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. COOK COUNTY RECORDER

E3939 L.L.C., an Illinois limited liability company

(Mortgagor)

to

Aries Capital Incorporated, an Illinois corporation

(Mortgagee)

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## MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS

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Dated: March 14, 1997

Location: 3939 South Karlov Avenue, Chicago, Illinois

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THIS MORTGAGE, SECURITY AGREEMENT, and ASSIGNMENT OF LEASES AND RENTS (the "Mortgage"), made the 14th day of March, 1997, by E3939 L.L.C., an Illinois limited liability company, having its principal place of business at 225 North Wabash Avenue, Suite 310, Chicago, Illinois 60601 ("Mortgagor") to Aries Capital Incorporated, an Illinois corporation, having its principal place of business at 220 West Huron Street, Suite 500 West, Chicago, Illinois 60610 ("Mortgagee").

## WITNESSETH:

To secure the payment of an indebtedness in the principal sum of One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00), lawful money of the United States of America, to be paid with interest according to a certain note dated the date hereof made by Mortgagor to Mortgagee (the note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note") and all other sums due hereunder, under the Other Security Documents (hereinafter defined) and under the Note (said indebtedness, interest and all sums due hereunder and under the Note and the Other Security Documents being collectively called the "Debt"), Mortgagor has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned, and hypothecated and by these presents does hereby mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate unto Mortgagee the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter described are collectively referred to herein as the "Mortgaged Property");

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

(b) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have

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an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "Uniform Commercial Code") superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain or condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(d) all leases and subleases (including, without limitation, all guarantees thereof) and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (the "Leases") and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements (the "Rents"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property or any part thereof;

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property or any part thereof;

(g) all accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any



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other governmental impositions related to the Mortgaged Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon;

(h) all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Mortgaged Property or any part thereof;

(i) all rights which Mortgagor now has or may hereafter acquire, to be indemnified and/or held harmless from any liability, loss, damage, cost or expense (including, without limitation, attorneys' fees and disbursements) relating to the Mortgaged Property or any part thereof; and

(j) all proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

## Part I

### General Provisions

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Mortgagor shall pay the Debt at the time and in the manner provided in the Note and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Mortgage now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, which evidences, secures or guarantees all or any portion of the payments due under the Note or otherwise is executed and/or delivered in connection with the Note and Mortgage (the "Other Security Documents"), are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

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2. Warranty of Title. Mortgagor warrants that Mortgagor has good, marketable and insurable title to the Mortgaged Property and has the right to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Insurance. (a) Mortgagor, at its sole cost and expense, will keep the Mortgaged Property insured during the entire term of this Mortgage for the mutual benefit of Mortgagor and Mortgagee against loss or damage by fire and against loss or damage by other risks and hazards covered by a standard extended coverage insurance policy including, but not limited to, riot and civil commotion, vandalism, malicious mischief, burglary and theft. Such insurance shall be in an amount equal to the greatest of (i) the then full replacement cost of the Improvements and Equipment, without deduction for physical depreciation, (ii) the outstanding principal balance of the Loan (hereinafter defined), and (iii) such amount that the insurer would not deem Mortgagor a co-insurer under said policies. The policies of insurance carried in accordance with this paragraph (the "Policies") shall be paid annually in advance.

(b) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall also obtain and maintain during the entire term of this Mortgage the following Policies:

(i) Flood insurance if any part of the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Program in an amount at least equal to the outstanding principal amount of the Note or the maximum limit of coverage available with respect to the Improvements and Equipment under said Program, whichever is less.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages.

(iii) Rental loss insurance in an amount equal to the aggregate annual amount of all rents and additional rents payable by all of the tenants under the Leases (whether or not such Leases are terminable in the event of a fire or casualty), such rental loss insurance to cover rental losses for a period of at least two years after the date of the fire or casualty in question. The amount of such rental loss insurance shall be increased from time to time during the term of this Mortgage as and when new Leases and renewal Leases are

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entered into in accordance with the terms of this Mortgage, to reflect all increased rent and increased additional rent payable by all of the tenants under such renewal Leases and all rent and additional rent payable by all of the tenants under such new Leases.

(iv) Insurance against loss or damage from explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements.

(v) Ordinance or law coverage to compensate for the cost of demolition and the increased cost of construction.

(vi) Such other insurance as may from time to time be reasonably required by Mortgagee in order to protect its interests.

(c) All Policies (i) shall be issued by companies approved by Mortgagee and licensed to do business in the state where the Mortgaged Property is located, with a claims paying ability rating of "AA" or better by Standard & Poor's Ratings Group or a rating of "A:X" or better in the current Best's Insurance Reports, (ii) shall contain the standard New York mortgagee non-contribution clause naming Mortgagee as the person to which all payments made by such insurance company shall be paid, (iii) shall be maintained throughout the term of this Mortgage without cost to Mortgagee, (iv) shall be delivered to Mortgagee, (v) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under said Policies and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification or cancellation, and (vi) shall be satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee as to amounts, form, risk coverage, deductibles, loss payees and insureds. Mortgagor shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable. Not later than thirty (30) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Mortgagee satisfactory evidence of the renewal of each Policy.

(d) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, the Mortgagor shall give prompt notice thereof to the Mortgagee and promptly repair the Mortgaged Property to be at least equal value and of substantially the same character as prior to such damage regardless of whether insurance proceeds are made available to Mortgagor pursuant to the remaining provisions of this paragraph. The expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Mortgagor to Mortgagee upon demand.

(e) In the event of a Minor Casualty (hereinafter defined), the net amount of all insurance proceeds received by the Mortgagee with respect to such damage or destruction, after deduction of the reasonable costs and expenses incurred by the Mortgagee in collecting the same (the "Net Proceeds") shall be disbursed by the Mortgagee in accordance with the terms and conditions

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set forth herein to pay for the costs and expenses of the Restoration (hereinafter defined) provided (i) no Event of Default has occurred and remains uncured under this Mortgage, the Note or any of the Other Security Documents, (ii) subject to the obligation of the Mortgagee to disburse all Net Proceeds in accordance herewith, the Mortgagor proceeds promptly after the insurance claims are settled with the restoration, replacement, rebuilding or repair of the Mortgaged Property as nearly as possible to the condition the Mortgaged Property was in immediately prior to such fire or other casualty (the "Restoration"), (iii) the Restoration shall be done in compliance with all applicable laws, rules and regulations, (iv) a set of the plans and specifications in connection with the Restoration is submitted to the Mortgagee and is reasonably satisfactory to the Mortgagee in all material respects, (v) the Mortgagor carries builder's risk insurance reasonably satisfactory to the Mortgagee, (vi) all reasonable costs and expenses incurred by the Mortgagee in connection with making the Net Proceeds available for the Restoration of the Mortgaged Property including, without limitation, counsel fees and inspecting engineer fees incurred by the Mortgagee, are paid by the Mortgagor, (vii) the Mortgaged Property as restored, in the reasonable judgment of Mortgagee, will generate sufficient income to pay all expenses in connection with the operation of the Mortgaged Property and the debt service under the Note, and (viii) Mortgagee shall have received evidence reasonably satisfactory to it that, during the period of the Restoration, the sum of (A) income derived from the Mortgaged Property, as reasonably determined by Mortgagee, plus (B) proceeds of rent loss insurance or business interruption insurance, if any, to be paid will equal or exceed the sum of (C) expenses in connection with the operation of the Mortgaged Property and (D) the debt service under the Note. The term "Minor Casualty" shall mean a casualty which renders untenable no more than 10% of the net rentable area of the Improvements and results in a rent interruption of no more than 10% of the Rents. For the purpose of this paragraph, a portion of the Improvements shall be considered untenable if following the casualty such portion of the Improvements is not rentable at the rent existing prior to the casualty.

