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**TRIANGLE PLAZA VENTURE L.L.C.,**  
a Delaware limited liability company, as mortgagor  
(Borrower)

to

**NLI PROPERTIES CENTRAL, INC.,**  
a Delaware corporation, as mortgagee  
(Lender)

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

Dated: December 10, 1998

Location: 8750-8770 West Bryn Mawr Avenue, Chicago, Illinois

**BOX 333-CTI**

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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Security Instrument") is made as of the 10<sup>th</sup> day of December, 1998, by TRIANGLE PLAZA VENTURE L.L.C., a Delaware limited liability company, having its principal place of business at Three Pickwick Plaza, Greenwich, Connecticut 06830 as mortgagor ("Borrower") to NLI PROPERTIES CENTRAL, INC., a Delaware corporation, having an address at 190 South LaSalle Street, Suite 1660, Chicago, Illinois 60603 as mortgagee, together with its successors and assigns ("Lender").

### RECITALS:

Borrower by its promissory note of even date herewith given to Lender is indebted to Lender in the principal sum of SIXTY FIVE MILLION AND 00/100 DOLLARS (\$65,000,000.00) in lawful money of the United States of America (the note together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "Note"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note and due and payable in full on January 1, 2006.

Borrower desires to secure the payment of the Debt (as defined in Article 2 hereof) and the performance of all of its obligations under the Note and the Other Obligations (as defined in Article 2 hereof).

### ARTICLE 1

#### GRANTS OF SECURITY

1.1 **Property Mortgaged.** Borrower does hereby irrevocably MORTGAGE, GRANT, BARGAIN, SELL, PLEDGE, ASSIGN, WARRANT, TRANSFER AND CONVEY to Lender, and grant a security interest to Lender in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property") all of which property, rights, interests and estates are hereby pledged primarily and on a parity with the Land (as hereinafter defined) and not secondarily:

(a) **Land.** The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) **Additional Land.** All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) **Improvements.** The buildings (including two office buildings containing approximately 624,430 square feet of office, retail and storage space (the "Buildings")), structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");

(d) **Easements.** All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all of Borrower's interest in all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) **Fixtures and Personal Property.** All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(f) **Leases and Rents.** All of Borrower's interest in all leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments and modifications thereto, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees' obligations thereunder, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits



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(including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(g) **Insurance Proceeds**. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(h) **Condemnation Awards**. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(i) **Tax Appeals**. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax appeals or any applications or proceedings for reduction;

(j) **Conversion**. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(k) **Rights**. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(l) **Agreements**. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of an Event of Default (defined below), to receive and collect any sums payable to Borrower thereunder;

(m) **Intangibles**. All trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property; and

(n) **Other Rights.** Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (m) above.

1.2 **Assignment of Leases And Rents.** Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 3.8, Lender grants to Borrower a license to collect and receive the Rents. Borrower shall hold a portion of the Rents sufficient to discharge all current sums due on the Debt for use in the payment of such sums.

1.3 **Security Agreement.** This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (defined in Section 2.3), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code.

1.4 **Pledge of Monies Held.** Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Escrow Fund (as defined in Section 3.5), Net Proceeds (as defined in Section 3.7) and condemnation awards or payments (as described in Section 3.6), as additional security for the Obligations until expended or applied as provided in this Security Instrument.

1.5 **Conditions to Grant.** TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever; PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void.

## ARTICLE 2

### DEBT AND OBLIGATIONS SECURED

2.1 **Debt.** This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the payment of the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"):

- (a) the indebtedness evidenced by the Note in lawful money of the United States of America;
- (b) interest, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the Other Security Documents (defined below);
- (c) the Prepayment Consideration (as defined in the Note), if any;
- (d) all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the Other Security Documents;
- (e) all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and
- (f) all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender.

2.2 **Other Obligations.** This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the "Other Obligations"):

- (a) all other obligations of Borrower contained herein;
- (b) each obligation of Borrower contained in the Note and in the Other Security Documents; and
- (c) each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, this Security Instrument or the Other Security Documents.

2.3 **Debt And Other Obligations.** Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "Obligations."

2.4 **Payments.** Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting

bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

## ARTICLE 3

### BORROWER COVENANTS

Borrower covenants and agrees that:

3.1 **Payment of Debt.** Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

3.2 **Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or members of Borrower and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note (the "Other Security Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

3.3 **Insurance.**

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) **Property Insurance.** Insurance with respect to the Improvements and building equipment insuring against any peril now or hereafter included within the classification "All Risks of Physical Loss" in amounts at all times sufficient to prevent Lender from becoming a co-insurer within the terms of the applicable policies and under applicable law, but in any event such insurance shall be maintained in an amount which, after application of deductible, shall be equal to the full insurable value of the Improvements and building equipment, the term "full insurable value" to mean the actual replacement cost of the Improvements and building equipment (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, a recognized independent insurance broker or an independent appraiser selected and paid by Borrower and in no event less than the coverage required pursuant to the terms of any Lease;

(ii) **Liability.** Comprehensive general liability insurance, including bodily injury, death and property damage liability, insurance against any and all claims, including all legal liability to the extent insurable and imposed upon Lender and all court costs and attorneys' fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Property in such

amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property but in any event for a combined single limit of at least \$2,000,000, and \$50,000,000 in excess and/or umbrella liability.

(iii) **Workers' Compensation Insurance.** Statutory workers' compensation insurance with respect to any work on or about the Property;

(iv) **Business Interruption Insurance.** Business interruption and/or loss of "rental income" insurance in an amount sufficient to avoid any co-insurance penalty and to provide proceeds which will cover a period of not less than one (1) year from the date of casualty or loss, the term "rental income" to mean the sum of (A) the total then ascertainable Rents payable under the Leases and (B) the total ascertainable amount of all other amounts to be received by Borrower from third parties which are the legal obligation of the tenants, reduced to the extent such amounts would not be received because of operating expenses not incurred during a period of non-occupancy of that portion of the Property then not being occupied;

(v) **Boiler and Machinery Insurance.** Broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery, and equipment located in, on or about the Property and insurance against loss of occupancy or use arising from any breakdown in such amounts as are generally required by institutional lenders for properties comparable to the Property;

(vi) **Flood Insurance.** If required by Subsection 5.5 (j) hereof, flood insurance in an amount at least equal to the lesser of (A) the principal balance of the Note, or (B) the maximum limit of coverage available for the Property under the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended;

(vii) **Builder's Risk Insurance.** At all times during which structural construction, repairs or alterations are being made with respect to the Improvements (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in Subsection 3.3(a)(i) written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsection 3.3(a)(i), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions; and

(viii) **Other Insurance.** Such other insurance with respect to the Property against loss or damage of the kinds from time to time customarily insured against and

in such amounts as are required by institutional lenders for properties comparable to the Property.

(b) All insurance provided for in Subsection 3.3(a) hereof shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), and shall be issued by either the insurers who insure the Improvements on the date of this Security Instrument or one or more other domestic primary insurer(s) having (i) an investment grade rating or claims paying ability assigned by one or more credit rating agencies approved by Lender (a "Rating Agency") and (ii) a general policy rating of A or better and a financial class of X or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company Inc. is no longer available, a similar rating from a similar or successor service) (each such insurer shall be referred to below as a "Qualified Insurer"). All insurers providing insurance required by this Security Instrument shall be authorized to issue insurance in the state in which the Property is located. The Policy referred to in Subsection 3.3(a)(ii) above shall name Lender as an additional named insured and the Policies referred to in Subsection 3.3(a)(i), (iv), (v), (vi) and (vii), and as applicable (viii), above shall provide that all proceeds be payable to Lender as set forth in Section 3.7 hereof. The Policies referred to in Subsections 3.3(a)(i), (v), (vi) and (vii) shall also contain: (i) a standard "non-contributory mortgagee" endorsement or its equivalent relating, *inter alia*, to recovery by Lender notwithstanding the negligent or willful acts or omission of Lender; (ii) to the extent available at commercially reasonable rates, a waiver of subrogation endorsement, as to Lender; and (iii) an endorsement providing for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of similar properties in the general vicinity of the Property, but in no event in excess of \$100,000. The Policy referred to in Subsection 3.3(a)(i) above shall also contain (i) a "Replacement Cost Endorsement" with a waiver of depreciation, (ii) an "Agreed Amount Endorsement", and shall (iii) provide coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements together with an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses. All Policies shall contain (i) a provision that such Policies shall not be canceled or terminated, nor shall they expire, without at least thirty (30) days' prior written notice to Lender in each instance; and (ii) include effective waivers by the insurer of all claims for Insurance Premiums (defined below) against any loss payees, additional insureds and named insureds (other than Borrower). Certificates of insurance with respect to all renewal and replacement Policies shall be delivered to Lender not less than thirty (30) days prior to the expiration date of any of the Policies required to be maintained hereunder, which certificates shall bear notations evidencing payment of applicable premiums (the "Insurance Premiums"). Originals or certificates of such replacement Policies shall be delivered to Lender promptly after Borrower's receipt thereof but in any case within thirty (30) days after the effective date thereof. If Borrower fails to maintain and deliver to Lender the original Policies or certificates of insurance required by this Security Instrument, upon ten (10) days' prior notice to Borrower, Lender may procure such insurance at Borrower's sole cost and expense.

(c) Borrower shall comply with all insurance requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to this Section 3.3.

3.4 **Payment of Taxes, etc.**

(a) Subject to Section 3.5(a) below, Borrower shall promptly pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property as same become due and payable. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with commercially reasonable diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Security Documents, (ii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (v) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, or Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon, taking into consideration the amount in the Escrow Fund available for payment of Taxes.

## 3.5 Escrow Fund.

(a) In addition to the initial deposits (which shall be in an amount which, when added to the monthly installments to be paid by Borrower hereunder, will be sufficient to pay the Taxes as they accrue and are due and payable) with respect to Taxes, made by Borrower to Lender on the date hereof to be held by Lender in escrow, Borrower shall pay to Lender on the first day of each calendar month one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months (the "Escrow Fund"), which shall be deposited by Lender into an interest-bearing account at a bank selected by Lender. Provided Borrower holds title to and controls the Property, the Taxes are paid current, no Event of Default has occurred and is continuing hereunder, and no state of facts exists which, with the passage of time, or giving of notice, or both, would constitute an Event of Default, then the interest earned by the Escrow Fund, less Lender's reasonable escrow costs, shall be paid to Borrower following Lender's receipt of confirmation that the Taxes have been paid. Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Other Charges of which it has or obtains knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Provided there are sufficient amounts in the Escrow Fund and no Event of Default exists, Lender shall be obligated to pay the Taxes as they become due on their respective due dates on behalf of Borrower by applying the Escrow Fund to the payments of such Taxes required to be made by Borrower pursuant to Section 3.4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes pursuant to Section 3.4 hereof, Lender shall credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay Taxes, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall reasonably estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund.

