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THIS DOCUMENT PREPARED BY, RECORDING REQUESTED BY, AND WHEN RECORDED MAIL TO:

96936911

O'Melveny & Myers LLP
Embarcadero Center West
275 Battery Street
San Francisco, CA 94111
Attn: Stephen A. Cowan,
Esq.

DEPT-01 RECORDING \$111.00
T#0012 TRAN 3344 12/11/96 14:31:00
#7096 # CG # -96-936911
COOK COUNTY RECORDER

Loan No. 6-101-144

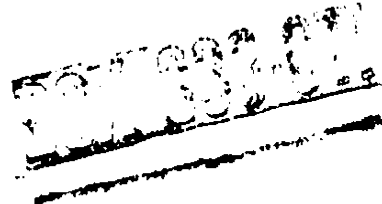
SPACE ABOVE THIS LINE FOR RECORDER'S USE

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF RENTS (Cook County, Illinois-First)

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF RENTS (this "Mortgage") is made as of December 9, 1996 by **THE CHICAGO TRUST COMPANY**, an Illinois corporation, not personally but as trustee under Trust Agreement dated December 7, 1995 and know as Trust Number 1102241 having an office in care of AMB Institutional Realty Advisors, Inc., at 505 Montgomery Street, 5th Floor, San Francisco, California 94111, Attention: ~~Portfolio Manager~~ ("Mortgagor"), and **THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**, a New Jersey corporation, having offices at Four Embarcadero Center, Suite 2700, San Francisco, California 94111 ("Mortgagee"). Initially-capitalized terms used in this Mortgage without definition shall have the meaning given to such term in Article 1 of this Mortgage.

WITNESSETH:

MORTGAGOR HEREBY IRREVOCABLY MORTGAGES AND CONVEYS TO MORTGAGEE all of Mortgagor's right, title and interest now owned or hereafter acquired in and to the following property, together with the Personalty (as hereinafter defined), all of which is hereinafter collectively defined as the "Property":



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- A. That certain real property (individually and collectively, the "Land") located in Cook County, State of Illinois, and more particularly described in Exhibits A-1 through A-4 attached hereto;
- B. All Improvements (as hereinafter defined) and all appurtenances, easements, rights and privileges thereof, including all minerals, oil, gas and other hydrocarbon substances thereon or therein, air rights, water rights and development rights, and any land lying in the streets, roads or avenues adjoining the Land or any part thereof;
- C. All Fixtures (as hereinafter defined), whether now or hereafter installed, being hereby declared to be for all purposes of this Mortgage a part of the Land;
- D. The rents, issues and profits of or from the Land, the Improvements and the Fixtures; and
- E. All proceeds of the foregoing, including without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation or the taking of the Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Property, or the proceeds of any sale, option or contract to sell the Property or any portion thereof.

FOR THE PURPOSE OF SECURING, in such order of priority as Mortgagee may determine: (i) payment of the Indebtedness; and (ii) payment (with interest as provided) and performance by Mortgagor of the Obligations (collectively, excluding the Other Obligations, the "Secured Obligations"). Notwithstanding the foregoing, none of the Additional Indebtedness, Mortgagor's obligations under or relating to any Discretionary Loan Note, any Other Note or any of the Other Loan Documents (collectively, the "Other Obligations") shall be secured by this Mortgage.

TO HAVE AND TO HOLD the Property, unto the Mortgagee, its successors and assigns forever, for the purposes and upon the uses herein set forth together with all right to possession of the Property after the occurrence of an Event of Default (as hereinafter defined); Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

THE MATURITY DATE OF THE NOTE IS December 12, 2008.

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ARTICLE 1 Definitions

Certain Defined Terms: As used in this Mortgage the following terms shall have the following meanings:

Additional Indebtedness: The loan from Mortgagee to the Borrowers evidenced by one or more Discretionary Loan Notes in the maximum aggregate principal amount of Seventy-Seven Million Dollars (\$77,000,000.00).

Advisor: As defined in the Loan Administration Agreement.

Bankruptcy Default: As defined in the Loan Administration Agreement.

Borrowers: AMB Current Income Fund, Inc., a Maryland corporation, AMB Connecticut Retail Fund, Inc., a Delaware corporation, AMB Industrial Income Fund, Inc., a Maryland corporation, AMB Retail Income Fund, Inc., a Maryland corporation, and Mortgagor, jointly and severally.

Collateral: As defined in Paragraph 7.1 hereof.

Disclosed to Mortgagee: Any information concerning the Property which is specifically included in the Title Policy, the Engineering Report (as defined in the Loan Administration Agreement), the Environmental Site Assessment (as defined in the Loan Administration Agreement), an Estoppel Certificate (as defined in the Loan Administration Agreement), the Land Use Certification, any disclosure made by Mortgagor pursuant to this Mortgage or otherwise acknowledged in writing by Mortgagee as having been specifically disclosed to Mortgagee.

Discretionary Loan Note: As defined in the Loan Administration Agreement in the maximum aggregate principal amount of Seventy-Seven Million Dollars (\$77,000,000.00).

Event of Default: As defined in the Loan Administration Agreement.

Fixtures: All fixtures now or hereafter owned by Mortgagor located upon or within the Improvements or now or hereafter installed in, or used in connection with any of the Improvements, including boilers, furnaces, pipes, plumbing, elevators, cleaning and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating, ventilating, air conditioning and air cooling equipment, whether or not permanently affixed to the Land or the Improvements.

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Hazardous Substances Agreements: Collectively, those certain Hazardous Substances Remediation and Indemnification Agreement executed by Mortgagor in favor of Mortgagee and referencing the Notes.

IL Trust: The Illinois land trust created pursuant to the Trust Agreement dated December 7, 1995 and known as Trust Number 1102241.

Impositions: All real estate and personal property and other taxes and assessments, water and sewer rates and charges levied or assessed upon or with respect to the Property, and all other governmental charges and any interest or costs or penalties with respect thereto, ground rent and charges for any easement or agreement maintained for the benefit of the Property, general and special, ordinary and extraordinary, foreseen or unforeseen, of any kind and nature whatsoever that at any time prior to or after the execution of the Loan Documents may be assessed, levied, imposed, or become a lien upon the Property or the rent or income received therefrom, or any use or occupancy thereof; and any and all other charges, expenses, payments, claims, mechanics' or material suppliers' liens or assessments of any nature, if any, which are or may become a lien upon the Property or the rent or income received therefrom.

Impound Account: The account that Mortgagor may be required to maintain pursuant to Paragraph 3.4 hereof for the deposit of amounts required to pay Impositions and insurance premiums.

Improvements: All buildings, structures and other improvements and appurtenances located on the Land, including surface improvements, such as parking areas and landscaping structures and all improvements, additions and replacements thereof, and other buildings and improvements, at any time hereafter constructed or placed upon the Land.

Indebtedness: The principal of and all other amounts, payments and premiums due under the Note (as hereinafter defined) and any extensions or renewals thereof (including extensions or renewals at a different rate of interest, whether or not evidenced by a new or additional promissory note or notes), and all other indebtedness of Mortgagor to Mortgagee and additional advances under, evidenced by and/or secured by the Loan Documents (including the Note), plus interest on all such amounts, other than any obligations relating to the Other Notes or any Discretionary Loan Note.

Initial Loan: As defined in the Loan Administration Agreement.

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Land Use Certification: The Land Use Certification of even date herewith executed by Mortgagor in favor of Mortgagee with respect to the Property.

Laws and Restrictions: All federal, state, regional, county, local and other laws, regulations, orders, codes, ordinances, rules, statutes and policies, restrictive covenants and other title encumbrances, permits and approvals relating to the development, occupancy, ownership, management, use, and/or operation of the Property, or otherwise affecting all or any part of the Property, or applicable to Mortgagor.

Leases: Any and all leasehold interests, including subleases and tenancies following attornment, now or hereafter affecting or covering any part of the Property.

Loan: As defined in the Loan Administration Agreement.

Loan Administration Agreement: The Loan Administration Agreement dated of even date herewith by and among Borrowers and Mortgagee, as amended, amended and restated, supplemented or otherwise modified from time to time.

Loan Documents: The Note, the Loan Administration Agreement (as it relates to the Indebtedness), this Mortgage, the Assignment of Agreements, the Land Use Certification, the Hazardous Substances Agreement, and all other documents evidencing, securing or relating to the Loan, the payment of the Indebtedness or the performance of the Obligations.

Note: The Promissory Note (Illinois) of even date herewith in the original principal amount of Eleven Million Eight Hundred Twenty-Six Thousand Dollars (\$11,826,000), executed by Mortgagor, as maker, and payable to Mortgagee or its order, as said promissory note may be amended, amended and restated, supplemented or otherwise modified from time to time.

Obligations: Any and all of the covenants, promises and other obligations (including payment of the Indebtedness) made or owing by Mortgagor to or due to Mortgagee under and/or as set forth in the Loan Documents and all of the material covenants, promises and other material obligations made or owing by Mortgagor to each and every other Person relating to the Property, exclusive of the Other Obligations. Notwithstanding anything to the contrary contained in this Mortgage, the maximum amount secured by this Mortgage shall not exceed Fifteen Million Dollars (\$15,000,000.00).

