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MORTGAGE AND SECURITY AGREEMENT

from

WESTERN SUBURBAN INDUSTRIAL INVESTMENTS  
LIMITED PARTNERSHIP,  
an Illinois limited partnership

and

ALAN S. PUTTERMAN, as nominee for  
American Trust Co. of Hawaii, Inc.

to

THE NORTHERN TRUST COMPANY,  
an Illinois banking corporation

Dated as of October 1, 1987

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Property of Cook County Clerk's Office

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Chicago, Illinois 60603

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## MORTGAGE AND SECURITY AGREEMENT

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## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT dated as of October 1, 1987, from WESTERN SUBURBAN INDUSTRIAL INVESTMENTS LIMITED PARTNERSHIP, an Illinois limited partnership, and ALAN S. PUTTERMAN, not personally but solely as nominee for American Trust Co. of Hawaii, Inc. (collectively the "Mortgagors"), to THE NORTHERN TRUST COMPANY, an Illinois banking corporation (the "Mortgagee");

### W I T N E S S E T H:

WHEREAS, the Mortgagors have, concurrently herewith, executed and delivered to the Mortgagee their Mortgage Note in the principal sum of Six Million Nine Hundred Thousand and No/100 Dollars (\$6,900,000) (the "Note"), bearing even date herewith, payable to the order of the Mortgagee, and due on October 31, 1990; and

WHEREAS, the Note evidences a loan in the amount of Six Million Nine Hundred Thousand and No/100 Dollars (\$6,900,000) being made by the Bank to the Mortgagors for the purpose of providing mortgage financing for the purchase and rehabilitation of the four parcels of real estate described in Exhibit A attached hereto and the improvements located thereon, which are designed for use as industrial and warehouse buildings;

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness hereby secured, the receipt and sufficiency of which are hereby acknowledged, the Mortgagors hereby grant, bargain, sell, convey and mortgage to the Mortgagee and its successors and assigns forever, under and subject to the terms and conditions hereinafter set forth, all of the Mortgagors' right, title and interest in and to the real property located in the Counties of Cook and Kane, State of Illinois described in Exhibit A attached hereto and by this reference incorporated herein, including all improvements now and hereafter located thereon;

### TOGETHER WITH THE FOLLOWING:

(a) All rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to the Mortgagors to collect and apply same; and

(b) All right, title and interest of the Mortgagors in and to all leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, including, but not limited to, the Leases (as defined in Article I hereof) and all right, title and interest of the Mortgagors thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature; and

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(c) All privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which the Mortgagors now have or may hereafter acquire in the said real estate and improvements; and

(d) All easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; and

(e) All right, title and interest of the Mortgagors, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements; and

(f) Any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and

(g) All materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate; and

(h) All fixtures now or hereafter owned by the Mortgagors and attached to or contained in and used in connection with the said real estate and improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property owned by the Mortgagors and used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property owned by the Mortgagors and placed by them on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not

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constitute a "fixture" (as such term is defined in the Uniform Commercial Code of Illinois), this Mortgage is deemed to be a security agreement under the Uniform Commercial Code of Illinois for the purpose of creating hereby a security interest an such property, which the Mortgagors hereby grant to the Mortgagee as secured party; and

(i) All the estate, interest, right, title, other claim or demand, including claims or demands with respect to any proceeds of insurance related thereto, which the Mortgagors now have or may hereafter acquire in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages;

the said real estate and improvements and the property and interests described in (a) through (i) above being collectively referred to herein as the "Premises".

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

FOR THE PURPOSE OF SECURING:

(a) Payment of the indebtedness evidenced by the Note, and including the principal thereof and interest thereon and any and all modifications, extensions and renewals thereof, and performance of all obligations of the Mortgagors under the Note; and

(b) Performance and observance by the Mortgagors of all of the terms, covenants and provisions of this Mortgage; and

(c) Performance and observance by the parties thereto of all of the terms, covenants and provisions of the other Loan Documents (as defined in Article I hereof); and

(d) Payment of all sums advanced by the Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the other Loan Documents (as defined in Article I hereof), or otherwise advanced by the Mortgagee pursuant to the provisions hereof or any of such other documents to protect the property hereby mortgaged and pledged; and

(e) Performance and observance of all of the terms, covenants and provisions of any other instrument given to evidence or further secure the payment and performance of any indebtedness hereby secured or any obligation secured hereby; and

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(f) Payment of any future or further advances (not exceeding \$100,000,000) which may be made by the Mortgagee to and for the benefit of the Mortgagors, their successors, assigns and legal representatives.

PROVIDED, HOWEVER, that if the Mortgagors shall pay the principal and all interest as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

TO PROTECT THE SECURITY OF THIS MORTGAGE AND SECURITY AGREEMENT, THE MORTGAGORS HEREBY COVENANT AND AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. The terms defined in this Section (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Mortgage shall have the respective meanings specified in this Section.

"Assignment of Rents" means the Assignment of Rents and Leases dated as of October 1, 1987, from Western and Putterman to the Mortgagee.

"Commitment" means the Commitment Letter dated as of October 1, 1987, by and among, Western, Putterman, Waikiki and the Mortgagee.

"Guarantors" means Michael T. Tomasz and Jay H. Shidler, the sole shareholders of Tomasz/Shidler Investment Corporation, an Illinois corporation, the general partner of Western.

"Guaranty" means the Guaranty of Payment and Performance dated as of October 1, 1987, from the Guarantors to the Mortgagee.

"Hazardous Material" means any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards on conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

"Leases" means the leases described in Exhibit B attached hereto.

"Loan Documents" means the Commitment, the Note, this Mortgage, the Assignment of Rents, the Guaranty, and all other

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documents and instruments at any time evidencing and securing the indebtedness secured by this Mortgage.

"Mortgage" means this Mortgage and Security Agreement dated as of October 1, 1987, from Western and Putterman to the Mortgagee.

"Mortgagee" means The Northern Trust Company, an Illinois banking corporation.

"Mortgagors" means Western and Putterman, as nominee for the American Trust Co. of Hawaii, Inc., and in addition includes Waikiki after conveyance by Putterman of his interest in the Premises to Waikiki as contemplated by Section 2.13(d) hereof, and any entity to which Waikiki may convey its interest in the Premises as permitted by Section 2.13(d) hereof.

