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COOK COUNTY  
RECORDER  
JESSE WHITE  
BRIDGEVIEW OFFICE

97377660

05/29/97

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RECORD IN # 159.00  
97377660 #  
8006 MCN 9:26

## MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (hereafter referred to as "Mortgage") made and entered into this 13th day of May, 1997, by COMBINED CENTRE RPFIII ASSOCIATES LIMITED LIABILITY COMPANY, a Delaware limited liability company (hereafter referred to as "Borrower"), for the benefit of PROVIDIAN LIFE AND HEALTH INSURANCE COMPANY, a Missouri corporation (hereafter referred to as "Lender"):

### WITNESSETH THAT:

FOR and in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and to secure the full and timely payment of the indebtedness and the full and timely performance and discharge of the Obligations (as such terms are hereinafter defined), Borrower has granted, bargained, sold, and conveyed, and by these presents does hereby grant, bargain, sell, mortgage, and convey, unto Lender and Lender's successors and assigns all of the following (hereafter collectively referred to as the "Property"):

(a) All interests of Borrower in that tract or parcel of land, whether now owned or hereafter acquired, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (hereafter referred to as the "Land");

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, A/Cs, heaters, furnaces, engines and machinery, escalators, boilers, ranges, elevators, motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water

This instrument prepared by and after recording return to:

Richard L. Wood  
Brown, Todd & Heyburn PLLC  
3200 Providian Center  
Louisville, Kentucky 40202

Box 15  
JFS 2/10/97



Address: 500, 555 and  
707 Skokie Boulevard,  
Northbrook, Illinois  
P.I. Nos.  
04-02-402-030  
04-02-412-023  
04-02-424-034

\$159.00

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heaters, mirrors, mantels, air conditioning apparatus (including, without limitation humidity control equipment), refrigeration plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings, and storm sashes, alarm devices of any type, automatic sprinkler systems, carpet, cabinets and shelving, partitions, paneling, and wall covering, and windows of every type, which are owned by Borrower and are or shall be attached to the Land or said buildings, structures, or improvements, covered garages, utility sheds, workrooms, open parking areas, water, storm and sanitary sewer facilities, electric facilities, drapery, recreational equipment, swimming pools, ventilation systems, disposals, and all other fixtures, machinery, equipment, furniture, furnishings, appliances, vehicles, building supplies and materials, books and records, chattels, inventory, accounts, farm products, consumer goods, general intangibles and personal property of every kind and nature whatsoever (other than personal property which may be or deemed to be toxic or Hazardous Materials, as defined in Paragraph 1.10 below) now or hereafter owned by Borrower and located in, on, or about, or used or intended to be used with or in connection with the use, operation, or enjoyment of the Property, including all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions or proceeds from a voluntary or involuntary sale, liquidation or conversion of any of the foregoing and all right, title and interest of Borrower in any such fixtures, machinery, equipment, furniture, furnishings, appliances, vehicles, goods to become fixtures, and personal property subject to or covered by any prior security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by Borrower or on behalf of Borrower, all trade names, trademarks, service marks, logos and goodwill which are owned by Borrower and in any way now or hereafter belong, relate or appertain to the Property or any part thereof or are now owned or hereafter acquired by Borrower and which relate or pertain to the Property; and all inventory, accounts, chattel paper, documents, equipment, fixtures, farm products, consumer goods and general intangibles constituting proceeds acquired with cash proceeds of any of the property described hereinabove, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage:

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, minerals, royalties, easements, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(d) All present and future income, rents, issues, profits and revenues of the Property from time to time accruing (including, without limitation, all payments under leases or tenancies, unearned premiums on any insurance policy carried by Borrower for the benefit of Lender and/or the Property, tenant security deposits, settlements, remunerations, compensation, escrow funds and all awards or payments, including interest accrued thereon, if any, and the right to receive same, growing out of or as a result of any exercise of the right