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Other Loan Documents: The Other Notes and all other documents evidencing, securing or relating to the payment of the Other Notes or the performance of the Other Obligations.

Other Notes: The three (3) promissory notes of even date herewith executed by Mortgagor and the other Borrowers, as maker, and payable to the order of Mortgagee, as holder, as follows: (i) Promissory Note (California) in the original principal amount of Thirty-Five Million Three Hundred Thirty-Two Thousand Dollars (\$35,332,000.00), (ii) Promissory Note (Connecticut) in the original principal amount of Fourteen Million Five Hundred Twenty-Seven Thousand Dollars (\$14,527,000.00), and (iii) Promissory Note (Georgia) in the original principal amount of Eleven Million Three Hundred Fifteen Thousand Dollars (\$11,315,000.00), as each may be amended, amended and restated, supplemented or otherwise modified from time to time. The term "Other Notes" also includes any other promissory note hereafter executed by Mortgagor and the other Borrowers which evidences an advance by Mortgagee to Mortgagor and the other Borrowers of the Initial Loan other than the Note.

Other Obligations: As defined in the Granting Paragraph of this Mortgage.

Permitted Exceptions: Those exceptions to title with respect to the Property, as shown in the Title Policy, together with any Leases permitted under the Loan Administration Agreement and such other liens, encumbrances and other charges as are specifically approved by Mortgagee.

Permitted Transferee: As defined in the Loan Administration Agreement.

Person: Any natural person, corporation, firm, association, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

Personalty: Mortgagor's right, title and interest in all personal property (other than Fixtures) now or hereafter located in, upon or about or collected or used in connection with, the Property, including, without limitation, the Impound Account, all furniture, fixtures and furnishings, all goods and equipment, all drawings, plans and specifications of the Improvements or any portion thereof, and all accounts, contract rights and general intangibles (including any insurance proceeds and condemnation awards or compensation, and any rights to Trademarks) arising out of or incident to the ownership, development or operation of the Property and owned by Mortgagor or in which Mortgagor has an interest, in each case together with

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all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor, and the cash and noncash proceeds thereof.

Potential Event of Default: As defined in the Loan Administration Agreement.

Property: As defined in the Granting Paragraph of this Mortgage.

Receiver: Any trustee, receiver, custodian, fiscal agent, liquidator or similar officer.

Rents: All rents, royalties, revenues, issues, profits, proceeds and other income from the Property.

Secondary Interest Rate: As defined in the Note.

Subordinate Mortgage: The Mortgage, Security Agreement and Fixture Filing with Assignment of Rents (Illinois-Second) of even date with this Mortgage, executed by Mortgagor in favor of Mortgagee, securing the Other Obligations (excluding any of Mortgagor's obligations under the Hazardous Substances Agreement).

Title Policy: The title insurance policy delivered to and accepted by Mortgagee insuring the priority and validity of this Mortgage.

Trademarks: All trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles owned by Mortgagor and used in connection with the Property and/or other source and/or identifiers and applications pertaining thereto; including without limitation all of the trademarks which are presently or in the future may be owned and used by Mortgagor in conducting its business on the Property and including all federal, state and foreign registrations therefor, heretofore or hereafter granted, all proceeds thereof (such as, by way of example and not by way of limitation, license royalties and proceeds of infringement suits), the right (but not the obligation) to register claim under the state, federal or foreign trademark law or regulation and to renew and extend trademarks and registrations, the right (but not the obligation) to sue or bring opposition or cancellation proceedings in the name of Mortgagor or in the name of Mortgagee for past, present and future infringements of the trademarks or the registrations and all rights (but not obligations) corresponding thereto throughout the world and the associated goodwill; provided that the rights and interests described in this Paragraph shall include, without limitation, rights and interests pursuant to licensing or

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other contracts in favor of Mortgagor pertaining to trademarks or registrations presently or in the future owned or used by third parties but only to the extent permitted by such licensing or other contracts and, if not so permitted, only with the consent of such third parties.

Transfer: As defined in the Loan Administration Agreement.

ARTICLE 2 Representations and Warranties

Mortgagor hereby represents and, by its joinder in this Mortgage, AMB Industrial Income Fund, Inc., a Maryland corporation ("IIF"), as the sole beneficiary of the IL Trust, represents and warrants to Mortgagee that as of the date of this Mortgage and as of the date of any subsequent disbursement pursuant to the Loan Documents:

- 2.1 **Property, Personalty and Fixtures.** (i) The Property is not used principally or primarily for agricultural or grazing purposes; (ii) all costs for labor, equipment and materials used in the construction of the Improvements have been paid in full (or adequate provision for payment has been made); (iii) Mortgagor is not aware of any assessment for public improvements which is pending and which could become a lien upon the Property, except for those matters specifically shown in the Title Policy; (iv) Mortgagor has not executed any financing statement or security agreements covering the Fixtures or Personalty, or any of them, and the costs of all Fixtures or Personalty due as of the date hereof have been paid; (v) Mortgagor or IIF, as the sole beneficiary of the IL Trust, owns directly, and not through any affiliated entity, subject only to the Permitted Exceptions, all of the Personalty and Fixtures necessary for the operation and management of the Property for the uses presently being conducted thereon; and (vi) the proceeds of the Note will be used for the purposes set forth in Ill. Rev. Stat. ch. 17, para. 6404, *et seq.* (197), and the principal obligations secured hereby constitutes a "business loan" coming within the definition and purview of said section.
- 2.2 **Bankruptcy.** No petition in bankruptcy, petition or answer seeking assignment for the benefit of creditors or appointment of a Receiver with respect to Mortgagor has occurred or is contemplated, and no reorganization, arrangement, liquidation or dissolution as similar relief under the Federal Bankruptcy laws or any state laws have been instituted by or against Mortgagor, and none is contemplated.

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2.3 **FIRPTA Certification.** Mortgagor declares and certifies, under penalty of perjury, that:

A. IIF's U.S. Taxpayer I.D. Number is: 94-3214206. Morgagor's U.S. Taxpayer I.D. Number is: 94-6696075.

B. The business address of Mortgagor is:

c/o AMB Institutional Realty Advisors, Inc.
505 Montgomery Street, 5th Floor
San Francisco, California 94111
~~Attention: Portfolio Manager~~

C. Mortgagor is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended (the "Code") (i.e., Mortgagor is not a nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

D. Mortgagor understands that the information and certification contained in this Paragraph 2.3 may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both.

E. Mortgagor agrees to indemnify and hold Mortgagee and Mortgagee's agents harmless of, from and against any and all actual loss, liability, costs, damages, claims or causes of action which may arise or be incurred by Mortgagee or Mortgagee's agents by reason of any failure of any representation or warranty made by Mortgagor in this Paragraph 2.3 to be true and correct when made, including any liability for failure to withhold any amount required under Code Section 1445 in the event of foreclosure or other transfer of the Property.

F. Mortgagor agrees to provide Mortgagee with a new Affidavit containing the provisions of Paragraphs 2.3 A. - E. above immediately upon any change in the information contained in this Paragraph 2.3.

2.4 **Beneficiary of the IL Trust.** IIF is the sole beneficiary of, and holder of the power of direction under, the IL Trust.

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ARTICLE 3 Affirmative Covenants

Mortgagor hereby covenants and agrees as follows:

3.1 **Obligations of Mortgagor.** Mortgagor will (i) timely perform, or cause to be timely performed, all of the Obligations; (ii) maintain and preserve the lien of this Mortgage; and (iii) forever warrant and defend its grant made herein against any and all claims and demands whatsoever.

3.2 **Insurance.**

A. Mortgagor, at its sole cost and expense, will keep and maintain for the mutual benefit of Mortgagor and Mortgagee, the following policies of insurance:

- (1) Insurance against loss or damage to the Property by fire and other risks covered by insurance commonly known as "All Risk" coverage, including losses sustained by reason of riot and civil commotion, vandalism, malicious mischief, burglary, theft and mysterious disappearance, flood (if available) and against such other risks or hazards as Mortgagee from time to time reasonably may designate, in an amount equal to one hundred percent (100%) of the then "full replacement cost" of the Improvements, the Fixtures and the Personalty, without deduction for physical depreciation.
- (2) Rental income insurance against loss of income in an amount not less than twelve (12) months rental and taxes and other operating expense reimbursements or payments at then-current income levels.
- (3) Comprehensive General Liability insurance including broad form property damage, contractual liability and personal injury or death coverage, with a combined single limit of at least ~~Twenty~~ ^{Five} Million Dollars (~~\$20,000,000.00~~). TUCB
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- (4) "Builders Risk" insurance, during any material construction, repair, replacement, renovation or alteration of the Improvements, in such amounts as are reasonably approved by Mortgagee.