(f) The Net Proceeds shall be held in trust by the Mortgagee to be used in connection with the Restoration as herein set forth and shall be paid by the Mortgagee to, or as directed by, the Mortgagor, less customary retainage, from time to time during the course of the Restoration (but not more frequently than once per month), upon receipt of evidence, reasonably satisfactory to the Mortgagee, that (i) all materials installed and work and labor performed (except to the extent they are to be paid for out of the requested payment) in connection with the Restoration have been paid for in full, (ii) no mechanics' or other liens or encumbrances on the Mortgaged Property arising out of the Restoration exist which have not been bonded or otherwise discharged or released, and (iii) the balance of the Net Proceeds plus the balance of any deficiency deposits given by the Mortgagor to the Mortgagee pursuant to the provisions of this paragraph hereinafter set forth shall be sufficient to pay in full the balance of the cost of the Restoration.

(g) The excess, if any, of the Net Proceeds after payment to the Mortgagor as provided herein shall be applied by the Mortgagee in reduction of the Debt in such priority and proportions as the Mortgagee in its discretion shall deem proper. Notwithstanding anything to the contrary contained herein, if the Net Proceeds shall be less than \$50,000 the Net Proceeds shall be released to the Mortgagor, in trust, prior to commencement of the Restoration. Upon completion

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of the Restoration, the Mortgagor shall deliver evidence reasonably satisfactory to the Mortgagee that (i) all materials installed and work and labor performed in connection with the Restoration have been paid for in full and (ii) no mechanics' or other liens or encumbrances on the Mortgaged Property arising out of the Restoration exist which have not been bonded or otherwise discharged of record. Upon disbursement of all Net Proceeds, any remaining Net Proceeds shall be released to the Mortgagor upon completion of the entire Restoration to the satisfaction of the Mortgagee and the satisfaction of the obligations on the part of the Mortgagor set forth in this paragraph. If at any time the Net Proceeds, or the undisbursed balance thereof, shall not in the reasonable opinion of the Mortgagee be sufficient to pay in full the balance of the cost of the Restoration, the Mortgagor shall deposit the deficiency with the Mortgagee before any further disbursement of the Net Proceeds shall be made.

(h) Any amount of the Net Proceeds received by the Mortgagee and not required to be disbursed for the Restoration pursuant to the provisions of this paragraph hereinabove set forth may, in the Mortgagee's discretion, be either retained and applied by the Mortgagee toward payment of the Debt in such priority and proportions as the Mortgagee in its discretion shall deem proper or, at the discretion of the Mortgagee, either in whole or in part, to the Mortgagor for such purposes as the Mortgagee shall designate. Such application toward the Debt shall be without any prepayment consideration, except that if an Event of Default or an event with notice and/or the passage of time, or both, would constitute an Event of Default (hereinafter defined), has occurred, then such application shall be subject to the prepayment consideration computed in accordance with the Note.

4. Payment of Taxes, etc. (a) Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as the same become due and payable. Mortgagor will deliver to Mortgagee, promptly upon Mortgagee's request, evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee or its designee receipts for the payment of the Taxes, Other Charges and said utility services prior to the date the same shall become delinquent.

(b) After prior written notice to Mortgagee, Mortgagor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes or Other Charges, provided that (i) Mortgagor is not in default under the Note or this Mortgage, (ii) Mortgagor is permitted to do so under the provisions of any mortgage or deed of trust junior in lien to this Mortgage, (iii) such proceeding shall suspend the collection of the Taxes or Other Charges

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from Mortgagor and from the Mortgaged Property, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder, (v) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Mortgagor shall have set aside adequate reserves for the payment of the Taxes or Other Charges, together with all interest and penalties thereon, and (vii) Mortgagor shall have furnished such security as may be required in the proceeding, or as may be requested by Mortgagee, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon.

5. Escrow Fund. Mortgagor shall, at the option of Mortgagee or its designee, pay to Mortgagee on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable, during the next ensuing twelve (12) months, and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (said amounts in (a) and (b) above hereinafter called the "Escrow Fund"). The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Paragraphs 3 and 4 hereof, Mortgagee shall, in its discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Mortgagor shall promptly pay to Mortgagee, upon demand, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Escrow Fund to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note; or
- (v) All other sums payable pursuant to the Note, this Mortgage and the Other Security Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Mortgage.

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Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. No earnings or interest on the Escrow Fund shall be payable to Mortgagor.

6. Condemnation. Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, in this Mortgage and the Other Security Documents and the Debt shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Mortgagee to the discharge of the Debt. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein and in the Note. Mortgagor shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Mortgagor, to be paid directly to Mortgagee. Mortgagee may apply any such award or payment to the reduction or discharge of the Debt whether or not then due and payable (such application to be without any prepayment consideration, except that if an Event of Default, or an event with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the prepayment consideration computed in accordance with the Note). If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt.

7. Leases and Rents. (a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee its right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instrument, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Paragraph 7, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon an Event of Default, the license granted to Mortgagor herein shall be automatically revoked and Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes

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control of the Mortgaged Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon the revocation of the license granted herein to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Debt in such priority and proportion as Mortgagee in its discretion shall deem proper.

(b) All Leases shall be written on the standard form of lease which has been approved by Mortgagee. Upon request, Mortgagor shall furnish Mortgagee with executed copies of all Leases. No material changes may be made to the Mortgagee-approved standard lease without the prior written consent of Mortgagee. In addition, all renewals of Leases and all proposed leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions. All Leases shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Mortgagee. All proposed Leases shall be subject to the prior approval of the Mortgagee; provided, however, a proposed Lease which otherwise satisfies the terms and conditions of this Paragraph 7(b) and which affects less than [5%] of the net rentable area of the Improvements and contributes no more than [5%] of the Rents for the Mortgaged Property shall not require the prior approval of Mortgagee. Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) upon request of Mortgagee shall promptly send copies to Mortgagee of all notices of default which mortgagor shall send or receive thereunder; (iii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (vi) shall not alter, modify or change any material terms of the Leases without the prior written consent of Mortgagee, or cancel or terminate the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Premises or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; (vi) shall not alter, modify or change any material terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Mortgagee; (viii) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; and (ix) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require.