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of eminent domain, including the taking of any part or all of the Property or payment for alteration of the grade of any street upon which said Property abuts, or any other injury to, taking of or decrease in the value of said Property to the extent of all amounts which may be owing on the indebtedness as hereinafter defined secured by this Mortgage at the date of receipt of any such award or payment by Borrower, and the reasonable attorneys' fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law as well as in equity, of Borrower of, in and to the same; reserving only the right to Borrower to collect the same as long as no continuing acceleration of the indebtedness by Lender exists following an Event of Default as defined in Paragraph 2.01(a);

(e) All insurance policies and proceeds thereof, franchise agreements, management contracts, construction contracts, map approvals, conditional use permits, and all other contracts, permits, licenses, plans or intangibles now or hereafter owned by Borrower and dealing with, affecting or concerning the Property, including, without limitation, all rights accruing to Borrower from any and all contracts with all contractors, architects, engineers or subcontractors relating to the construction of improvements on or upon the Property, including payment, performance and/or materialmen's bonds and any other related choses in action; and

(f) Proceeds of any of the foregoing.

TO HAVE AND TO HOLD the Property and all parts, rights, members, and appurtenances thereof, unto Lender and the successors and assigns of Lender, forever; and Borrower does hereby bind itself, its successors and assigns, to warrant and forever defend the title to the Property unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Borrower, but not otherwise, subject, however, to the title exceptions listed in Exhibit B attached hereto and incorporated herein by this reference ("Permitted Exceptions"), and upon this special trust provided, always, and it is the true intent and meaning of the parties, that when Borrower shall pay or cause to be paid to Lender, its successors or assigns, the indebtedness according to the conditions and agreements of the Note and of this Mortgage and shall keep, perform and observe all of the covenants, obligations and agreements contained in the Loan Documents, all without delay, as required thereunder and hereunder, then this Mortgage shall be canceled of record. Borrower shall pay, on demand, the reasonable out-of-pocket costs and expenses, if any, incurred by Lender in connection with such cancellation.

This instrument is given to secure the payment and performance of the following described indebtedness in such manner as Lender in its sole discretion shall determine (hereafter collectively referred to as the "Indebtedness"):

(a) The debt evidenced by that certain Promissory Note dated the date hereof by Borrower to Lender under which the final maturity date is May 10, 2002 and the interest rate is as set forth therein, a true and correct copy of which is attached hereto as Exhibit C and incorporated herein by this reference (hereafter referred to as the "Note"), together with any and all renewals, extensions, substitutions, modifications and consolidations of the indebtedness evidenced by the Note;

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(b) Any and all additional advances made by Lender to protect or preserve the Property or the security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereafter provided, or for performance of any of Borrower's obligations hereunder, or for any other purpose provided herein (whether or not the original Borrower remains the owner of the property at the time of such advances), provided, however, nothing herein shall be deemed to obligate Lender to make any such advances; and

(c) This Mortgage secures, in addition to the aforescribed Indebtedness, all obligations and covenants of Borrower under the Note, under this Mortgage and under any other document, instrument or agreement executed by Borrower and now or hereafter evidencing, securing or otherwise relating to the Note, including, without limitation, the Assignment of Leases and Rents ("Lease Assignment") of even date herewith from Borrower to Lender, the Note, this Mortgage, the Lease Assignment, Assignment of Management Agreement, the Mortgage Loan Application/Commitment between Borrower and Providian Capital Management Real Estate Services, Inc. which was assigned to Lender, and all of such other documents, instruments and agreements are hereinafter sometimes referred to collectively as the "Loan Documents", and all costs of collection or enforcement of the rights and remedies of Lender, including reasonable attorneys' fees if collected or enforced by or through an attorney-at-law or under the advice thereof.

As used herein, the term "Obligations" shall mean any and all covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, but not any other person or entity, to Lender as set forth in the Loan Documents.

As used herein, the term "Lender" shall mean PROVIDIAN LIFE AND HEALTH INSURANCE COMPANY, a Missouri Corporation, and the subsequent holder or holders of the Note.