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- (5) Boiler and machinery insurance covering boilers and other pressure vessels, the air conditioning system, high pressure piping and other machinery and equipment required for the operation of the Property.
- (6) Such other insurance, and in such amounts, as may from time to time be reasonably required by Mortgagee.
- B. Mortgagor shall provide Mortgagee with satisfactory evidence of compliance with applicable requirements for Worker's Compensation insurance and of employee automobile coverage.
- C. All policies of insurance required by this Mortgage (i) shall be satisfactory in form and substance to Mortgagee and written with companies reasonably satisfactory to Mortgagee, (ii) shall name Mortgagee as an additional insured as its interests may appear, (iii) shall contain a Standard Lender's Loss Payable endorsement and other non-contributory standard mortgagee protection clauses acceptable to Mortgagee, and, at Mortgagee's option, a waiver of subrogation rights by the insurer, if available (iv) shall contain an agreement by the insurer that such policy shall not be amended or cancelled without at least thirty (30) days' prior written notice to Mortgagee, (v) shall be in the full replacement cost of the Improvements, and (vi) shall contain such other provisions as Mortgagee deems reasonably necessary or desirable to protect its interests. Any policies containing a coinsurance clause shall include a replacement cost endorsement adequate to ensure that the coinsurance clause is rendered inoperative.
- D. In the event a blanket policy is submitted to satisfy Mortgagor's responsibilities under this Paragraph 3.2, in addition to such other requirements set forth herein, Mortgagor shall deliver to Mortgagee a certificate from such insurer indicating that Mortgagee is an insured under such policy and designating the amount of such insurance applicable to the Property.
- E. Mortgagor shall furnish evidence, satisfactory to Mortgagee, that (a) all insurance requirements (including provisions for waivers of subrogation) set forth in the Leases or any other agreements affecting the Property shall have been satisfied by each party thereto, and (b) Mortgagor's insurance coverage is sufficient (assuming the total destruction of the Property) to permit Mortgagor to rebuild the Improvements (including basic tenant improvements) and to replace

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the Fixtures and Personalty in such a manner as to enable the Property to be operable and rentable as it is currently rented and operated.

- F. Self-insurance (other than the applicable deductibles approved by Mortgagee) shall not be employed to satisfy the requirements of this Paragraph 3.2.
- G. All of Mortgagor's right, title and interest in and to all policies of property insurance and any unearned premiums paid thereon are hereby assigned (to the fullest extent assignable) to Mortgagee who shall have the right, but not the obligation, to assign the same to any purchaser of the Property at any foreclosure sale. All rights and powers of Mortgagee with respect to such insurance policies and the proceeds thereof shall continue, from and after the entry of a judgment of foreclosure, in Mortgagee as judgment creditor of Mortgagee until confirmation of sale.
- H. Not less than thirty (30) days prior to the expiration dates of any policy previously furnished pursuant to this Paragraph 3.2, Mortgagor shall provide Mortgagee with duplicate originals or certified copies of the renewal policies together with evidence satisfactory to Mortgagee of Mortgagor's payment of the applicable premiums.

3.3 **Maintenance, Waste and Repair** Mortgagor will (i) maintain the Property, including the parking, recreational and landscaping portions thereof, in good order and condition, reasonable wear and tear and damage from fire or other casualty excepted; (ii) promptly make all reasonably necessary structural and non-structural repairs to the Property or cause the tenants under the Leases to perform such obligation; (iii) not diminish the value or utility of, the Improvements nor erect any new buildings, structures or building additions on the Land or make any structural alterations thereof without the prior written consent of Mortgagee; and (iv) not permit any waste of the Property or make any change in the use thereof, nor do or permit to be done thereon anything, that may in any way impair the security of this Mortgage.

3.4 **Impositions; Impounds.** Mortgagor will pay when due all Impositions (or currently payable installments thereof). Upon an Event of Default, Mortgagor will pay monthly to Mortgagee an amount equal to one-twelfth (1/12th) of the annual cost of any real property taxes and any assessments constituting a lien on the

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Property, together with an amount equal to the estimated next premiums for hazard and other required insurance. These funds will be held by Mortgagee (and may be commingled with other funds of Mortgagee) without interest and will be released to Mortgagor for payment of Impositions and insurance premiums, or directly applied to such costs by Mortgagee, as Mortgagee may elect.

- 3.5 **Compliance with Law.** Mortgagor will promptly and faithfully comply with all present and future Laws and Restrictions.
- 3.6 **Books and Records.** Mortgagor, without expense to Mortgagee, will maintain full and complete books of account and other records reflecting the results of the operations of the Property in accordance with generally accepted accounting principles consistently applied, and will furnish or cause to be furnished to Mortgagee such financial information concerning the condition of the Property as Mortgagee shall reasonably request.
- 3.7 **Further Assurances.** Mortgagor, at any time upon the reasonable request of Mortgagee, will at Mortgagor's reasonable expense execute, acknowledge and deliver all such additional papers and instruments (including, without limitation, a declaration of no setoff) and all such further acts and things as may be reasonably necessary to carry out the purposes of the Loan Documents and to subject to the liens thereof any property intended by the terms thereof to be covered thereby and any renewals, additions, substitutions or replacements thereto.
- 3.8 **Indemnity and Attorneys' Fees.** Mortgagor will indemnify, defend, protect and hold Mortgagee harmless from any and all liability, loss, claims, damage, cost or expense (including reasonable outside counsel attorneys' fees and the reasonable allocated cost of Mortgagee's legal staff provided the services of Mortgagee's legal staff are not redundant with the services of outside counsel) that Mortgagee may or might incur hereunder, or in connection with the enforcement of any of Mortgagee's rights or remedies hereunder or under the other Loan Documents, any action taken by Mortgagee hereunder or thereunder, whether or not suit is filed, or by reason or in defense of any and all claims and demands whatsoever that may be asserted against Mortgagee arising out of the Property, or any part thereof or interest therein, or as to which it becomes necessary to defend or uphold the lien of this Mortgage or other Loan Documents; provided that the foregoing indemnity shall not apply to any liability, loss, claims, damage, cost or expense that is

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incurred as a direct result of the gross negligence or willful misconduct of Mortgagee. Should Mortgagee incur any such liability, loss, claim, damage, cost or expense, the amount thereof with interest thereon at the Secondary Interest Rate shall be payable by Mortgagor immediately without demand, shall be secured by this Mortgage, and shall be part of the Indebtedness.

- 3.9 **Litigation.** Mortgagor will promptly give notice in writing to Mortgagee of any litigation which may reasonably be expected to result in a material adverse change in the financial condition or operations of Mortgagor or the condition, use or operation of the Property.
- 3.10 **Inspection of Property.** Mortgagor hereby grants to Mortgagee, its agents, employees, consultants and contractors, the right from time to time, (i) prior to an Event of Default not to exceed one time during any twelve (12) consecutive month period during the term of the Loan, (ii) after the occurrence of an Event of Default under any of the Loan Documents or the Hazardous Substances Agreements, (iii) if Mortgagee becomes aware of an event on or near the Property which could have a material adverse effect on the conditions of any portion of the Property, (iv) if Mortgagee believes that any report it has received concerning the Property is materially inaccurate, and (v) in connection with any transfer by Mortgagee of any interest in the Loan Documents, to enter upon the Property for the purpose of making any and all inspections, reports, tests (including soils borings, ground water testing, wells and/or soils analysis), inquiries and reviews as Mortgagee (in its reasonable discretion) may deem necessary to assess the then current condition of the Property. Mortgagee shall provide Mortgagor with three (3) business days' notice of such entry; provided, however, that Mortgagor's consent shall not be required for such entry or for the performance of such tests. Such entry shall be made in such a manner as not to unreasonably interfere with the rights of the tenants and other occupants of the Property, and provided, so long as no Event of Default or Potential Event of Default then exists testing (A) will be done only by an environmental engineering or consulting firm then on Mortgagee's approved list of consultants or by an environmental engineering or consulting firm approved by Mortgagor, which approval shall not be unreasonably withheld or delayed, and (B) will be done in consultation with Mortgagor. All costs, fees and expenses (including those of Mortgagee's legal counsel and consultants) incurred by Mortgagee with respect to inspections, reports, tests, inquiries and reviews performed pursuant

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to clauses (ii), (iii) and (iv) above shall be paid by Mortgagor to Mortgagee within thirty (30) days after demand, shall accrue interest at the Secondary Interest Rate until paid, and shall be secured by this Mortgage.

- 3.11 **Contest.** Notwithstanding the provisions of Paragraphs 3.4 and 3.5, Mortgagor may, at its expense, contest the validity or application of any Impositions or Laws and Restrictions by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Mortgagee is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Mortgagor shall have posted a bond or furnished such other security as may be reasonably required from time to time by Mortgagee.
- 3.12 **Tax Receipts.** Mortgagor will deliver to Mortgagee, within seven (7) days after demand made therefor, bills showing the payment to the extent then due of all taxes, assessments (including those payable in periodic installments) and any Imposition that may have become a lien upon the Property or any part thereof.
- 3.13 **Additional Information.** Mortgagor will furnish to Mortgagee, within seven (7) days after written request therefor, any and all information in Mortgagor's possession or control, or in the possession or control of any agent of Mortgagor, that Mortgagee may reasonably request concerning the Property or the performance by Mortgagor of the Obligations.
- 3.14 **Prepayment.** Mortgagor may prepay the Loan only on the terms and conditions set forth in the Note, the Other Notes or any Discretionary Loan Note, as applicable, and Mortgagor shall pay Mortgagee prepayment charges in respect of any prepayment, whether voluntary or involuntary, as required by and on the terms and conditions set forth in the Note, the Other Notes or any Discretionary Loan Note, as applicable.
- 3.15 **FIRPTA Affidavit.** In the event of any transfer by Mortgagor of its rights hereunder or of any interest in the Property otherwise permitted under this Mortgage, such transferee shall, as an additional condition to such transfer, under penalty of perjury, execute and deliver to Mortgagee an affidavit concerning the non-foreign status of Mortgagor substantially in the form of Paragraph 2.3 hereof. Nothing in this paragraph shall be deemed a

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modification or waiver of any other provision of any of the Loan Documents limiting, prohibiting or otherwise relating to any transfer of any interest in the Property or Mortgagor.