(b) Notwithstanding the foregoing provisions of this Section 3.5, Borrower, at its option in lieu of paying to Lender cash to be held in the Escrow fund, may deposit a letter of credit (the "ANC Letter of Credit") with Lender in the amount of \$1,014,421.00, representing the estimate of Borrower and Lender of the amount of Taxes accruing with regard to the next period of six months which are to be paid by the Tenant pursuant to the Lease Agreement between Borrower and American National Can for a portion of the Property. The ANC Letter of Credit shall also satisfy the following requirements: (i) it shall be substantially in the form attached hereto as Exhibit B; (ii) it shall be issued by a national banking association having assets in excess of \$5,000,000,000 which shall be satisfactory to Lender; (iii) it shall be presentable at a facility of the issuer located in Chicago, Illinois; and (iv) it shall be issued with an expiry date not earlier than one (1) year after the date of issuance. At least thirty (30) days prior to the expiration of the ANC Letter of Credit, Borrower shall cause the issuer of



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the ANC Letter of Credit to extend the expiry date of the ANC Letter of Credit for a period of at least one (1) year. Lender shall not draw on the ANC Letter of Credit to pay amounts due for Taxes if Borrower pays the Taxes directly to the respective taxing authority and furnishes to Lender proof of payment of the Taxes, in the form of receipts, at least one (1) Business Day before the Taxes become delinquent. In the event Lender draws against the ANC Letter of Credit, the Borrower shall cause the ANC Letter of Credit to be reissued in accordance with the terms hereof and in the amount which will be, at any time, the product of multiplying the following amounts: (x) the amount of Taxes assessed against the Property in the last year for which final tax bills were issued; (y) fifty percent (50%); and (z) forty four and fifty nine hundredths percent (44.59%). Failure of Borrower to deliver to Lender a reissued ANC Letter of Credit within thirty (30) days following notice of Lender's draw shall constitute an Event of Default as provided in Section 10.1 below.

(c) Notwithstanding the foregoing provisions of this Section 3.5, provided that Borrower deposits a Tax Letter of Credit (as defined below) with Lender, and provided an Event of Default has not occurred, Borrower may pay the Taxes directly to the respective taxing authority, and shall furnish to Lender proof of the payment of the Taxes, in the form of receipts, at least one (1) Business Day prior to the date the Taxes shall become delinquent. As used herein, the term "Tax Letter of Credit" shall mean a letter of credit having the following characteristics: (i) it shall be substantially in the form attached hereto as Exhibit B; (ii) it shall be issued by a national banking association having assets in excess of \$5,000,000,000 which shall be satisfactory to Lender; (iii) it shall be presentable at a facility of the issuer located in Chicago, Illinois; (iv) it shall be in the amount of Lender's reasonable estimate of the Taxes for the next ensuing six (6) months less the amount available to be drawn on any ANC Letter of Credit held by Lender; and (v) it shall be issued with an expiry date not earlier than one (1) year after the date of issuance. At least thirty (30) days prior to the expiration of the Tax Letter of Credit, Borrower shall cause the issuer of the Tax Letter of Credit to extend the expiry date of the Tax Letter of Credit for a period of at least one (1) year. In the event Lender draws against the Tax Letter of Credit, the Borrower shall cause the Tax Letter of Credit to be reissued in accordance with the terms hereof and in such amount as the Lender shall require under clause (iv) above. Failure of Borrower to extend the expiry date of the Tax Letter of Credit or deliver to Lender a reissued Tax Letter of Credit within thirty (30) days following notice of Lender's draw shall constitute an Event of Default as provided in Section 10.1 below.

3.6 **Condemnation.** Borrower shall promptly give Lender notice of the actual commencement or written threat of commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after

the deduction of reasonable out-of-pocket expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. Lender may apply any award or payment to the reduction or discharge of the Debt whether or not then due and payable, subject to the provisions of Section 3.7 below. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt.

**3.7 Restoration After Casualty/Condemnation.** In the event of a casualty, condemnation or a taking by eminent domain, the following provisions shall apply in connection with the Restoration (defined below) of the Property:

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, or if the Property or any portion thereof is taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by the power of eminent domain, then Borrower shall give prompt notice of such damage or taking to Lender and shall, if Lender has made the Net Proceeds available for Restoration, promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty or taking, with such alterations as may be approved by Lender (the "Restoration").

(b) The term "Net Proceeds" for purposes of this Section 3.7 shall mean: (i) the net amount of all insurance proceeds under the Policies carried pursuant to Subsections 3.3(a)(i), (iv), (v), (vi), (vii) and (viii) of this Security Instrument as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to reasonable counsel fees), if any, in collecting the same, or (ii) the net amount of all awards and payments made by the condemning authority with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of Lender's reasonable costs and expenses (including, but not limited to reasonable counsel fees), if any, in collecting the same, whichever the case may be.

(c) All Net Proceeds shall be paid directly to Lender, to be applied to the principal amount due under the Note, or restoration or repair of the Property, at Lender's sole discretion.

Notwithstanding the foregoing, the Net Proceeds paid to Lender pursuant to Section 3.6 or this Section 3.7:

(i) in an amount less than \$250,000 shall be made available to Borrower for payment or reimbursement of Borrower's expenses in connection with the Restoration;

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(ii) in an amount equal to or greater than \$250,000 shall be made available to Borrower for payment or reimbursement of Borrower's expenses in connection with the Restoration, provided:

(A) in the event of a casualty, not more than twenty-five percent (25%) of the Property and not more than forty percent (40%) of either of the Buildings is damaged; and in the event of a condemnation, not more than fifteen percent (15%) of the Property and not more than twenty-five (25%) of either of the Buildings is taken or threatened to be taken;

(B) there exists no uncured Event of Default under this Security Instrument, the Note, or the Other Security Documents;

(C) Borrower has demonstrated to Lender's reasonable satisfaction that Borrower, after taking into account the Net Proceeds derived from the business interruption insurance maintained pursuant to Section 3.3(a)(iv), has the financial ability to maintain its obligations under this Security Instrument, the Note, and the Other Security Documents during reconstruction;

(D) the damage or destruction to the Property or either of the Buildings can be repaired at least eighteen (18) months prior to the Maturity Date (as defined in the Note), in Lender's reasonable discretion;

(E) in the event the Net Proceeds exceed \$500,000, then the Net Proceeds shall be released to Borrower pursuant to escrow/construction funding arrangements reasonably satisfactory to Lender; and

(F) annual net income from Leases in place and approved by Lender which will survive Restoration provide coverage of at least 1.25 times the product of (i) the Monthly Debt Service Payment Amounts and (ii) 12.

(d) The Net Proceeds held by Lender until disbursed in accordance with the provisions of this Section 3.7 shall constitute additional security for the Obligations. The Net Proceeds other than the Net Proceeds paid under the business interruption Policy described in Subsection 3.3(a)(iv) shall be disbursed by Lender to, or as directed by, Borrower, in an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration less customary retainage from time to time during the course of the Restoration, not more frequently than once per month, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either

been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company insuring the lien of this Security Instrument. The Net Proceeds paid under the business interruption Policy described in Subsection 3.3(a)(iv) shall be disbursed by Lender to pay for debt service under the loan evidenced by the Note, to pay other expenses incurred by Borrower in connection with the ownership and operation of the Property, and the remainder thereof, to, or as directed by, Borrower to pay for the cost of the Restoration in accordance with this Section 3.7(d). Final payment shall be made after submission to Lender of all licenses, permits, certificates of occupancy and other required approvals of governmental authorization having jurisdiction and Casualty Consultant's certification that the Restoration has been fully completed.

(e) Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration, for the purpose of exercising Lender's rights hereunder. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender and an independent consulting engineer selected by Lender (the "Casualty Consultant"), such acceptance not to be unreasonably withheld or delayed. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 3.7 shall constitute additional security for the Obligations.

(g) Except upon the occurrence and continuance of an Event of Default, Borrower shall settle any insurance claims with respect to the Net Proceeds which in the aggregate are less than \$250,000. Lender shall have the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds which in the aggregate are greater than \$250,000. If the Net Proceeds are received by Borrower, such Net Proceeds shall, until the completion of the Restoration, be held in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof.

(h) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after (i) the Casualty Consultant certifies

to Lender that the (ii) Restoration has been completed in accordance with the provisions of this Section 3.7, and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full and all required permits, licenses, certificates of occupancy and other required approvals of governmental authorities having jurisdiction have been issued, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Security Instrument or any of the Other Security Documents.

(i) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 3.7(h) shall be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper (and such payment shall cause a pro-rata reduction in the debt service payments under the Note to maintain the then current Applicable Interest Rate (as defined in the Note)) or, at the discretion of Lender, the same shall be paid, either in whole or in part, to Borrower. If Lender shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Debt. Any payment of the Debt pursuant to this Section 3.7 shall not be subject to any Prepayment Consideration under the Note.

### 3.8 Leases And Rents.

(a) Borrower may enter into a proposed Lease of less than 15,000 square feet without the prior written consent of Lender, provided such proposed Lease (i) provides for a lease term no greater than 120 months, (ii) is an arms-length transaction with a bona fide, independent third party tenant, (iii) provides for a rental rate comparable to existing local market rates (taking into account the type and quality of the tenant, the Building and the tenant space) as of the date such Lease is executed by Borrower, (iv) provides no ownership interest in the Property or Buildings to the tenant, (v) does not provide the tenant with an option to cancel such Lease, and (vi) is written on the standard form of lease previously approved by Lender in writing with no material changes other than changes previously approved by Lender in other comparable or similar Leases. All proposed Leases of 15,000 square feet or more which meet all of the requirements (i) through (vi) set forth in this Subsection 3.8(a) shall be subject to the prior written approval of Lender, at Borrower's reasonable expense, which consent shall not be unreasonably withheld or delayed, and such Leases shall be deemed approved if not disapproved in writing by Lender within ten (10) business days following submission of the Lease to Lender. All proposed Leases which do not satisfy the requirements (i) through (vi) set forth in this Subsection 3.8(a) shall be subject to the prior approval of Lender and its counsel, at Borrower's reasonable expense, which consent shall not be unreasonably withheld or delayed, and such Leases shall be deemed approved if not disapproved in writing by Lender within (x) ten (10) business days following submission of the Lease to Lender for Leases of less than 15,000 square feet, and (y) fifteen (15) business days following submission of the Lease to Lender for Leases of 15,000 square

feet or more. Borrower shall promptly deliver to Lender copies of all Leases which are entered into pursuant to this Subsection. Upon the written request of any tenant under a lease approved by Lender pursuant to this Subsection, Lender shall enter into its standard subordination, non-disturbance and attornment agreement, in the form attached hereto as Exhibit C, with such tenant with reasonable and customary changes. Notwithstanding anything to the contrary contained in this Security Instrument, Borrower shall not be required to pay fees or expenses of Lender's attorneys for reviewing any proposed Lease which meets requirements (i) through (vi) of this Section 3.8, regardless of the square footage of the premises demised under that Lease.

(b) Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of any of the Leases as security for the Debt; (ii) upon request, shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) shall enforce all of the material terms, covenants and conditions contained in the Leases upon the part of the tenant thereunder to be observed or performed, (iv) shall not collect any of the Rents more than one (1) month in advance (except security deposits shall not be deemed Rents collected in advance); (v) shall not execute any other assignment of the lessor's interest in any of the Leases or the Rents; and (vi) shall not consent to any assignment of or subletting under any Leases not in accordance with their terms, without the prior written consent of Lender.

(c) If a Lease is not a "Major Lease" (as defined below), Borrower may, without the consent of Lender, amend, modify or waive the provisions of such Lease other than provisions concerning the payment of Rent or provisions which concern the term of the Lease. If a Lease is not a Major Lease, Borrower may terminate that Lease if the tenant is in default beyond applicable notice and cure periods with no requirement of consent from Lender. Any other amendment, modification, waiver, termination, rent reduction, space surrender or term shortening shall be subject to the prior approval of Lender and its counsel, at Borrower's expense, which consent shall not be unreasonably withheld or delayed, and such amendment, modification, waiver, termination, rent reduction, space surrender or term shortening shall be deemed approved if not disapproved in writing by Lender within ten (10) business days following submission of the matter in writing to Lender. Borrower shall promptly deliver to Lender copies of amendments, modifications and waivers which are entered into pursuant to this Subsection.

