including any such agreement in this Mortgage, Lender may require Borrower to fund a reserve account (the "reserve account," regardless of the type established as described below). The terms of the reserve account shall be:

(i) Generally. Lender may hold the reserve account for one or both of the following reasons: [1] to ensure funds are available so Borrower can maintain the Property in the future (such a reserve account being a "Replacement Reserve Account"); or [2] to provide security to protect Lender from similar future defaults. The reserve account shall be held by Lender in a depository institution selected by Lender, and Lender may commingle these funds with Lender's general funds. The reserve account shall not bear interest. Borrower shall, at the option of Lender, either fund the reserve account with a single payment during the cure period or fund the reserve account with monthly deposits that shall be payable at the time of each regularly scheduled payment to Lender under the Notes. The amount of the initial deposit and the subsequent monthly deposits to the reserve account shall be determined by Lender in Lender's reasonable discretion. Lender may from time to time adjust the required deposit amount by giving written notice of such adjustment to Borrower.

(ii) Replacement Reserve Account. Borrower may use funds from a Replacement Reserve Account to reimburse Borrower for expenditures Lender approves from time to time. The categories of expenditures that may be reimbursed from the Replacement Reserve Account may be specified in writing by Lender at the time the Replacement Reserve Account is established. If so, Lender shall use its reasonable discretion in approving expenditures that fall within the specified categories. If no such categories are specified in writing, Lender shall have the right, in its sole discretion, to approve or disapprove expenditures to be reimbursed. Funds will be released to Borrower on or before the 15th day (but no more frequently than once per month) following the date Lender receives paid invoices and lien waivers

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from all contractors, materials suppliers, brokers and agents who have performed work in connection with an approved expenditure, and an advance shall not exceed the amount of such paid invoices. Lender may, but need not, condition any advance from a Replacement Reserve Account on either or both of the following: (i) an inspection of the repairs or improvements which is found to be satisfactory by a representative of Lender in such representative's reasonable discretion; and (ii) Lender's receipt of evidence that Borrower has obtained any and all required approvals from governmental authorities (such as, but not limited to, building permits and required satisfactory inspection reports).

(iii) No Liability. By holding and disbursing funds from a reserve account, Lender shall have no liability or responsibility for repairs, replacements or maintenance of the Property, for interpretation of any construction contract, for the adequacy of the reserve account or any advances from the reserve account to complete the repairs, replacements or maintenance, for inspections during repairs, replacements or maintenance or for any other acts on the part of Borrower to be performed in connection with the repairs, replacements or maintenance. Borrower shall indemnify and hold Lender harmless from any claim made against Lender (and the costs and attorneys' fees of defending such claim) that arises because Lender holds the reserve account or makes disbursements from the reserve account pursuant to this Subsection.

(iv) Defaults. Deposits to the reserve account that are not made when due shall be assessed a late payment charge at the time and rate that late payment charges may be assessed for late principal and interest payments. The late payment charge shall be payable to Lender as reasonable compensation for its costs in handling Borrower's failure to make the deposits and shall not be construed as a penalty. Further, Borrower's failure to make deposits to the reserve account when due shall, after the notice and cure period for payment defaults described in the Loan Documents, constitute an event of default under the Loan Documents. After any acceleration of the Loan, Borrower shall pay interest to Lender on any unpaid deposits to the reserve account at the default rate specified in the Notes.

(j) Rents and Leases.

(i) Performance of Borrower's Obligations by Lender. If Borrower fails to make any payment or do any act required under this Mortgage with respect to the Rents or the Leases, Lender may, without obligation and without releasing Borrower from any obligation under the Rents Assignment, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security of the Rents Assignment and the Loan Documents. Notwithstanding the foregoing or any other contrary provision of the Rents Assignment or this Mortgage, Lender shall not be obligated to perform or discharge, and does not undertake in the Rents Assignment to perform or discharge, any obligation, duty or liability under the Leases, and Lender shall not be responsible or liable for [1] the control, care, management or repair of the Property; [2] the performance of any of the terms and conditions of the Leases; [3] any waste committed on the Property; [4] any dangerous or defective condition of the Property, including the presence of any Hazardous Substances; [5] any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any of the Tenants or any licensee, employee or stranger; or [6] for laches or failure to collect the Rents or enforce the Leases. Lender shall be required to account only for money actually received by it.