"Note" means the Mortgage Note of Western and Putterman dated October 1, 1987, in the principal amount of \$6,900,000, made payable to the order of the Mortgagee.

"Permitted Encumbrances" means (i) this Mortgage; (ii) the Assignment of Rents; (iii) Uniform Commercial Code financing statements reflecting the Mortgagee as secured party; (iv) leases of the Premises, provided same are subordinate to or provide for subordination to this Mortgage and the Assignment of Rents; (v) liens for ad valorem taxes and special assessments not then delinquent; and (vi) those Additional Permitted Encumbrances listed in Exhibit C attached hereto.

"Premises" means the real estate described in Exhibit A attached hereto and all improvements now and hereafter located thereon, and all other property, rights and interests described in the foregoing granting clauses of this Mortgage.

"Putterman" means Alan S. Putterman, one of the Mortgagors and the owner of a 50% undivided interest in the Premises as a tenant in common, not personally but solely as nominee for American Trust Co. of Hawaii, Inc.

"Waikiki" means Waikiki Beachcomber Investment Co., a Hawaii partnership.

"Western" means Western Suburban Industrial Properties Limited Partnership, an Illinois limited partnership, one of the Mortgagors and the owner of a 50% undivided interest in the Premises as a tenant in common.

## ARTICLE II

### COVENANTS AND AGREEMENTS OF MORTGAGOR

Section 2.1. Payment of Indebtedness. The Mortgagors covenant and agree that they will pay when due the principal of and



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interest on the indebtedness hereby secured evidenced by the Note, all other sums which may become due pursuant thereto or hereto, and all other indebtedness hereby secured as described in the foregoing granting clauses of this Mortgage, including, but not limited to, all charges, fees and all other sums to be paid by the Mortgagors as provided in the Loan Documents, and that they will duly and punctually perform, observe and comply with all of the terms, provisions and conditions herein and in the other Loan Documents provided to be performed and observed by the Mortgagors. The Note secured hereby, which is hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, is in the principal amount of \$6,900,000, and bears interest at a variable rate of 1% per annum plus the Mortgagee's Prime Rate (as defined below) from time to time in effect while the Note is outstanding. For such purposes, the term "Prime Rate" shall mean that rate of interest announced from time to time by the Mortgagee as its prime rate of interest, which rate at any time may not be the lowest rate charged by the mortgagee. Changes in the rate of interest on the Note resulting from a change in the Prime Rate shall take effect on the date of change in the Prime Rate set forth in each announcement. The Mortgagors have the option from time to time in the manner provided in the Note to convert the interest rate on the Note from a rate based on the Mortgagee's Prime Rate to a rate based on the rate at which dollar deposits are offered in immediately available funds in the London Interbank Market to the Mortgagee by leading banks in the Eurodollar market, calculated as provided in the Note. From and after the first day of the month following the month in which annual Net Operating Income (as defined below), based upon annualization of Net Operating Income for any three consecutive months, equals or exceeds 1.25 times the annual debt service on the Note (annualized for a corresponding period), the applicable interest rate on the Note shall be reduced by 1/2% per annum as provided in the Note. For such purposes the term "Net Operating Income" shall mean, with respect to any period, rental income from the Premises for such period (including payments by tenants as payment or reimbursement of operating expenses) minus operating expenses for such period, including, but not limited to, utilities, real estate taxes, insurance, management fees, and a structural reserve in the amount of \$15,469, \$16,088 and \$16,732 for the fiscal years ending September 30, 1988, 1989 and 1990, respectively, but not including depreciation, amortization and interest on the Loan, all as determined in accordance with generally accepted accounting principles and set forth in a report certified by Western and Waikiki and in a form acceptable to the Mortgagee in its reasonable discretion. Interest is payable on the Note in arrears on the first day of each month commencing November 1, 1987. All of the principal and any accrued and unpaid interest on the Note shall be due and payable on October 31, 1990.

Section 2.2. Escrow Deposits. In order to provide moneys for the payment of the Impositions on the Premises required to be paid by the Mortgagors pursuant to Section 2.6 hereof and the premiums on the insurance required to be carried by the Mortgagors pursuant to Section 2.4 hereof, the Mortgagors shall pay to the Mortgagee with each monthly payment on the Note such amount as the

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Mortgagee shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Impositions and insurance premiums, through substantially equal monthly payments by the Mortgagors to the Mortgagee, amounts sufficient to pay such next annual Impositions and insurance premiums. All such payments shall be held by the Mortgagee in escrow, and the Mortgagee shall not be obligated to pay interest thereon. Amounts held in such escrow shall be made available by the Mortgagee to the Mortgagors for the payment of the Impositions and insurance premiums on the Premises when due, or may be applied thereto by the Mortgagee if it in its sole discretion so elects. The Mortgagee may at any time and from time to time waive the requirement for the escrow deposits provided for in this Section. In the event of any such waiver, the Mortgagee may thereafter in its sole discretion elect to require that the Mortgagors commence making such escrow deposits by giving the Mortgagors not less than 10 days' written notice of such election. No such waiver shall impair the right of the Mortgagee thereafter to require that such escrow deposits be made.

Section 2.3. Maintenance, Repair, Alterations. The Mortgagors covenant and agree that they will:

- (a) keep the Premises in good condition and repair;
- (b) not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or governmental regulations) any of the improvements which are a part of the Premises except with the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld or delayed; provided that the Mortgagors may remove and dispose of obsolete, worn out and inadequate fixtures and personal property provided same are replaced with comparable property of at least equal value which shall become subject to the lien of this Mortgage;
- (c) promptly repair and restore any portion of the Premises which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;
- (d) pay when due all claims for labor performed and materials furnished to and for the Premises;
- (e) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements;
- (f) not commit or permit any waste or deterioration of the Premises or any portion thereof;
- (g) keep and maintain the Premises and abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair and free of nuisance;

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(h) not commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation;

(i) not initiate or acquiesce in any zoning change or reclassification of the Premises; and

(j) subject to Section 2.13(b) hereof, keep the Premises free and clear of all liens and encumbrances of every sort except Permitted Encumbrances.

Section 2.4. Required Insurance. The Mortgagors shall at all times provide, maintain and keep in force the following policies of insurance:

(a) Insurance against loss or damage to any improvements on the Premises by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage", in an amount not less than the full replacement cost thereof (exclusive of the cost of excavations, foundations and footings below the lowest basement floor), and with not more than \$10,000 deductible from the loss payable for any casualty.

