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In

**FIRST AMENDMENT TO  
MORTGAGE AND SECURITY AGREEMENT**

This First Amendment to Mortgage and Security Agreement (this "Amendment"), is made as of March 1, 1992, by Wacker/Randolph Investment Company, an Illinois limited partnership having its principal place of business at 150 North Wacker Drive, Chicago, Illinois (hereinafter referred to as "Mortgagor"), in favor of Connecticut General Life Insurance Company, a Connecticut corporation having its principal place of business at 900 Cottage Grove Road, Bloomfield, Connecticut 06002 (hereinafter referred to as "Mortgagee").

**RECITALS:**

- A. Mortgagor is the owner of the real property and improvements commonly known as 150 North Wacker Drive, Chicago, Cook County, Illinois, which real property and improvements are legally described on Exhibit A attached hereto and made a part hereof (the "Property").
- B. Mortgagor and Waikiki Beachcomber Investment Company ("WBIC"), a Hawaii general partnership, are the makers of, and Mortgagee is the holder of, that certain Promissory Note, dated April 11, 1990, made payable to the order of Mortgagee in the face principal amount of \$27,500,000.00 (the "Original Note").
- C. Mortgagor and WBIC executed and delivered to Mortgagee that certain Mortgage and Security Agreement, dated as of April 11, 1990, and recorded in the Office of the Cook County Recorder of Deeds (the "Recorder's Office")

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on April 17, 1990 as Document No. 90172721 (the "Mortgage"), pursuant to which Mortgagor and WBIC granted and conveyed to Mortgagee a first mortgage lien upon and security interest in the Property.

- D. On November 1, 1991, WBIC conveyed its interest in the Property to Mortgagor, by Quitclaim Deed, dated November 1, 1991, and recorded November 27, 1991, in the Recorder's Office as Document No. 91625243, in exchange for a fifty percent (50%) limited partnership interest in Mortgagor.
- E. Mortgagor has concurrently herewith executed and delivered to Mortgagee that certain Amended and Restated Promissory Note, dated as of the date hereof, and made payable to the order of the Mortgagee in the face principal amount of \$26,853,826.00 (the "Restated Note"), which Restated Note evidences indebtedness and liability heretofore evidenced by the Original Note, and was delivered by Mortgagor as a replacement and substitute for the Original Note.
- F. Mortgagor, Mortgagee and Julian, Toft & Downey have concurrently herewith executed and delivered that certain Lock Box, Escrow and Security Agreement, and that certain Real Estate Tax Escrow and Security Agreement, each dated as of March 1, 1992, pursuant to which the revenues and other amounts generated by or in connection with the operation of the Property, all real estate taxes payable with respect to the Property, and security

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The Board of Directors of Cook County, Illinois, has the honor to acknowledge the receipt of your letter of the 10th day of August, 1958, in which you requested that the Board of Directors of Cook County, Illinois, should take action to amend the Charter of Cook County, Illinois, to provide for the election of a County Clerk for a term of four years, to be held in the year 1960, and to provide for the election of a County Clerk for a term of four years, to be held in the year 1964, and to provide for the election of a County Clerk for a term of four years, to be held in the year 1968, and to provide for the election of a County Clerk for a term of four years, to be held in the year 1972, and to provide for the election of a County Clerk for a term of four years, to be held in the year 1976, and to provide for the election of a County Clerk for a term of four years, to be held in the year 1980, and to provide for the election of a County Clerk for a term of four years, to be held in the year 1984, and to provide for the election of a County Clerk for a term of four years, to be held in the year 1988, and to provide for the election of a County Clerk for a term of four years, to be held in the year 1992, and to provide for the election of a County Clerk for a term of four years, to be held in the year 1996, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2000, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2004, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2008, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2012, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2016, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2020, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2024, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2028, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2032, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2036, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2040, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2044, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2048, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2052, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2056, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2060, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2064, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2068, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2072, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2076, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2080, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2084, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2088, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2092, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2096, and to provide for the election of a County Clerk for a term of four years, to be held in the year 2100.