(ii) Remedies after an Event of Default. At any time after an Event of Default, Lender may [1] revoke the privilege granted to Borrower under the Rents Assignment to collect the Rents; and [2] at its option, without notice, either in person or by agent or a receiver to be appointed by a court, with or without taking possession of or entering the Premises or bringing any action or proceeding, [A] collect all of the Rents payable under the Leases; [B] enforce the payment of the Rents; [C] exercise all of the rights of the landlord under the Leases and all of the rights of Lender under the Rents Assignment; [D] enter upon, take possession of, manage and operate all or any part of the Premises; [E] subject to the Tenants' rights, if any, cancel, enforce or modify the Leases, and fix or modify the Rents; [F] do any acts, with or without taking possession of the Premises, which Lender deems proper to protect Lender's rights under the Rents Assignment and the security interest granted in the Rents Assignment; and [G] apply the Rents to the costs and expenses of operation, management and collection, including reasonable attorneys' fees, to the payment of the expenses of any agent appointed by Lender, to the payment of taxes, assessments, insurance premiums and expenditures for the upkeep of the Premises, to the performance of the landlord's obligations under the Leases and to any of the Obligations, all in such order as Lender may determine.

(iii) No Cure Through Collection of Rents. Lender's entering upon and taking possession of the Premises and the collection and application of the Rents shall not cure or waive any default or waive, modify or affect any notice of default under any of the Loan Documents or invalidate any act done pursuant to such notice or in any way operate to prevent Lender from pursuing any remedy which it now or hereafter may have under the terms or conditions of the

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Loan Documents.

(iv) Costs of Enforcement. Lender's rights under this Subsection include, without limitation, the right to appear in and defend any action or proceeding purporting to affect the security of the Rents Assignment or the rights or powers of Lender, the right to perform and discharge each and every obligation, covenant and agreement of Borrower in the Lease and the right to pay necessary related costs and expenses, including attorneys' fees. Any amounts incurred by Lender in connection with its rights under the Rents Assignment, including costs, expenses and attorneys' fees, shall bear interest at the rate stated in the Notes, are secured by the Rents Assignment and constitute part of the "Obligations." Borrower shall reimburse Lender for such amounts immediately upon demand.

(v) Not Dependent on Adverse Conditions. Lender's rights under the Rents Assignment shall in no way be dependent upon, and shall apply without regard to, whether the Premises are in danger of being lost, materially injured or damaged or whether the Premises are adequate to discharge the Obligations.

(vi) Authorization to Tenants. Borrower irrevocably directs and authorizes the Tenants to pay to Lender or any receiver appointed under the Loan Documents all sums due under the Leases without any need for a judicial determination that Lender is entitled to exercise its rights under the Rents Assignment or that an Event of Default has occurred. The Tenants are irrevocably authorized and directed to recognize the claims of Lender or any such receiver without investigating (a) the reason for any action taken by Lender or such receiver; (b) the validity or the amount of indebtedness owing to Lender; (c) the existence of an Event of Default; or (d) the manner in which Lender or such receiver shall apply any money received. Borrower acknowledges that the Tenants shall have no further liability to Borrower for the Rents actually paid to Lender or such receiver. The signature of Lender or such receiver, without further signature or authorization, shall be sufficient for the exercise of any rights under the Rents Assignment. The receipt by Lender or such receiver for any sums received shall be a full discharge and release for such sums to any of the Tenants or occupants of the Premises. Checks for all or any part of the Rent collected under the Rents Assignment shall, upon notice from Lender or such receiver, be payable to the exclusive order of Lender or such receiver.

(vii) Lender as Creditor of the Tenants. Upon and at all times while an Event of Default continues, Lender, and not Borrower, shall be deemed to be the creditor of the Tenants with respect to assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such Tenants (without obligation on the part of Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights in such proceedings, and reserving the right to Borrower to make such filing in such event) with an option to Lender to apply any money received by Lender as such creditor to reduce the Obligations.