- 3.16 **Tax Service Contract.** Throughout the term of the Loan, at Mortgagor's sole expense, Mortgagee shall be furnished tax service contracts issued by a tax reporting agency satisfactory to Mortgagee.
- 3.17 **Reimbursement.** Any amount paid by Mortgagee for any tax, stamp tax, assessment, water rate, sewer rate, insurance premium, repair, rent charge, debt, claim, inspection or lien having priority over this Mortgage or to in any way protect the security for the Loan, shall (i) bear interest at the Secondary Interest Rate from the date of payment by Mortgagee, (ii) constitute additional indebtedness secured by this Mortgage, prior to any right, title or interest in or claim upon the Property attaching or accruing subsequent to the lien of this Mortgage, (iii) be secured by this Mortgage, and (iv) be payable by Mortgagor to Mortgagee upon demand.
- 3.18 **Plans and Specifications.** To the extent in the possession of, or available to, Mortgagor, Mortgagor agrees to keep at its offices at the Property or at the offices of Advisor in San Francisco, California, and to make available to Mortgagee during normal business hours, As-Built Plans and Specifications or, if unavailable, the final set of plans and specifications from which the Improvements were constructed ("As-Builts"), certified by a licensed architect or licensed contractor as true, correct and complete As-Builts for the Improvements.
- 3.19 **Property Description.** Mortgagor agrees not to initiate or consent to any change in the boundary lines or the legal description of the Property, as the same are constituted as of the date hereof, without the prior written consent of Mortgagee.

ARTICLE 4 Negative Covenants

Mortgagor hereby covenants to and agrees as follows:

- 4.1 **Restrictive Uses.** Mortgagor will not initiate, join in, or consent to any change in the current use of the Property or in any zoning

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ordinance, private restrictive covenant, assessment proceedings or other public or private restriction limiting or restricting the uses that may be made of the Property or any part thereof without the prior written consent of Mortgagee.

- 4.2 **Due on Sale or Encumbrance.** Except as otherwise expressly permitted by Section 5, subsections 6.1, 6.2 and 8.1 of the Loan Administration Agreement, Mortgagor shall not, and shall not cause, allow or permit a Transfer (as defined in the Loan Administration Agreement) without the prior written consent of Mortgagee, which consent may be withheld or conditioned in Mortgagee's sole discretion. In the event of any Transfer in violation of the provisions of this Paragraph 4.2, then the entire Indebtedness, plus the Prepayment Premium (as defined in the Note), shall become immediately due and payable at the option of Mortgagee subject to the expiration of any cure period provided in the Loan Administration Agreement. Consent to one Transfer by Mortgagee shall not be deemed a waiver to require such consent to further Transfers. Any transferee shall as a condition of the effectiveness of any consent or waiver by Mortgagee hereunder, as a covenant of Mortgagor and such transferee, and in form and substance required by Mortgagee, assume all obligations under the Loan Documents and the Hazardous Substances Agreement and agree to be bound thereby. Such assumption shall not, however, release Mortgagor, or any maker or guarantor of the Note, from any liability thereunder.
- 4.3 **Replacement of Fixtures and Personalty** Mortgagor will not permit any of the Fixtures or Personalty to be removed at any time from the Property without the prior written consent of Mortgagee unless actually replaced by articles of equal suitability and value owned by Mortgagor free and clear of any lien or security interest.
- 4.4 **No Cooperative or Condominium.** Mortgagor shall not operate the Property or permit the Property to be operated, as a cooperative or condominium building or buildings in which the tenants or occupants participate in ownership, control, or management of the Property or any part thereof, as tenant stockholders or otherwise.

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ARTICLE 5 Casualties and Condemnation

- 5.1 **Insurance and Condemnation Proceeds.** Any insurance proceeds or condemnation proceeds applicable to all or any part of the Property shall be allocated, held, disbursed and applied as provided in the Loan Administration Agreement.

ARTICLE 6 Events of Default and Remedies of Mortgagee

- 6.1 **Certain Rights Upon Default.** Upon the occurrence of a Bankruptcy Default, all of the Indebtedness shall become immediately due and payable, together with all payments due in accordance with the terms of the Note (including, without limitation, any Prepayment Premium), without any further presentment, demand, protest or notice of any kind. Upon the occurrence of any other Event of Default, Mortgagee may at any time declare all of the Indebtedness to be due and payable and the same shall thereupon become immediately due and payable, together with all payments due in accordance with the terms of the Note (including, without limitation, any Prepayment Premium), without any further presentment, demand, protest or notice of any kind. In either case, Mortgagee may, in its sole discretion, also do any of the following in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1011 (1992) *et seq.* (the "Act"):
- (1) in person, by agent, or by a Receiver, without regard to the adequacy of security, the solvency of Mortgagor or the condition of the Property, without obligation so to do and without notice to or demand upon Mortgagor, enter upon and take possession of the Property, or any part thereof, in its own name and do any acts which Mortgagee deems necessary to preserve the value or marketability of the Property; sue for or otherwise collect the Rents, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees (including, without limitation, court costs, expert witness fees, document reproduction expenses, costs of exhibit, preparation, courier charge's, postage and communication expenses), against the obligations, all in such order as Mortgagee may determine; appear in and defend any action or proceeding purporting to affect, in any manner whatsoever, the Obligations, the security hereof or the rights or powers of Mortgagee; pay, purchase

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or compromise any encumbrance, charge or lien that in the judgment of Mortgagee is prior or superior hereto; and in exercising any such powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees (including, without limitation, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses);

- (2) upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, Mortgagee may petition the court in which such complaint is filed and such court may appoint, at Mortgagee's sole option, a Receiver for the Property pursuant to the Act; such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such Receiver, and without regard to the then value of the Property or whether or not the same shall be then occupied as a homestead and Mortgagee or any employee or agent thereof may be appointed as such Receiver; such Receiver shall have all powers and duties provided by the Act, including the power to make leases to be binding upon parties, including the Mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Property after an entry of a judgment of foreclosure, all as provided in the Act; in addition, such Receiver shall also have the power to extend or modify any then existing leases and to collect the Rents and Proceeds of the Property during the pendency of such foreclosure suit and, in the case of a sale and deficiency, during the full statutory period of a redemption, if any, whether or not there is a redemption, as well as during any further times when Mortgagor, except for the intervention of such Receiver, would be entitled to collection of such Rents and Proceeds, and such Receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period (any such Receiver shall have all the powers and duties of Receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale, unless such Receivership is sooner terminated);
- (3) commence an action to foreclose this Mortgage in any manner provided hereunder or by law; and/or
- (4) with respect to any Personalty, proceed as to both the real and personal property in accordance with Mortgagee's rights and

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remedies in respect of the Land, or proceed to sell said Personalty separately and without regard to the Land in accordance with Mortgagee's rights and remedies as to personal property.

- 6.2 **Receiver.** If an Event of Default shall have occurred and be continuing, Mortgagee, as a matter of strict right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Property, shall have the right to apply *ex parte* to any court having jurisdiction to appoint a Receiver to enter upon and take possession of the Property, and Mortgagor hereby waives notice of any application therefor, provided a hearing to confirm such appointment with notice to Mortgagor is set within the time required by law. Any such Receiver shall have all the powers and duties of Receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in this Mortgage, and shall continue as such and exercise all such powers until the date of confirmation of sale, unless such Receivership is sooner terminated.
- 6.3 **Remedies Cumulative.** All remedies of Mortgagee provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided in the other Loan Documents or by law, including any right of offset. The exercise of any right or remedy by Mortgagee hereunder shall not in any way constitute a cure or waiver of default hereunder or under the Loan Documents, or invalidate any act done pursuant to any notice of default, or prejudice Mortgagee in the exercise of any of its rights hereunder or under the Loan Documents.
- 6.4 **Curing of Defaults.** If Mortgagor shall at any time fail to perform or comply with any of the terms, covenants and conditions required on Mortgagor's part to be performed and complied with under this Mortgage, any of the other Loan Documents or any other agreement that, under the terms of this Mortgage, Mortgagor is required to perform, then Mortgagee, without waiving or releasing Mortgagor from any of the Obligations, may, in its sole discretion:
- (i) make any payments hereunder or thereunder payable by Mortgagor and take out, pay for and maintain any of the insurance policies provided for herein; and/or
 - (ii) after the expiration of any applicable grace period and subject to Mortgagor's rights to contest certain obligations specifically granted hereby, perform any such other acts hereunder or thereunder on

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the part of Mortgagor to be performed and enter upon the Property for such purpose; and/or

- (iii) perform any act in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purpose; appear in and defend any action or proceeding purporting to affect, in any manner whatsoever, the Obligations or the Indebtedness, the security hereof or the rights or powers of Mortgagee; pay, purchase or compromise any encumbrance, charge or lien that in the judgment of Mortgagee is prior or superior hereto.