(d) If a Lease is a Major Lease, Borrower may not amend, modify or waive the provisions of such Lease or terminate, reduce rents under, accept a surrender of space under, or shorten the term of, such Major Lease (including any guaranty, letter of credit or other credit support with respect thereto), other than non-material amendments and modifications made in the ordinary administration of the Building, without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed. Borrower shall promptly deliver to Lender copies of amendments, modifications and waivers which are entered into

pursuant to this Subsection. The term "Major Lease" shall mean a lease of 7,500 square feet or more.

3.9 **Maintenance And Use of Property.** Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or "materially" altered (except for normal replacement of the Personal Property) without the consent of Lender. As used herein, "materially alter" shall mean any alteration which would materially affect the structural components of the Improvements, the exterior appearance of the Building, reduce the gross leasable area of the Building or cost more than \$750,000. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

3.10 **Waste.** Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

3.11 **Compliance With Laws.**

(a) Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting the Property, or the use thereof ("Applicable Laws").

(b) Borrower shall from time to time, but not more often than once per year, upon Lender's request, provide Lender with evidence reasonably satisfactory to Lender that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws, subject to the provisions of Article 12 below.

(c) Notwithstanding any provisions set forth herein or in any document regarding Lender's approval of alterations of the Property, Borrower shall not alter the Property in any manner which would materially increase Borrower's responsibilities for compliance with

Access Laws, as hereinafter defined, without the prior written approval of Lender. Lender's approval of the plans, specifications, or working drawings for alterations of the Property shall create no responsibility or liability on behalf of Lender for their completeness, design, sufficiency or their compliance with the Access Laws. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of compliance with the Access Laws from an independent architect, engineer, or other person acceptable to Lender.

(d) Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

(e) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Applicable Laws affecting the Property, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Security Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust, or deed to secure debt affecting the Property; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and shall not constitute a default thereunder; (iv) neither the Property, any part thereof or interest therein, any of the tenants or occupants thereof, nor Borrower shall be affected in any material adverse way as a result of such proceeding; (v) noncompliance with the Applicable Laws shall not impose civil or criminal liability on Borrower or Lender, and (vi) Borrower shall have furnished to Lender all other items reasonably requested by Lender.

(f) Borrower shall promptly implement the plan of action (the "ADA Compliance Plan"), previously submitted to and approved by Lender, in accordance with its terms, which provide all actions necessary to bring the Property into compliance with the Americans with Disabilities Act.

### 3.12 Books And Records.

(a) Borrower, Equity (as defined below), Arizona (as defined below), and Buck Triangle L.L.C. ("Buck") (Equity, Arizona, and Buck are collectively referred to herein as the "Indemntor") shall keep adequate books and records of account in accordance with generally accepted accounting principles ("GAAP"), consistently applied, and Borrower shall furnish to Lender:

(i) an annual balance sheet, income statement, and cash flow statement of sources and uses, and any "Notes to Financial Statements", to be accompanied by the audit opinion of an independent certified accountant satisfactory to Lender



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confirming that such statements have been prepared in accordance with GAAP, all to be provided within ninety (90) days after the close of each fiscal year of Borrower;

(ii) annual balance sheets of Indemnitator and of each member of Borrower in the form required by Lender, prepared and certified by the respective Indemnitator or member, within ninety (90) days after the close of each fiscal year of such party;

(iii) an annual operating budget of Borrower presented on a monthly basis for Borrower's current and next fiscal year, including pro forma income statements, current expense statements, and capital expenditure statements, all to be provided at least thirty (30) days prior to the end of each fiscal year of Borrower;

(iv) certified rent rolls signed and dated by Borrower, detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease and the term of each Lease, including the expiration date, an aging report, detailing the extent to which any tenant is in monetary default under any Lease, options to terminate, lease buyouts, and any unpaid monetary tenant inducement, all to be provided within forty five (45) days after the close of each calendar quarter of the Borrower; and

(v) quarterly operating statements, with variance reports showing differences from operating budget and reasons therefor, quarterly cash flow reports, all to be provided within forty-five (45) days at the end of each calendar quarter.

(b) Borrower shall furnish Lender with such other additional financial or management information (including State and Federal tax returns) as may, from time to time, be reasonably required by Lender in form and substance satisfactory to Lender.

(c) Borrower shall furnish to Lender and its agents convenient facilities for the examination and audit of any such books and records.

**3.13 Payment For Labor And Materials.** Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions (defined below). Notwithstanding the foregoing provisions of this Section 3.13, Borrower shall not be in default for failure to pay or discharge mechanic's or materialman's liens asserted against the Property if, and so long as, (a) Borrower shall have notified Lender of same within five (5) days of obtaining knowledge thereof; (b) Borrower shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Property or any part thereof; (c) Borrower shall have

furnished to Lender a cash deposit, or an indemnity bond satisfactory to Lender with a surety satisfactory to Lender, in the amount of the mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Property or any part thereof; and (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such claim so determined, together with all costs, interest and penalties which may be payable in connection therewith.

3.14 **Performance of Other Agreements.** Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an obligation secured hereby and any amendments, modifications or changes thereto.

3.15 **Change of Name or Identity.** Except as may be permitted under Article 8 hereof, Borrower will not change Borrower's name or identity (including its trade name or names) without notifying the Lender of such change in writing at least thirty (30) days prior to the effective date of such change.

3.16 **Existence.** Borrower will continuously maintain (a) its existence and shall not dissolve or permit its dissolution, (b) its rights to do business in the state where the Property is located and (c) its franchises and trade names, if any.

## **ARTICLE 4**

### **SPECIAL COVENANTS**

Borrower covenants and agrees that:

4.1 **Property Use.** The Property shall be used only for the operation of two office buildings, with appurtenant parking and ancillary services and uses, including a health club, and for no other use, without the prior written consent of Lender. In the event Borrower acquires any property used for parking which is adjacent to or proximate to the Land, Borrower and Lender shall amend this Security Instrument to encumber such additional property with the lien of this Security Instrument.

4.2 **Single Purpose Entity.** Borrower has not and shall not:

(a) engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto;

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(b) acquire or own any material assets other than (i) the Property, (ii) additional parking areas which, if acquired by Borrower shall become subject to the lien of this Security Instrument, and (iii) such incidental Personal Property as may be necessary for the operation of the Property;

(c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's consent;

(d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualification to do business in the state where the Property is located, if applicable, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's Articles of Organization, or modify or amend the provisions of Borrower's Operating Agreement to include terms which would be expressly contrary to any provision of this Security Instrument;

(e) own any subsidiary or make any investment in, any person or entity without the consent of Lender;

(f) commingle its assets with the assets of any of its members, affiliates, or of any other person or entity;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, except for trade payables in the ordinary course of its business of owning and operating the Property and financing for office equipment and other assets used in connection with the Property other than operating systems for the Buildings, provided the amount of such financing does not exceed \$1,000,000, provided that such debt is not evidenced by a note and is paid within sixty (60) days of the date the same became due, unless the item in question is the subject of a bona fide dispute with the vendor;

(h) become insolvent and fail to pay its debts and liabilities from its assets as the same shall become due;

(i) fail to maintain its records, books of account and bank accounts separate and apart from those of the members and affiliates of Borrower, the affiliates of a member of Borrower, and any other person or entity;

(j) enter into any contract or agreement after the date hereof with any member, general partner, principal or affiliate of Borrower and Indemnitor, or any member, general partner, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third

parties other than any member, general partner, principal or affiliate of Borrower and Indemnitor, or any member, general partner, principal or affiliate thereof;

- (k) seek the dissolution or winding up in whole, or in part, of Borrower;
- (l) fail to correct any known misunderstandings regarding the separate identity of Borrower;
- (m) hold itself out to be responsible for the debts of another person;
- (n) make any loans or advances to any third party, including any member or affiliate of Borrower, or any member, general partner, principal or affiliate thereof;
- (o) fail to file its own tax returns;
- (p) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not
  - (i) to mislead others as to the identity with which such other party is transacting business, or
  - (ii) to suggest that Borrower is responsible for the debts of any third party (including any member, general partner, principal or affiliate of Borrower, or any member, general partner, principal or affiliate thereof); or
- (q) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

5.1 **Warranty of Title.** Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "Permitted Exceptions"). Borrower shall forever warrant, defend and preserve the title to the Property and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

5.2 **Legal Status And Authority.** Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization as a limited liability company; (b) is duly qualified to transact business and is in good standing in the state where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Property. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

5.3 **Validity of Documents.** (a) The execution, delivery and performance of the Note, this Security Instrument and the Other Security Documents and the borrowing evidenced by the Note (i) are within the power and authority of Borrower; (ii) have been authorized by all requisite organizational action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or governmental authority, the articles of organization, operating agreement, or other governing instrument of Borrower; or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby); and (b) to the best knowledge of Borrower, the Note, this Security Instrument and the Other Security Documents constitute the legal, valid and binding obligations of Borrower.

5.4 **Litigation.** There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), or investigation pending or, to the best of Borrower's knowledge, threatened or contemplated against Borrower or Indemnitor, or against or affecting the Property that (a) has not been disclosed to Lender by Borrower in writing, and has a material adverse affect on the Property or Borrower's or Indemnitor's ability to perform its obligations under the Note, this Security Instrument or the Other Security Documents, or (b) is not adequately covered by insurance, each as determined by Lender in its sole discretion, and to the best of Borrower's knowledge, no such proceeding is contemplated.

5.5 **Status of Property.**

(a) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(b) The Property and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use laws, Environmental Laws and other similar laws.

(c) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(d) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

(e) The Property is served by public water and sewer systems.

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

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

(h) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby and except for equipment leases permitted under the terms of this Security Instrument.

(i) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and, to the best of Borrower's knowledge, is in compliance with all Applicable Laws.

(j) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Improvements is located within such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof.

(k) All the Improvements lie within the boundaries of the Property.

(l) The Property shall be managed pursuant to a Management Agreement (the "Management Agreement"), which shall not be amended with respect to the term of the agreement, the fees paid to the manager, and the reduction of manager's duties thereunder without Lender's prior written approval, such approval not to be unreasonably withheld. Any change in the manager of the Property, and any amendment to the Management Agreement adverse to Borrower shall be subject to Lender's prior approval, not to be unreasonably

withheld or delayed, taking into account the manager's experience and reputation. Any liens on the Property which the manager may impose shall be expressly subordinate to the lien of this Security Instrument. The Management Agreement shall automatically terminate upon foreclosure by the Lender pursuant to Article 11 hereof, unless otherwise elected by Lender. In no event shall Lender be liable for any fees or charges pursuant to the Management Agreement.

5.6 **No Foreign Person.** Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations.

5.7 **Separate Tax Lot.** The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

5.8 **Leases.** Except as disclosed in the rent roll for the Property delivered to Lender, or otherwise disclosed to Lender in the attached Exhibit D, (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable and in full force and effect; (c) all of the Leases are arms-length agreements with bona fide, independent third parties; (d) Borrower is not in default under any Lease, and, to the best of Borrower's knowledge, no tenant is in default under its Lease; (e) all Rents due have been paid in full; (f) the terms of all alterations, modifications and amendments to the Leases, which alteration, modification or amendment would require a revision to the rent roll, are reflected in the certified rent roll statement delivered to and approved by Lender; (g) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (h) none of the Rents have been collected for more than one (1) month in advance (except a security deposit shall not be deemed rent collected in advance); (i) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (j) there exist no offsets or defenses to the payment of any portion of the Rents; (k) Borrower has received no notice from any tenant challenging the validity or enforceability of any Lease; (l) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease; (m) the Leases are valid and enforceable against Borrower and the tenants set forth therein; (n) no Lease contains an option to terminate, option to purchase, right of first refusal to purchase, or any other similar provision; (o) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (p) all security deposits relating to the Leases reflected on the certified rent roll delivered to Lender have been collected by Borrower; and (q) no brokerage commissions or finders fees are due and payable regarding any Lease.