Borrower hereby further covenants and agrees with Lender as follows:

## ARTICLE I

1.01 Payment of Indebtedness, Covenants and Warranties. Borrower will pay the Note according to the terms thereof and will pay all other Indebtedness at the time and in the manner provided under the Note, this Mortgage, any instrument evidencing and/or securing the Indebtedness and any other Loan Document and Borrower will otherwise perform, all of the Obligations and comply with and abide by each and every of the stipulations, agreements, conditions and covenants contained in the Note, this Mortgage and every other Loan Document.

(a) (i) Borrower shall, subject to the exculpation provisions set forth in Article IV hereof, protect, defend, indemnify and hold Lender harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, reasonable attorneys' fees and court costs) imposed upon or incurred by Lender by reason of this Mortgage or in exercising, performing, enforcing, or protecting its rights, title,

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or interests set forth herein, and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under this Mortgage;

(iii) Borrower shall not initiate, join in or consent to any change in any restrictive covenant, zoning ordinance, easement or other restrictions limiting or defining the uses which may be made of the Property, or any part thereof, without Lender's prior written consent such consent not to be unreasonably withheld or delayed, except as otherwise permitted by this Mortgage or the Lease Assignment.

(iii) Borrower covenants and agrees that, subject to Borrower's right to contest same as set forth in Paragraph 5 of Exhibit D attached hereto, it shall not take any action or fail to take any action which will result in liens or encumbrances affecting the Property, the Note or this Mortgage, except for Permitted Exceptions.

(iv) Borrower hereby protects, defends, indemnifies and holds Lender harmless from, subject to the exculpatory provisions set forth in Article IV hereof, any and all costs, damages and liabilities resulting from, arising out of or related to the creation or existence of liens, impositions, taxes, assessments or encumbrances, other than the Permitted Exceptions, by or against the Property.

(v) Borrower covenants and agrees to execute, at no cost to Borrower, such additional documents as Lender may reasonably require to evidence and confirm the liens and security interest evidenced by this Mortgage.

(b) Borrower hereby represents, warrants, and agrees as follows:

(i) To the best of Borrower's knowledge, Borrower has neither done any act nor failed to do any act which would prevent Lender from, or materially limit Lender in, acting under any of the provisions of this Mortgage;

(ii) Neither the execution and delivery of this Mortgage, nor the performance of each and every covenant of Borrower under this Mortgage, nor the satisfaction of each and every condition contained in this Mortgage, conflicts with, or constitutes a breach or default after the expiration of any applicable notice and/or cure and/or grace period under, any agreement, indenture, or other instrument to which Borrower is a party or is subject, or, to the best of Borrower's knowledge, any law, ordinance, administrative regulation, or court decree which is applicable to Borrower;

(iii) No action has been brought or, to the best of Borrower's knowledge, is threatened, which would interfere in any way with the right of

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Borrower to execute this Mortgage and perform all of Borrower's obligations contained in this Mortgage;

(iv) This Mortgage and the other Loan Documents, constitute legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms subject to bankruptcy, solvency and other debtor relief laws, rules and regulations now or hereafter in effect;

(v) The representations and warranties of Borrower in this Mortgage, Loan Documents and the financial statements prepared by Borrower and submitted with the Application/Commitment are, to the best of Borrower's knowledge, true and correct in all material respects as of the date of this Mortgage; and

(vi) To the best of Borrower's knowledge, except as disclosed by the Borrower's Affidavit dated the date hereof by Borrower to Lender, there is no litigation, arbitration, investigation, or administrative proceeding of or before any court, arbitrator or governmental authority pending or threatened, by or against Borrower, with respect to the Loan Documents, or with respect to or against the Property;

(vii) Good and indefeasible fee simple title to the Property is vested in Borrower free and clear of any liens and encumbrances other than the Permitted Exceptions.

## 1.02 Taxes, Liens and Other Charges

(a) In the event of the passage of any law, order, rule or regulation subsequent to the date hereof, in any manner changing or modifying the taxation of mortgages, deeds of trust, or security agreements or debts secured thereby or the manner of collecting taxes so as to affect Lender adversely, except for income taxes payable by Lender or franchise taxes payable by Lender, Borrower shall subsequent to the date hereof, promptly pay any such tax on or before the due date thereof to the extent that payment of such tax does not cause the Indebtedness to be usurious. However, if Borrower fails to make such prompt payment or if, in the reasonable opinion of Lender, any such law, order, rule or regulation prohibits Borrower from making such payment or would penalize Lender if Borrower makes such payment or if, in the opinion of Lender, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Indebtedness secured by this Mortgage and all accrued interest thereon shall, at the option of Lender, become due and payable within ninety (90) days after delivery of written notice from Lender to Borrower.