All sums so paid out of Mortgagee's own funds and all reasonable costs and expenses incurred and paid by Mortgagee in connection with the performance of any such act, including, without limitation, attorneys' fees and any allocated costs of in-house counsel (provided such services are not redundant with the services of any outside counsel), together with interest on unpaid balances thereof at the Secondary Interest Rate from the respective dates of Mortgagee's making of each such payment, shall be added to the principal of the Indebtedness, be secured by the Loan Documents and by the lien of this Mortgage, prior to any right, title or interest in or claim upon the Property attaching or accruing subsequent to the lien of this Mortgage, and be payable by Mortgagor to Mortgagee on demand.

- 6.5 **Foreclosure.** When the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof in accordance with the Act and to exercise any other remedies of Mortgagee provided in the Notes, this Mortgage, the Loan Documents, or which Mortgagee may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, 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 assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Property, and any other expenses and expenditures which may be paid or incurred by or on behalf of Mortgagee and permitted by the Act to

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be included in such decree. All expenditures and expenses of the nature mentioned in this Paragraph 6.5, and such other expenses and fees as may be incurred in the protection of the Property and Rents therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Notes or the Property, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Mortgagor, with interest thereon at the Secondary Interest Rate until paid.

- 6.6 **Right of Possession.** When the Indebtedness shall become due, whether by acceleration or otherwise, or if Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to be placed in possession of the Property as provided in the Act, and Mortgagee, in its discretion and pursuant to court order, may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:
- A. Hold, operate, manage, and control all or any part of the Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as Mortgagee may deem necessary to enforce the payment or security of the Rents of the Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;
 - B. Cancel or terminate any Lease or sublease of all or any part of the Property for any cause or on any ground that would entitle Mortgagor to cancel the same;
 - C. Elect to disaffirm any Lease or sublease of all or any part of the Property made subsequent to this Mortgage without Mortgagee's prior written consent;

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- D. Extend or modify any then existing Leases and make new Leases of all or any part of the Property, which extensions, 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 Loan evidenced by the Notes and the issuance of a deed to a purchaser 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 Mortgagor, all persons whose interests in the Property are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;
- E. Make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Property as may seem judicious to Mortgagee, to insure and reinsure the Property and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all Rents therefrom; and
- F. Apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Property, to the payment of Impositions, insurance premiums and other charges applicable to the Property, or in reduction of the Indebtedness in such order and manner as Mortgagee shall select.

Without limiting the generality of the foregoing, Mortgagee shall have all power, authority and duties as provided in the Act. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property.

- 6.7 MORTGAGOR HEREBY WAIVES ANY RIGHT MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF ILLINOIS OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE, OTHER THAN EXPRESSLY PROVIDED FOR IN THIS INSTRUMENT, OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS INSTRUMENT TO MORTGAGEE AND MORTGAGOR WAIVES MORTGAGOR'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN**

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ACCORDANCE WITH THE PROVISIONS OF THIS INSTRUMENT ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY MORTGAGOR IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER MORTGAGOR HAS BY MORTGAGOR'S ATTORNEY BEEN FIRST APPRISED OF AND COUNSELED WITH RESPECT TO MORTGAGOR'S POSSIBLE ALTERNATIVE RIGHTS.

ARTICLE 7 Security Agreement and Fixture Filing

- 7.1 **Grant of Security Interest.** Mortgagor hereby grants to Mortgagee a security interest in and to all Mortgagor's right, title and interest now owned or hereafter acquired in and to the Personalty and the Fixtures (collectively, the "Collateral"), to secure payment and performance of the Secured Obligations.
- 7.2 **Remedies.** This Mortgage constitutes a security agreement with respect to the Collateral in which Mortgagee is hereby granted a security interest. In addition to the rights and remedies provided under this Mortgage, Mortgagee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the state in which the Land is located as well as all other rights and remedies available at law or in equity. Mortgagor hereby agrees to execute and deliver on demand and irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor to, at Mortgagor's expense, execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Mortgagee may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any Event of Default, Mortgagee shall have (i) the right to cause any of the Collateral which is personal property to be sold at any one or more public or private sales as permitted by applicable law and to apply the proceeds thereof to the Indebtedness or any other monetary obligation of Mortgagor to Mortgagee, and (ii) the right to apply to the Indebtedness or any other monetary obligation of Mortgagor to Mortgagee, any Collateral which is cash, negotiable documents or chattel paper.

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Any such disposition may be conducted by an employee or agent of Mortgagee. Any Person, including Mortgagee, shall be eligible to purchase any part or all of such Personalty at any such disposition.

- 7.3 **Expenses.** Expenses of retaking, holding, preparing for sale, selling or the like pertaining to the Collateral shall be borne by Mortgagor and shall include Mortgagee's reasonable attorneys' fees and legal expenses (including, without limitation, court costs, expert witness fees, document reproduction expenses, costs of exhibit preparation, courier charges, postage and communication expenses). Mortgagor, upon demand of Mortgagee shall assemble the Collateral and make it available to Mortgagee at the Property, a place which is hereby deemed to be reasonably convenient to Mortgagee and Mortgagor. Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of the Collateral or of the time after which any private sale or any other intended disposition is to be made. Any such notice sent to Mortgagor in the manner provided for the mailing of notices herein is hereby deemed to be reasonable notice to Mortgagor.
- 7.4 **Fixture Filing.** This Mortgage covers certain goods which are or are to become fixtures related to the Land and constitutes a fixture filing under the Uniform Commercial Code of the State of Illinois with respect such goods executed by Mortgagor as debtor in favor of Mortgagee as secured party.
- 7.5 **Waivers.** Mortgagor waives (a) any right to require Mortgagee to (i) proceed against any Person, (ii) proceed against or exhaust any Collateral or (iii) pursue any other remedy in its power; and (b) any defense arising by reason of any disability or other defense of Mortgagor or any other Person, or by reason of the cessation from any cause whatsoever of the liability of Mortgagor or any other Person. Until the Indebtedness shall have been paid in full, Mortgagor shall not have any right to subrogation, and Mortgagor waives any right to enforce any remedy which Mortgagee now has or may hereafter have against Mortgagor or against any other Person and waives any benefit of and any right to participate in any Collateral or security whatsoever now or hereafter held by Mortgagee.

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ARTICLE 8 Assignment of Rents

- 8.1 **Assignment of Rents.** Mortgagor absolutely, irrevocably and unconditionally assigns and transfers the Leases and the Rents to Mortgagee, whether now due, past due or to become due, and gives to and confers upon Mortgagee the immediate and continuing right, power and authority to collect such Rents, and apply the same to the Indebtedness or the satisfaction of any Secured Obligation. Mortgagor irrevocably appoints Mortgagee its agent to, at any time, demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in the name of Mortgagor or in the name of Mortgagee, for all such Rents. Neither the foregoing assignment of Rents to Mortgagee or the exercise by Mortgagee of any of its rights or remedies under this Mortgage shall be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part thereof, unless and until Mortgagee, in person or by its own agent, assumes actual possession thereof, nor shall appointment of a Receiver for the Property by any court at the request of Mortgagee or by agreement with Mortgagor or the entering into possession of the Property or any part thereof by such Receiver be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part thereof.
- 8.2 **Collection of Rents.** Notwithstanding anything to the contrary contained herein or in the Note, so long as no Event of Default shall have occurred, Mortgagor shall have a license, revocable upon the occurrence of an Event of Default to collect and receive all Rents, as a trust fund, to be applied to the extent such items are then due and payable, before using any part of the Rents for any other purpose: first to the payment of the Impositions before penalty or interest is due thereon, second to the cost of such insurance and of such maintenance and repairs as is required by the terms of the Loan Administration Agreement and this Mortgage, third to the satisfaction of all obligations of Mortgagor, as landlord, under the Leases, and fourth to the payment of the Indebtedness and thereafter to retain, use and enjoy the same and to otherwise exercise all rights with respect thereto, subject to the terms hereof. Upon the occurrence of an Event of Default, Mortgagee shall have the right, on written notice to Mortgagor, to

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terminate and revoke the license hereinafter granted to Mortgagor and shall have the complete right and authority then or thereafter to exercise and enforce any and all of its rights and remedies provided herein or by law or at equity.

- 8.3 **Power of Attorney.** Effective automatically upon the occurrence of an Event of Default and continuously thereafter, and without the necessity of the execution of any further documents or instruments, Mortgagor hereby constitutes and appoints Mortgagee as Mortgagor's true and lawful attorney, coupled with an interest, in the name, place and stead of Mortgagor: (i) to collect, demand, sue for, attach, levy, recover and receive all Rents due and payable by tenants pursuant to the Leases and to give proper notices, receipts, releases and acquittances therefor and after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Obligations, notwithstanding that the amount owing thereunder may not then be due and payable or that the Obligations are adequately secured, and Mortgagor does hereby authorize and direct such tenants to deliver such payment to Mortgagee in accordance with the foregoing; and (ii) to subject and subordinate at any time and from time to time, the Leases to the lien of this Mortgage or any other Loan Documents or any other mortgage or deed of trust on or to any ground lease of the Property, or to request or require such subordination, where such reservation, option or authority was reserved under the Leases to Mortgagor, or in any case, where Mortgagor otherwise would have the right, power or privilege so to do. Mortgagor hereby ratifies and confirms all acts that Mortgagee shall do or cause to be done by virtue of the powers granted hereby and warrants that Mortgagor has not, on or at any time prior to the date hereof, exercised any such right of subordination under clause (ii) above and covenants not to exercise any such right except as may be required by Mortgagee. The power of attorney hereunder granted is irrevocable and continuing, shall survive the insolvency or dissolution of Mortgagor, and such rights, powers and privileges shall be exclusive in Mortgagee, its successors and assigns so long as any part of the Obligations shall remain unpaid.