5.9 **Financial Condition.**

(a) (i) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated,

and (ii) Borrower has received reasonably equivalent value for the granting of this Security Instrument.

(b) No petition in bankruptcy has ever been filed by or against Borrower, any Indemnitor or any related entity, or any principal, general partner or member thereof, in the last seven (7) years, and neither Borrower, any Indemnitor nor any related entity, or any principal, general partner or member thereof, in the last seven (7) years has ever made any assignment for the benefit of creditors or taken advantage of any insolvency act or any act for the benefit of debtors.

5.10 **Business Purposes.** The loan evidenced by the Note secured by the Security Interest and the Other Security Documents (the "Loan") is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

5.11 **Taxes.** Borrower and Indemnitor have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower nor Indemnitor knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

5.12 **Mailing Address.** Borrower's mailing address, as set forth in the opening section hereof or as changed in accordance with the provisions hereof, is true and correct.

5.13 **No Change in Facts or Circumstances.** All information in the application for the Loan submitted to Lender (the "Loan Application") and in all financing statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application or in satisfaction of the terms thereof, are accurate, complete and correct in all material respects as of the date when made. There has been no adverse change in any condition, fact, circumstance or event that would make any such information materially inaccurate, incomplete or otherwise misleading.

5.14 **Disclosure.** Borrower has disclosed to Lender all material facts and to the best of Borrower's knowledge has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

5.15 **Third Party Representations.** Each of the representations and the warranties made by Indemnitor herein or in any Other Security Document(s) is true and correct in all material respects.

5.16 **Illegal Activity.** No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity and to the best of Borrower's knowledge, there are no illegal activities or activities relating to controlled substances at the Property.



## ARTICLE 6

### OBLIGATIONS AND RELIANCES

6.1 **Relationship of Borrower And Lender.** The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

6.2 **No Reliance on Lender.** The members of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

6.3 **No Lender Obligations.** Notwithstanding the provisions of Subsections 1.1(f) and (l) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note or the Other Security Document, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

6.4 **Reliance.** Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the Other Security Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 and Article 12 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the Other Security Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5 and Article 12.

## ARTICLE 7

### FURTHER ASSURANCES

7.1 **Recording of Security Instrument, Etc.** Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security

Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Security Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

7.2 **Further Acts, etc.** Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender, following ten (10) days' written notice to Borrower and Borrower's failure to execute, to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of executing in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the perfection of the security interest of Lender in the Personal Property, and in such other parts of the Property a security interest in which may be perfected by the filing of a financing statement, pursuant to this Section 7.2.

7.3 **Changes in Tax, Debt Credit And Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised in writing by counsel chosen by it, and a copy of such counsel's opinion is furnished to Borrower, that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the

option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable. In the event Lender so elects to declare the Debt immediately due and payable, no Prepayment Consideration (as defined in the Note) shall be due.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If Lender is advised in writing by counsel chosen by it, and a copy of such counsel's opinion is furnished to Borrower, if such claim, credit or deduction shall be required by law, and such claim, credit or deduction cannot lawfully be paid by Borrower, Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable. In the event Lender so elects to declare the Debt immediately due and payable, no Prepayment Consideration shall be due.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the Other Security Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any, provided Borrower receives notice of such penalties.

#### 7.4 Estoppel Certificates.

(a) After request by Lender, but not more often than once per year, Borrower, within ten (10) Business Days, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, to the best of Borrower's knowledge, except as provided in such statement, there are no defaults or events which, with the passage of time or the giving of notice or both, would constitute an event of default under the Note or the Security Instrument, (vii) that to the best of Borrower's knowledge, the Note and this Security Instrument are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (viii) whether, to the best of Borrower's knowledge, any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect and have not been modified (or if modified, setting forth all modifications), (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the best knowledge of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any

other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender, promptly upon request, but not more often than once per year, duly executed estoppel certificates, in the form attached hereto as Exhibit E, from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may require, including but not limited to attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Upon any transfer or proposed transfer contemplated by Section 18.1 hereof, at Lender's request, Borrower and Indemnitator shall provide an estoppel certificate to the Investor (defined in Section 18.1) or any prospective Investor in such form, substance and detail as Lender, such Investor or prospective Investor may reasonably require.

7.5 **Flood Insurance.** After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area" or if it is, that Borrower has obtained insurance meeting the requirements of Section 3.3(a)(vi).

7.6 **Splitting of Security Instrument.** Upon the request of Borrower, this Security Instrument and the Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount secured by this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender. Such split or division shall be at no cost to Borrower.

7.7 **Replacement Documents.** Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any Other Security Document which is not of public record, and, in the case of any such mutilation upon surrender and cancellation of such Note or Other Security Document, Borrower will issue, in lieu thereof, a replacement Note or Other Security Document, dated the date of such lost, stolen, destroyed or mutilated Note or Other Security Document in the same principal amount thereof and otherwise of like tenor. Such replacement shall be at no cost to Borrower.

ARTICLE 8DUE ON SALE/ENCUMBRANCE

8.1 **No Sale/Encumbrance.** As used herein, the term "Transfer" shall mean to sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant a security interest in, or otherwise transfer the interest in question. As used herein, the term "Equity" shall mean SOFI-IV Equity IV, L.L.C., a Connecticut limited liability company. As used herein, the term "Arizona" shall mean SOFI-IV Arizona, Inc., a Maryland corporation. As used herein, the term "Opportunity Fund" shall mean Starwood Opportunity Fund IV, L.P., a Delaware limited partnership. Borrower agrees that Borrower shall not, without the prior written consent of Lender, Transfer the Property or any part thereof or permit the Property or any part thereof to be Transferred, other than pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 3.8 or in accordance with the provisions of Section 8.2 or Section 8.3 below.

8.2 **Sale/Encumbrance Defined.** A Transfer of the Property within the meaning of this Article 8 shall be deemed to include any one of the following events:

(a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments;

(b) an agreement by Borrower to lease all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a Transfer of all or part of Borrower's right, title and interest in and to any Leases or any Rents;

(c) the pledge of any membership interest in Borrower;

(d) if Arizona should fail, for any reason, to own at least fifty percent (50%) of the membership interests in Borrower;

(e) the voluntary or involuntary Transfer of Opportunity Fund's stock of Arizona, or the creation or issuance of new stock of Arizona, if either instance results in an aggregate of more than fifty percent (50%) of Arizona's stock, or such greater percentage of stock ownership as may be required to control the affairs of Arizona, being vested in a party or parties other than Opportunity Fund;

(f) the voluntary or involuntary Transfer of Opportunity Fund's membership interest in Equity, or the addition of new members of Equity, if either instance results in an aggregate of more than fifty percent (50%) of Equity's membership interests, or control of the affairs of Equity, either directly or indirectly, being vested in a party or parties other than Opportunity Fund or Starwood Capital Group, L.L.C.;

(g) if Equity resigns or is removed as managing member of Borrower; or

(h) if Arizona resigns or is removed as a member of Borrower.

Notwithstanding the foregoing, the following shall not be deemed to be a Transfer within the meaning of this Article 8: (i) the voluntary or involuntary sale, conveyance or transfer of any stock of Arizona, or the creation or issuance of new stock in Arizona, unless and until such sale, conveyance, transfer, creation or issuance results in Opportunity Fund no longer owning at least fifty percent (50%) of Arizona's stock, or such greater percentage of stock ownership as may be required to control the affairs of Arizona, (ii) the voluntary or involuntary sale, conveyance or transfer of membership interests in Equity, or the addition of new members of Equity, unless and until (A) such sale, conveyance, transfer or addition results in Opportunity Fund and Starwood Capital Group, L.L.C. no longer together owning in the aggregate, directly or indirectly, at least fifty percent (50%) of Equity's membership interests, or (B) Opportunity Fund or Starwood Capital Group, L.L.C. no longer controls, either directly or indirectly, the affairs of Equity, (iii) a transfer by devise or descent or by operation of law upon the death of a member, general partner or stockholder of Borrower or Indemnitor or any general partner or member thereof, or (iv) Transfers of a member's interest in the Borrower to a spouse, descendants or other family members or a trust for the benefit of a spouse, descendants or other family members for estate planning purposes, so long as such Transfer or group of Transfers shall not cause a change in control of Borrower. As used herein a "change of control" shall mean a change in the ability to direct the day-to-day operations or management of the Borrower. Any pledge of ownership interests in Borrower, Arizona or Equity will not constitute a Transfer in violation of Section 8.1 hereof, unless the pledgee or pledgees of such interests shall succeed, in the aggregate, to more than fifty percent (50%) of the ownership interests in any such entity or if such pledgee or pledgees shall acquire control of any such entity.

**8.3 One Time Transfer; Underwriting Standards.** Notwithstanding the foregoing provisions of this Article 8, Borrower is hereby granted the right to a one time sale, conveyance or transfer of the Property in its entirety (hereinafter, a "Sale") to any person or entity provided that each of the following terms and conditions are satisfied and provided that the closing requirements specified in Section 8.4 are satisfied:

- (a) No Event of Default is then continuing hereunder or under any of the Other Security Documents;
- (b) a property inspection by Lender or Lender's designee shows that all reasonably necessary maintenance on or damage or destruction to the Property has been completed or repaired;
- (c) the proposed transferee ("Buyer") or affiliates thereof shall be a Qualified Real Estate Investor (defined below);
- (d) the Debt Service Coverage (defined below) on the Note must equal or exceed 1.60, for the previous twelve month calendar period and for the twelve month period following the date of calculation, based on signed Leases with tenants in place;

(e) at least 30 days prior to such transfer Borrower must provide Lender with all of the material provisions of such transfer including without limitation the proposed date of transfer, and the name, net worth, background and address of the proposed Buyer or affiliates thereof and the purchase price;

(f) Borrower shall provide Lender with such evidence as Lender may require that the proposed Buyer shall contractually assume, and fulfill each and every obligation of Borrower under the Note, this Security Instrument and the Other Security Documents. Upon such transfer, Borrower and its members shall be released from each and every obligation of Borrower under the Note, this Security Instrument and the Other Security Documents except for those obligations for which the Borrower and its members are obligated on a full recourse basis under the Note, this Security Instrument and the Other Security Documents (including without limitation Borrower's or the Indemnitee's obligations under any indemnification agreement) with respect to matters occurring prior to the date of such transfer, and such transfer shall not affect or impair Lender's security and rights under the Note, this Security Instrument and the Other Security Documents;

(g) such notice received under clause (f) above shall be accompanied by the payment of Lender of a non-refundable fee in the amount of one percent (1%) of the outstanding loan balance in the form of a certified check or wire transfer of immediately available funds, to be retained by Lender in order to induce Lender to consent to the proposed transfer and returned to Borrower if Lender does not approve the transfer;

(h) the Loan To Value Ratio of the Property must be not greater than sixty-five percent (65%);

(i) Borrower shall provide Lender with such evidence as Lender may require that such transfer shall not affect or impair Lender's security and rights under the loan documents or under any Leases; and

(j) Borrower shall pay for all of Lender's costs and expenses associated with the transfer, including without limitation, attorney's fees charged by Lender's staff counsel or special counsel.