(b) Borrower shall, subject to Paragraph 5 of Exhibit D attached hereto, pay and discharge, on or before the due date thereof, all taxes, levies, license fees, permit fees, liens, judgments, assessments, utility fees and charges, hook-up fees and charges, and all other expenses, fees and charges (in each case whether general or special, ordinary or extraordinary, or foreseen and unforeseen) of every character whatsoever now or hereafter

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levied, assessed, confirmed or imposed on, or with respect to, or which may be a lien upon, the Property, or any part thereof, or any estate, right, or interest therein, or upon the rents, issues, income or profits thereof, or incurred in connection with the Note, the Indebtedness or any of the Loan Documents, and all premiums on policies of insurance covering, affecting, or relating to the Property, as required pursuant to Paragraph 1.03 hereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments, insurance premiums and other fees and charges as Lender may reasonably require, including without limitation paid tax receipts no later than the date on which taxes first become delinquent.

(c) Borrower will protect the first lien and security interest status of this Mortgage (subject to the Permitted Exceptions) and will not, without the prior written consent of Lender, create, place or permit to be created or placed, or otherwise mortgage, hypothecate or encumber any portion of the Property with, any other lien, or claim thereof, or security interest of any nature whatsoever (statutory, constitutional or contractual) regardless of whether same is allegedly or expressly inferior to the lien and security interest created by this Mortgage, except for Permitted Exceptions and subject to Paragraph 5 and Paragraph 7 of Exhibit D attached hereto.

## 1.03 Insurance.

(a) Borrower shall, at its expense, procure for, deliver to and maintain for the benefit of Lender until the Indebtedness is fully repaid, original, fully paid insurance policies or a copy of such policy certified by Borrower to be true, complete, and correct, and an original certificate from the insurer (which certificate in the event the policy is a blanket policy which includes land, improvements, personalty or income other than the Property or income derived from the Property, shall evidence the allocation of coverage to the Property and the income from the Property) providing the following types of insurance relating to the Property, issued by insurance companies with a Best's rating of "A-" or better, in such amounts, in such form and content and with such expiration dates as are approved by Lender (such approval not to be unreasonably withheld or delayed). Such policies shall provide that the insurer shall give Lender at least fifteen (15) days' prior written notice of non-renewal and at least thirty (30) days' prior written notice of cancellation, amendment, termination, or change in coverage in the manner provided for the giving of notices under Paragraph 3.05 hereof and shall provide that no act done or omission by the insured shall invalidate or diminish the insurance provided to Lender and Lender may, but shall not be obligated to, make premium payments to prevent any cancellation or alteration of the policies and such payments will be accepted by the insurers to prevent same, and, except for liability policies, shall contain a standard mortgagee clause satisfactory to Lender:

(i) Broad form property insurance against all risks of physical loss, including, without limitation, fire, extended coverage, vandalism, malicious mischief, earthquake, flood, and collapse, with waiver of subrogation, to the extent of the full replacement cost of the improvements now or hereafter located on the Land, to the Property, without deduction for depreciation, either without co-insurance requirements or with agreed amount endorsement attached;

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(ii) Public liability insurance covering all liabilities incident to the ownership, possession, occupancy and operation of the Property and naming Lender as an additional insured thereunder, having limits of not less than \$1,000,000 each accident, \$1,000,000 each person, and \$500,000 property damage. Lender reserves the right to reasonably require increased coverage under this subparagraph (ii);

(iii) Rent or business interruption insurance against loss of income arising out of any hazard against which the Property is required to be insured under Subparagraph 1.03(a)(i) above, in an amount not less than six (6) months' gross rental income from the Property (including all payments to be made by tenants under leases);

(iv) Flood hazard insurance, if any portion of the Property is in an area which is, at any time during the term of this Mortgage, identified by the Federal Emergency Management Agency as having special flood or mud slide hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended;

(v) Boiler, machinery, and heating, ventilation, and air conditioning system insurance

(vi) Workers' compensation insurance, if applicable; and

(vii) Such other insurance with respect to the Property or any replacements or substitutions thereof, in such amounts as may from time to time be reasonably required by Lender, against other insurable casualties which at the time are commonly insured against in the case of properties of similar character.