(c) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor at such commercial or savings bank or banks as may be reasonably satisfactory to Mortgagee. Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be (i) maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described; (ii) issued by an institution reasonably satisfactory to Mortgagee; (iii) if permitted pursuant to any legal requirements, name Mortgagee as payee or mortgagee thereunder (or at Mortgagee's option, be fully assignable

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to Mortgagee); and (iv) comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, remit to Mortgagee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Mortgaged Property, to be held by Mortgagee subject to the terms of the Leases.

8. Maintenance of Mortgaged Property. Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof and obtain and maintain all permits, licenses and certificates required for the lawful use and operation of the Mortgaged Property. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Paragraph 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee.

9. Transfer or Encumbrance of the Mortgaged Property. (a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alien, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit the Mortgaged Property or any part thereof to be sold, conveyed, aliened, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Paragraph 9 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid

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in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, any Guarantor (hereinafter defined), or any general partner of Mortgagor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation; (iv) if Mortgagor, any Guarantor or any general partner of Mortgagor or any Guarantor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer, pledge or encumbrance of the partnership interest of any general partner, managing partner or limited partner or the transfer, pledge or encumbrance of the interest of any joint venturer or member; and (v) the removal or resignation of the managing agent for the Mortgaged Property or the transfer of ownership, management or control of such managing agent to a person or entity other than the general partner or managing partner of Mortgagor.

(c) Mortgagor shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

(d) Mortgagee's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any part thereof shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property made in contravention of this paragraph shall be null and void and of no force and effect.

(e) Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

(f) Mortgagee's consent to the sale or transfer of the Mortgaged Property will not be unreasonably withheld after consideration of all relevant factors, provided that:

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- (i) no Event of Default or event which with the giving of notice or the passage of time would constitute an Event of Default shall have occurred and remain uncured;
- (ii) the proposed transfer shall occur on a date twelve (12) months or more after the date hereof;
- (iii) the proposed transferee ("Transferee") shall be a reputable entity or person of good character, creditworthy, with sufficient financial worth considering the obligations assumed and undertaken, as evidenced by financial statements and other information reasonably requested by Mortgagee;
- (iv) the Transferee and its property manager shall have sufficient experience in the ownership and management of properties similar to the Mortgaged Property, and Mortgagee shall be provided with reasonable evidence thereof (and Mortgagee reserves the right to approve the Transferee without approving the substitution of the property manager);
- (v) Mortgagee shall have recommendations in writing from the Rating Agencies (as hereinafter defined) to the effect that such transfer will not result in a re-qualification, reduction or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction (as hereinafter defined). The term "Rating Agencies" as used herein shall mean each of Standard & Poor's Ratings Services, a division of McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co. and Fitch Investors Service, L.P., or any other nationally-recognized statistical rating agency which has been approved by Mortgagee;
- (vi) the Transferee shall have executed and delivered to Mortgagee an assumption agreement in form and substance acceptable to Mortgagee, evidencing such Transferee's agreement to abide and be bound by the terms of the Note, this Mortgage and the Other Security Documents, together with such legal opinions and title insurance endorsements as may be reasonably requested by Mortgagee; and
- (vii) Mortgagee shall have received an assumption fee equal to one percent (1%) of the then unpaid principal balance of the Note in addition to the payment of all costs and expenses incurred by Mortgagee in connection with such assumption (including attorneys' fees and costs).

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10. Estoppel Certificates and No Default Affidavits. (a) After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note and this Mortgage are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Mortgagee, Mortgagor, within ten (10) days, will furnish Mortgagee with estoppel certificates from any lessees under the Leases as required by their respective Leases.

11. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

12. No Credits on Account of the Debt. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

13. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

14. Usury Laws. It is expressly stipulated and agreed to be the intent of Mortgagor, and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Paragraph 14 shall control every other covenant and agreement in this Mortgage and the Other Security Documents. If the

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applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the Other Security Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Debt and the provisions of the Note and the Other Security Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the Other Security Documents, it is not the intention of Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

## 15. Financial Statements.

(a) The financial statements heretofore furnished to Mortgagee are, as of the dates specified therein, complete and correct and fairly present the financial condition of the Mortgagor and any other persons or entities that are the subject of such financial statements, and are prepared in accordance with generally accepted accounting principles. Mortgagor does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Mortgagor and reasonably likely to have a materially adverse effect on the Mortgaged Property or the operation thereof as a an office building, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operating or business of Mortgagor from that set forth in said financial statements.

(b) Mortgagor will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Mortgaged Property and will furnish to Mortgagee on or before forty-five (45) days after the end of each calendar quarter the following items, each certified by Mortgagor as being true and correct: (i) a written statement (rent roll) dated as of the last day of each such calendar quarter identifying each of the Leases by the term, space occupied, rental required to be paid, security deposit paid, any rental concessions, and identifying any defaults or payment delinquencies thereunder; and (ii) monthly and year to date operating statements prepared for each calendar month during each such calendar quarter. Within ninety (90) days following the end of each calendar year, Mortgagor shall furnish statements of its financial

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affairs and condition including a balance sheet and a statement of profit and loss for the Mortgagor in such detail as Mortgagee may request, and setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar year prepared by a certified public accountant approved by Mortgagee. Mortgagor's annual financial statements shall be accompanied by a certificate executed by the chief financial officer of Mortgagor or the general partner of Mortgagor, as applicable, stating that each such annual financial statement presents fairly the financial condition of the Mortgaged Property being reported upon and has been prepared in accordance with generally accepted accounting principles consistently applied. Mortgagor's annual financial statements shall include (i) a list of the tenants, if any, occupying more than twenty (20%) percent of the total floor area of the Improvements, and (ii) a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which Leases shall expire in each such year, each such percentage to be expressed on both a per year and a cumulative basis. At any time and from time to time Mortgagor shall deliver to Mortgagee or its agents such other financial data as Mortgagee or its agents shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property.

(c) Mortgagor shall deposit with Mortgagee on the first day of each calendar month the sum of three hundred dollars (\$300.00) (the "Required Records Escrow Fund") which shall be held by Mortgagee for disbursement to Mortgagee in the event that Mortgagor fails to provide to Mortgagee or its designee any of the financial statements, certificates, reports or information (the "Required Records") required by this Paragraph 15. Mortgagee shall be entitled to disbursement of nine hundred dollars (\$900.00) from the Required Records Escrow Fund if the Required Records are not delivered within thirty (30) days after the date upon which such Required Record is due; provided that, Mortgagee has given at least fifteen (15) days prior written notice to Mortgagor of such failure by Mortgagor to timely submit the applicable Required Record. Mortgagee shall make disbursements to Mortgagor from the Required Records Escrow Fund on a quarterly basis in increments of nine hundred dollars (\$900.00) provided that all Required Records have been delivered pursuant to this Paragraph 15. The Required Records Escrow Fund shall be held in an interest bearing account in Mortgagee's name at a financial institution selected by Mortgagee in its sole discretion. All earnings of interest on the Required Records Escrow Fund shall be and become part of such Required Records Escrow Fund and shall be disbursed as provided in this Paragraph 15. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Required Records Escrow Fund to the payment of the Debt in any order in its sole discretion. Until expended or applied as above provided, the Required Records Escrow Fund shall constitute additional security for the Debt. The Required Records Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. Upon payment of the Debt and any other amounts due under the Other Security Documents, Mortgagee shall disburse to Mortgagor any remaining monies in the Required Records Escrow Fund.