The following terms are used with the following meanings in this Security Instrument:

"Debt Service Coverage Ratio" shall mean the ratio of: (A) a fraction which for any period, has as its numerator the Net Operating Income of the Property for the 12-month period preceding or following such date, as the case may be, and which has as its denominator the aggregate amount of principal and interest actually due and payable on the Note for such period to (B) 1.

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"Loan To Value Ratio" shall mean a fraction, expressed as a percentage, which has as its numerator the then current principal balance of the Debt and which has as its denominator the value of the Property as determined by an appraisal which has been approved by Lender in its sole discretion.

"Net Operating Income" shall mean, for any period, the difference between all Operating Income during such period, minus all Operating Expenses during such period. In determining Net Operating Income for purposes hereof, all adjustments to Operating Income and Operating Expenses shall be determined by Lender in its sole discretion consistent with its due diligence findings and prevailing market conditions. Net Operating Income shall be audited, or shall be determined in accordance with procedures established by Lender.

"Operating Expenses" shall mean, as to any period, all operating expenses relating to the Property during such period, including the following items:

- (1) all expenses for the operation of the Property including management fees, insurance premiums and expenses, accounting expenses, advertising expenses, expenses for architectural services, bank charges, utility charges, expenses for extermination, cleaning, and trash removal services, expenses relating to window washing, landscaping and security services, reasonable and necessary legal expenses incurred in connection with the operation of the Property, and marketing costs;
- (2) impositions, water charges, property and real estate taxes, sewer rents, other than fines, penalties, interest or such impositions (or portions thereof) that are payable by reason of Borrower's failure to pay an imposition timely; and
- (3) the cost of routine interior and exterior maintenance, repairs and minor alterations, the cost of which can be expenses under GAAP.

Operating Expenses shall be subject to adjustment to provide for: (a) a normalized allowance for tenant leasing incentives, including free rent, moving allowances, tenant inducements, and any other similar expenses incurred in leasing the Property; (b) a reserve for capital expenditures and capital replacements in the annual amount which is equal to the greater of: (i) \$0.20 per square foot; or (ii) such greater amount as Lender may reasonably require based upon the reasonably recommended capital repairs and expenditures indicated in the independent engineering reports; and (c) any other matters as reasonably determined by Lender that may have an impact on Operating Expenses. Operating Expenses shall be subject to adjustment to provide for any matters that may have an impact on Operating Expenses. Operating Expenses will not include debt service, capital expenses, non-cash items such as depreciation and amortization and any extraordinary one-time expenditures not considered operating expenses under GAAP.



"Operating Income" shall mean, as to any period, all income actually received by Borrower from the Property during such period, including actual rental income and other income, base rents, property tax recoveries, insurance recoveries, Consumer Price Index rent adjustments and other miscellaneous income items. For purposes of calculating Operating Income, reimbursement and other income will be included in Operating Income to the extent that Lender, in its reasonable discretion, determines that it is stabilized and recurring, and any income from temporary or month-to-month tenants will not be included in Operating Income. Operating Income shall be subject to adjustment (a) for a vacancy allowance at the rate which is the greater of: (i) the actual vacancy rate for the Property; (ii) five percent (5%); and (iii) the market vacancy rate for the relevant market comparison area as is reasonably determined by Lender; (b) for any tenants operating under bankruptcy protection; (c) to address any rent incentives, rent adjustments or cancellation options contained in the Leases; and (d) any other matters which in Lender's reasonable judgment may have an impact on Operating Income. Operating Income will not include income from non-recurring income sources, advance payments, deposits (unless forfeited), escrows, a sale or other capital item transaction.

"Qualified Real Estate Investor" is defined as any reputable corporation, partnership, joint venture, joint-stock company, trust or individual with, after acquisition of the Property, a minimum net worth of \$50,000,000, real estate assets of \$250,000,000, a minimum current cash position of \$2,000,000, must own or manage office buildings having in the aggregate not less than 2,000,000 square feet of net rentable area allocated to office space, must be based in the United States and free from any bankruptcy, reorganization or insolvency proceedings or any criminal charges or proceedings and shall not have been, at the time of transfer or in the past, a litigant, plaintiff or defendant in any suit brought against or by Lender. Lender agrees to be reasonable in the review of such qualifications.

8.4 **One Time Transfer; Closing Requirements.** Borrower's right to the one time Sale provided in Section 8.3 is subject to the condition that each of the following terms and conditions are satisfied:

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

(b) Borrower delivers to Lender, without any cost or expense to Lender, such endorsement to Lender's loan title insurance policy, hazard insurance endorsements or certificates and other similar materials as Lender may deem necessary at the time of the Sale, all in form and substance satisfactory to Lender, including, without limitation, an endorsement or endorsements to Lender's loan title insurance policy insuring the lien of this Security Instrument, extending the effective date of such policy to the date of execution and delivery of the assumption agreement referenced above in subsection (g) of Section 8.3, with no additional exceptions added to such policy and insuring that fee simple title to the Property is vested in the Buyer;

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

(d) such Sale is not construed as to relieve Indemnitee of its obligations except to the extent arising following the transfer, under any guarantee or indemnity agreement executed in connection with the Note with respect to matters occurring prior to the date of such Sale and Indemnitee executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of each such guarantee and indemnity agreement;

(e) the Buyer shall furnish, if the Buyer is a corporation, partnership or other entity, all appropriate papers evidencing the Buyer's capacity in good standing and the qualification of the signers to execute the assumption of the Obligations, which paper shall include certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners of the Buyer. The Buyer and such constituent partners, members or shareholders of the Buyer (as the case may be) as Lender shall require, shall be single purpose, bankruptcy remote entities, whose formation documents shall be approved by counsel to Lender, which approval shall not be unreasonably withheld; and

(f) the Buyer shall furnish an opinion of counsel satisfactory to mortgagee and its counsel stating that (i) the assumption of the Obligations has been duly authorized, executed and delivered and the loan documents are valid, binding and enforceable against the Buyer in accordance with their terms, (ii) the Buyer has been duly organized and are in good standing and in existence, and (iii) with respect to such other normal and customary matters as Lender may reasonably request.

**8.5 Lender's Rights.** All of Lender's expenses incurred shall be payable by Borrower whether or not Lender consents to the transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property without Lender's consent. This provision shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property.

## ARTICLE 9

### PREPAYMENT

9.1 **Prepayment Before Event of Default.** The Debt may be prepaid only in strict accordance with the express terms and conditions of the Note including the payment of any Prepayment Consideration.

9.2 **Prepayment on Casualty Condemnation And Change in Tax And Debit Credit Laws.** Provided no Event of Default exists and continues under the Note, this Security Instrument or the Other Security Documents, in the event of any prepayment of the Debt pursuant to the terms of Sections 3.7 or 7.3 hereof, no Prepayment Consideration shall be due in connection therewith, but Borrower shall be responsible for all other amounts due under the Note, this Security Instrument and the Other Security Documents.

9.3 **Prepayment After Event of Default.** If a Default Prepayment (defined below) occurs, Borrower shall pay to Lender the entire Debt, including without limitation, the greater of (i) the Prepayment Consideration and (ii) two percent (2%) of the entire Debt. For purposes of this Section 9.3, the term "Default Prepayment" shall mean a prepayment of the principal amount of the Note made after the occurrence of any Event of Default or an acceleration of the Maturity Date (as defined in the Note) under any circumstance, including, without limitation, a prepayment occurring in connection with reinstatement of this Security Instrument provided by statute under foreclosure proceedings or exercise of a power of sale, any statutory right of redemption exercised by Borrower or any other party having a statutory right to redeem or prevent foreclosure, any sale in foreclosure or under exercise of a power of sale or otherwise.

## ARTICLE 10

### DEFAULT

10.1 **Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default":

- (a) if the entire Debt is not paid on or before the Maturity Date;
- (b) if any payment of principal, interest, or applicable escrow amounts due under the Note is not paid on or before the third (3<sup>rd</sup>) business day after the same is due;
- (c) if any payment due under the Note, this Security Instrument, or the Other Security Documents other than principal, interest, Taxes, other charges or applicable escrow amounts is not paid prior to the fifth (5<sup>th</sup>) business day after the same is due;

(d) if any of the Taxes or Other Charges is not paid when the same is due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(e) if any Insurance Premiums are not paid when due, if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within ten (10) business days after request;

(f) if Borrower violates or does not comply with any of the provisions of Article 8;

(g) if any representation or warranty of Borrower, Indemnitor or any member, general partner, principal or beneficial owner of any of the foregoing, made herein or in the Environmental Indemnity (defined below) or in any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender by Borrower or such other party shall have been false or misleading in any material respect when made;

(h) if (i) Borrower or Indemnitor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower or Indemnitor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or Indemnitor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Borrower or Indemnitor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; (iv) the Borrower or Indemnitor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower or Indemnitor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(i) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(j) if any federal tax lien is filed against Borrower, any member or general partner of Borrower, any Indemnitor or the Property and same is not discharged of record within thirty (30) days after same is filed;

(k) if any default occurs under any guaranty or indemnity executed in connection herewith (including the Environmental Indemnity) and such default continues after the expiration of applicable grace periods, if any;

(l) if there occurs a material adverse change to the Property or Borrower which materially impairs the ability of Borrower to perform its obligations under this Security Instrument, the Note, or any Other Security Document;

(m) if there exists an outstanding final and non-appealable judgment against the Borrower in excess of \$500,000;

(n) if for more than ten (10) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the Other Security Documents in the case of any default which can be cured by the payment to Lender of a sum of money or for thirty (30) days after notice from Lender in the case of any other default; provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days;

(o) if Lender draws on the ANC Letter of Credit and Borrower does not cause a reissued ANC Letter of Credit to be delivered to Lender in accordance with the provisions of Section 3.5(b) within thirty (30) days of the date of notice to Borrower of such draw;

(p) if Lender draws on the Tax Letter of Credit and Borrower does not cause a reissued Tax Letter of Credit to be delivered to Lender in accordance with the provisions of Section 3.5(c) within thirty (30) days of the date of notice to Borrower of such draw; or

(q) if, at least 30 days prior to the expiry date of the ANC Letter of Credit, Borrower has not caused the issuer of the ANC Letter of Credit to extend the expiry date of the ANC Letter of Credit for a period of at least one (1) year.

## ARTICLE 11

### RIGHTS AND REMEDIES

11.1 **Remedies.** Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce

its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) subject to the provisions of Article 15, institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the Other Security Documents;
- (f) subject to the provisions of Article 15, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, Indemnitor or of any person, firm or other entity liable for the payment of the Debt;
- (h) subject to any applicable law, the license granted to Borrower under Section 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession

of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least twenty (20) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited in the Escrow Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, this Security Instrument and the Other Security Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(k) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority

and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums;

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit which may be remaining after Restoration, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or

(m) pursue such other remedies as Lender may have under applicable law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as described in clause (i) or (ii) of Subsection 10.1(h) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

**11.2 Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the Other Security Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

**11.3 Right to Cure Defaults.** Upon the occurrence of any Event of Default and the continuance thereof, or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (as defined in the Note), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents, notice of such costs and expenses shall be provided to Borrower monthly, and all such costs and expenses shall be immediately due and payable upon demand by Lender therefor.



11.4 **Actions And Proceedings.** After the occurrence and during the continuance of an Event of Default, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

11.5 **Recovery of Sums Required to Be Paid.** Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

11.6 **Examination of Books And Records.** Lender, its agents, accountants and attorneys shall have the right, upon prior written notice to Borrower if no Event of Default exists, to examine and audit, during reasonable business hours, the records, books, management and other papers of Borrower and its affiliates or of Indemnitator which pertain to their financial condition or the income, expenses and operation of the Property, at the Property or at any office regularly maintained by Borrower, its affiliates or Indemnitator where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers.