(b) All amounts payable pursuant to and all other proceeds of such insurance policies maintained pursuant to this Mortgage are hereby assigned to Lender. As long as no event of default is then in existence after the expiration of any applicable notice and/or grace period, Borrower may proceed to adjust, compromise or settle any loss under any insurance policies maintained pursuant hereto (other than any loss of Lender covered by liability insurance and/or loss covered by rent insurance); provided, however, that Lender's prior written consent shall be required for the final adjustment, compromise or settlement of any such loss of more than \$500,000. In the event Borrower fails to commence any such adjustment, compromise, or settlement, or to prosecute any such proceeding with due diligence, Lender may adjust, compromise or settle any such loss. In any event, Borrower covenants and agrees that Lender is hereby authorized and empowered, at its option, to adjust, compromise, or settle any such loss if an event of default after the expiration of any applicable notice, grace and/or cure period is then in existence, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender, instead of to Borrower and Lender jointly. In the event any insurance company fails to disburse directly and solely to Lender but disburses instead either solely to Borrower or to Borrower and Lender jointly,



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Borrower agrees immediately to endorse and transfer such proceeds to Lender. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfers for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as its agent and attorney-in-fact coupled with an interest so to do. After deducting from said insurance proceeds all of its reasonable out-of-pocket expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, Lender may, subject to Paragraph 3 of Exhibit D attached hereto, apply the net proceeds or any part thereof, at its sole option (i) to a prepayment of the Indebtedness hereby secured, whether or not due and in whatever order Lender elects, without prepayment premium or penalty, (ii) to the repair and/or restoration of the Property, upon such conditions as Lender may reasonably determine, and/or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Mortgage, all without reducing or impairing the lien of this Mortgage or any obligations secured hereby. Any balance of such proceeds then remaining shall be paid to Borrower or the person or entity lawfully entitled thereto. Lender shall not be obligated to see to the proper application of any amount paid over to Borrower and shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy, regardless of the cause of such failure.

(c) At least ten (10) days prior to the expiration date of each policy maintained pursuant to this Paragraph 1.03, a certificate of insurance evidencing the renewal or replacement thereof reasonably satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts evidencing the full payment of premiums for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Property in extinguishment or partial extinguishment of the Indebtedness, all right, title and interest of Borrower in and to all insurance policies maintained pursuant to this Paragraph 1.03 then in force shall belong to the purchaser and Lender is hereby irrevocably appointed by Borrower as attorney-in-fact (coupled with an interest) for Borrower to assign any such policy to said purchaser, without accounting to Borrower for any unearned premiums therefor. No assignment of a blanket policy will be required, although the proceeds payable and any unearned premiums under the blanket policy will be assigned, in each case for the Property.

(d) If the proceeds of the insurance described in this Paragraph 1.03, or any condemnation proceeds described in Paragraph 1.05 below, are to be used for restoration, repair or replacement (hereinafter referred to as the "Work") of the Property, such proceeds up to \$500,000 shall be delivered to Borrower for such purpose and such proceeds of \$500,000 or more shall be paid out by Lender no more frequently than monthly to Borrower (or, at the option of Lender, jointly to Borrower and the persons furnishing labor and/or material incident to such restoration, repair or replacement or directly to such persons) as the Work progresses, subject to the following conditions: (A) prior to the commencement thereof (other than Work to be performed on an emergency basis to protect the Property or prevent interference therewith), (i) an architect or engineer, approved by Lender (such approval not to be unreasonably withheld or delayed), shall be retained by Borrower (at Borrower's expense) and charged with the supervision of the Work and (ii) Borrower shall have prepared, submitted to Lender and secured Lender's written approval of (such approval not to be unreasonably withheld or delayed) the plans and specifications for such Work; (B) each request for payment