(b) Comprehensive public liability insurance, including coverage for elevators and escalators, if any, on the Premises and completed operations coverage for two years after any construction or repair at the Premises has been completed, on an occurrence basis against claims for personal injury, including without limitation bodily injury, death or property damage occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways. Such insurance to afford immediate minimum protection to a limit of not less than \$1,000,000 for one person and \$3,000,000 per occurrence for personal injury or death and \$500,000 per occurrence for damage to property.

(c) Workmen's compensation insurance in accordance with the requirements of Illinois law.

(d) During the course of any construction or repair at the Premises, builder's risk insurance against all risks of physical loss, on a completed value basis, including collapse and transit coverage, with a deductible not to exceed \$10,000, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy upon completion of work" endorsement.

(e) Boiler and machinery insurance covering any pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment located on the Premises, and insurance against loss of occupancy or use arising from any breakdown therein, all in such amounts as are satisfactory to the Mortgagee.

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(f) If the Premises are located in an area that has been identified by the United States Department of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, flood insurance in an amount at least equal to the replacement cost of any improvements on the Premises or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

(g) Such other commercially available insurance, and in such amounts, as may from time to time be reasonably required by the Mortgagee against the same or other hazards.

All policies of insurance required by terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of the Mortgagors which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim or deductions against the Mortgagors.

#### Section 2.5. Delivery of Policies; Payment of Premiums.

All policies of insurance required by the terms of this Mortgage shall be issued by companies and in amounts in each company satisfactory to the Mortgagee in its reasonable discretion. All policies of insurance shall name the Mortgagors and the Mortgagee as insureds, as their respective interests may appear, and the policies required by paragraphs (a), (d), (e) and (f) of Section 2.4 hereof shall have attached thereto a mortgagee's loss payable endorsement for the benefit of the Mortgagee in form satisfactory to the Mortgagee in its reasonable discretion. The Mortgagors shall furnish the Mortgagee with the original of all required policies of insurance. At least 30 days prior to the expiration of each such policy, the Mortgagors shall furnish the Mortgagee with evidence satisfactory to the Mortgagee of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Mortgage. Each policy of insurance required by this Mortgage shall contain a provision that such policy will not be cancelled or materially amended, including any reduction in the scope or limits of coverage, without at least 30 days' prior written notice to the Mortgagee.

#### Section 2.6. Taxes and Impositions.

(a) The Mortgagors agree to pay or cause to be paid, at or prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, which are assessed or imposed upon the Premises, or become due and payable, and which create, may create or appear to create a

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lien upon the Premises, or any part thereof (all of which taxes, assessments and other governmental charges and non-governmental charges of the above-described or like nature are hereinafter referred to as "Impositions"); provided however, that if, by law, any such Imposition is payable, or at the option of the taxpayer may be paid, in installments, the Mortgagors may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) The Mortgagors shall furnish to the Mortgagee within 30 days after the date upon which any Imposition is due and payable by the Mortgagors, official receipts of the appropriate taxing authority, or other proof satisfactory to the Mortgagee, evidencing the payment thereof.

(c) The Mortgagors shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay the collection of the contested Impositions and prevent the sale or forfeiture of the Premises to collect the same; provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Mortgagors' covenants to pay any such Imposition at the time and in the manner provided in this Section unless the Mortgagors have given prior written notice to the Mortgagee of the Mortgagors' intent to so contest or object to an Imposition, and unless, at the Mortgagee's sole option, (i) the Mortgagors shall demonstrate to the Mortgagee's satisfaction that legal proceedings instituted by the Mortgagors contesting or objecting to such impositions shall conclusively operate to prevent the sale or forfeiture of the Premises, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; and/or (ii) the Mortgagors shall furnish a good and sufficient bond or surety as requested by and satisfactory to the Mortgagee, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, adequate fully to pay all such contested Impositions and all interest and penalties upon the adverse determination of such contest.

Section 2.7. Utilities. The Mortgagors shall pay or cause to be paid when due all utility charges which are incurred by the Mortgagors or others for the benefit of or service to the Premises or which may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Premises or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

Section 2.8. Actions by Mortgagee to Preserve Premises. Subject to any applicable grace periods, should the Mortgagors fail

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to make any payment or to do any act as and in the manner provided herein or in any of the other Loan Documents, the Mortgagee in its own discretion, without obligation so to do and without releasing the Mortgagors from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), the Mortgagee shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Premises; (ii) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary and proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of the Mortgagee; (iv) to pay any Impositions (as defined in Section 2.6 hereof) asserted against the Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of the Mortgagee may affect or appears to affect the Premises or the security of this Mortgage or which may be prior or superior hereto; and (vi) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. The Mortgagors irrevocably appoint the Mortgagee their true and lawful attorney in fact, at the Mortgagee's election, to do and cause to be done all or any of the foregoing in the event the Mortgagee shall be entitled to take any or all of the action provided for in this Section. The Mortgagors shall immediately, upon demand therefor by the Mortgagee, pay all costs and expenses incurred by the Mortgagee in connection with the exercise by the Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon at a rate of two percent (2%) above the then prevailing interest rate on the Note.

Section 2.9. Damage and Destruction.

(a) The Mortgagors shall give the Mortgagee prompt notice of any damage to or destruction of any portion or all of the Premises, and the provisions of paragraphs (b) through (e) of this Section shall apply in the event of any such damage or destruction.

(b) In the case of loss covered by policies of insurance, the Mortgagee is hereby authorized at its option either (i) to settle and adjust any claim under such policies with the consent of the Mortgagors, which consent shall not be unreasonably withheld or delayed, or (ii) allow the Mortgagors to agree with the insurance company or companies on the amount to be paid upon the loss; and in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by the Mortgagee in the adjustment and collection

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of insurance proceeds shall be so much additional indebtedness secured by this Mortgage, and shall be reimbursed to the Mortgagee upon demand.

(c) In the event of any insured damage to or destruction of the Premises or any part thereof the proceeds of insurance payable as a result of such loss shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Premises, as the Mortgagee in its sole discretion shall elect.