(viii) Lender as Attorney-in-fact. Borrower irrevocably appoints Lender as its agent and attorney-in-fact, which appointment is coupled with an interest, to exercise any rights or remedies under the Rents Assignment following an Event of Default and to execute and deliver during the term of the Rents Assignment such instruments as Lender may deem necessary to make the Rents Assignment and any further assignment effective.

(ix) Continuing Rights. The rights and powers of Lender or any receiver under the Rents Assignment shall continue and remain in full force and effect until all of the Obligations are paid in full, and shall continue after commencement of a foreclosure action and after foreclosure sale and until expiration of the equity of redemption if Lender is the purchaser at the foreclosure sale.

(x) Separate Rights. **LENDER'S RIGHTS AND REMEDIES UNDER THE RENTS ASSIGNMENT ARE SEPARATE FROM AND CUMULATIVE TO LENDER'S OTHER RIGHTS AND REMEDIES UNDER THIS MORTGAGE. AT LENDER'S SOLE OPTION, LENDER MAY EXERCISE THESE RIGHTS AND REMEDIES SEPARATE FROM, OR AS PART OF, ANY ACTION UNDER OTHER PROVISIONS OF THIS MORTGAGE. NO FORECLOSURE OF THIS MORTGAGE SHALL BE REQUIRED AS A PREREQUISITE TO LENDER'S EXERCISE OF THESE RIGHTS AND REMEDIES.**

(k) Contracts.

(i) Performance of Borrower's Obligations by Lender. If Borrower fails to make any payment or do any act required under this Mortgage with respect to the Contracts, Lender may, without obligation and without releasing Borrower from any obligation under the Contracts Assignment, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security of the Contracts Assignment and the Loan Documents.

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Notwithstanding the foregoing or any other contrary provision of the Contracts Assignment or this Mortgage, Lender shall not be obligated to perform or discharge, and does not undertake in the Contracts Assignment to perform or discharge, any obligation, duty or liability under the Contracts, and Lender shall not be responsible or liable for (i) the control, care, management or repair of the Property or any construction of improvements to the Property; (ii) the performance of any of the terms and conditions of the Contracts; (iii) any waste committed on the Property; (iv) any dangerous or defective condition of the Property, including the presence of any Hazardous Substances; (v) any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any of the Tenants, Other Contract Parties or any licensee, employee or stranger; or (vi) for laches or failure to enforce the Contracts. Lender shall be required to account only for money actually received by it.

(ii) Remedies after an Event of Default. At any time after an Event of Default, Lender may [1] revoke the privilege granted to Borrower under the Contracts Assignment with respect to the Contracts; and [2] at its option, without notice, either in person or by agent or a receiver to be appointed by a court, with or without taking possession of or entering the Premises or bringing any action or proceeding, [A] cancel all or any of the Contracts; [B] enforce the Contracts; [C] exercise all of Borrower's rights under the Contracts and all of the rights of Lender under the Contracts Assignment; [D] enter upon, take possession of, manage and operate all or any part of the Premises; and [E] do any acts, with or without taking possession of the Premises, which Lender deems proper to protect Lender's rights under the Contracts Assignment and the security interest granted in the Contracts Assignment.

(iii) Personal Contract Between Borrower and Other Contract Parties. The Contracts Assignment shall not constitute an assumption by Lender of any of the obligations of Borrower under the Contract unless and until Lender shall exercise its rights under the Contracts Assignment, but then only for the period Contractor is retained under the Contract. Notwithstanding the foregoing, Borrower shall continue to be primarily liable for all obligations under the Contract. The Contracts are personal contracts between Borrower and the Other Contract Parties. Lender may remove any of the Other Contract Parties at any time after exercising its rights under the Contracts Assignment instead of assuming the relevant Contract in full for the duration of the term of the Contract.