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deposits for tenant space leases at the Property, are collected and disbursed.

- G. Mortgagor and Mortgagee desire to amend and modify certain terms and conditions of the Mortgage.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing Recitals are true and correct and are incorporated herein by reference.
2. All references in the Mortgage to the term "Mortgagor" shall be deemed to be references to Wacker/Randolph Investment Company.
3. The granting clause of the Mortgage is hereby amended and restated in its entirety, as follows:

THAT, to secure (i) payment to Mortgagee of the principal indebtedness of Twenty-Six Million Eight Hundred Fifty-Three Thousand Eight Hundred Twenty-Six Dollars (\$26,853,826.00), together with interest thereon, as evidenced by the certain Amended and Restated Promissory Note (hereinafter referred to as the "Note") dated as of March 1, 1992, and any renewals, extensions or modifications thereof, issued by Mortgagor to Mortgagee and made payable to the order of Mortgagee, with the final payment being due and payable on May 1, 1995, in and by which Note the Mortgagor promises to pay the principal indebtedness and interest at the rates and in installments as provided in the Note (the parties acknowledge that the Note was issued by Mortgagor as a substitute and replacement for that certain Promissory Note (the "Original Note"), dated April 11, 1990, in the face principal amount of \$27,500,000.00, issued by Mortgagor and Waikiki Beachcomber Investment Company, a Hawaii general partnership, in favor of Mortgagee); (ii) the performance of the covenants herein contained and the payment of any moneys expended by Mortgagee in connection therewith, (iii) the payment of all

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obligations and the performance of all covenants of Mortgagor under the Note, this Mortgage, that certain Lock Box Agreement (the "Lock Box Agreement"), by and among Mortgagor, Mortgagee and Julian, Toft & Downey, and that certain Real Estate Tax Escrow and Security Agreement (the "Real Estate Tax Escrow"), by and among Mortgagor, Mortgagee and Julian, Toft & Downey, each of which is dated as of March 1, 1992, and all of the other Loan Documents (as hereinafter defined), as the same have been or may be amended from time to time, and (iv) any and all additional advances made by Mortgagee to protect or preserve the Security (as hereinafter defined) or the security interest created hereby on the Security, or for taxes, assessments, or insurance premiums as hereinafter provided or for the performance of any of Mortgagor's obligations hereunder or for any other purpose provided herein (whether or not the original Mortgagor remains the owner of the Security at the time of such advances) (all of the aforesaid indebtedness and obligations of Mortgagor being herein called the "Indebtedness" and the Note, this Mortgage, the Lock Box Agreement, the Real Estate Tax Escrow and all of the other documents, agreements and instruments now or hereafter evidencing or securing the repayment of, or otherwise pertaining to, the Indebtedness, whether executed in connection with the Note or the Original Note, as the same have been or may be amended from time to time, are herein collectively called the "Loan Documents"); Mortgagor does hereby mortgage, grant, bargain, sell, assign, pledge, transfer, and convey unto Mortgagee and to Mortgagee's successors and assigns forever, all of the following described land, improvements and property, all of its estate, title and interest therein (hereinafter collectively called the "Security"):".

4. Section 4 of the Mortgage is hereby amended by adding the following paragraph at the end thereof:

"Mortgagor and Mortgagee acknowledge that Impositions are to be paid out of the funds to be deposited in the Real Estate Tax Escrow. Mortgagee agrees that all funds deposited in the Real Estate Tax Escrow shall be used to pay the Impositions, provided that Mortgagor is not in default and that no Event of Default has occurred under this Mortgage, the Note, or any of the other Loan Documents. Mortgagor agrees that, in the event the funds deposited in the Real Estate Tax Escrow are not sufficient to pay all Impositions, Mortgagor

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The undersigned, Clerk of Cook County, Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears on the records of the County Clerk's Office.