(d) In the event that the Mortgagee shall elect that proceeds of insurance are to be applied to the repair and restoration of the Premises, the Mortgagors hereby covenant promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration, upon the Mortgagee's being furnished with satisfactory evidence of the estimated cost of such repair and restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as the Mortgagee may require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, then upon the Mortgagee's also being furnished with all plans and specifications for such repair or restoration as the Mortgagee may require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens.

(e) Notwithstanding any provision herein to the contrary and in particular Section 2.9(c) hereof, in the event of any such damage or destruction, the Mortgagee shall make the proceeds of insurance received as a result of such damage or destruction available for the repair and restoration of the Premises, subject to the following conditions: (i) that there does not then exist any event of default under this Mortgage or any of the other Loan Documents, or any condition which with the passage of time or the giving of notice, or both, would constitute such an event of default; (ii) that all then existing leases and subleases of the Premises shall continue in full force and effect without reduction or abatement of rental (except during any period of untenability); (iii) that the Mortgagee shall first be given satisfactory proof that such improvements have been fully repaired and restored, or that by the expenditure of such money will be fully repaired and restored, free and clear of all liens, except the lien of this Mortgage; (iv) that in the event such proceeds shall be insufficient to repair and restore the Premises, the Mortgagors shall deposit promptly with the Mortgagee the amount of such deficiency; (v) that in the event the Mortgagors shall fail within a reasonable time, subject to delays beyond their control, to repair and restore the Premises, then the Mortgagee, at its option, may repair and restore the Premises for or on behalf of the Mortgagors

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and for such purpose may do all necessary acts, including using said funds deposited by the Mortgagors as aforesaid; (vi) that waiver of the right of subrogation shall be obtained from any insurer under such policies of insurance who, at that time, claims that no liability exists as to the Mortgagors or the then owner or the assured under such policies; (vii) such insurance proceeds shall be disbursed as provided in Section 2.9(d) hereof; and (viii) that the excess of said insurance proceeds above the amount necessary to complete such repair and restoration shall be applied as a credit upon any portion, as selected by the Mortgagee, of the indebtedness secured hereby. In the event any of the said conditions are not or cannot be satisfied, then the alternate disposition of such insurance proceeds as provided in Section 2.9(c) hereof shall become applicable. Under no circumstances shall the Mortgagee become personally liable for the fulfillment of the terms, covenants and conditions contained in any of the said leases or subleases nor obligated to take any action to repair and restore the Premises.

## Section 2.10. Eminent Domain.

(a) Should the Premises or any part thereof or interest therein be taken or damaged by reason of any public improvement or condemnation proceeding or in any other manner, or should the Mortgagors receive any notice or other information regarding any such proceeding, the Mortgagors shall give prompt written notice thereof to the Mortgagee, and the provisions of paragraphs (b) through (d) of this Section shall apply.

(b) The Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor (except awards made to tenants of the Premises), and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. The Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage with the consent of the Mortgagors, which consent shall not be unreasonably withheld or delayed. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to the Mortgagors are hereby assigned to the Mortgagee and the Mortgagors agree to execute such further assignments of such proceeds as the Mortgagee may require.

(c) In the event that any portion of the Premises are taken or damaged as aforesaid, all such proceeds shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Premises, as the Mortgagee in its sole discretion shall elect.

(d) In the event that the Mortgagee shall elect that such proceeds are to be applied to the repair and restoration of the Premises, the Mortgagors hereby covenant promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration on the terms provided for in Section 2.9(d) hereof with respect to insurance proceeds.

Section 2.11. Inspection of Premises. The Mortgagee, or its agents, representatives or workmen, are authorized to enter at

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any reasonable time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage or any of the other Loan Documents.

Section 2.12. Inspection of Books and Records. The Mortgagors shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and shall make such books and records and all supporting vouchers and data available for examination by the Mortgagee and its agents at any time and from time to time on request at the offices of the Mortgagee, or at such other location as may be mutually agreed upon.

Section 2.13. Title, Liens and Conveyances.

(a) The Mortgagors represent that they hold good and marketable title to the Premises, each with an undivided 50% interest as tenants in common, subject only to Permitted Encumbrances.

(b) Except for Permitted Encumbrances, the Mortgagors shall not create, suffer or permit to be created or filed against the Premises, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage. The Mortgagors shall have the right to contest in good faith the validity of any such lien, charge or encumbrance, provided the Mortgagors shall first deposit with the Mortgagee a bond or other security reasonably satisfactory to the Mortgagee in its reasonable discretion and in such amounts or form as the Mortgagee shall reasonably require; provided further that the Mortgagors shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If the Mortgagors shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of the Mortgagee, the Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law and any amounts expended by the Mortgagee in so doing shall be so much additional indebtedness secured by this Mortgage. Except for Permitted Encumbrances, in the event that the Mortgagors shall suffer or permit any superior or junior lien, charge or encumbrance to be attached to the Premises, the Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest thereon to be immediately due and payable without notice to the Mortgagors.

(c) In the event title to the Premises, is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Premises shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

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(d) Except for Permitted Encumbrances, in the event that the Mortgagors or either of them shall sell, transfer, convey or assign the title to all or any portion of the Premises, whether by operation of law, voluntarily, or otherwise, or the Mortgagors or either of them shall contract to do any of the foregoing, the Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest thereon to be immediately due and payable without notice to the Mortgagors; provided that (i) Putterman shall be permitted to convey his entire interest in the Premises, subject to this Mortgage and the Assignment of Rents, to Waikiki, which shall assume all of Putterman's obligations under the Loan Documents, subject to the nonrecourse provisions thereof, and (ii) Waikiki shall be permitted to convey its interest in the Premises, subject to this Mortgage and the Assignment of Rents, to an entity 50% or more of which is owned by Michael T. Tomasz and Jay H. Shidler, which shall assume all of Putterman's obligations under the Loan Documents, subject to the nonrecourse provisions thereof.

(e) Any waiver by the Mortgagee of the provisions of this Section shall not be deemed to be a waiver of the right of the Mortgagee to insist upon strict compliance with the provisions of this Section in the future.