(iv) No Cure Through Collection of Rents. Lender's enforcement of the Contracts Assignment shall not cure or waive any default or waive, modify or affect any notice of default under any of the Loan Documents or invalidate any act done pursuant to such notice or in any way operate to prevent Lender from pursuing any remedy which it now or hereafter may have under the terms or conditions of the Loan Documents.

(v) Costs of Enforcement. Lender's rights under this Subsection include, without limitation, the right to appear in and defend any action or proceeding purporting to affect the security of the Contracts Assignment or the rights or powers of Lender, the right to perform and discharge each and every obligation, covenant and agreement of Borrower in the Contracts and the right to pay necessary related costs and expenses, including attorneys' fees. Any amounts incurred by Lender in connection with its rights under the Contracts Assignment, including costs, expenses and attorneys' fees, bear interest at the rate stated in the Notes, are secured by the Contracts Assignment and constitute part of the "Obligations." Borrower shall reimburse Lender for such amounts immediately upon demand.

(vi) Not Dependent on Adverse Conditions. Lender's rights under the Contracts Assignment shall in no way be dependent upon, and shall apply without regard to, whether the Premises are in danger of being lost, materially injured or damaged or whether the Premises are adequate to discharge the Obligations.

(vii) Authorization to Other Contract Parties. Borrower irrevocably directs and authorizes the Other Contract Parties to act at Lender's direction and otherwise perform on Lender's behalf without any need for a judicial determination that Lender is entitled to exercise its rights under the Contracts Assignment or that an Event of Default has occurred. The Other Contract Parties are irrevocably authorized and directed to recognize the claims of Lender or any such receiver without investigating (a) the reason for any action taken by Lender or such receiver; (b) the validity or the amount of indebtedness owing to Lender; (c) the existence of an Event of Default; or (d) the manner in which Lender or such receiver shall apply any money received. The signature of Lender or such receiver, without further signature or authorization, shall be sufficient for the exercise of any rights under the Contracts Assignment. Any direction by Lender or such receiver to any of the Other Contract Parties shall be considered the direction of Borrower.

(viii) Lender as Creditor of the Other Contract Parties. Upon and at all times while an Event of Default continues, Lender, and not Borrower, shall be deemed to be the creditor of the Other Contract Parties with respect to assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership

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proceedings affecting such Other Contract Parties (without obligation on the part of Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights in such proceedings, and reserving the right to Borrower to make such filing in such event) with an option to Lender to apply any money received by Lender as such creditor to reduce the Obligations.

(ix) Lender as Attorney-in-fact. Borrower irrevocably appoints Lender as its agent and attorney-in-fact, which appointment is coupled with an interest, to exercise any rights or remedies under the Contracts Assignment following an Event of Default and to execute and deliver during the term of the Contracts Assignment such instruments as Lender may deem necessary to make the Contracts Assignment and any further assignment effective.

(x) Continuing Rights. The rights and powers of Lender or any receiver under the Contracts Assignment shall continue and remain in full force and effect until all of the Obligations are paid in full, and shall continue after commencement of a foreclosure action and after foreclosure sale and until expiration of the equity of redemption if Lender is the purchaser at the foreclosure sale.

(xi) Separate Rights. **LENDER'S RIGHTS AND REMEDIES UNDER THE CONTRACTS ASSIGNMENT ARE SEPARATE FROM AND CUMULATIVE TO LENDER'S OTHER RIGHTS AND REMEDIES UNDER THIS MORTGAGE. AT LENDER'S SOLE OPTION, LENDER MAY EXERCISE THESE RIGHTS AND REMEDIES SEPARATE FROM, OR AS PART OF, ANY ACTION UNDER OTHER PROVISIONS OF THIS MORTGAGE. NO FORECLOSURE OF THIS MORTGAGE SHALL BE REQUIRED AS A PREREQUISITE TO LENDER'S EXERCISE OF THESE RIGHTS AND REMEDIES.**

19. **WAIVER.** Lender may waive any default without waiving any other subsequent or prior default by an Obligor. No failure or delay of Lender to exercise fully or in part any right, power or remedy under the Loan Documents shall operate as a waiver of such right, power or remedy; and no single or partial exercise by Lender of any such right, power or remedy shall preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy. Each right, power and remedy described in this Mortgage and the Loan Documents is non-exclusive and separate, and the rights, powers and remedies and powers are cumulative and not exclusive of any remedies provided by law. Neither a modification or waiver of any of the provisions of any of the Loan Documents nor a consent to any departure by an Obligor from such provisions shall be effective unless it is in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose identified in writing.