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Witness my hand and the seal of said County at Chicago, Illinois, this 1st day of February, 1900.

CLERK OF COOK COUNTY

RECORDED



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will deposit, in the manner and at the time required by the Real Estate Tax Escrow, the amount necessary to eliminate any deficit in the Real Estate Tax Escrow."

5. Section 15 of the Mortgage is hereby amended by inserting the phrase "as amended by that certain First Amendment to Environmental Indemnification Agreement, dated as of March 1, 1992", after the phrase "of even date herewith,".

6. Section 26 of the Mortgage is hereby amended by deleting the phrase "or the general partner of WBIC" from Subsection (d); and by inserting the following new Subsection (g) after subsection (f):

"(g) The occurrence of any default or event of default under that certain Lease between Mortgagor, as lessor, and Tomasz/Shidler Investment Corporation, as lessee, dated March 1, 1983; provided, however, that Mortgagor shall have a period of thirty (30) days to cure such default or event of default from the date of any such default or event of default (subject to the right to extend such cure period for a reasonable period of time (not to exceed sixty (60) days) if Mortgagor is diligently pursuing such cure, but cannot complete such cure within said thirty (30) day period) and, if Mortgagor effects such a cure, such default or event of default shall not be treated as an Event of Default under this Mortgage."

7. The initial paragraph of Section 34 is hereby amended and restated in its entirety as follows:

"Mortgagor shall provide to Mortgagee, on a monthly basis, financial statements covering the prior month. The monthly financial statements shall consist of a balance sheet, operating statement and statement of sources and uses of funds. The operating statement shall be in the format agreed upon by Mortgagor and Mortgagee pursuant to the Lock Box Agreement and shall show variances on a monthly and year-to-date basis from the budget for the Security agreed upon by Mortgagor and Mortgagee pursuant to the Lock Box Agreement. Any variation in the format of the operating statement or the budget shall be subject to Mortgagee's reasonable

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IN SENATE, January 11, 1901.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE

ON JANUARY 11, 1899.

ALBANY: J. B. LIPPINCOTT & COMPANY, PRINTERS, 1899.

PROPERTY OF COOK COUNTY CLERK'S OFFICE

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approval. The monthly financial statements also shall include a reconciliation of the variance, if any, between (1) net operating income as shown on the operating statement, and (2) actual cash on deposit in the account to be established pursuant to the Lock Box Agreement. The monthly financial statements also shall include a reconciliation with the draw request originally submitted by Mortgagor to Mortgagee for such month pursuant to the terms of the Lock Box Agreement. No draw request for funds in the account established pursuant to the Lock Box Agreement shall be approved by Mortgagee until Mortgagee has approved the budget. The budget to be submitted by Mortgagor and approved by Mortgagee shall project all capital improvement and leasing costs, and the monthly financial statements shall indicate the status of capital improvement costs and leasing activity costs, to date, and shall indicate the amount of funds required for completion of any capital improvements. The monthly financial statements shall be certified by the Chief Financial Officer of the managing general partner of Mortgagor and all such monthly financial statements shall be delivered to Mortgagee no later than the 20th day of each succeeding month. The annual financial statements shall include annual versions of the financial statements required to be delivered by Mortgagor to Mortgagee on a monthly basis and also shall include a balance sheet for the Security as of the last day of the Mortgagor's fiscal year, in such detail as shall be reasonably required by Mortgagee. The annual financial statements shall be delivered by Mortgagor to Mortgagee no later than ninety (90) days after the end of each calendar year. The annual financial statements shall be certified by Mortgagor's managing general partner. All financial statements submitted pursuant to this Section 34 shall be prepared and certified in form and substance reasonably acceptable to Mortgagee and Mortgagee shall have the right, at any time and from time to time, to request that future annual financial statements be certified by a Certified Public Accountant acceptable to Mortgagee."