## Section 2.14. Taxes Affecting Mortgage.

(a) If at any time any federal, State or municipal law shall require any documentary stamps or other tax hereon or on the Note, or shall require payment of any tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of the Mortgagee upon 90 days' notice to the Mortgagors; provided, however, said election shall be unavailing and this Mortgage and the Note shall be and remain in effect, if the Mortgagors lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of the Mortgagee and the Mortgagors do in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

(b) In the event of the enactment after the date of this Mortgage of any law of the State in which the Premises are located deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagors, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder hereof, then, and in any such event, the Mortgagors, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if, in the opinion of counsel for the Mortgagee, (i) it might be unlawful to require Mortgagors to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in

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such event, the Mortgagee may elect, by notice in writing given to the Mortgagors, to declare all of the indebtedness secured hereby to be and become due and payable within 90 days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that the Mortgagors are not obligated to pay any portion of Mortgagee's federal or State income tax.

## Section 2.15. Environmental Matters.

(a) The Mortgagors hereby represent and warrant to the Mortgagee that neither of the Mortgagors, nor any of their affiliates or subsidiaries, nor, to the best of Mortgagors' knowledge, any other person or entity has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Premises or any part thereof and that none of the property described above has ever been used by the Mortgagors or either of them, any of Mortgagors' affiliates or subsidiaries, or, to the best of Mortgagors' knowledge, by any other person or entity as a temporary or permanent dump or storage site for any Hazardous Material.

(b) Without limitation on any other provision hereof, the Mortgagors hereby agree to indemnify and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any of the following (collectively, "Environmental Laws"): the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to, or imposing liability or standards on conduct concerning any Hazardous Material) paid, incurred, suffered by or asserted against the Mortgagee as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Mortgagors, or either of them: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from (A) the Premises or any part thereof, or (B) any or any other real property in which the Mortgagors, or either of them or any of their affiliates or subsidiaries holds any estate or interest whatsoever, or (ii) any liens against the Premises permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligations of the Mortgagors, or either of them or any of their affiliates or subsidiaries under any Environmental Laws, or (iii) any actual or asserted liability or obligations of the Mortgagors, or either of them or any of their affiliates or subsidiaries under any Environmental Law relating to the Premises.

Section 2.16. Estoppel Letters. The Mortgagors shall furnish from time to time within 15 days after the Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist

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against the indebtedness secured by this Mortgage. The Mortgagee shall furnish from time to time within 15 days after the Mortgagors' request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged defaults exist hereunder.

## ARTICLE III

### ASSIGNMENT OF RENTS; DECLARATION OF SUBORDINATION TO LEASES

Section 3.1. Assignment of Rents. As further security for the indebtedness secured by this Mortgage, the Mortgagors, have, concurrently herewith, executed and delivered to the Mortgagee the Assignment of Rents, wherein and whereby, among other things, the Mortgagors have assigned to the Mortgagee all rents, avails, issues and profits under all leases of the Premises, and all such leases, all as therein more specifically set forth, which Assignment of Rents is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length. The Mortgagors agree that they will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment of Rents. The Mortgagors further agree that they will duly perform and observe all of the terms and provisions on lessor's part to be performed and observed under any and all leases of the Premises, including, but not limited to the Leases, to the end that no default on the part of lessor shall exist thereunder. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any lease of the Premises, and the Mortgagors shall and do hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any leases of the Premises or by reason of the Assignment of Rents; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense of any claims or demands therefor (whether successful or not), shall be so much additional indebtedness secured by this Mortgage, and the Mortgagors shall reimburse the Mortgagee therefor on demand.

Section 3.2. Further Assignment. Without limiting the generality of any other provisions hereof, and without limiting the effectiveness of the Assignment of Rents referred to in Section 3.1 hereof, as additional security, the Mortgagors hereby assign to the Mortgagee the rents, issues and profits of the Premises and upon the occurrence of any event of default hereunder, the Mortgagee may receive and collect said rents, issues and profits so long as such event of default shall exist and during the pendency of any foreclosure proceedings. As of the date of this Mortgage, as additional security, the Mortgagors also hereby assign to the Mortgagee any and all written and oral leases, whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension hereof, and the rents thereunder, covering the Premises or any portion thereof, including, but not limited to, the Leases; provided that the collection of rents by the Mortgagee pursuant to this Section or pursuant to the Assignment of

Rents shall in no way waive the right of the Mortgagee to foreclose this Mortgage in the event of any event of default, but provided always, that nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession.

Section 3.3. Declaration of Subordination to Leases. At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases and subleases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

Section 4.1. Events of Default. Any of the following events shall be deemed an event of default hereunder:

(a) Default shall be made in the payment when due of any installment of principal or interest on the Note or in the payment when due of any other amount required to be paid by the Mortgagors hereunder or under any of the other Loan Documents, or in the payment when due of any other indebtedness secured by this Mortgage, and such default shall continue for more than five days after written notice to the Mortgagors; or

(b) The Mortgagors, or any of them, or any guarantor under the Guaranty shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, State or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagors, or any of them, or any such guarantor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof; or shall make any general assignment for the benefit of creditors, or shall admit in writing its or his inability to pay its or his debts generally as they become due; or

(c) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Mortgagors, or any of them, or any guarantor under the Guaranty seeking any reorganization, dissolution or similar relief under any present or future federal, State or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree

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shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of the Mortgagors, or any of them, or any such guarantor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed and such appointment shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive); or

(d) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Premises, or any judgment involving monetary damages shall be entered against the Mortgagors, or any of them, which shall become a lien on the Premises or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 30 days after its entry or levy; or

(e) If any representation or warranty of the Mortgagors contained in this Mortgage, or of the Mortgagors or the Guarantors contained in any of the other Loan Documents or any certificate or other document delivered in connection with the loan evidenced by the Note, shall prove untrue or incorrect in any material respect; or

(f) If there has occurred any other material breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in this Mortgage, and such breach or default shall continue for a period of 30 days after written notice to the Mortgagors, or if such breach or default is of such a nature that it cannot reasonably be corrected within such 30-day period, it shall not constitute an event of default if corrective action is instituted by the Mortgagors within such 30-day period and diligently pursued until the breach or default is corrected; or

(g) If there has occurred any other breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the other Loan Documents which has not been cured within any applicable grace period; or

(h) If any event of default has occurred or been declared under any other mortgage on the Premises.