20. **COSTS, EXPENSES AND ATTORNEYS' FEES.** To the extent not prohibited by law, all of Lender's expenses for purposes of collection and enforcement of Borrower's obligations under the Loan Documents, including reasonable attorneys' fees, and all costs and disbursements if legal action is necessary, and all reasonable expenses of Lender including, without limitation, title evidence, surveys, appraisals, travel expenses and insurance, shall be added to the Obligations, and shall become due as incurred and be included in any judgment. If Lender is challenged in any manner or Lender is named, intervenes, is deposed or gives testimony in any action, proceeding or lawsuit (including any bankruptcy or probate proceeding) for any reason involving Borrower, any Obligor or the Property, Borrower shall immediately, upon request of Lender, pay to Lender all reasonable expenses of every kind that pertain to such matter including, without limitation, Lender's reasonable attorneys' fees, costs, disbursements, and expenses. Borrower shall indemnify and save Lender harmless from and against any and all costs, expenses, judgments, awards and liabilities incurred by Lender in connection with the transactions contemplated by this Agreement, including without limitation all costs, expenses and reasonable attorneys' fees incurred by Lender in connection with the review of Borrower's request for Lender's consent to a sale or other transfer or to encumber further all or any part of the Property, any interest in this Mortgage or any interest in Borrower.

21. **CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL.** Borrower, for Borrower and for all Obligors, to the extent that each may do so, and Lender each hereby consents to the jurisdiction of the courts of the State of Illinois situated in the county in which the Premises are located and the United States District Court for the Northern District of Illinois for the purpose of any suit, action or other proceeding arising out of any of the Obligations or the terms or provisions of the Loan Documents, and expressly waives any and all objections that Borrower or any Obligor or Lender, as applicable, may have as to venue in any of such courts. **TO THE EXTENT PERMITTED BY LAW, BORROWER, FOR BORROWER AND FOR ALL OBLIGORS, AND LENDER, EACH HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION BROUGHT WITH RESPECT TO ANY OR ALL OF THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION THIS MORTGAGE AND**

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THE NOTES.

22. ADDITIONAL PROVISIONS.

(a) Word Form. Wherever the context of their usage permits, words in singular form shall include the plural form and words in plural form shall include the singular form with no distinction between gender.

(b) Severability and Cumulative Remedies. Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provisions. The rights and remedies granted to Lender in this Mortgage are cumulative, and are in addition to the remedies granted by law.

(c) Obligors, Successors and Assigns. The Obligations are the joint and several obligations of Borrower, including each individual and entity that are defined as "Borrower" (if more than one). This Mortgage benefits Lender and Lender's successors and assigns, and binds Borrower and all other Obligors and their respective heirs, personal representatives, successors, assigns, trustees and receivers; however, Borrower may not assign or transfer Borrower's rights under the Loan Documents without the prior written consent of Lender.

(d) Applicable Law. This Mortgage shall be governed by and interpreted under the laws of the State of Illinois, except that the substantive law of the state in which the Property is located shall govern the procedural aspects of a foreclosure of this Mortgage and attachment of the liens granted by this Mortgage.

(e) Captions. The captions shall not be deemed to be fully inclusive of all provisions in any captioned Section or Subsection, and are included for reference purposes only.