"Mortgagor shall, on a monthly basis, within twenty (20) days after the end of each month, provide to Mortgagee a statement signed by Mortgagor listing all leases of space and the Improvements as of the last day of the preceding month, the respective areas demised thereunder, the names of the tenants, the respective expiration date of the leases, the respective rentals provided for therein, and such other information as may reasonably be requested by Mortgagee."

"In addition, Mortgagee shall have the right at all reasonable times to audit the Security and Mortgagor's books and records pertaining to the financial statements



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required to be delivered by Mortgagor hereunder. Mortgagor shall cooperate fully in all requests by Mortgagee for information relating to such audits and in facilitating Mortgagee's inspections of the Security."

8. Section 37 of the Mortgage is hereby amended by adding the following clause at the end of Section 37:

"Mortgagor acknowledges and agrees that as of June 17, 1993, it has no defenses or offsets (and does not currently have any basis therefore) to its obligations under the Note, this Mortgage or any of the other Loan Documents, nor does Mortgagor, as of June 17, 1993, have any claims or counterclaims against Mortgagee (and does not currently have any basis therefore) relating to or arising out of the Note, this Mortgage or any of the other Loan Documents or the administration of the Indebtedness by Lender; Mortgagor specifically and irrevocably waives any and all rights Mortgagor now has to offset any amount due Mortgagee under the terms of the Note, this Mortgage or any of the other Loan Documents to satisfy any claims Mortgagor currently has against Mortgagee. Mortgagor represents and warrants that, as of June 17, 1993, it has no knowledge of any fact or circumstance which, with notice, the passage of time, or otherwise would provide Mortgagor with any defense or offset to its obligations under the Note, this Mortgage or any of the other Loan Documents."

9. Section 40(b) of the Mortgage is hereby amended as follows: (a) Section 40(b)(i) and Section 40(b)(ii) are amended by substituting the phrase "the misapplication by Mortgagor of" for the term "misapplying"; (b) Section



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40(b)(iii) is amended by substituting the phrase "the collection by Mortgagor of" for the term "collecting" and (c) the following new Sections 40(b)(vi) and 40(b)(vii) are hereby added thereto, "(vi) any loss, cost or expense suffered or incurred by Mortgagee as a result of Mortgagor's instructing any tenant to pay or deposit its rent in a manner contrary to or inconsistent with the terms and conditions of the Lock Box Agreement, and (vii) any loss, cost or expense suffered or incurred by Mortgagee as a result of any charges or setoffs made by The Northern Trust Company against funds deposited into the account established with The Northern Trust Company in connection with the Lock Box Agreement."

10. All references in the Mortgage to the Mortgage shall be deemed to mean and include the Mortgage as supplemented, amended, modified and restated hereby.

11. Mortgagor expressly agrees and understands that this Amendment shall not be construed as a novation of the Mortgage.

12. The Mortgage, as supplemented, amended, modified and restated hereby, is ratified and confirmed by the Mortgagor in its entirety.

13. Except as and to the extent supplemented, amended, modified and restated by this Amendment, the Mortgage and all of the terms, conditions and provisions thereof and all representations, warranties and covenants of Mortgagor therein made shall, in all respects, remain unmodified and





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unchanged and are hereby reaffirmed, ratified, remade and confirmed, and shall remain in full force and effect.

14. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. This Amendment may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original but all such counterparts shall together constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered, pursuant to proper authority duly granted, as of the date first above written.

**MORTGAGOR:**

WACKER/RANDOLPH INVESTMENT COMPANY  
an Illinois limited partnership

By: Tomasz/Shidler Investment Corporation

By: *Michael T. Tomasz*  
Michael T. Tomasz  
President

**MORTGAGEE:**

Connecticut General Life Insurance Company, a Connecticut corporation

By: Cigna Investments, Inc.