Section 4.2. Acceleration upon Default; Additional Remedies. Upon or at any time after the occurrence of any event of default, the Mortgagee may declare the Note and all indebtedness secured by this Mortgage to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter the Mortgagee may:

(a) Either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon and take possession of the Premises, or any part thereof, in

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its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same to the payment of taxes, insurance premiums and other charges against the Premises or in reduction of the indebtedness secured by this Mortgage; and the entering upon and taking possession of the Premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any event of default or notice of default hereunder or invalidate any act done in response to such event of default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents, issues or profits, the Mortgagee shall be entitled to exercise every right provided for in any of the other Loan Documents or by law upon occurrence of any event of default; or

(b) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or

(c) Sell the Premises, or any part thereof, or cause the same to be sold, and to convey the same to the purchaser thereof, pursuant to the statute in such case made and provided, and out of the proceeds of such sale to retain all of the indebtedness secured by this Mortgage including, without limitation, principal, accrued interest, costs and charges of such sale, the attorneys' fees provided by such statute (or in the event of a suit to foreclose by court action, a reasonable attorney's fee), rendering the surplus moneys, if any, to the Mortgagor; provided, that in the event of public sale, such property may, at the option of the Mortgagee, be sold in one parcel or in several parcels as the Mortgagee, in its sole discretion, may elect; or

(d) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Illinois, and any notice of sale, disposition or other intended action by the Mortgagee, sent to the Mortgagors at the address specified in Section 5.13 hereof, at least 10 days prior to such action, shall constitute reasonable notice to the Mortgagors.

Section 4.3. Foreclosure; Expense of Litigation. When the indebtedness secured by this Mortgage, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of the Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred

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by or on behalf of the Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Loan Documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage, immediately due and payable, with interest thereon at a rate of two percent (2%) above the then prevailing interest rate on the Note. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

Section 4.4. Application of Proceeds of Foreclosure Sale.

The proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in Section 4.3 hereof; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to the Mortgagors, their successors or assigns, as their rights may appear.

Section 4.5. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagors at the time of application for such receiver and without regard to the then value of the Premises and the Mortgagee or any holder of the Note may be appointed as such receiver. Such receiver shall have power (i) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Mortgagors, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness

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secured by this Mortgage and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagors and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

Section 4.6. Insurance After Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

Section 4.7. Remedies Not Exclusive; No Waiver of Remedies.

(a) The Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to the Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by the Mortgagee and the Mortgagee may pursue inconsistent remedies. Failure by the

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Mortgagee to exercise any right which it may exercise hereunder, or the acceptance by the Mortgagee of partial payments, shall not be deemed a waiver by the Mortgagee of any default or of its right to exercise any such rights thereafter.

(b) In the event the Mortgagee at any time holds additional security for any of the indebtedness secured by this Mortgage, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with exercising remedies under this Mortgage or after a sale is made hereunder.

Section 4.8. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession.

Section 4.9. Waiver of Certain Rights. The Mortgagors shall not and will not apply for or avail themselves of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but rather waive the benefit of such laws. The Mortgagors for themselves and all who may claim through or under them waive any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agree that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. The Mortgagors hereby waive any and all rights of redemption from sale or from or under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagors and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Premises are located.

Section 4.10. Mortgagee's Use of Deposits. With respect to any deposits made with or held by the Mortgagee or any depository pursuant to any of the provisions of this Mortgage, in the event of a default in any of the provisions contained in this Mortgage or in the Note or any of the other Loan Documents, the Mortgagee may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the obligations under this Mortgage, the Note or the other Loan Documents, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to the Mortgagors. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagors.

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## ARTICLE V

### MISCELLANEOUS

Section 5.1. Recitals. The recitals hereto are hereby made a part of this Mortgage.

Section 5.2. Time of Essence. Time is of the essence of this Mortgage and of each and every provision hereof.

Section 5.3. Usury Covenant. The Mortgagors hereby represent and covenant that the proceeds of the Note will be used for the purposes specified in paragraph (c) contained in Section 6404 of Chapter 17 of the Illinois Revised Statutes (1985), and that the indebtedness secured hereby constitutes a "business loan" within the meaning of that Section.

Section 5.4. Lien for Service Charges and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all origination fees, loan commissions, service charges, liquidated damages, expense and advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby, all in accordance with the application and any loan commitment issued in connection with this transaction.

Section 5.5. Subrogation. To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Premises, the Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

Section 5.6. Recording. The Mortgagors shall cause this Mortgage and all other documents securing the indebtedness secured by this Mortgage at all times to be properly filed and/or recorded at the Mortgagors' own expense and in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee.

Section 5.7. Further Assurances. The Mortgagors will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagors or hereafter acquired.

Section 5.8. No Defenses. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

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Section 5.9. Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage.

Section 5.10. Illegality of Terms. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require the Mortgagors to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (ii) to require the Mortgagors to make any payment or do any act contrary to law; and if any provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and the Mortgagee shall be given a reasonable time to correct any such error.

Section 5.11. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, the Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with the Mortgagors, without in any way releasing or discharging the Mortgagors from the covenants and/or undertakings hereunder, specifically including Section 2.13(d) hereof, and without the Mortgagee waiving its rights to accelerate the Note as set forth in Section 2.13(d).

Section 5.12. Releases. The Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note, this Mortgage, the Guaranty, or any other guaranty given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall

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extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.

Section 5.13. Giving of Notice. All communications provided for herein shall be in writing and shall be deemed to be given or made when served personally or three days after deposit in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to the Mortgagors: Western Suburban Industrial Investments  
Limited Partnership  
c/o Tomasz/Shidler Investment  
Corporation  
200 West Madison, Suite 3040  
Chicago, Illinois 60606

and

Alan S. Putterman  
Two First National Plaza  
20 South Clark Street  
Suite 2400  
Chicago, Illinois 60603

and

Waikiki Beachcomber Investment Co.  
c/o The Shidler Group  
733 Bishop Street  
Suite 2700  
Honolulu, Hawaii 96813

with a copy to:

Nagelberg & Resnick, P.C.  
200 South Wacker Drive  
29th Floor  
Chicago, Illinois 60606

Attention: Suzanne Bessette-Smith

If to the Mortgagee: The Northern Trust Company  
50 South LaSalle Street  
Chicago, Illinois 60675

Attention: Bernie M. Tuggle  
Commercial Banking  
Department

or to such party at such other address as such party may designate by notice duly given in accordance with this Section to the other parties.