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16. Performance of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

17. Further Acts, etc. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, aliened, encumbered, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this Paragraph 17.

18. Recording of Mortgage, etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

19. Prepayment. If permitted by the Note, the Debt may be prepaid in accordance with the terms thereof.

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20. Events of Default. The Debt shall become immediately due and payable at the option of Mortgagee, without notice or demand, upon any one or more of the followings events ("Events of Default"):

(a) if any portion of the Debt is not paid on or before the fifth (5th) day after the same is due;

(b) if any of the Taxes or Other Charges is not paid when the same is due and payable, subject to the provisions of Paragraph 4;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Mortgagee upon request;

(d) if Mortgagor violates or does not comply with any of the provisions of Paragraphs 7, 9, 33 or 34;

(e) if any representation or warranty of Mortgagor, or of any person guaranteeing payment of the Debt or any portion thereof or performance by Mortgagor of any of the terms of this Mortgage (a "Guarantor"), made herein or in an such guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying his debts as they become due;

(g) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(h) if Mortgagor shall be in default under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;

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

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(j) if Mortgagor fails to cure promptly any violations of laws or ordinances affecting the Mortgaged Property; or

(k) if for more than thirty (30) days after notice from Mortgagee, Mortgagor shall continue to be in default under any other term, covenant or condition of the Note, this Mortgage or any of the Other Security Documents.

21. Default Interest. Upon the occurrence of any Event of Default, Mortgagor shall pay interest on the unpaid principal balance of the Note at the rate of the greater of (i) 5% above the Applicable Interest Rate (as defined in the Note) or (ii) 5% above the Base Rate (hereinafter defined) in effect at the time of the occurrence of the Event of Default (the "Default Rate"). The term "Base Rate" shall mean the annual rate announced by Citibank, N.A., in New York City, New York as its base rate in effect at the time of the occurrence of the Event of Default. The Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Debt. This charge shall be added to the Debt, and shall be deemed secured by this Mortgage. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Mortgagee by reason of the occurrence of any Event of Default. If the Default Rate is above the maximum rate permitted by applicable law, the Default Rate shall be the maximum rate permitted by applicable law.

22. Right to Cure Defaults. Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Paragraph 22, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment of Mortgagee. All such costs and expenses incurred by Mortgagee together with interest thereon calculated at the above rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the Other Security Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

23. Late Payment Charge. If any portion of the Debt is not paid on or before the fifth (5th) day after the date on which it is due, Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum

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amount permitted by applicable law, to defray the expense incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Mortgage and the Other Security Documents.

24. Prepayment After Event of Default. If following the occurrence of any Event of Default, Mortgagor shall tender payment of an amount sufficient to satisfy the Debt at any time prior to a sale of the Mortgaged Property either through foreclosure or the exercise of other remedies available to Mortgagee under this Mortgage, such tender by Mortgagor shall be deemed to be a voluntary prepayment under the Note and this Mortgage in the amount tendered. If at the time of such tender prepayment of the principal balance of the Note is not permitted, Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee a sum equal to interest which would have accrued on the principal balance of the Note at the Applicable Interest Rate from the date of such tender to the earlier of (i) the Maturity Date (as defined in the Note), or (ii) the first day of the period during which prepayment of the principal balance of the Note would have been permitted together with a prepayment consideration equal to the prepayment consideration which would have been payable as of the first day of the period during which prepayment would have been permitted. If at the time such tender prepayment of the principal balance of the Note is permitted, Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee the applicable prepayment consideration specified in the Note.

25. Right of Entry. Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

26. Remedies. (a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute proceedings for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then

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due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;

(iv) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note;

(vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;

(viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues profits and other income of the Mortgaged Property and every part thereof; and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, assessments, insurance

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and Other Charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees; or

(ix) pursue such other rights and remedies as may be available at law and in equity.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its discretion shall deem proper.

(c) To the extent permitted by applicable law, Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this paragraph, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this paragraph shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this paragraph, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

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(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 26 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee and such costs and expenses shall constitute a portion of the Debt and shall be secured in this Mortgage.

27. Reasonable Use and Occupancy. In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor or may require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

28. Security Agreement. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this Paragraph 28 the "Collateral"). If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or

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any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

29. Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

30. Waiver of Counterclaim. Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee, and, to the extent permitted by law, waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Mortgagee against Mortgagor, or in any matters whatsoever arising out of or in any way connected with this Mortgage, the Note, any of the Other Security Documents or the Debt.

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

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

33. Hazardous Substances. Except as disclosed in the Environmental Report (as defined in Section 34), (a) Mortgagor hereby represents and warrants to Mortgagee that, to the best of Mortgagor's knowledge, after due inquiry and investigation: (i) the Mortgaged Property is not in direct or indirect violation of any federal, state, or local law, ordinance or regulation or any court judgment or order of any federal, state or local agency or regulatory body applicable to Mortgagor or to the Mortgaged Property relating to industrial hygiene or to environmental or unsafe conditions

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including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Substances (hereinafter defined), those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations, or processes relating to the Mortgaged Property, those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Mortgaged Property, or including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Resource Conservation and Recovery Act (including but not limited to subtitle I relating to underground storage tanks), the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, the Federal Water Pollution Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the National Environmental Policy Act and the Rivers and Harbors Appropriation Act and all regulations adopted in respect to the foregoing laws (collectively, "Environmental Laws"); (ii) the Mortgaged Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, pollutants or contaminants, petroleum and petroleum products, tremolite, anthophylli or actinolite or polychlorinated biphenyls (including, without limitation, any raw materials which include hazardous constituents) or paint with more than 0.5 percent lead by dry weight ("Lead Based Paint") and any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances"); (iii) no Hazardous Substances are or have been, prior to Mortgagor's acquisition of the Mortgaged Property, discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Mortgaged Property otherwise than in compliance with all Environmental Laws; (iv) no property adjoining the Mortgaged Property is being used or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances and there is no threat of any Hazardous Substances migrating to the Mortgaged Property; (v) no underground storage tanks exist on any of the Mortgaged Property except as those disclosed in writing to Mortgagee and which comply with applicable Environmental Laws; and (vi) Mortgagor has truthfully and fully provided to Mortgagee, in writing, any and all information relating to conditions in, on, under or from the Mortgaged Property that is known to Mortgagor and that is contained in files and records of Mortgagor, including but not limited to any reports relating to Hazardous Substances in, on, under or from the Mortgaged Property and/or to the environmental condition of the Mortgaged Property.