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ARTICLE 9 Miscellaneous

- 9.1 **Change of Law.** In the event of the passage, after the date of this Mortgage, of any law deducting from the value of the Property, for the purposes of taxation, any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust, or debts secured by mortgage or deed of trust (other than laws imposing taxes on franchise, capital or income), or the manner of the collection of any such taxes so as to materially affect the anticipated yield of Mortgagee as holder of the Note and/or Mortgagee under this Mortgage, Mortgagor shall assume the payment of any tax or other charge so imposed upon Mortgagee for the period remaining until full payment by Mortgagor of the Indebtedness. If Mortgagee is not permitted to pay tax or other charge as a matter of law, the Indebtedness (but without assessment of any prepayment charges) shall become due and payable at the option of Mortgagee exercised by thirty (30) days' notice to Mortgagor.
- 9.2 **No Waiver.** No failure by Mortgagee to insist upon strict, full and complete (i) payment when due of any portion of the Indebtedness or (ii) performance of any Obligation, nor failure to exercise any right or remedy hereunder, shall constitute a waiver of any such failure to pay or breach of any such Obligation, or of the later exercise of such right or remedy.
- 9.3 **Abandonment.** Any and all Personalty that upon foreclosure of the Property is owned by Mortgagor and is used in connection with the operation of the Property shall be deemed at the option of Mortgagee to have become on such date a part of the Property and abandoned to Mortgagee in its then condition.
- 9.4 **Notices.** All notices, demands, requests, consents, statements, satisfactions, waivers, designations, refusals, confirmation or denials that may be required or otherwise provided for or contemplated under the terms of this Mortgage shall be in writing, and shall be deemed to have been properly given (i) upon delivery, if delivered in person or, as to any person other than Mortgagee, by facsimile transmission with receipt acknowledged, and, if by facsimile transmission to Mortgagee, on the date a hard copy of such notice, demand or other matter is deemed delivered to Mortgagee as otherwise provided in this Paragraph, (ii) one business day after having been deposited for overnight delivery

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with Federal Express or another comparable overnight courier service, or (iii) three business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, in each case addressed as follows:

If to Mortgagor:

The Chicago Trust Company
c/o AMB Institutional Realty Advisors, Inc.
505 Montgomery Street, 5th Floor
San Francisco, California 94111
Attention: ~~Portfolio Manager~~
Chief Financial Officer *CSB*

(with a copy to, which copy shall not be required for notice hereunder)

AMB Institutional Realty Advisors, Inc.
505 Montgomery Street, 5th Floor
San Francisco, California 94111
Attention: Chief Financial Officer

If to Mortgagee:

The Prudential Insurance Company of America
Four Embarcadero Center, Suite 2700
San Francisco, California 94111
Attention: Vice President, Mortgage Capital

with a copy to:

The Prudential Insurance Company of America
Four Embarcadero Center, Suite 2700
San Francisco, California 94111
Attention: Regional Counsel

or addressed to each respective party at such other address as such party may from time to time designate by written notice to the other parties.

- 9.5 **Severability.** If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, all terms, provisions, covenants and conditions hereof and all

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applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

- 9.6 **Joinder of Foreclosure.** Should Mortgagee hold any other or additional security for the payment of the Indebtedness or performance of the Obligations, its sale or foreclosure, upon any default in such payment or performance, in the sole discretion of Mortgagee, may be prior to, subsequent to, or joined or otherwise contemporaneous with any sale or foreclosure hereunder.
- 9.7 **Governing Law.** The parties expressly agree that this Mortgage (including, without limitation, all questions regarding permissible rates of interest) shall be governed by and construed in accordance with the laws of the state in which the Land is located.
- 9.8 **Subordination.** At the option of Mortgagee, this Mortgage shall become subject and subordinate in whole or in part (but not with respect to priority of entitlement to any insurance proceeds, damages, awards, or compensation resulting from damage to the Property or condemnation or exercise of power of eminent domain), to any and all contracts of sale and/or any and all Leases upon the execution by Mortgagee and recording thereof in the Official Records of Cook County, Illinois of a unilateral declaration to that effect. Mortgagee may require the issuance of such title insurance endorsements to the Title Policy, in connection with any such subordination as Mortgagee, in its reasonable judgment, shall determine are appropriate, and Mortgagor shall be obligated to pay any cost or expense incurred in connection with the issuance thereof. In addition, at the option of Mortgagee, this Mortgage shall (i) become subject and subordinate to any mortgage executed by Mortgagor for the benefit of Mortgagee that is junior to this Mortgage, or (ii) become senior and superior to any mortgage executed by Mortgagor for the benefit of Mortgagee that is senior to this Mortgage, in either case upon the execution by Mortgagee and recording thereof in the Official Records of Cook County, Illinois of a unilateral declaration to that effect.
- 9.9 **Further Advances.** Upon the request of Mortgagor or its permitted successors in ownership of the Property, Mortgagee may hereafter, at its option, at any time before full payment of the Indebtedness, make further advances to Mortgagor or said successors, and the same, with interest and late charges, shall be secured by this

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Mortgage; provided, however, that the amount of principal secured by this Mortgage and remaining unpaid, shall not at the time of and including any such advance exceed the original principal sum secured hereby; and provided further that if Mortgagee, at its option, shall make a further advance or advances as aforesaid, Mortgagor or said successors in ownership agree to execute and deliver to Mortgagee (i) a note to evidence the same, payable on or before the maturity of the Indebtedness secured hereby and bearing such other terms as Mortgagee shall require, and (ii) satisfactory evidence that after such advance this Mortgage will secure such advance and continue to constitute a valid first mortgage lien on the Property subject only to the Permitted Exceptions.

- 9.10 Waiver of Statute of Limitations and Rights to Trial by Jury.
- A. The pleading of any statute of limitations as a defense to any and all obligations secured by this Mortgage is hereby waived, to the fullest extent allowed by law.
 - B. Mortgagor hereby waives any right to trial by jury with respect to any action or proceeding brought by Mortgagor, Mortgagee or any other person relating to (i) the Indebtedness, or (ii) the Loan Documents.
- 9.11 Entire Agreement. The Loan Documents set forth the entire understanding between Mortgagor and Mortgagee relative to the Loan and the same shall not be amended except by a written instrument duly executed by each of Mortgagor and Mortgagee. Any and all previous representations, warranties, agreements and understandings between or among the parties regarding the subject matter of the Loan or the Loan Documents, whether written or oral, are superseded by this Mortgage and the other Loan Documents. In the event of any conflict between the provisions of this Mortgage and the provisions of the Loan Administration Agreement, the provisions of the Loan Administration Agreement shall control.
- 9.12 Rights of Mortgagee. At any time or from time to time, without liability therefor and without notice, and without releasing or otherwise affecting the liability of any person for payment of any Indebtedness, Mortgagee at its sole discretion and only in writing may extend the time for, or release any Person now or hereafter liable for, payment of any or all such Indebtedness, or accept or release additional security therefor, or subordinate the lien or charge hereof.

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- 9.13 **Copies.** Mortgagor will promptly give to Mortgagee copies of all (i) notices of violation relating to the Property that Mortgagor receives from any governmental agency or authority, and (ii) notices of default that Mortgagor shall give or receive under any material agreement that Mortgagor covenants to perform hereunder, including notices of default Mortgagor receives under any agreements relating to the borrowing of money by Mortgagor from any Person.
- 9.14 **No Merger.**
- A. **Leasehold Estate.** So long as any of the Indebtedness shall remain unpaid or Mortgagor shall have any further obligation under the Loan Documents, unless Mortgagee shall otherwise consent in writing, the fee estate of Mortgagor in the Property or any part thereof shall not merge, by operation of law or otherwise, with any leasehold or other estate in the Property or any part thereof, but shall always be kept separate and distinct therefrom, notwithstanding the union of said fee estate and such leasehold or other estate in Mortgagor or any other Person.
- B. **Subordinate Mortgage.** If Mortgagee forecloses the lien created by the Subordinate Mortgage for any reason and thereby acquires the fee estate of Mortgagor in the Property or any part thereof, unless Mortgagee shall otherwise consent in writing, the lien of this Mortgage shall not merge, by operation of law or otherwise, with such fee estate, but shall always be kept separate and distinct therefrom, notwithstanding the union of said fee estate with the estate held for the benefit of Mortgagee under this Mortgage.
- 9.15 **Right of Entry.** In addition to the rights granted to Mortgagee under Paragraph 3.10, Mortgagee may enter at any reasonable time upon any part of the Property for the purpose of performing any of the acts Mortgagee is authorized to perform under the terms of this Mortgage. Mortgagor agrees to cooperate with Mortgagee to facilitate such entry.
- 9.16 **Personalty Security Instruments.** Mortgagor covenants and agrees that if Mortgagee at any time holds additional security for any obligations secured hereby, it may enforce the terms thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds upon the Indebtedness secured hereby without affecting the status or of waiving any right to exhaust all or any other

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security, including the security hereunder, and without waiving any breach or default or any right or power whether exercised hereunder or contained herein or in any such other security.