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by Borrower, shall be made on ten (10) days prior written notice to Lender and shall be accompanied by a certificate to be made by the architect or engineer supervising the Work (if one is required pursuant to Subparagraph 1.03(d)(A)(ii) hereinabove), otherwise by Borrower or an executive officer of Borrower, stating, among such other matters as may be reasonably required by Lender that: (i) all of the Work completed has been done in substantial compliance with the approved plans and specifications (if any be required under Paragraph 1.03(d)(A)(ii) hereinabove); and (ii) the sum requested is justly required to reimburse Borrower for payments by Borrower to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials); (C) Lender shall have received adequate assurance that when added to all sums previously paid out by Borrower, the sum requested does not exceed the cost of the Work done to the date of such certificate; (D) Lender shall have received adequate assurance that the amount of insurance proceeds plus amounts deposited with Lender by Borrower remaining in the hands of Lender, if any, will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Lender may require an estimate of the cost of such completion); (E) each request shall be accompanied by waiver of lien satisfactory in form and substance to Lender that there has not been filed with respect to the Property any mechanic's lien or other lien, affidavit or instrument asserting any lien or any lien rights with respect to the Property, which liens have not been satisfied, discharged or bonded over; (F) there has not occurred any Event of Default since the hazard, casualty or contingency giving rise to payment of the insurance proceeds; (G) in the case of the request for the final disbursement, such request is accompanied by a copy of any Certificate of Occupancy or other certificate, if any, required by any legal requirement or governmental authority to render occupancy of the damaged portion of the Property lawful, and (H) if, in Lender's reasonable judgment, the amount of such insurance proceeds will not be sufficient to complete the Work (which determination may be made prior to or during the performance of the Work), Borrower shall deposit with Lender, immediately upon a request therefor, an amount of money which when added to such insurance proceeds will be sufficient to complete the Work. Any deposit by Borrower with Lender shall be invested for the account of Borrower as Lender may reasonably approve, with this interest, if any, held by Lender as part of the deposit in accordance with this Paragraph 1.03(c). Nothing herein shall be interpreted to prohibit Lender from applying at any time the whole or any part of such insurance proceeds to the curing of any Event of Default.

(e) Subject to the provisions of Paragraph 3 of Exhibit D attached hereto, the Indebtedness shall be due and payable, without any prepayment penalty or premium, within one hundred twenty (120) days after Lender notifies Borrower that the Property has been demolished, destroyed, or substantially damaged by fire or other casualty or by condemnation, so that (in Lender's reasonable judgment) the Property cannot be restored or rebuilt with available funds to substantially the same condition as the Property was in prior to such casualty or condemnation within a reasonable period of time.

1.04 Monthly Deposits. Borrower shall, subject to the terms of Paragraph 2 of Exhibit D attached hereto, deposit monthly, with Lender, concurrently with each regular monthly loan payment under the Note, or at Lender's option, with an escrow agent designated by Lender, whose fee shall be paid by Borrower, until the Indebtedness is fully repaid, such sum or sums determined by Lender in its sole discretion to be sufficient to pay, at least thirty