(b) So long as Mortgagor owns or is in possession of the Mortgaged Property, Mortgagor shall (i) keep or cause the Mortgaged Property to be kept free from Hazardous Substances and in compliance with all Environmental Laws; (ii) promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Substances on or affecting the Mortgaged Property and/or if Mortgagor shall become aware that the Mortgaged Property is in direct or indirect violation of any Environmental Laws; and (iii) conduct and complete all remedial action necessary to clean up such Hazardous Substances and remove such Hazardous Substances and/or cure such violations, as

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applicable, as required by law, promptly after Mortgagor becomes aware of same, at Mortgagor's sole expense. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure.

(c) The obligations and liabilities of Mortgagor under this Paragraph 33 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

<sup>34</sup> Asbestos Environmental Monitoring. (a) Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, after due inquiry and investigation, (a) no asbestos or any substance containing asbestos ("Asbestos") is located on the Mortgaged Property except as disclosed in that certain Environmental Assessment Report, dated 1/19/97 by Q&A (the "Environmental Report"); and (b) any Asbestos disclosed in the Environmental Report is not friable and otherwise complies with all applicable federal, state and local laws, ordinances, rules and regulations with respect thereto. Mortgagor shall not install in the Mortgaged Property, nor permit to be installed in the Mortgaged Property, Asbestos and shall remove any Asbestos promptly upon discovery to the satisfaction of Mortgagee, at Mortgagor's sole expense, or take all action necessary to ensure that such Asbestos is abated or managed in a manner which complies with all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos. Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee.

(b) Upon Mortgagee's reasonable request, at any time and from time to time while this Mortgage is in effect, Mortgagor shall provide, at Mortgagor's sole expense, an inspection or audit of the Mortgaged Property prepared by an engineering or consulting firm approved by Mortgagee, indicating the presence or absence of Asbestos and Hazardous Substances on the Mortgaged Property. If Mortgagor fails to provide such inspection or audit within (30) days after such request, Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and a license to undertake such inspection or audit. The cost of such inspection or audit shall be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

(c) The obligations and liabilities of Mortgagor under this Paragraph 34 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee

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of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

35. Handicapped Access. (a) Mortgagor agrees that the Mortgaged Property shall at all times strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

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

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

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36. Indemnification. In addition to any other indemnifications provided herein or in the Other Security Documents, Mortgagor covenants and agrees at its sole cost and expense to protect, defend, indemnify and save harmless Mortgagee, its directors, officers, shareholders, employees, agents, successors, assigns and attorneys from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses (including diminution in the value of the Mortgaged Property or any part thereof), fines, costs and expenses (including without limitation reasonable attorneys' fees and expenses, sums paid in settlement of claims and any such fees and expenses incurred in enforcing this Mortgage or collecting any sums due hereunder), imposed upon or incurred by or asserted against Mortgagee, its directors, officers, shareholders, employees, agents, successors, assigns and attorneys by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services, or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Mortgaged Property or any other property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; (j) any failure of the Mortgaged Property to comply with any Access Laws; (k) the use, generation, refining, manufacture, transportation, transfer, production, processing, storage, handling or treatment of any Hazardous Substances or Asbestos, on, under, from, or affecting the Mortgaged Property or any part thereof or any other property; (l) the imposition, recording or filing or the threatened imposition recording or filing of any environmental lien encumbering the Mortgaged Property; and (m) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Mortgaged Property. Any amounts payable to Mortgagee by reason of the application of this Paragraph 36 shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this Paragraph 36 shall survive any termination, satisfaction or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

37. Notices. Any notice required or permitted to be given under this Mortgage shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt



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requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Paragraph 37). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth on the first page of this Mortgage. Any communication so addressed and mailed shall be deemed to be given on the earliest of (a) when actually delivered, (b) on the first business day after deposit with an overnight air courier service, or (c) on the third business day after deposit in the United States mail, postage prepaid, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, Mortgagee or Mortgagor, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next business day if not confirmed during normal business hours. Any party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address

38. Authority. (a) Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed; and (b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

39. Compliance with ERISA and State Statutes on Governmental Plans. (a) Mortgagee represents and warrants to Mortgagor that, as of the date of this Mortgage and throughout the term of this Mortgage, the source of funds from which Mortgagee extends this Mortgage is its general account, which is subject to the claims of its general creditors under state law.

(b) Mortgagor represents and warrants that, as of the date of this Mortgage and throughout the term of this Mortgage, (i) Mortgagor is not an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, and (ii) the assets of such Mortgagor do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

(c) Mortgagor represents and warrants to Mortgagee that, as of the date of this Mortgage and throughout the term of this Mortgage (i) Mortgagor is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and (ii) transactions by or with Mortgagor are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

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(d) Mortgagor covenants and agrees to deliver to Mortgagee such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Mortgagee in its sole discretion, that (i) Mortgagor is not an "employee benefit plan" or a "governmental plan"; (ii) Mortgagor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

1. Equity interests in Mortgagor are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);
2. Less than 25 percent of all equity interests in such Mortgagor are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or
3. Mortgagor qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

(e) Any of the following shall constitute an Event of Default under this Mortgage, entitling Mortgagee to exercise any and all remedies to which it may be entitled under this Mortgage, and any Other Security Documents: (i) the failure of any representation or warranty made by any Mortgagor under this paragraph to be true and correct in all respects, (ii) the failure of any Mortgagor to provide Mortgagee with the written certifications and evidence referred to in this paragraph, or (iii) the consummation by Mortgagor or any one Mortgagor of a transaction which would cause this Mortgage or any exercise of Mortgagee's rights under this Mortgage, or the Other Security Documents to constitute a non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, or otherwise subjecting Mortgagee to liability for violation of ERISA or such state statute.

(f) Mortgagor shall indemnify Mortgagee and defend and hold Mortgagee harmless from and against all civil penalties, excise taxes, or other loss, cost, damage and expense (including, without limitation, attorneys' fees and disbursements and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Mortgagee's sole discretion) that Mortgagee may incur, directly or indirectly, as a result of a default under this Paragraph 39. This indemnity shall survive any termination, satisfaction or foreclosure of this Mortgage.

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40. Forfeiture. Mortgagor represents and warrants to Mortgagee that there has not been committed by Mortgagor or any other person in occupancy of or involved with the operation or use of the Mortgaged Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Mortgagor's obligations under the Note, this Mortgage or under any of the Other Security Documents. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this paragraph. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor or all or any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Note, this Mortgage, or the Other Security Documents is a potential result, shall, at the election of Mortgagee, constitute an Event of Default hereunder without notice or opportunity to cure.

41. Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

42. Remedies of Mortgagor. In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the Other Security Documents, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment.

43. Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

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44. Non-Waiver. The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantors to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the Other Security Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

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

46. Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

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

48. Headings, etc. The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

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49. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

50. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

51. Homestead. Mortgagor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Premises as against the collection of the Debt, or any part hereof.