11.7 **Other Rights, etc.**

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or Indemnitator to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person other than Borrower liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Other Security Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, unless Lender redeems the prepaid policies under Section 11.1(k) hereof, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without

prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

11.8 **Right to Release Any Portion of The Property.** Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

11.9 **Violation of Laws.** If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, reasonable monetary reserves or financial equivalents.

11.10 **Right of Entry.** Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

11.11 **Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the Other Security Documents and the performance and discharge of the Other Obligations.

## **ARTICLE 12**

### **ENVIRONMENTAL AND OTHER MATTERS**

12.1 **Hazardous Substances.** Borrower hereby represents and warrants to Lender that, except as identified and disclosed in writing to Lender, including the environmental report Lender has ordered at Borrower's expense, and those reports and other matters listed on Exhibit F attached

hereto, to the best of Borrower's knowledge: (a) the Property is not in violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substance Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, any state super-lien and environmental clean-up statutes and all regulations adopted in respect to the foregoing laws (collectively, "**Environmental Laws**"); (b) the Property is not subject to any private or governmental lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, raw materials which include hazardous constituents, pollutants or contaminants including without limitation, petroleum, tremolite, anthophyllite, actinolite or polychlorinated biphenyls and any other substances or materials which are included under or regulated by Environmental Laws or which are considered by scientific opinion to be otherwise dangerous in terms of the health, safety and welfare of humans (collectively, "**Hazardous Substances**"); (c) no Hazardous Substances are or have been (including the period prior to Borrower's acquisition of the Property) discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Property other than in compliance with all Environmental Laws; (d) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Property; and (e) no underground storage tanks exist on any of the Property. So long as Borrower owns or is in possession of the Property, Borrower (i) shall keep or cause the Property to be kept in compliance with all Environmental Laws, (ii) shall promptly notify Lender if Borrower shall become aware of any Hazardous Substances on or near the Property and/or if Borrower shall become aware that the Property is in violation of any Environmental Laws and/or if Borrower shall become aware of any condition on or near the Property which shall pose a threat to the health, safety or welfare of humans, (iii) shall remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law, promptly after Borrower becomes aware of same, at Borrower's sole expense and (iv) shall comply with all of the recommendations contained in the environmental report which was delivered to Lender in connection with the origination of the Loan, provided such report is provided to Borrower prior to the closing of the Loan. Nothing herein shall prevent Borrower from recovering such expenses from any other party that may be liable for such removal or cure. The obligations and liabilities regarding indemnifications by Borrower under this Section 12 shall survive any termination, satisfaction, or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure, but not repayment in accordance with the terms of the Loan. The obligations and liabilities regarding covenants by Borrower under this Section 12 shall not survive any termination, satisfaction, or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

12.2 **Asbestos.** Borrower represents and warrants that, except as identified and disclosed in writing to Lender, including the environmental report Lender has ordered at Borrower's expense, and those reports and other matters listed on Exhibit F attached hereto, to the best of Borrower's knowledge, no asbestos or any substance or material containing asbestos ("Asbestos") is located on the Property except as may have been disclosed in an environmental report delivered to Lender prior to the date of this Security Instrument. Borrower shall not install in the Property, nor permit to be installed in the Property, Asbestos and shall remove or encapsulate any Asbestos promptly upon discovery in compliance with all laws, to the satisfaction of Lender, at Borrower's sole expense. Borrower shall in all instances comply with, and ensure compliance by all occupants of the Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Borrower receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Property, Borrower shall immediately notify Lender. The obligations and liabilities of Borrower under this Section 12 shall survive any termination, satisfaction, or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure, but not repayment in accordance with the terms of the Loan.

12.3 **Environmental Monitoring.** Borrower shall give prompt written notices to Lender of: (a) any proceeding or inquiry by any party with respect to the presence of any Hazardous Substance or Asbestos on, under, from or about the Property, (b) all written claims made or threatened by any third party against Borrower or the Property relating to any loss or injury resulting from any Hazardous Substance or Asbestos, and (c) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Borrower shall permit Lender to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Law or Hazardous Substance, and Borrower shall pay all reasonable attorneys' fees and disbursements incurred by Lender in connection therewith. Upon Lender's request, at any time and from time to time while this Security Instrument is in effect, Borrower shall provide (i) an inspection or audit of the Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Lender indicating the presence or absence of Hazardous Substances on, in or near the Property, and (ii) an inspection or audit of the Property prepared by a duly qualified engineering or consulting firm approved by Lender, indicating the presence or absence of Asbestos on the Property. The cost and expense of such audit or inspection shall be paid by Borrower not more frequently than once every five (5) calendar years after the occurrence of a Secondary Market Transaction unless Lender, in its good faith judgment, determines that reasonable cause exists for the performance of an environmental inspection or audit of the Property, then such inspections or audits described in the preceding sentence shall be at Borrower's sole expense. If Borrower fails to provide any inspection or audit required pursuant to this Section 12 within thirty (30) days after such request, Lender may order same, and Borrower hereby grants to Lender and its employees and agents access to the Property and a license to undertake such inspection or audit. The cost of such inspection or audit may be added

to the Debt and shall bear interest thereafter until paid at the Default Rate. In the event that any investigation, site monitoring, containment cleanup, removal, restoration or other work of any kind is required under an applicable Environmental Law (the "**Remedial Work**"), Borrower shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Lender for performance thereof (or such shorter period of time as may be required under applicable law). All Remedial Work shall be performed by contractors approved in advance by Lender, and under the supervision of a consulting engineer approved by Lender. All costs and expenses of such Remedial Work shall be paid by Borrower including, without limitation, Lender's reasonable attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lender may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Debt and shall bear interest thereafter until paid at the Default Rate.

#### 12.4 Handicapped Access.

(a) Borrower agrees that the Property shall at all times strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (as may be hereafter amended, modified, and supplemented from time to time, collectively "**Access Laws**"), and with the Borrower's American with Disabilities Act Corrective Action Plan dated November 24, 1998 delivered to Lender.

(b) Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Property, Borrower shall not alter the Property in any manner which would materially increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Lender.

(c) Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

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Property of Cook County Clerk's Office

ARTICLE 13INDEMNIFICATIONS

13.1 **General Indemnification.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (defined below) from and against any and all Losses (defined below) imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the finishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Applicable Laws; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Security Instrument; or (g) the litigation known as Cole Taylor Bank, as successor Trustee to Harris Trust and Savings Bank, as Trustee under Trust Agreement dated March 23, 1973, and known as Trust No. 35480, Plaintiff v. American National Can Company, American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated June 2, 1987, and known as Trust No. 102719-06, and Triangle Plaza Limited Partnership, Defendants, Case Number 98 CH 000230. Any amounts payable to Lender by reason of the application of this Section 13.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid.

The term "Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, fines, penalties, charges, judgments, awards, amounts paid in settlement of whatever kind or nature, and any fees, costs and expenses incurred in connection with any of the foregoing (including but not limited to attorneys' fees and other costs of defense). The term "Indemnified Parties" shall mean (a) Lender, (b) any prior owner or holder of the Note, (c) any servicer or prior servicer of the Loan, (d) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (e) the heirs, legal representatives, successors and assigns of each of the foregoing.

13.2 **Mortgage And/or Intangible Tax.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the Other Security Documents.

13.3 **Duty to Defend Attorneys Fees And Other Fees And Expenses**. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of claim or proceeding. Upon demand, Borrower shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

13.4 **Environmental Indemnity**. Simultaneously with this Security Instrument, Borrower has executed and delivered that certain environmental indemnity agreement dated the date hereof to Lender (the "Environmental Indemnity").

## **ARTICLE 14**

### **WAIVERS**

14.1 **Waiver of Counterclaim**. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender to foreclose Lender's interest pursuant to this Security Instrument.

14.2 **Marshaling And Other Matters**. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

14.3 **Waiver of Notice**. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and (b) with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

14.4 **Waiver of Statute of Limitations**. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.



14.5 **Sole Discretion of Lender.** Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole, reasonable discretion of Lender, except as may be otherwise expressly and specifically provided herein.

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

## ARTICLE 15

### EXCULPATION

15.1 **Exculpation.** The provisions of Article 11 of the Note are hereby incorporated by reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

## ARTICLE 16

### NOTICES

16.1 **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower or Lender, as the case may be, at the addresses set forth on the first page of this Security Instrument or addressed as such party may from time to time designate by written notice to the other parties, with copies to:

In each case: L.J. Melody & Company  
5847 San Felipe, Suite 4400  
Houston, Texas 77057  
Attention: Robert Vestewig  
Loan No. 202046

If to Lender: Rudnick & Wolfe  
203 North LaSalle Street  
Suite 1800  
Chicago, Illinois 60601  
Attention: Kenneth Hartmann, Esq.

If to Borrower: The John Buck Company  
233 S. Wacker Drive  
Chicago, Illinois 60606  
Attention: John O'Donnell  
and  
Katten, Muchin & Zavis  
525 W. Monroe Street  
Suite 1600  
Chicago, Illinois 60661  
Attention: Seth R. Madorsky, Esq.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

For purposes of this Subsection, "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in Chicago, Illinois.

## ARTICLE 17

### APPLICABLE LAW

17.1 **Choice of Law.** This Security Instrument shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located.

17.2 **Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

**ARTICLE 18****SECONDARY MARKET**

18.1 **Transfer of Loan**. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant, or investor in such Securities (collectively, the "Investor") or any Rating Agency rating such Securities, each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, any Indemnitor(s) and the Property, whether furnished by Borrower, any Indemnitor(s) or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy. Lender otherwise agrees to keep all information forwarded pursuant to this Section 18.1 confidential, and shall require those to which Lender forwards such information to keep it confidential.

18.2 **Cooperation**. Borrower and Indemnitor agree to reasonably cooperate with Lender in connection with any transfer made of any Securities created pursuant to this Section, including, without limitation, the delivery of an estoppel certificate required in accordance with Subsection 7.4(c) hereof and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower and Indemnitor consent to Lender furnishing to such Investors or such prospective Investors or such Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower and Indemnitor as may be requested by Lender, any Investor, any prospective Investor or any Rating Agency in connection with any sale, transfer or participation interest.

**ARTICLE 19****COSTS**

19.1 **Performance at Borrowers Expense**. Borrower acknowledges and confirms that Lender shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of certain Leases or proposed Leases as provided herein, or the preparation or review of any subordination, non-disturbance agreement (the occurrence of any of the above shall be called an "Event"). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority. Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the

same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event or otherwise. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable out-of-pocket legal fees and disbursements of Lender.

19.2 **Legal Fees For Enforcement.** Borrower shall pay all reasonable legal fees incurred by Lender in connection with (i) the preparation of the Note, this Security Instrument and the Other Security Documents and (ii) the items set forth in Section 19.1 above. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property, whether or not: any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

## **ARTICLE 20**

### **DEFINITIONS**

20.1 **General Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Notes" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

20.2 **Headings, Etc.** The headings and captions of various Articles and Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

ARTICLE 21

MISCELLANEOUS PROVISIONS

21.1 **No Oral Change.** This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the priority against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

21.2 **Liability.** If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

21.3 **Inapplicable Provisions.** If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

21.4 **Duplicate Originals, Counterparts.** This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

21.5 **Number and Gender.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

21.6 **Payments Due On Business Days.** If the day upon which any payment due under this Security Instrument or any Other Security Document is due is not a Business Day (as defined below), then payment shall be due on the first Business Day thereafter. The term "Business Day" shall mean a day other than (i) a Saturday or Sunday, or (ii) any day on which banking and savings and loan institutions in Chicago, Illinois are authorized or obligated by law or executive order to be closed.