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Section 5.14. Binding Effect. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagors and their successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated the Mortgagee.

Section 5.15. Covenants to Run with the Land. All the covenants hereof shall run with the land.

Section 5.16. Governing Law; Severability; Modification. This Mortgage shall be governed by the laws of the State of Illinois. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions hereof which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 5.17. Meanings. Wherever in this Mortgage the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

Section 5.18. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 5.19. Approval or Consent of Mortgagee. Wherever in this Mortgage provision is made for the approval or consent of the Mortgagee, or that any matter is to be to the Mortgagee's satisfaction, or the like, unless specifically stated to the contrary, such approval, consent, satisfaction or the like shall be made, given or determined by the Mortgagee in its sole discretion.

Section 5.20. Nonrecourse Obligation. This Mortgage is a nonrecourse obligation, and the amounts payable under this Mortgage are payable solely out of the property mortgaged hereunder. Neither of the Mortgagors nor any of their general or limited partners shall have any personal liability for the payment of any amounts becoming due hereunder, and no personal liability shall be asserted or be enforceable against any of them because of or in respect of this Mortgage or any amounts becoming due hereunder. However, nothing



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## EXHIBIT A

### LEGAL DESCRIPTION

#### Property A:

Parcel One - 1005-1035 Paramount Parkway, Batavia, Illinois,  
P.I.N. 12-13-327-004

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That part of Block "A" of Paramount/Batavia Park, Unit 1, lying north of a line described as follows: Commencing at the south west corner of said block "A"; thence north along the west line of said block, 380.0 feet for the beginning of said line; thence east at right angles to the west line of said block 300.00 feet to the west line of Paramount Parkway and the terminus of said line and the southerly 36.45 feet, as measured along the westerly line thereof, of vacated Douglas Road lying north of and adjoining said block "A", all being in the City of Batavia, Kane County, Illinois.

Parcel Two - 905 Paramount Parkway, Batavia, Illinois,  
P.I.N. 12-13-327-003

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That part of block "A" of Paramount/Batavia Park, unit 1, lying south of a line described as follows: Commencing at the south west corner of said block "A"; thence north along the west line of said block 380.00 feet for the beginning of said line; thence east at right angles to the west line of said block 300.00 feet to the west line of Paramount Parkway and the terminus of said line, in the City of Batavia, Kane County, Illinois.

#### Parcel Three:

Easement for railroad track, drainage and utility purposes created by Agreement recorded June 15, 1976, as Document 1366695 made by Heritage-Standard Bank and Trust Company, as Trustee under the provisions of a Trust Agreement dated March 7, 1974, and known as Trust No. 4034, Chicago Title and Trust Company, as Trustee under the provisions of a Trust Agreement dated August 14, 1974, known as Trust No. 64851, and the City of Batavia, a municipal corporation, for the benefit of Parcel 2 over that part of Lots 4, 11, and 12 of Batavia Industrial Park, Batavia, Kane County, Illinois, and that part of the West half of Section 13, Township 39 North, Range 8 East of the Third Principal Meridian, described as follows: Beginning on the Northerly right of way line of Burlington-Northern, Inc. at the Southeast corner of said Batavia Industrial Park; thence North 0° 11' 20" East along the East line of said Batavia Industrial

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Park and said East line extended North 2,660.69 feet to an old claim line; thence Westerly along said old claim line 40 feet; thence South  $0^{\circ} 11' 20''$  West 2,381.56 feet; thence Southerly along curve to the right having a radius of 459.28 feet and being tangent to the last described point an arc distance of 377.05 feet to the Northerly right of way line of Burlington-Northern, Inc.; thence Easterly along said Northerly right of way line 194.85 feet to the point of beginning, in the City of Batavia, Kane County, Illinois.

## Property B:

2120 Roberts Drive, Broadview, Illinois,  
P.I.N. 15-22-300-024

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All that part of lot 2 lying south of a line described as follows: Beginning at the northwest corner of lot 1; thence west along the south line of Roberts Drive, 269 feet; thence northwesterly along a curved line convex to the southwest and having a radius of 55 feet, 41.60 feet to a point which is on a line 15 feet north of and parallel to the south line of said Roberts Drive; thence west along aforesaid parallel line to a point in the westerly line of lot 2, in B.P.M. subdivision, being a subdivision of part of the south  $1/2$  of the northwest  $1/4$  of the southwest  $1/4$  of Section 22, Township 39 North, Range 12 east of the Third Principal Meridian lying northerly and easterly of Addison Creek, all in Cook County, Illinois.

## Property C:

35-45 West Lake Street, Northlake, Illinois,  
P.I.N. 15-06-216-025

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That part of the northeast  $1/4$  of Section 6, Township 39 North, Range 12 east of the Third Principal Meridian, described as follows: Beginning at a point on the center line of Lake Street extended which is 1186.87 feet southeasterly (as measured on said center line and center line extended) from the point of intersection of said center line with a southward extension of the west line of block 9 in H. O. Stone North Lake Addition; thence northeasterly along a line which is parallel with a line drawn at right angles to the southwesterly line of block 10 in H. O. Stone Northlake Addition in said Section to the center line of Lake Street; thence easterly along the center line of Lake Street a distance of 342.07 feet; thence southwesterly to a point on a line which is parallel with and 200 feet northerly of, as measured at right angles from the center line of spur track I.C.C. Number 1101 of the Chicago and Northwestern Railway Company now located and established, said point being 779.46 feet northwesterly of and as measured along said parallel line the east line of the northeast  $1/4$  of said Section 6; thence

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nórtwesterly along said last described parallel line to a point that is 10 feet northerly of, as measured radial thereto, the center line of spur track number 1399 now located and established; thence westerly and parallel with and 10 feet northerly of the center line of said track number 1399 to its intersection with the first mentioned line extended southwesterly; thence northeasterly along said first mentioned line extended southwesterly to the point of beginning, in Cook County, Illinois.