52. Assignments. Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any Assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

53. Cooperation. Mortgagor acknowledges that Mortgagee and its successors and assigns may (a) sell this Mortgage, the Note and Other Security Documents to one or more investors as a whole loan, (b) participate the loan (the "Loan") secured by this Mortgage to one or more investors, (c) deposit, through one or a series of transactions, this Mortgage, the Note and Other Security Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary Market Transactions"). Mortgagor shall cooperate in good faith with Mortgagee in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any rating agency involved in any Secondary Market Transaction including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the rating agency and addressing such matters as the rating agency may require; provided, however, that the Mortgagor shall not be required to modify any documents evidencing or securing the Loan which would modify (i) the

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interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the amortization of principal of the Note or (iv) any other material economic term of the Loan. Mortgagor shall provide such information and documents relating to Mortgagor, Guarantor, if any, the Mortgaged Property and any tenants of the Improvements as Mortgagee may reasonably request in connection with a Secondary Market Transaction. Mortgagee shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Mortgagor, the Guarantor, if any, the Mortgaged Property and any tenant of the Improvements. Mortgagor acknowledges that certain information regarding the Loan and the parties thereto and the Mortgaged Property may be included in a private placement memorandum, prospectus or other disclosure documents.

**54. Waiver of Jury Trial. MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE, OR THE OTHER SECURITY DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.**

**55. Recourse Obligations.** (a) Subject to the qualifications below, Mortgagee shall not enforce the liability and obligation of Mortgagor, or any general partner of Mortgagor, to perform and observe the obligations contained in the Note or this Mortgage by any action or proceeding wherein a money judgment shall be sought against Mortgagor, or any general partner of Mortgagor, except that Mortgagee may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Mortgagee to enforce and realize upon the Note, this Mortgage, the Other Security Documents, and the interests in this Mortgaged Property, the Rents and any other collateral given to Mortgagee and created by this Mortgage and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Mortgagor only to the extent of Mortgagor's interest in this Mortgaged Property, in the Rents and in any other collateral given to Mortgagee. Mortgagee, by accepting the Note and this Mortgage, agrees that it shall not sue for, seek or demand any deficiency judgment against Mortgagor, or any general partner of Mortgagor, in any such action or proceeding, under or by reason of or under or in connection with this Mortgage, the Other Security Documents or the Note. The provisions of this paragraph shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Mortgage, the Other Security Documents or the Note; (ii) impair the

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right of Mortgagee to name Mortgagor, or any general partner of Mortgagor, as a party defendant in any action or suit for foreclosure and sale under this Mortgage; (iii) affect the validity or enforceability of any guaranty made in connection with this Mortgage, the Note, or the Other Security Documents; (iv) impair the right of Mortgagee to obtain the appointment of a receiver, (v) impair the enforcement of the Assignment of Leases and Rents executed in connection herewith; or (vi) constitute a waiver of the right of Mortgagee to enforce the liability and obligation of Mortgagor, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Mortgagee (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

- (a) fraud or intentional misrepresentation by Mortgagor or any Guarantor in connection with the Loan;
- (b) the gross negligence or willful misconduct of Mortgagor;
- (c) the breach of any representation, warranty, covenant or indemnification provision in that certain Environmental Indemnity Agreement of even date herewith given by Mortgagor to Mortgagee or in this Mortgage concerning environmental laws, hazardous substances and asbestos;
- (d) the removal or disposal of any portion of the Mortgaged Property after an Event of Default;
- (e) the misapplication or conversion by Mortgagor of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Mortgaged Property, (B) any awards or other amounts received in connection with the condemnation of all or a portion of the Mortgaged Property, or (C) any Rents following an Event of Default; and
- (f) any security deposits collected with respect to the Mortgaged Property which are not delivered to Payee upon a foreclosure of the Mortgaged Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof.

(b) Notwithstanding anything to the contrary in the Note, this Mortgage or in any of the Other Security Documents, the Debt shall be fully recourse to the Mortgagor and any general partner of Mortgagor in the event that (A) the first full monthly payment of principal and interest on the Debt is not paid when due, (B) this Mortgaged Property is further encumbered by a voluntary lien securing an obligation for which Mortgagor is personally liable for repayment, or (C) the Mortgaged Property is sold, transferred, conveyed, mortgaged or encumbered in violation of Paragraph 9 of this

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Mortgage. Nothing herein shall be deemed to be a waiver of any right which Mortgagee may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured by this Mortgage or to require that all collateral shall continue to secure all of the indebtedness owing to Mortgagee in accordance with the Note, Mortgage and Other Security Documents.

56. Single Purpose Entity/Separateness. Mortgagor represents, warrants and covenants as follows:

(a) Mortgagor does not own and will not own any asset or property other than (i) the Mortgaged Property, and (ii) incidental personal property necessary for the ownership or operation of the Mortgaged Property.

(b) Mortgagor will not engage in any business other than the ownership, management and operation of the Mortgaged Property and Mortgagor will conduct and operate its business as presently conducted and operated.

(c) Mortgagor will not enter into any contract or agreement with any affiliate of the Mortgagor, any constituent party of Mortgagor, any Guarantor or any affiliate of any constituent party or Guarantor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(d) Mortgagor has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt, (ii) trade and operational debt incurred in the ordinary course of business with trade creditors in amounts as are normal and reasonable under the circumstances, and (iii) debt incurred in the financing of Equipment. No indebtedness other than the Debt may be secured (subordinate or pari passu) by the Mortgaged Property.

(e) Mortgagor has not made and will not make any loans or advances to any third party (including any affiliate or constituent party, any Guarantor or any affiliate of any constituent party or Guarantor), and shall not acquire obligations or securities of its affiliates or any constituent party.

(f) Mortgagor is and will remain solvent and Mortgagor will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(g) Mortgagor has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Mortgagor will not, nor will Mortgagor permit any constituent party or Guarantor to amend, modify or otherwise change

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the partnership certificate, partnership agreement, articles of incorporation and bylaws, trust or other organizational documents of Mortgagor or such constituent party or Guarantor without the prior written consent of Mortgagee.

(h) Mortgagor will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and Mortgagor will file its own tax returns. Mortgagor shall maintain its books, records, resolutions and agreements as official records.

(i) Mortgagor will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Mortgagor, any constituent party of Mortgagor, any Guarantor or any affiliate of any constituent party or Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(j) Mortgagor will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(k) Neither Mortgagor nor any constituent party will seek the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Mortgagor.

(l) Mortgagor will not commingle the funds and other assets of Mortgagor with those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party of Guarantor, or any other person.

(m) Mortgagor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party or Guarantor, or any other person.

(n) Mortgagor does not and will not hold itself out to be responsible for the debts or obligations of any other person.

(o) INTENTIONALLY DELETED.

(p) INTENTIONALLY DELETED.

(q) INTENTIONALLY DELETED.