- 9.17 **Suits to Protect Property.** Mortgagor covenants and agrees to appear in and defend any action or proceeding purporting to affect the security of the Mortgage, or of any additional or other security for the Obligations, the interest of Mortgagee or the rights, powers and duties of Mortgagee hereunder; and to pay all costs and expenses, including cost of evidence of title and reasonable attorneys's fees, in any action or proceeding in which Mortgagee may appear or be made a party, including foreclosure or other proceeding commenced by those claiming a right to any part of the Property in any action to partition or condemn all or part of the Property, whether or not pursued to final judgment.
- 9.18 **Charges for Statements.** Mortgagor agrees to pay Mortgagee's charge, up to the maximum amount permitted by law, for any statement regarding the obligations secured by this Mortgage requested by Mortgagor or in its behalf.
- 9.19 **Usury.** In the event that Mortgagee determines that any charge, fee or interest paid or agreed to be paid in connection with the Loan may, under the applicable usury laws, cause the interest rate on the Loan to exceed the maximum permitted by law, then such charges, fees or interest shall be reduced and any amounts actually paid in excess of the maximum interest permitted by such laws shall be applied by Mortgagee to reduce the outstanding principal balance of the Loan. The parties intend that Mortgagor shall not be required to pay, and Mortgagee shall not be entitled to collect, interest in excess of the maximum legal rate permitted under the applicable usury laws.
- 9.20 **Publicity.** Subject to the provisions of subsection 12.13 of the Loan Administration Agreement, Mortgagor hereby agrees that Mortgagee, at its expense, may publicize the financing of the Property.
- 9.21 **Defense and Indemnity Rights.** Whenever, under any Loan Document, Mortgagor is obligated to indemnify and/or defend Mortgagee, or Mortgagor is obligated to defend or prosecute any action or proceeding, then Mortgagee shall have the right of counsel of Mortgagee's choice reasonably exercised, and all reasonable costs and expenses incurred by Mortgagee in connection with such

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participation (including reasonable attorneys' fees and any allocated costs of in-house counsel, provided the services of in-house counsel are not redundant with the services of outside counsel) shall be reimbursed by Mortgagor to Mortgagee within thirty (30) days of demand. In addition, Mortgagee shall have the right to approve any counsel retained by Mortgagor in connection with the prosecution or defense of any such action or proceeding by Mortgagor. Mortgagor shall give notice to Mortgagee of the initiation of all proceedings prosecuted or required to be defended by Mortgagor, or which are subject to Mortgagor's indemnity obligations, under this Mortgage, promptly after the receipt by Mortgagor of notice of the existence of any such proceeding, but in no event later than five (5) days thereafter. All costs or expenses required to be reimbursed by Mortgagor to Mortgagee hereunder shall, if not paid when due as herein specified, bear interest at the Secondary Interest Rate. As used herein, "proceeding" shall include litigation (whether by way of complaint, answer, cross-complaint, counterclaim or third party claim), arbitration and administrative hearings or proceedings.

9.22

Destruction of Note. Mortgagor shall, if the Note is mutilated or destroyed by any cause whatsoever, or otherwise lost or stolen and regardless of whether due to the act or neglect of Mortgagee, execute and deliver to Mortgagee in substitution therefor a duplicate promissory note containing the same terms and conditions as the Note, within ten (10) days after Mortgagee notifies Mortgagor of any such mutilation, destruction, loss or theft of the Note; provided that Grantee shall indemnify Mortgagor against any cost, liability, damage or expense (including reasonable attorneys' fees and expenses) arising out of such mutilated, destroyed, lost or stolen Note. Any new promissory note executed and delivered hereunder shall be in full substitution for the Note, shall not constitute any new or additional indebtedness of Mortgagor to Mortgagee, shall constitute solely a substitute evidence of the indebtedness evidenced by the original Note, and shall not affect in any manner the priority of this Mortgage, or any other document or instrument executed in connection with or evidencing or securing the Indebtedness under the Note. Failure or delay by Mortgagee to notify Mortgagor hereunder shall not affect in any manner Mortgagor's liability for the Indebtedness under the Note or Mortgagor's obligation to execute a new promissory note hereunder; and Mortgagor's failure to execute a new promissory note on Mortgagee's request hereunder shall likewise not affect Mortgagor's liability for the indebtedness under the Note.

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- 9.23 **Mortgagor and Mortgagee Defined.** As used in this Mortgage, "Mortgagor" includes the original signators of this Mortgage as Mortgagor, and its successors and assigns; and the term "Mortgagee" means the Mortgagee named herein or any future owner or holder, including pledgee and participants, of any note, notes or instrument secured hereby, or any participation therein.
- 9.24 **Heirs and Assigns.** This Mortgage applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.
- 9.25 **Rules of Construction.** When the identity of the parties or other circumstances make it appropriate, the masculine gender shall include the feminine and/or neuter, and the singular number shall include the plural. Specific enumeration of rights, powers and remedies of Mortgagee and of acts which they may do and of acts Mortgagor must do or not do shall not exclude or limit the general. The headings of each Article and Paragraph are for information and convenience and do not limit or construe the contents of any provision hereof. The provisions of this Mortgage and all other Loan Documents shall be construed as a whole according to their common meaning, not strictly for or against any party and consistent with the provisions herein contained, in order to achieve the objectives and purposes of such documents. Each party and its counsel has reviewed and revised the Loan Documents and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of such document. The use in this Mortgage and all other Loan Documents of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of non-limitation such as "without limitation" or "but not limited to", or words of similar import, are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. The references to the "Property" shall be deemed to refer to all or any portion of the Property and any interest therein.
- 9.26 **Commingling of Funds.** Any and all sums collected or retained by Mortgagee hereunder (including insurance and condemnation proceeds and any amounts paid by Mortgagor to Mortgagee under Paragraph 3.4 above), shall not be deemed to be held in trust, and

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Mortgagee may commingle any and all such funds or proceeds with its general assets and shall not be liable for the payment of any interest or other return thereon, except to the extent otherwise required by law.

- 9.27 **Standards of Discretion.** Wherever in this Mortgage, the Note or any other Loan Document, the expressly stated standard for the exercise by Mortgagee of any right, discretion or judgment on its part is sole discretion or sole judgment, then Mortgagee may exercise such right, discretion or judgment in a subjective manner whether or not "objectively" reasonable under the circumstances. Any such exercise shall not be deemed inconsistent with any covenant of good faith and fair dealing otherwise implied by law to be a part of this Mortgage; and the parties intend by the foregoing to set forth and affirm their entire understanding with respect to the terms, covenants and conditions and standards pursuant to which their rights, duties and obligations are to be judged, their performance measured, and the parameters within which Mortgagee's discretion may be exercised hereunder and under the other Loan Documents.
- 9.28 **Certain Standards of Efforts of Mortgagor.** Whenever in this Mortgage, or any other Loan Document, the phrase "cause to be" is used in conjunction with any of Mortgagor's Obligations, such phrase shall be deemed to include the use by Mortgagor of commercially reasonable efforts and all due diligence to cause the applicable act, event or circumstance to occur or be performed or taken, and such efforts and due diligence shall encompass the initiation of litigation or other proceedings in order to enforce or bring about the happening of the applicable act or matter.
- 9.29 **Waiver of Right of Redemption and Other Rights.** To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to

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require that the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that the Property does not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

- 9.30 **Joint and Several Obligations.** Should this Mortgage be signed by more than one party, all obligations herein contained shall be deemed to be the joint and several obligations of each party executing this Mortgage. Any married person signing this Mortgage agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of all obligations contained herein.
- 9.31 **Time of Essence.** Time is of the essence with respect to each and every provision of this Mortgage.
- 9.33 **Priority.** This Mortgage is intended to have and retain priority over all other liens and encumbrances upon the Property (including the Subordinate Mortgage), excepting only the Permitted Exceptions.
- 9.32 **Non-Recourse.** Certain of the other Borrowers' Obligations which are secured by this Mortgage may be, and all of the Mortgagor's Obligations under and which are secured by this Mortgage shall be, non-recourse as provided in Section 11 of the Loan Administration

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Agreement and the provisions of this Mortgage are subject to Section 11 of the Loan Administration Agreement.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the day and year first above written.

MORTGAGOR:

THE CHICAGO TRUST COMPANY,
an Illinois corporation,
not personally but as trustee under
Trust Agreement dated December 7, 1995
and known as Trust Number 1102241

By: _____

Name:

Title:

CLERK OF COOK COUNTY
CLAUSE FOR SIGNATURE

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EXECUTION WITH EXCULPATORY CLAUSE FOR THE CHICAGO TRUST COMPANY, TRUSTEE UNDER TRUST # 1102241 ATTACHED TO THAT Mtg, Security Agreement & Fixture Filing (First) DATED December 9, 1996 TOWITH The Prudential Insurance Co.