Property of Cook County Clerk's Office

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DEPT-01 RECORDING \$47.00  
T#11111 TRAN 9371 10/20/87 13:16:00  
#1200 # 2 \* 87-566210  
COOK COUNTY RECORDER

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## EXHIBIT C

### PERMITTED ENCUMBRANCES

#### Property A:

1. Covenants, conditions and restrictions contained in the Declaration of Restrictions. Recorded: July 11, 1977, as Document No. 1414117. Amended by instrument recorded July 31, 1979, as Document No. 1514472. Amended by instrument recorded September 20, 1979, as Document No. 1521075. Assignment to UOP, Inc., a Delaware corporation, recorded July 1, 1983, as Document No. 1644085.
2. A 38-foot building line established by Plat of Subdivision located along Northerly and Easterly lines of Parcel 1, recorded December 27, 1976, as Document No. 1389969.
3. A 38-foot building line established by Plat of Subdivision, located along Easterly and Southerly lines of Parcel 2, recorded December 27, 1976, as Document No. 1389969.
4. An easement for public utilities and/or drainage as disclosed by the Plat of Subdivision, recorded December 27, 1976, as Document No. 1389969, affecting Northerly and Easterly 10 feet of Parcel 1.
5. An easement for public utilities and/or drainage as disclosed by the Plat of Subdivision, recorded December 27, 1976, as Document No. 1389969, affecting Easterly and Southerly 10 feet of Parcel 2.
6. An easement affecting a portion of the subject property for drainage, recorded December 27, 1976, as Document No. 1389969, affecting Westerly 30 feet of Block A.
7. An encroachment located on the subject property, over the building line consisting of 38 feet of improvements on the North (Parcel 1).
8. An encroachment located on the subject property, over the building line consisting of approximately 1.5 feet of loading dock on the East (Parcel 2).
9. An encroachment of improvements located on the subject property consisting onto the utility easement of 10 feet of improvements on the North (Parcel 1).
10. Terms, conditions and provisions of the instrument creating the easement described as Parcel 3.
11. Rights of adjoining owners to the concurrent use of Parcel 3.

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## Property B:

1. An easement in favor of the Commonwealth Edison Company and the Illinois Bell Telephone Company for pole lines, conduits and incidental purposes, recorded July 3, 1969, as Document No. 20,890,644.
2. An easement in favor of the Commonwealth Edison Company and the Illinois Bell Telephone Company for pole lines, conduits and incidental purposes, recorded July 3, 1969, as Document No. 20,890,645.
3. Easement for public utilities over the 10 feet adjoining Roberts Drive on the South, South West, West, North West, Northerly, Northeasterly and the North and over the East 10 feet of the North 214.99 feet of Lot 2, as shown on Plat of Subdivision recorded October 6, 1967 as Document 20283850.
4. Encroachment of concrete wall onto the easement described as number 3 above.

## Property C:

1. Rights of the public, the State of Illinois and the municipality in and to the North 50 feet of the land taken or used for Lake Street.
2. An easement in favor of Alberto Culver Company for construction, maintenance, operation and removal of certain sewers and water mains, recorded July 1, 1965, as Document No. 19,514,194.
3. An easement in favor of Alberto Culver Company for construction, maintenance, operation and removal of certain sewers and water mains, recorded May 25, 1965, as Document No. 19,476,909.
4. An easement in favor of Northern Illinois Gas Company for the installation, relocation, renewal and removal of gas mains and appurtenances, recorded October 13, 1970, as Document No. 21,288,076.
5. Encroachment of concrete retaining wall onto easement area.
6. Overhead utility wires, wood service poles.
7. Encroachment of fence post onto adjoining property to the South to the extent of 0.2 feet.

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EXHIBIT B

NORTHLAKE (PROPERTY C)

1. Lease ("Lease") dated October 23, 1981, by and between LaSalle National Bank, not personally, but as Trustee under a Trust Agreement dated May 12, 1969, and known as Trust No. 15923 ("Landlord") and Apex Automotive Warehouse, Inc., as successor to U-Brand Corp. ("Tenant") covering 38,137 square feet of space at 43 West Lake Street, Northlake, Illinois.
2. Lease ("Lease") dated March 15, 1979, by and between LaSalle National Bank, not personally, but as Trustee under a Trust Agreement dated May 12, 1969, and known as Trust No. 15923 ("Landlord") and Apex Automotive Warehouse, Inc. ("Tenant") covering 86,667 square feet of space at 43 West Lake Street, Northlake, Illinois.

BATAVIA #1 (PROPERTY A, PARCEL ONE)

1. Lease ("Lease") dated March 1, 1980, by and between LaSalle National Bank, not personally, but as Trustee, under a Trust Agreement dated June 14, 1979, and known as Trust No. 101255 ("Landlord") and Alcoa Building Products Division of Stolle Corporation ("Tenant") covering 32,287 square feet of space at 1005 Paramount Parkway, Batavia, Illinois.
2. Lease ("Lease") dated April 22, 1986, by and between LaSalle National Bank, not personally, but as Trustee, under a Trust Agreement dated June 14, 1979, and known as Trust No. 101255 ("Landlord") and McDougall, Littell & Company ("Tenant") covering 32,287 square feet of space at 1025 Paramount Parkway, Batavia, Illinois.

BATAVIA #2 (PROPERTY A, PARCELS TWO & THREE)

1. Lease ("Lease") dated April 22, 1983, by and between LaSalle National Bank, not personally, but as Trustee, under a Trust Agreement known as Trust No. 54984 ("Landlord") and American Can ("Tenant") covering 40,000 square feet of space at 905-911 Paramount Parkway, Batavia, Illinois.

BROADVIEW (PROPERTY B)

1. Lease ("Lease") dated August 30, 1982, by and between LaSalle National Bank, not personally, but as Trustee, under a Trust Agreement dated December 23, 1968, and known as Trust No. 38981 ("Landlord") and Bruck Plastics Co. ("Tenant") covering 28,542 square feet of space at 2120-2122 Roberts Drive, Broadview, Illinois.
2. Lease ("Lease") dated December 24, 1981, by and between LaSalle National Bank, not personally, but as Trustee, under a Trust Agreement dated December 23, 1968, and known as Trust No. 38981 ("Landlord") and The Carroll Company, Inc. ("Tenant") covering 13,136 square feet of space at 2124 Roberts Drive, Broadview, Illinois.
3. Lease ("Lease") dated July 27, 1984, by and between LaSalle National Bank, not personally, but as Trustee, under a Trust Agreement dated December 23, 1968, and known as Trust No. 38981 ("Landlord") and Barkley Filing Supplies Division Murray Envelope Corp. ("Tenant") covering 18,330 square feet of space at 2122 Roberts Drive, Broadview, Illinois.