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(r) INTENTIONALLY DELETED.

(s) Certain Office Covenants. Mortgagor represents, warrants and covenants as follows:

(a) The Management Agreement, dated January 1, 1997 (the "Management Agreement"), between Mortgagor and Barbara D. Fedor ("Manager") pursuant to which Manager operates the Mortgaged Property is in full force and effect and there is no default or violation by any party thereunder. Mortgagor shall not terminate, cancel, modify, renew or extend the Management Agreement, or enter into any agreement relating to the management or operation of the Mortgaged Property with Manager or any other party without the express written consent of Mortgagee, which consent shall not be unreasonably withheld. If at any time Mortgagee consents to the appointment of a new manager, such new manager and Mortgagor shall, as a condition of mortgagee's consent, execute a Conditional Assignment of Management Agreement in the form then used by Mortgagee.

(b) Mortgagor shall maintain the Management Agreement for the operation of the Mortgaged Property in full force and effect and timely perform all of Mortgagor's obligations thereunder and enforce performance of all obligations of the manager thereunder. Mortgagor will enter into and cause the Manager to enter into a conditional assignment of such Management Agreement in form satisfactory to Mortgagee. Upon an Event of Default, Mortgagor at Mortgagee's request made at any time while such Event of Default continues, shall terminate the Management Agreement and replace the manager with a manager approved by Mortgagee.

IN WITNESS WHEREOF, Assignor has executed this instrument the day and year first above written.

WITNESS:

  
\_\_\_\_\_

MORTGAGOR:

E3939 L.L.C., an Illinois limited liability company

By:   
Barbara Fedor, Its Manager

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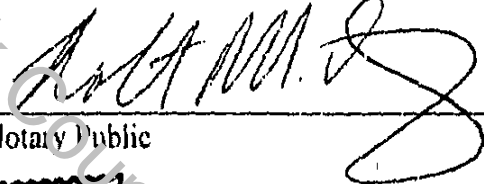
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## ACKNOWLEDGMENTS

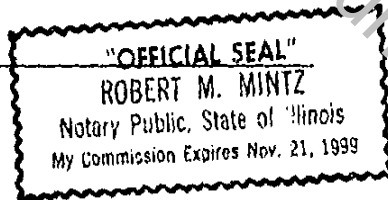
STATE OF ILLINOIS     )  
  )  
COUNTY OF   Cook    )

I, a notary public, in and for and residing in   Cook   County, in the State aforesaid, do hereby certify that Barbara Fedor, the manager of E3939 L.L.C., an Illinois limited liability company, personally known to me to be the same person whose name is subscribed in the foregoing instrument as such manager of such company, appeared before me this day in person and being first duly sworn by me, acknowledged that she signed and delivered the said instrument as her free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this   14th   day of   March  , 1997.

  
\_\_\_\_\_  
Notary Public

My commission expires:



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## EXHIBIT A

Legal Description

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SCHEDULE A CONTINUED

LEGAL DESCRIPTION:

PARCEL 1:

THE PART OF LOT "B" IN THE SUBDIVISION OF THE CIRCUIT COURT COMMISSIONERS IN PARTITION OF THAT PART OF THE NORTHEAST 1/4 LYING SOUTH OF THE ILLINOIS AND MICHIGAN CANAL RESERVE, OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS, ON SEPTEMBER 5, 1893 IN BOOK 59 OF PLATS, PAGE 32, AS DOCUMENT 1924571, BOUNDED AND DESCRIBED AS FOLLOWS:

FROM THE POINT OF INTERSECTION OF THE NORTH RIGHT OF WAY MARGIN OF WEST 40TH STREET (A PRIVATE STREET BEING 66 FEET IN WIDTH AS DEFINED IN TRUSTEE'S DEED DATED APRIL 6, 1965, AND RECORDED AS DOCUMENT NO. 19429737) WITH THE WEST RIGHT OF WAY MARGIN OF SOUTH PULASKI ROAD (SAID RIGHT OF WAY BEING 100 FEET IN WIDTH), RUNNING THENCE NORTH ALONG SAID WEST RIGHT OF WAY MARGIN OF SOUTH PULASKI ROAD A DISTANCE OF 655.63 FEET TO A POINT MARKED BY AN IRON PIPE PLACED AND THE POINT OF BEGINNING; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE LYING NORTHWEST OF ITS CHORD HAVING A RADIUS OF 666.69 FEET AND A CENTRAL ANGLE OF 7 DEGREES, 47 MINUTES, 38 SECONDS OF DISTANCE OF 90.69 FEET TO A POINT MARKED BY AN IRON PIPE PLACED, WHICH POINT IS 468.24 FEET EAST FROM THE EAST RIGHT OF WAY MARGIN OF SOUTH KARLOV AVENUE (A PRIVATE STREET BEING 66 FEET IN WIDTH AS DEFINED IN TRUSTEE'S DEED DATED APRIL 6, 1965, AND RECORDED AS DOCUMENT NO. 19429737) AND 616.65 FEET NORTH FROM SAID NORTH RIGHT OF WAY MARGIN OF WEST 40TH STREET; THENCE CONTINUING SOUTHWESTERLY ALONG THE ARC OF A CURVE LYING NORTHWEST OF ITS CHORD HAVING A RADIUS OF 366.02 FEET AND A CENTRAL ANGLE OF 12 DEGREES, 28 MINUTES, 00 SECONDS A DISTANCE OF 79.64 FEET TO A POINT MARKED BY AN IRON PIPE PLACED WHICH IS 403.68 FEET EAST FROM SAID EAST RIGHT OF WAY MARGIN OF SOUTH KARLOV AVENUE AND 570.37 FEET NORTH FROM SAID NORTH RIGHT OF WAY MARGIN OF WEST 40TH STREET; THENCE CONTINUING SOUTHWESTERLY ALONG THE ARC OF A CURVE LYING NORTHWEST OF ITS CHORD HAVING A RADIUS OF 391.56 FEET AND A CENTRAL ANGLE OF 9 DEGREES, 24 MINUTES, 02 SECONDS A DISTANCE OF 64.24 FEET TO A POINT MARKED BY AN IRON PIPE PLACED, LOCATED ON A LINE 523.79 FEET NORTH FROM AND PARALLEL WITH THE NORTH LINE OF WEST 40TH STREET, WHICH POINT IS 190.40 FEET WEST FROM SAID WEST LINE OF SOUTH PULASKI ROAD; THENCE WEST ALONG THE LAST ABOVE MENTIONED PARALLEL LINE A DISTANCE OF 359.60 FEET TO A POINT LOCATED AT THE INTERSECTION OF THE LAST ABOVE MENTIONED PARALLEL LINE AND THE EAST RIGHT OF WAY MARGIN OF SOUTH KARLOV AVENUE; THENCE NORTH ALONG THE EASTERN RIGHT OF WAY MARGIN OF SOUTH KARLOV AVENUE A DISTANCE OF 267.91 FEET TO A POINT MARKED BY AN IRON PIPE PLACED; THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF A CURVE LYING NORTH OF ITS CHORD HAVING A RADIUS OF 600.00 FEET AND A CENTRAL ANGLE OF 34 DEGREES, 40 MINUTES, 18 SECONDS A DISTANCE OF 363.08 FEET TO A POINT MARKED BY AN IRON PIPE PLACED, WHICH POINT IS 2,354.67 FEET NORTH OF THE SOUTH LINE OF THE SOUTH LINE OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN; AFORESAID COUNTY AND STATE, AND IS HEREINAFTER REFERRED TO AS POINT A; THENCE SOUTHEASTERLY 59.64 FEET TO A POINT MARKED BY AN IRON PIPE FOUND LOCATED ON LINE A, LINE A BEING DEFINED AS A STRAIGHT LINE RUNNING SOUTHEASTERLY FROM POINT A 199.62 FEET TO A POINT LOCATED ON THE WESTERN RIGHT OF WAY MARGIN OF SOUTH PULASKI ROAD; THENCE SOUTHEASTERLY 68.74 FEET TO A POINT MARKED BY AN IRON PIPE FOUND AND LOCATED ON A LINE PARALLEL TO AND 18.04 FEET NORTHEAST OF LINE A; THENCE SOUTHEASTERLY AND ALONG A LINE PARALLEL TO LINE A 68.74 FEET TO A POINT LOCATED ON THE WEST RIGHT OF WAY MARGIN OF SOUTH PULASKI ROAD AND MARKED BY AN IRON PIPE PLACED; THENCE SOUTHERLY ALONG THE WEST MARGIN OF THE RIGHT OF WAY OF SOUTH PULASKI ROAD 114.00 FEET TO THE POINT OF BEGINNING, AS SHOWN ON THAT PLAT OF SURVEY MADE BY CHICAGO GUARANTEE SURVEY COMPANY, ROBERT J. HANNON, ILLINOIS REGISTERED LAND SURVEYOR, FOR CHICAGO TITLE INSURANCE COMPANY AND EESCO, INC., DATED JULY 30, 1986, IN COOK COUNTY, ILLINOIS.