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(30) days before due, all taxes, assessments, insurance premiums and similar charges (hereafter referred to as "Impositions") with respect to the Property. Said deposits shall be held by Lender or such escrow agent free of any liens or claims on the part of creditors of Borrower and as part of the security of Lender, and if no default or event of default after the expiration of any applicable notice and/or cure and/or grace period then remains uncured said deposits shall be used by Lender to pay the Impositions as the same accrue and are payable. Nothing contained herein shall cause Lender to be deemed a trustee as to said deposits. Said deposits may be commingled with the general funds of Lender and no interest shall be payable thereon. If said funds are insufficient to pay the Impositions in full, as the same become payable, Borrower will deposit with Lender such additional sum or sums as may be required. Nothing contained herein shall cause Lender to be obligated to pay any amounts in excess of the amount of funds deposited with Lender pursuant to this paragraph. Should Borrower fail to deposit with Lender sums sufficient to pay in full the Impositions at least thirty (30) days before the date when due, Lender, at Lender's election, but without any obligation so to do, may advance any amounts required to make up the deficiency, and any amounts so advanced shall be deemed part of the indebtedness secured by the Loan Documents and shall be payable on demand and shall bear interest at the Default Rate set forth in the Note. Upon any default or event of default after the expiration of any applicable notice and/or cure and/or grace period under this Mortgage or the Note or any other Loan Document, Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the indebtedness, whether or not due and in such manner as it may elect. In the event of a foreclosure of this Mortgage, the purchaser of the Property shall succeed to all the rights of Borrower in and to such deposits. Upon assignment of this mortgage, Lender shall have the right to pay over the balance then held in escrow to its assignee whereupon the Lender named herein shall then become completely released from all liability with respect thereto. Upon full payment of the indebtedness or at such earlier time as Lender may elect, the balance of the deposits in its possession shall be paid over to the then owner of the Property (whether the person identified in the introductory paragraph of this Mortgage or the then owner of the Property) and no other party (including prior owners of the Property) shall have any right or claim thereto. Lender is not obligated to render the Property to taxing authorities or to attempt to obtain any adjustments to the assessed valuation or the amount of Impositions with respect to the Property. It is the obligation of Borrower to provide to Lender the information regarding the amount, date of payment and place of payment for all Impositions.

1.05 Condemnation. Subject to the provisions of Paragraph 4 of Exhibit D to this Mortgage, if all or any material portion (as determined by Lender in its reasonable discretion) of the Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or quasi-governmental authority and any transfer or grant by private sale made in anticipation of or in lieu thereof,) either temporarily or permanently, then the entire indebtedness including, without limitation, any accrued interest, shall, at the option of Lender, become due and payable without prepayment penalty or premium upon at least ninety (90) days' prior written notice from Lender to Borrower. Promptly upon learning of the institution or the proposed, contemplated or threatened institution of any condemnation proceeding, Borrower shall notify Lender of the pendency of such proceedings, and no settlement respecting awards in such proceedings or shall be effected without the consent of Lender. Lender shall be entitled to receive all compensation, awards, proceeds and other payments or relief relating to or payable

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as a result of such condemnation. Lender is hereby authorized, at its option, to commence, appear in and prosecute, in its own name or in the name of Borrower, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender. If Lender does not elect to declare the entire accrued and unpaid Indebtedness immediately due and payable, as provided above, then Lender, after deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including, without limitation, reasonable attorneys' fees, may, subject to Paragraph 4 of Exhibit D attached hereto, apply the net proceeds or any part thereof, at its option, (i) to a prepayment of the Indebtedness, whether or not due and in whatever order Lender elects, without prepayment penalty or premium, (ii) to the repair and/or restoration of the Property upon such conditions as Lender may reasonably determine, and, or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Mortgage, all without reducing or impairing the lien of this Mortgage; and any balance of such moneys then remaining shall be paid to Borrower or any other person or entity lawfully entitled thereto. Lender shall not be obligated to see to the proper application of any amount paid over to Borrower or any other person or entity. Borrower agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Lender may reasonably require. If, prior to the receipt by Lender of such award or proceeds, the Property shall have been sold on foreclosure of this Mortgage, or as a result of other legal action relating to this Mortgage or the Note, Lender shall have the right to receive such award or proceeds to the extent of any unpaid Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on the Indebtedness shall have been sought or obtained, and to the extent of reasonable attorneys' fees, costs and disbursements incurred by Lender in connection with the collection of such award or proceeds.

## 1.06 Care of Property.

(a) Borrower shall keep all improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, reasonable wear and tear excepted, shall not commit or suffer any intentional waste, and shall not do or suffer to be done anything which would or could materially increase the risk of fire or other hazard to the Property or any part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Property.