21.7 **Principle of Construction.** As used in this Security Instrument or in any Other Security Document, the word "including" followed by examples shall mean "including without limitation."

## ARTICLE 22

### SPECIAL ILLINOIS PROVISIONS

#### 22.1 Illinois Mortgage Foreclosure Law

(a) **Benefits to Act.** Borrower and Lender shall have the benefit of all of the provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101) (the "Act"), including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) **Insurance.** Wherever provision is made in this Security Instrument for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of the Lender shall continue in the Lender as judgment creditor or mortgagee until confirmation of sale.

(c) **Protective Advances.** All advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Security Instrument or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(i) all advances by Lender in accordance with the terms of this Security Instrument to: (1) preserve or maintain, repair, restore or rebuild the improvements upon the mortgaged real estate; (2) preserve the lien of this Security Instrument or the priority thereof; or (3) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(ii) payments by Lender of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (2) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (3) other obligations authorized by this Security Instrument; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests

reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Security Instrument as referred to in Sections 1504 (d)(2) and 5/15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Security Instrument or arising from the interest of the Lender hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to this Security Instrument or the mortgaged real estate;

(v) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the Act;

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (1) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Borrower's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (3) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the Property imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Lender to be for the benefit of the Property or required to be made by the owner of the mortgaged real estate under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (7) if the loan secured hereby is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) pursuant to any lease or other agreement for occupancy of the Property for

amounts required to be paid by Borrower; and (9) if this Security Instrument is insured, payments of FHA or private mortgage insurance required to keep insurance in force.

All Protective Advances shall be so much additional indebtedness secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note.

This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(viii) determination of the amount of indebtedness secured by this Security Instrument at any time;

(ix) the indebtedness found due and owing to the Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(x) if right of redemption has not been waived by the Borrower in this Security Instrument, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;

(xi) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(xii) application of income in the hands of any receiver or Lender in possession; and

(xiii) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

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



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possession, shall have, in addition to any other powers provided in this Security Instrument, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

(e) **Waiver of Redemption.** Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601 (b) of the Act, Borrower hereby waives any and all right to redemption.

22.2 **Future Advances.** At all times, regardless of whether any loan proceeds have been disbursed, this Security Instrument secures as part of the Obligations the payment of all loan commissions, service charges, liquidated damages, attorney's fees, expenses and advances due to or incurred by Lender in connection with the Obligations all in accordance with the Note and this Security Instrument; provided, however, that in no event shall the total amount of the Obligations, including loan proceeds disbursed plus any additional charges, exceed two hundred percent (200%) of the face amount of the Note. All such advances are intended by the parties hereto to be a lien on the Property from the time this Security Instrument is recorded, as provided in the Act.

[Signature page to follow]

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower the day and year first above written.

**BORROWER:**

**TRIANGLE PLAZA VENTURE L.L.C.**, a Delaware limited liability company

By: **SOFI-IV Equity IV, L.L.C.**, a Connecticut limited liability company, its managing member

By: **SOFI IV Management, L.L.C.**, a Connecticut limited liability company, its managing member

By: **Starwood Capital Group, L.L.C.**, a Connecticut limited liability company, its managing member

By: [Signature]  
Name: Jeff Dishner  
Title: MANAGING DIRECTOR

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STATE OF Connecticut  
COUNTY OF Fairfield ) SS

I HEREBY CERTIFY that on this 10<sup>th</sup> day of December, 1998, before me a Notary Public for the state and county aforesaid, personally appeared Jeff D. Street known to me or satisfactory proven to be the same person whose name is subscribed to the foregoing instrument, who acknowledged that he is the Managing Director of STARWOOD CAPITAL GROUP, L.L.C., that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth, and that he same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal the day and year first above written.

Karen B. Murray  
Notary Public

KAREN B. MURRAY  
NOTARY PUBLIC  
MY COMMISSION EXPIRES FEB. 28, 2002

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## EXHIBIT A

### LEGAL DESCRIPTION

ALL of that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being.

THE SOUTH 30 ACRES OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THEREFROM THE EAST 663.0 FEET AS MEASURED PERPENDICULAR TO THE EAST LINE OF SAID SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 2; ALSO EXCEPT THE SOUTH 50 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 2 AND EXCEPT ALL THOSE PORTIONS OF SAID SOUTH 30 ACRES LYING NORTHERLY AND WESTERLY OF THE SOUTHERLY AND EASTERLY LINES OF THE PROPERTY AS DEEDED TO THE COUNTY OF COOK FOR HIGHWAY PURPOSES BY DEEDS RECORDED AS DOCUMENT NUMBERS 17222711, 17222712, 17222714, 17237847, 17241632 AND BY CONDEMNATION CASE 58S3896 PARCEL NT-45) IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 8750-8770 WEST BRYN MAWR AVENUE  
CHICAGO, ILLINOIS

TAX IDENTIFICATION NOS.: 12-02-302-021-0000  
12-02-302-022-0000

**EXHIBIT B**  
**FORM OF LETTER OF CREDIT**

[LETTERHEAD OF ISSUING BANK]

DATE: \_\_\_\_\_

IRREVOCABLE DOCUMENTARY CREDIT NUMBER: \_\_\_\_\_

BENEFICIARY:

APPLICANT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXPIRY: \_\_\_\_\_ AT OUR COUNTERS      AMOUNT: \_\_\_\_\_

WE HEREBY ESTABLISH IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER \_\_\_\_\_ WHICH IS AVAILABLE WITH US BY SIGHT PAYMENT AGAINST PRESENTATION OF YOUR DRAFT "AT SIGHT" DRAWN ON US, BEARING THE CLAUSE "DRAWN UNDER [ISSUING BANK] LETTER OF CREDIT NUMBER \_\_\_\_\_" AND ACCOMPANIED BY:

BENEFICIARY'S SIGNED STATEMENT READING: "THE UNDERSIGNED, A DULY AUTHORIZED OFFICER OF [BENEFICIARY], HEREBY CERTIFIES WITH REFERENCE TO IRREVOCABLE LETTER OF CREDIT NUMBER \_\_\_\_\_ THAT THE AMOUNTS BEING DRAWN WILL BE APPLIED BY BENEFICIARY TO PAY THE REAL PROPERTY TAXES AND ASSESSMENTS ON THE PROPERTY LOCATED AT 8750-8770 WEST BRYN MAWR AVENUE, CHICAGO, ILLINOIS, IN ACCORDANCE WITH THE TERMS OF THAT MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING DATED DECEMBER 10, 1998 MADE BY TRIANGLE PLAZA VENTURE L.L.C. TO BENEFICIARY."

IN THE EVENT APPLICANT DOES NOT, AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRY DATE ABOVE, CAUSE SAID EXPIRY DATE TO BE EXTENDED FOR A PERIOD OF AT LEAST ONE (1) YEAR, THEN THIS LETTER OF CREDIT MAY BE DRAWN UPON BY BENEFICIARY FIFTEEN (15) DAYS PRIOR TO SUCH EXPIRY DATE BY PRESENTATION OF YOUR DRAFT "AT SIGHT" DRAWN ON US, BEARING THE CLAUSE "DRAWN UNDER [ISSUING BANK] LETTER OF CREDIT NUMBER \_\_\_\_\_" AND ACCOMPANIED BY:

BENEFICIARY'S SIGNED STATEMENT READING: "THE UNDERSIGNED, A DULY AUTHORIZED SIGNATORY OF [BENEFICIARY], HEREBY CERTIFIES WITH REFERENCE TO IRREVOCABLE LETTER OF CREDIT NUMBER \_\_\_\_\_ THAT THE EXPIRY DATE OF SUCH LETTER OF CREDIT WILL OCCUR WITHIN FIFTEEN DAYS OF THE DATE OF THIS DRAFT."

THIS LETTER OF CREDIT IS TRANSFERABLE. NO TRANSFER OF THIS LETTER OF CREDIT SHALL BE EFFECTIVE UNLESS IN FORM AS PER SAMPLE ATTACHED HERETO AS ANNEX I AND NOTICE THEREOF ENDORSED HEREON BY [ISSUING BANK] (AND THE [ISSUING BANK'S] CUSTOMARY CHARGES THEREFOR PAID.) THE CORRECTNESS OF THE SIGNATURE AND TITLE OF THE

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PERSON(S) SIGNING INSTRUCTIONS TO THE [ISSUING BANK] REGARDING TRANSFERS UNDER THIS LETTER OF CREDIT MUST BE VERIFIED BY YOUR BANK.

THIS DOCUMENTARY CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS" (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

[ISSUING BANK]

\_\_\_\_\_  
FOR CASHIER

\_\_\_\_\_  
FOR CASHIER

Property of Cook County Clerk's Office

ANNEX I  
TO IRREVOCABLE DOCUMENTARY CREDIT NO. \_\_\_\_\_

[ISSUING BANK]  
[STREET]  
[CITY, STATE, ZIP CODE]

Ladies and Gentlemen:

Re: Letter of Credit Number: \_\_\_\_\_  
Issued By: \_\_\_\_\_

For value received, the undersigned, as beneficiary of the above Letter of Credit (the "Credit"), hereby requests and instructs you to make the Credit irrevocably available IN WHOLE

to \_\_\_\_\_ (the "Transferee")  
at the address: \_\_\_\_\_

subject to the same terms and conditions as the Credit.

We IRREVOCABLY agree that, by your transfer pursuant hereto, all our rights under the Credit will be irrevocably transferred to the Transferee and the Transferee, solely, shall have all rights, without limitation of any type or kind, as beneficiary under the Credit.

We enclose herewith the Credit (including all amendments thereto, if any) and request you to endorse the transfer on the reverse thereof, and to forward such documents, together with your customary notice of transfer, directly to the Transferee.

In order to cover your transfer commission of \$ \_\_\_\_\_, you are hereby authorized to debit our account no. \_\_\_\_\_ or, if no account is herein designated or sufficient funds are not maintained in such account, any other account maintained by us with you or, in the alternative, the coverage is provided by our enclosed check. In addition, we agree to pay to you on demand any additional expenses that may be incurred in connection with the transfer.

Date \_\_\_\_\_

Very truly yours,  
\_\_\_\_\_  
Beneficiary (Full Name)  
\_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Signer's Name, Title and Telephone Number  
(Please type or print)

(Where a specimen signature of the beneficiary is not on file with [ISSUING BANK], the following signature verification by the beneficiary's bank is required)

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The above signature with title as stated conforms with that on file with us and is authorized for the execution of such instruments.

---

Bank (Full Name and Address)

---

Authorized Signature

---

Signer's Name, Title and Telephone Number

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EXHIBIT C

FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT  
AGREEMENT**

THIS AGREEMENT is made as of this \_\_\_ day of \_\_\_\_\_, 1998 by and among **NLI PROPERTIES CENTRAL, INC.**, a Delaware corporation having its principal office and place of business at 190 South LaSalle Street, Suite 1600, Chicago, Illinois 60603 ("Lender"), **TRIANGLE PLAZA VENTURE, LLC**, a Delaware limited liability company, whose address is Three Pickwick Plaza, Greenwich, Connecticut 06830 ("Landlord"), and \_\_\_\_\_ a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ ("Tenant").