(f) Notices. All notices to be given to Borrower or Lender under this Mortgage or any other of the Loan Documents shall be in writing and shall be deemed given (i) upon receipt by the intended recipient, or any officer, director or equity holder of the intended recipient (except in the case of notices to Lender, only upon receipt by an officer who works at the address set forth above or at such other address as Lender designates by written notice to Borrower after the date of this Mortgage); (ii) if mailed, upon mailing to the intended recipient at the intended recipient's address set forth above (or any address designated by the intended recipient by written notice to the other after the date of this Mortgage), postage prepaid, either by registered or certified mail, return receipt requested for notices from Borrower to Lender and default notices to Borrower from Lender or by first class mail for all other notices from Lender to Borrower; or (iii) if transmitted by a recognized courier service, upon delivery to such courier with fees paid by the sender addressed to the intended recipient at the intended recipient's address set forth above (or any address designated by the intended recipient by written notice to the other after the date of this Mortgage) with a copy to the following if for Borrower: D'Ancona & Pflaum, 111 E. Wacker Drive, Suite 2800, Chicago, Illinois 60601; Attention Jeffrey B. Schamis; and a copy to the following if to Lender: Gardner Carton & Douglas, 191 N. Wacker Drive, Suite 3700, Chicago, Illinois 60606; Attention: Valerie A. Haugh.

(g) Exhibits. All exhibits attached to this Mortgage are incorporated in this Mortgage by reference.

(h) Compliance With Illinois Mortgage Foreclosure Law. If any provision in this Mortgage shall be inconsistent with any provision of the statutes or common law of the State of Illinois governing the foreclosure of this Mortgage (collectively, "Foreclosure Laws"), the provisions of the Foreclosure Laws shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Laws. If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Foreclosure Laws in the absence of said provision, Lender shall be vested with rights granted in the Foreclosure Laws to the full extent permitted by Law.

Dated as of the date set forth above.

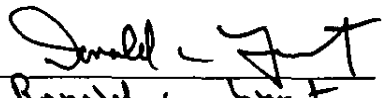
BORROWER:

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1101 Perimeter, L.L.C., a Delaware limited liability company

By: HP 1101 Perimeter, L.L.C., an Illinois
limited liability company, its manager

By: 
Name: Ronald C. Hunt
Title: Managing Member

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STATE OF ILLINOIS)

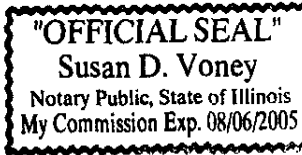
COUNTY OF DuPage) SS

I, Susan D. Voney, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that RONALD C. LUNT, as MANAGING MEMBER of HP Perimeter, L.L.C., an Illinois limited liability company ("HP") the manager of 1101 Perimeter, L.L.C., a Delaware limited liability company ("Company") who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such MANAGING MEMBER of HP and as manager said Company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of HP as the manager of said Company, for the uses and purposes set forth therein.

Given under my hand and Notarial Seal this 3 day of March, 2003.

Susan D. Voney
NOTARY PUBLIC

My commission expires:



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EXHIBITS

Exhibit A - Legal Description

Exhibit B - Permitted Encumbrances

Exhibit C - Personal Property

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EXHIBIT A

Legal Description

PARCEL 1:

LOT 6B IN THE RESUBDIVISION OF PARTS OF LOTS 2, 5, 6 AND 7 IN WOODFIELD, BRING. A SUBDIVISION OF PART OF THE NORTHWEST ¼ AND THE NORTHEAST ¼ AM THE SOUTHEAST ¼ OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2A:

A NON-EXCLUSIVE PERPETUAL EASEMENT APPURTENANT TO SAID PROPERTY TO USE THE PERIMETER ROAD FORMING THE BOUNDARY OF THE PROPERTY COMMONLY KNOWN AS 'WOODFIELD MALL' IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST ¼ AND THE NORTHEAST ¼ AND THE SOUTH EAST ¼ OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AS CREATED BY FOUR PARTY OPERATING AGREEMENT DATED AUGUST 20, 1969 AND RECORDED AUGUST 29, 1969 AS DOCUMENT 20945754 AND FILED AUGUST 29, 1969 AS DOCUMENT LR 2469541, AS AMENDED AND SUPPLEMENTED BY DOCUMENTS 21003242, 21003247, 21313213, LR 2598646, 21619274, 21774062, 21785149, 22237958 AND 22237959.