(THE FOREGOING DESCRIPTION IS BASED UPON THE FOLLOWING DEFINITIONS)

SOUTH KARLOV AVENUE (A PRIVATE STREET) IS DEFINED AS A STRIP OF LAND 66 FEET IN WIDTH, LYING IN LOT "B" OF THE SUBDIVISION RECORDED IN BOOK 59 OF PLATS, PAGE 32 AS DOCUMENT 1924571, BEING 33 FEET ON EAST SIDE OF THE CENTER LINE, THEREOF, WHICH LINE IS PARALLEL TO AND 583 FEET WEST OF THE WEST LINE OF SOUTH PULASKI ROAD AND EXTENDS FROM THE NORTH LINE OF WEST 40TH STREET TO THE NORTHERLY LINE OF THE LAND CONVEYED BY THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY TO THE CRAWFORD REAL ESTATE DEVELOPMENT COMPANY BY DEED RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS AS DOCUMENT 17307420.

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FILE NUMBER:  
97-0050

## SCHEDULE A CONTINUED

### LEGAL DESCRIPTION:

WEST 40TH STREET (A PRIVATE STREET) IS DEFINED AS A STRIP OF LAND 66 FEET IN WIDTH LYING IN LOT "A" AND IN LOT "B" OF THE SUBDIVISION RECORDED IN BOOK 59 OF PLATS, PAGE 32 AS DOCUMENT 1924571 EXTENDING EASTERLY FROM A LINE PARALLEL TO AND 655.93 FEET EAST OF AND PARALLEL TO THE NORTH AND SOUTH CENTER LINE OF SECTION 3, SAID PARALLEL LINE BEING THE EAST LINE OF SOUTH KILDARE BOULEVARD, TO ITS INTERSECTION WITH THE WEST LINE OF SOUTH PULASKI ROAD. THE NORTH LINE OF SAID STRIP IS A LINE PARALLEL TO AND 1,086 FEET NORTH OF THE NORTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD, THE SOUTH LINE OF SAID STRIP OF LAND IS A LINE PARALLEL TO AND 66 FEET SOUTH OF THE NORTH LINE OF SAID STRIP OF LAND. THE NORTH AND SOUTH CENTER LINE OF SAID SECTION 3 IS HEREIN DEFINED AS A STRAIGHT LINE DRAWN FROM A POINT ON THE NORTH LINE OF SAID SECTION 3, MEASURED 2,648.14 FEET WEST FROM THE NORTHEAST CORNER OF SAID SECTION 3, AND MEASURED 2,642.84 FEET EAST FROM THE NORTHWEST CORNER OF SAID SECTION 3, TO A POINT ON THE SOUTH LINE OF SAID SECTION 3, MEASURED 2,669.37 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 3, AND MEASURED 2,668.04 FEET EAST FROM THE SOUTHWEST CORNER OF SAID SECTION 3. THE EAST AND WEST CENTER LINE OF SAID SECTION 3, IS DEFINED AS A STRAIGHT LINE DRAWN FROM A POINT ON THE EAST LINE OF SAID SECTION MEASURED 2,597.19 FEET SOUTH FROM THE NORTHEAST CORNER OF SAID SECTION 3, AND MEASURED 2,669.84 FEET NORTH FROM THE SOUTHEAST CORNER OF SAID SECTION 3, TO A POINT ON THE WEST LINE OF SAID SECTION 3, MEASURED 2,598.77 FEET SOUTH FROM THE NORTHWEST CORNER OF SAID SECTION 3 AND MEASURED 2,661.19 FEET NORTH FROM THE SOUTHWEST CORNER OF SAID SECTION 3, THE NORTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD (A PRIVATE STREET) AND SAID NORTH LINE

EXTENDED, IS DEFINED AS A STRAIGHT LINE DRAWN FROM A POINT ON THE EAST LINE OF SAID SECTION 3, MEASURED 465.16 FEET NORTH OF THE EAST AND WEST CENTER LINE OF SAID SECTION 3 TO A POINT ON THE NORTH AND SOUTH CENTER LINE OF SAID SECTION 3, MEASURED 464.08 FEET NORTH OF SAID EAST AND WEST CENTER LINE. THE SOUTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD IS 80 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD.

### PARCEL 2:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AFORESAID, FOR INGRESS AND EGRESS OVER, UPON AND ACROSS THE PRIVATE STREETS KNOWN AS SOUTH KARLOV AVENUE AND WEST 40TH STREET, FOR PURPOSES OF PASSAGE TO A PUBLIC HIGHWAY, AS DEFINED IN TRUSTEE'S DEED TO STANDARD BRANDS INCORPORATED, A CORPORATION OF DELAWARE, DATED APRIL 6, 1965 AND RECORDED APRIL 8, 1965 AS DOCUMENT 19429737, IN COOK COUNTY, ILLINOIS.

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