By: *John A. Shaw*  
Title: JOHN A. SHAW

This instrument prepared by, and after recording should be returned to:

Vice President

Donald S. Horvath, Esq.  
JENNER & BLOCK  
One IBM Plaza  
Chicago, Illinois 60611

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and based on the stated basis of the information received by  
the Commission, the Commission has determined that the  
above named person is not a member of the Commission  
and is not entitled to the benefits of membership.

## RECOMMENDATION

It is recommended that the Commission  
take no action on the application of the  
above named person for membership in the  
Commission.

## RECOMMENDATION

It is recommended that the Commission  
take no action on the application of the  
above named person for membership in the  
Commission.

Very truly yours,  
Commissioner  
Cook County Clerk's Office  
Chicago, Illinois  
June 1, 1936

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STATE OF Hawaii )  
COUNTY OF Maui ) ss.

I, Cathryn Meuniger, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Michael T. Tomasz, President of Tomasz/Shidler Investment Corporation, the general partner of Wacker/Randolph Investment Company, an Illinois limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered and attested the same instrument as his free and voluntary act as such President and as the free and voluntary act of Tomasz/Shidler Investment Corporation and Wacker/Randolph Investment Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14<sup>th</sup> day of June, 1993.

Cathryn Meuniger  
Notary Public  
Comm. Exp: 10/15/94

CLERK OF COOK COUNTY CLERK'S OFFICE

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STATE OF Connecticut )  
COUNTY OF Hartford ) SS.

I, Millicent Goldberg, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John A. Shaw, the Vice President of Cigna Investments, Inc., the authorized agent of CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a Connecticut corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice-President, appeared before me this day in person and acknowledged he/she signed and delivered and attested the same instrument as his/her free and voluntary act as such Vice-President, and as the free and voluntary act of Connecticut General Life Insurance Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21<sup>st</sup> day of June, 1998.

Millicent Goldberg  
Notary Public  
Comm. expires 2/28/98

COOK County Clerk's Office

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STATE OF ILLINOIS  
COUNTY OF COOK

IN SENATE,  
January 11, 1900.  
REPORT OF THE  
COMMISSIONERS OF THE  
LAND OFFICE,  
IN RESPONSE TO A  
RESOLUTION PASSED  
BY THE SENATE  
MAY 11, 1899,  
RELATIVE TO THE  
LANDS BELONGING  
TO THE STATE OF  
ILLINOIS.

Property of Cook County Clerk's Office

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## EXHIBIT A

### Legal Description

#### Parcel 1:

The South 1/2 of Wharfing Lots 29, 30 and 31 (except that portion of said Lot 29 condemned and taken for widening North Market Street) as laid out by plat by Asa F. Bradley dated February 11, 1848 and recorded February 11, 1848, in Book 29 of Maps, Page 1, in the original Town of Chicago, Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

#### Parcel 2:

The South 1/2 of the North 1/2 of Wharfing Lots 29, 30 and 31 (except that portion of said Lot 29 condemned and taken for widening North Market Street) as laid out by plat by Asa F. Bradley dated February 11, 1848 and recorded February 11, 1848, in Book 29 of Maps, Page 1 in the original Town of Chicago, Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Address: 150 N. Wacker Drive  
Chicago, Illinois

P.I.N.: 17-09-427-003-0000  
17-09-427-004-0000

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ALABAMA

Alabama Department of Transportation

Page 11

The State of Alabama, by and through the Alabama Department of Transportation, do hereby certify that the following is a true and correct copy of the original as the same appears on the records of the Alabama Department of Transportation, to-wit:

Page 12

The State of Alabama, by and through the Alabama Department of Transportation, do hereby certify that the following is a true and correct copy of the original as the same appears on the records of the Alabama Department of Transportation, to-wit:

Property of Cook County Clerk's Office

Address: 330 W. Wacker Drive  
Chicago, Illinois

P.O. Box 11  
17-03-433-004-0000  
17-03-433-003-0000

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