PARCEL 2B:

A NON-EXCLUSIVE EASEMENT OVER AND ACROSS AN ACCESS ROAD CONSTRUCTED BY WOODFIELD ASSOCIATES, AN ILLINOIS JOINT VENTURE, OVER AND ACROSS THE WESTERLY 36 FEET OF LOT 6G IN THE RESUBDIVISION OF LOTS 6C, 6D AND 6E IN THE RESUBDIVISION OF PARTS OF LOTS 2, 5, 6 AND 7 IN WOODFIELD BEING A SUBDIVISION OF PART OF THE NORTHWEST ¼ AND THE NORTHEAST ¼ AND THE SOUTHEAST ¼ OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF FILED WITH THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS, ON OCTOBER 11, 1977 AS TORRENS REGISTRATION NO. LR 2973225, ALL IN COOK COUNTY, ILLINOIS FOR INGRESS AND EGRESS FOR VEHICULAR TRAFFIC TO AND FROM SUCH PROPERTY TO GOLF ROAD (ILLINOIS ROUTE 58) ADJOINING SUCH ACCESS ROAD, AS CREATED BY AGREEMENT BY AND BETWEEN CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER TRUST NO. 46746 AND NATIONAL BOULEVARD BANK, AS TRUSTEE UNDER TRUST NO. 5874 AND FILED DECEMBER 15, 1977 AS DOCUMENT LR 2988336.

PARCEL 2C:

A NON-EXCLUSIVE PERPETUAL RIGHT TO USE AN ACCESS ROAD WEST OF LOT 6B AFORESAID FOR INGRESS AND EGRESS FOR VEHICULAR TRAFFIC TO AND FROM SUCH PROPERTY AND THE ABOVE DESCRIBED PERIMETER ROAD AND GOLF ROAD, AS CREATED BY FOUR PARTY OPERATING AGREEMENT DATED AUGUST 20, 1969 AND RECORDED AUGUST 29, 1969 AS DOCUMENT 20945754 AND FILED AUGUST 29, 1969 AS DOCUMENT LR 2469541, AS AMENDED AND SUPPLEMENTED THERETO, ALL IN COOK COUNTY, ILLINOIS.

Property Address: 1101 Perimeter Drive, Schaumburg, IL, 60193

Permanent Index No. 07-13-200-021-0000

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EXHIBIT B

Permitted Encumbrances

1. General and special taxes and assessments not yet due or payable.

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EXHIBIT C

Personal Property

All of Borrower's "Equipment" and "Fixtures," as such terms are used in the Uniform Commercial Code, that are now or are hereafter attached to, located in, placed in or necessary to the use and operation of the improvements on the real property described on Exhibit A, together with all additions, accessions, accessories, parts, fittings, substitutes for such property, all proceeds and products of such property, all insurance payments and awards for and related to such property and all records, drawings, schematics and plans for such property. The Collateral includes, but is not limited to, (a) all machinery, fittings, fixtures, apparatus, equipment and articles used to supply heat, gas, electricity, air conditioning, water, light, waste disposal, power refrigeration, ventilation or fire or sprinkler protection, (b) all elevators, escalators, overhead cranes, hoists and assists, power driven machinery and equipment and other similar machinery and equipment, (c) all furniture, furnishings, supplies, draperies, maintenance and repair equipment and supplies, floor coverings, screens, storm windows, blinds, awnings, appliances, building supplies and materials, shrubbery and plants, and (d) all interest of Borrower in any of the above-described property hereafter acquired; however, the Collateral excludes the trade fixtures, inventory and removable personal property owned by any tenant or licensee of the real property. The enumeration of any specific articles of the Collateral shall in no way be held to exclude any items of property not specifically enumerated. The Collateral also includes all rents, issues and profits and security deposits arising from the above-described real and personal property, and all accounts held by Lender including, but not limited to, all escrow accounts for the payment of: real estate taxes and assessments; insurance premiums; or repairs, replacements or improvements to the real or personal property; and that certain account held by Lender and originally funded with \$300,000.00 which account will be held, disbursed and paid in accordance with a disbursement agreement by and between Lender and Borrower.

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Approved by Cook County Clerk's Office

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