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose of, with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against The Chicago Trust Company, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, The Chicago Trust Company, not personally, but as Trustee as aforesaid, has caused these presents to be signed by its Assistant Vice President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

DATE December 9, 1996

The Chicago Trust Company,
as Trustee aforesaid and
not personally,

Corporate Seal

By: [Signature]
Assistant Vice President
Attest: [Signature]
Assistant Secretary

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that the above named Assistant Vice President and

Assistant Secretary of The Chicago Trust Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that said Assistant Secretary, as custodian of the corporate seal of said Company, caused the corporate seal of said Company to be affixed to said instrument as said Assistant Secretary's own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 9th day of December 1996.

"OFFICIAL SEAL"
Martha Lopez
Notary Public, State of Illinois
My Commission Expires 4/8
Notarial Seal
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[Signature]

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JOINDER

The undersigned, AMB Industrial Income Fund, Inc., a Maryland corporation, the sole beneficiary of the IL Trust, hereby joins in the execution and delivery of this Mortgage for the purposes of (a) obligating itself to perform the Obligations of Mortgagor hereunder and (b) granting to Mortgagee all of the liens and security interests granted by Mortgagor hereunder.

Executed as of the day and year first above written.

AMB INDUSTRIAL INCOME FUND, INC.,
a Maryland corporation

By: AMB Institutional Realty Investors, Inc.,
a California corporation,
its authorized agent.

By: _____

S. Davis Carniglia,
Secretary, Treasurer and
Chief Financial Officer

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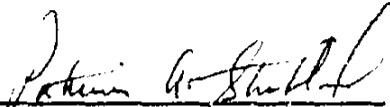
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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

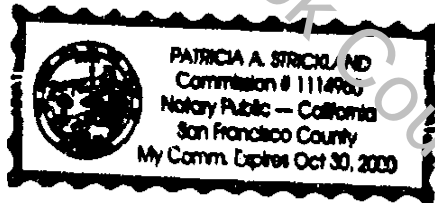
On December 9, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared S. Davis Carniglia personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



Signature of Notary

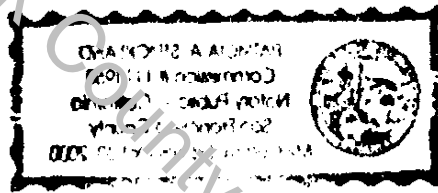
(Seal)



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EXHIBIT A

Legal Description of the Land

The real property described in this Mortgage as the Land consists of and refers collectively to the following properties located in the County of Cook, State of Illinois, as more particularly described below:

A. ELK GROVE INDUSTRIAL - LOT 262

PARCEL 1:

LOT 262 IN CENTEX INDUSTRIAL PART UNIT 146 BEING A SUBDIVISION IN SECTION 34, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE UTILITY, SEWER AND DRAINAGE EASEMENTS FOR THE BENEFIT OF PARCEL 1 CREATED BY THE PLAT OF SUBDIVISION RECORDED AS DOCUMENTS 21283896, 21183845 AND 21360549.

Project Name: Elk Grove Industrial (Lot 262)

Project Address: 1455 Estes Avenue
Elk Grove Village, Illinois

PIN No.: 08-34-201-007-0000

B. ELK GROVE INDUSTRIAL - LOT 266

PARCEL 1:

LOT 266 IN CENTEX INDUSTRIAL PARK UNIT 150 BEING A SUBDIVISION IN THE NORTH 1/2 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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PARCEL 2:

NON-EXCLUSIVE UTILITY EASEMENT FOR THE BENEFIT OF
SUBDIVISION 1 CREATED BY THE PLATS OF SUBDIVISION
RECORDED AS DOCUMENT 21283896, 21183845 AND 21360549.

Project Name: Elk Grove Industrial (Lot 266)

Project Address: 1450 Greenleaf Avenue
Elk Grove Village, Illinois

PIN No.: 08-34-201-008-0000

C. ELK GROVE INDUSTRIAL - LOT 267

PARCEL 1:

LOT 267 IN CENTEX INDUSTRIAL PARK UNIT 150 BEING A
SUBDIVISION IN THE NORTH 1/2 OF SECTION 24, TOWNSHIP 41
NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN,
IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE UTILITY, SEWER AND DRAINAGE EASEMENTS
FOR THE BENEFIT OF PARCEL 1 CREATED BY RECORDED
SUBDIVISION PLATS RECORDED AS DOCUMENTS 21283896,
21183845 AND 21360549.

Project Name: Elk Grove Industrial (Lot 267)

Project Address: 1500 Greenleaf Avenue
Elk Grove Village, Illinois

PIN No.: 08-34-201-009-0000

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D. ELK GROVE INDUSTRIAL - LOT 1, FOUR COLUMNS

PARCEL 1:

LOT 1 IN FOUR COLUMNS RESUBDIVISION IN ELK GROVE VILLAGE, BEING A RESUBDIVISION IN THE SOUTH EAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN ELK GROVE VILLAGE COOK COUNTY, ILLINOIS ACCORDING TO THE PLAT OF SOUTH RESUBDIVISION RECORDED JULY 30, 1980 AS DOCUMENT 25530614, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR BENEFIT OF PARCEL 1 DATED AUGUST 27, 1980 AND RECORDED AUGUST 29, 1980 AS DOCUMENT 25566450 AND 25566451 FOR 10 FOOT WIDE AND 15 FOOT WIDE UNDERGROUND EASEMENT TO INSTALL PIPES, LINES, WIRES AND CONDUITS TO PROVIDE SEWER, WATER, DRAINAGE, ELECTRICITY, NATURAL GAS, TELEPHONE AND OTHER UTILITIES GRANTED BY CHRYSLER CORPORATION TO LA SALLE NATIONAL BANK AS TRUSTEE UNDER TRUST NO. 102563 UNDER THE FOLLOWING DESCRIBED TRACT:

THAT PART OF LOT 269 IN CENTEX INDUSTRIAL PARK UNIT 151, BEING A SUBDIVISION IN THE SOUTH EAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN. DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 269; THENCE EASTWARD ALONG THE NORTH LINE OF SAID LOT 269, ALSO BEING THE SOUTH LINE OF ARTHUR AVENUE, NORTH 89 DEGREES 30 MINUTES 00 DEGREES EAST, A DISTANCE OF 716.56 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 3 DEGREES 38 MINUTES 41 SECONDS WEST, A DISTANCE OF 143.48 FEET; THENCE NORTH 89 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 15.04 FEET; THENCE NORTH 3 DEGREES 38 MINUTES 41 SECONDS EAST, A DISTANCE OF 143.38 FEET TO A POINT ON THE SAID NORTH LINE OF LOT 269; THENCE WESTWARD ALONG THE SAID NORTH LINE, SOUTH 89 DEGREES 30 MINUTES 00 SECONDS WEST, A DISTANCE OF 15.04 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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THAT PART OF LOT 269 IN CENTEX INDUSTRIAL PARK UNIT 151, BEING A SUBDIVISION IN THE SOUTH EAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 269; THENCE EASTWARD ALONG THE NORTH LINE OF SAID LOT 269, ALSO BEING THE SOUTH LINE OF ARTHUR AVENUE, NORTH 89 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 339.52 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 112.00 FEET; THENCE NORTH 89 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 12.00 FEET; THENCE SOUTH 00 DEGREES 30 MINUTES 00 SECONDS EAST A DISTANCE OF 31.00 FEET; THENCE NORTH 89 DEGREES 30 MINUTES 00 SECONDS EAST, A DISTANCE OF 10.00 FEET; THENCE NORTH 00 DEGREES 30 MINUTES 00 SECONDS WEST A DISTANCE OF 41.00 FEET; THENCE SOUTH 89 DEGREES 30 MINUTES 00 SECONDS WEST, A DISTANCE OF 12.00 FEET; THENCE NORTH 00 DEGREES 30 MINUTES 00 SECONDS WEST, A DISTANCE OF 102.00 FEET TO A POINT ON THE SAID NORTH LINE OF LOT 269; THENCE WESTWARD ALONG THE SAID NORTH LINE, SOUTH 89 DEGREES 30 MINUTES 00 SECONDS WEST, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3:

NON-EXCLUSIVE UTILITY, DRAINAGE, SEWER AND WATER AND RAILROAD SIDING EASEMENTS FOR THE BENEFIT OF PARCEL 1 CREATED BY THE PLATS OF SUBDIVISION RECORDED AS DOCUMENTS 25530614 AND 21360549.

Project Name: Elk Grove Industrial (Lot 1, Four Columns)

Project Address: 1281 Arthur Avenue
Elk Grove Village, Illinois

PIN No.: 08-34-402-050-0000

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E. NORTHBROOK EDENS INDUSTRIAL (WOODHEAD)

PARCEL 1:

LOTS 31 AND 32 AND THE EAST 64 FEET OF LOT 33 IN NORTHBROOK EDENS INDUSTRIAL PARK SUBDIVISION UNIT 3 IN THE NORTHWEST 1/4 OF SECTION 5 AND THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE UTILITY AND DRAINAGE EASEMENTS FOR THE BENEFIT OF PARCEL 1 CREATED BY THE PLAT OF SUBDIVISION RECORDED AS DOCUMENT 21088185.

Project Name: Northbrook Edens Industrial (Woodhead)

Project Address: 3600 Woodhead Drive
Northbrook, Illinois

A.P. No.: 04-05-102-018-0000, 04-06-202-020-0000,
04-06-202-021-0000

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