WITNESSETH:

WHEREAS, Tenant has entered into a certain lease (the "Lease") dated \_\_\_\_\_ with Landlord covering premises (the "Premises") located at \_\_\_\_\_, on the real property more particularly described in Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, Lender has agreed to make a \$ \_\_\_\_\_ loan (the "Loan") to Landlord to be evidenced by the promissory note issued by Landlord to Lender (the "Note") and to be secured by a Mortgage [and Security Agreement] (the "Mortgage") and by an Assignment of [Rents and Leases] (the "Assignment") encumbering, inter alia, the Premises; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make such loan to Landlord; and

WHEREAS, it is a condition precedent to obtaining the Loan that the Mortgage be a lien or charge upon the Premises unconditionally prior and superior to the Lease and the leasehold interest of Tenant thereunder; and

WHEREAS, Tenant acknowledges that the Mortgage, when recorded, will constitute a lien or charge upon the Premises which is unconditionally prior and superior to the Lease and the leasehold interest of Tenant thereunder; and

WHEREAS, Lender has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of Tenant thereunder in and to the Premises are and shall be subject and subordinate to the Mortgage and to all of the terms and conditions contained therein, and to any renewals, modifications, replacements, consolidations and extensions thereof. Tenant will not amend, modify, terminate or cancel the Lease without the prior written consent of both Lender and Landlord.

2. Lender consents to the Lease and in the event Lender comes into possession of or acquires title to the Premises as a result of the foreclosure or other enforcement of the Mortgage or the Note, or as a result of any other means, Lender agrees that, so long as Tenant is not then in default hereunder or under the Lease and so long as Tenant is then in possession of the Premises or has subleased the Premises in accordance with the terms of the Lease, Lender will recognize Tenant and will not disturb Tenant in its possession of the Premises for any reason other than one which would entitle Landlord to terminate the Lease under its terms or would cause, without any further action by Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant from the Premises.

3. Tenant agrees with Lender that if the interests of Landlord in the Premises shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it, or any other manner, or shall be conveyed thereafter by Lender or shall be conveyed pursuant to a foreclosure sale of the Premises, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the landlord under the Lease, and Tenant does hereby attorn to Lender as its landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Lender succeeding to the interest of Landlord in the Premises. Tenant agrees, however, upon the election of and written demand by Lender within twenty (20) days after Lender receives title to the Premises, to execute an instrument in confirmation of the foregoing provisions, satisfactory to Lender, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.

4. Tenant agrees with Lender that if Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be (a) liable for any action or omission of any prior landlord under the Lease, or (b) subject to any offsets or defenses which Tenant might have against any prior landlord, or (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, or (d) bound by any security deposit which Tenant may have paid to any prior landlord, unless such deposit is in an escrow fund available to Lender, or (e) bound by any amendment or modification of the Lease made without Lender's written consent, or (f) bound by any notice of termination given by Landlord to Tenant

or agreement by Landlord and Tenant to terminate or modify the Lease without Lender's written consent thereto, or (g) personally liable under the Lease and Lender's liability under the Lease shall be limited to the ownership interest of Lender in the Premises. Tenant further agrees with Lender that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Lender's written consent.

5. In the event that Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Lender and Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including, without limitation, any action in order to terminate, rescind or void the Lease or to withhold any rental thereunder, for a period of 10 days after receipt of such written notice by Lender with respect to any such default capable of being cured by the payment of money and for a period of 30 days after receipt of such written notice by Lender with respect to any other such default (provided, that in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such 30-day period because of the nature of such default or because Lender requires time to obtain possession of the Premises in order to cure the default, if Lender shall proceed promptly to attempt to obtain possession of the Premises, where possession is required, and to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity, but in no event longer than 120 days).

6. Landlord has agreed in the Mortgage and in the Assignment that the rentals payable under the Lease shall be paid directly by Tenant to Lender upon the occurrence of a default by Landlord under the Mortgage. Accordingly, after notice is given by Lender to Tenant that the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or in accordance with the directions of Lender, all rentals and other moneys due and to become due to Landlord under the Lease, or amounts equal thereto. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Mortgage or the Assignment. Landlord hereby waives any right, claim or demand it may now or hereafter have against Tenant by reason of such payment to Lender, and any such payment to Lender shall discharge the obligations of Tenant to make such payment to Landlord.

7. Tenant declares, agrees and acknowledges that:

a. Lender, in making disbursements pursuant to any agreement relating to the Loan, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement shall not defeat the subordination herein made in whole or in part; and

b. It intentionally and unconditionally waives, relinquishes and subordinates the Lease and its leasehold interest thereunder in favor of the lien or charge upon said land of the Mortgage, and that in consideration of this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender to Landlord and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into by Landlord and Lender which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

8. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein the term "Tenant" shall include Tenant, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure; and the word "Lender" shall include the Lender herein specifically named and any of its successors, participants and assigns, including anyone who shall have succeeded to Landlord's interest in the Premises by, through or under foreclosure of the Mortgage.

9. All notices, consents and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express or Airborne, and shall be deemed given when postmarked and addressed as follows:

If to Lender: NLI Properties Central, Inc.  
190 S. LaSalle Street, Suite 1660  
Chicago, Illinois 60603  
Attention: Katsumi Nakamura

with a copy to: Rudnick & Wolfe  
203 N. LaSalle Street  
Chicago, Illinois 60601  
Attention: Kenneth Hartmann

If to Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

to Landlord: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other address as shall from time to time have been designated by written notice by such party to the other parties as herein provided.

10. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Lease and the leasehold interest of Tenant thereunder to the lien or charge of the Mortgage in favor of Lender, and shall supersede and control any prior agreements as to such, or any, subordination, including, but not limited to, those provisions, if any, contained in the Lease, which provide for the subordination of the Lease and the leasehold interest of Tenant thereunder to a deed or deeds of trust or to a mortgage or mortgages to be thereafter executed, and shall not be modified or amended and no provision herein shall be waived except in writing signed by the party against whom enforcement of any such modification or amendment is sought.

The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires. In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be governed by and construed in accordance with the laws of the State of

---

[Signatures on next page]

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IN WITNESS WHEREOF the parties hereto have placed their hands and seals the day and year first above written.

Signed and acknowledged in  
the presence of us:

**TENANT:**

\_\_\_\_\_  
Typed Name:

By: \_\_\_\_\_

Typed Name:  
Title:

\_\_\_\_\_  
Typed Name:

Attest: \_\_\_\_\_

**LANDLORD:**

\_\_\_\_\_  
Typed Name:

By: \_\_\_\_\_

Typed Name:  
Title:

\_\_\_\_\_  
Typed Name:

Attest: \_\_\_\_\_

**LENDER:**

NLI PROPERTIES CENTRAL, INC.

\_\_\_\_\_  
Typed Name:

By: \_\_\_\_\_

Typed Name:  
Title:

\_\_\_\_\_  
Typed Name:

Attest: \_\_\_\_\_

Description of Premises

Property of Cook County Clerk's Office

EXHIBIT D

BORROWER'S DISCLOSURE REGARDING LEASES

Automated Concepts, Inc. ("ACI") signed an amendment to expand its existing office space with the building prior to the April 1999 sale. About the time of the sale, ACI had gone to the then Landlord and stated that due to organizational changes, it could not take the expansion space and not to proceed with the improvements. Since then, the current Landlord has been marketing the space and is in lease negotiations for this and additional space on the seventh floor. This new transaction shall require the following:

- A return of the tenant expansion space, approximately 4,131 RSF as defined in the lease amendment.
- A return of a portion of the tenant's original space, approximately 3,913 RSF as defined on the drawing dated 10/15/98.

ACI has not paid any rent on the expansion space. This outstanding rent may be found on the rent roll.

MCI Telecommunications Corporation and the Landlord have entered into an early occupancy agreement. This allows MCI access to suites 550 and 820 in the 8750 building while both parties negotiate the Seventh Amendment to Lease. This amendment represents expansion space of 13,160 rentable square feet.

The Landlord has entered into a license agreement with Windstar for roof top and riser access in order to provide the tenants of Triangle Plaza electronic communication services.

A commission of approximately \$4,500 is earned but not paid to Ron Reese of Caldwell Banker for his services relating to the Emigrant Mortgage lease. The Landlord awaits an invoice for payment.



**EXHIBIT E**

FORM OF TENANT ESTOPPEL CERTIFICATE

Landlord: Triangle Plaza Venture, LLC

Tenant:

Tenant Trade Name:

Premises:

Area: \_\_\_\_\_ Sq. Ft.                      Lease Date: \_\_\_\_\_

The undersigned Tenant of the above-referenced lease (the "Lease") hereby ratifies the Lease and certifies to NLI Properties Central, Inc. (with its successors and assigns, "Lender") as mortgagee of the Real Property of which the premises demised under the Lease (the "Premises") is a part, as follows:

1. That the term of the Lease commenced on \_\_\_\_\_, 19\_\_ and the Tenant is in full and complete possession of the premises demised under the Lease and has commenced full occupancy and use of the Premises, such possession having been delivered by the original landlord and having been accepted by the Tenant.
2. That the Lease calls for monthly rent installments of \$ \_\_\_\_\_ to date and that the Tenant is paying monthly installments of rent of \$ \_\_\_\_\_ which commenced to accrue on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.
3. That no advance rental or other payment has been made in connection with the Lease, except rental for the current month, there is no "free rent" or other concession under the remaining term of the lease and the rent has been paid to and including \_\_\_\_\_, 19\_\_.
4. That a security deposit in the amount of \$ \_\_\_\_\_ is being held by Landlord, which amount is not subject to any set-off or reduction or to any increase for interest or other credit due to Tenant.
5. That all obligations and conditions under said Lease to be performed to date by Landlord or Tenant have been satisfied, free of defenses and set-offs including all construction work in the Premises.
6. That the Lease is a valid lease and in full force and effect and represents the entire agreement between the parties; that to the best of Tenant's knowledge, there is no existing default on the part

of the Landlord in any of the terms and conditions thereof; that there is not existing default on the part of the Tenant in any of the terms and conditions thereof and no event has occurred which, with the passing of time or giving of notice or both, would constitute an event of default; and that said Lease has: (initial one)

( ) not been amended, modified, supplemented, extended, renewed or assigned.

( ) been amended, modified, supplemented, extended, renewed or assigned as follows by the following described agreements:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. That the Lease provides for a primary term of \_\_\_\_\_ months; the term of the Lease expires on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; and that: (initial one)

( ) neither the Lease nor any of the documents listed above in Paragraph 6 (if any), contain an option for any additional term or terms.

( ) the Lease and/or the documents listed above in Paragraph 6 contain an option for \_\_\_\_\_ additional term(s) of \_\_\_\_\_ year(s) and \_\_\_\_\_ months(s) (each) at a rent to be determined as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. That Landlord has not rebated, reduced or waived any amounts due from Tenant under the lease, either orally or in writing, nor has Landlord provided financing for, made loans or advances to, or invested in the business of Tenant.

9. That, to the best of Tenant's knowledge, there is no contamination of the Real Property or the Premises by Hazardous Materials, and Tenant does not use, nor has Tenant disposed of, Hazardous Materials on the Real Property or the Premises except in minimal quantities, and Tenant has not violated any Environmental Laws on the Real Property or the Premises.

10. That there are no actions, voluntary or involuntary, pending against the Tenant under the bankruptcy laws of the United States or any state thereof.

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11. That this certification is made knowing that Lender is relying upon the representations herein made.

**Tenant:**

By:

\_\_\_\_\_  
Typed Name:

Title:

Attest

\_\_\_\_\_  
Typed Name:

Title:

Date: \_\_\_\_\_, 1998

Property of Cook County Clerk's Office

**EXHIBIT F**

**BORROWER'S ENVIRONMENTAL DISCLOSURE**

Report of Phase I Environmental Site Assessment dated December 19, 1997 prepared by Law Engineering and Environmental Services, Inc., LAW Project Number 52000-7-1347.

Property of Cook County Clerk's Office