(b) Borrower shall not, except as part of the ordinary course of business, remove, demolish or materially alter, enlarge or change any structure or other improvement located on the Land without Lender's consent, such consent not to be unreasonably withheld or delayed, nor shall any new improvements be constructed on the Property, except in the ordinary course of business, without Lender's consent, such consent not to be unreasonably withheld or delayed. Borrower shall not remove or permit to be removed from the Land any fixture, chattel or part of the Property without the consent of Lender, except where appropriate replacements are immediately made which are free of any lien, security interest or claim superior to that of this Mortgage and which have a value and utility at least equal to the value and utility of the fixture or chattel removed, which replacement shall, without further action, become subject to the lien of this Mortgage.

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(c) Lender or its representative is hereby authorized to enter upon and inspect the Property at all reasonable times.

(d) Borrower will perform and comply promptly with, and cause the Property to be maintained, used and operated by Borrower in accordance with, any and all (i) present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental or quasi-governmental authority or agency applicable to Borrower or the Property, including without limitation, all applicable federal, state and local laws pertaining to air and water quality, hazardous waste, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and rules, regulations and ordinances of the United States Environmental Protection Agency and all other applicable federal, state and local agencies and bureaus; (ii) similarly applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions; (iii) similarly applicable duties or obligations of any kind imposed under any Permitted Exception, or otherwise by law, covenant, condition, agreement or easement, public or private; (iv) policies of insurances at any time in force with respect to the Property; (v) present and future hazardous and disability compliance laws and regulations; and (vi) the terms and conditions of any other financing secured by a lien on all or any part of the Property. If Borrower receives any notice that Borrower or the Property is in default after the expiration of any applicable notice, cure and/or grace period under or is not in compliance with any of the foregoing, or notice of any proceeding initiated under or with respect to any of the foregoing, Borrower will promptly furnish a copy of such notice to Lender.

(e) If all or any part of the Property shall be damaged by fire or other casualty, Borrower shall give immediate written notice thereof to Lender and shall, to the extent insurance proceeds are made available by Lender for such purpose, promptly restore the Property to the equivalent of its original condition; and if a part of the Property shall be damaged through condemnation, Borrower shall, to the extent condemnation proceeds are made available by Lender for such purpose, promptly restore, repair or alter the remaining portions of the Property in a manner reasonably satisfactory to Lender.

(f) If any work required to be performed under this Paragraph 1.06 involves an estimated expenditure of more than \$500,000, no such work will be undertaken until plans and specifications therefor, prepared by an architect or engineer satisfactory to Lender, have been submitted to and approved by Lender, such approval not to be unreasonably withheld or delayed.

## 1.07 Security Agreement.

(a) With respect to the machinery, apparatus, equipment, fittings, fixtures, building supplies and materials, articles of personal property, chattels, chattel paper, documents, inventory, accounts, farm products, receivables, insurance proceeds, condemnation awards, consumer goods and general intangibles and any other personal property or fixtures described in paragraphs (b), (c), (d), and (e) on pages 1, 2, and 3 in this Mortgage referred to or described in this Mortgage including any personal property or fixtures included within the definition of the term "Property" (other than any personal property which may be now or hereafter deemed to be toxic or Hazardous Materials) whether now owned or hereafter

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from time to time acquired by Borrower, together with all substitutions, replacements, additions, attachments, accessories and all of the rents, issues, income, revenues and profits derived from the Property and all proceeds of the foregoing (hereinafter collectively referred to as the "Collateral"), this Mortgage is hereby also made and declared to be a security agreement encumbering each and every item of such property comprising a part of the Collateral, in compliance with the provisions of the Uniform Commercial Code. To this end, Borrower has granted, bargained, conveyed, assigned, transferred, and set over, and by these presents hereby does grant, bargain, convey, assign, transfer, and set over, unto Lender a first and prior security interest in all of Borrower's right, title and interest in, to and under the Collateral to secure the full and timely payment of the indebtedness and the full and timely performance and discharge of the Obligations. Upon request by Lender, at any time and from time to time, a financing statement or statements reciting this Mortgage to be a security agreement affecting all of such property shall be executed by Borrower and Lender and appropriately filed.

(b) This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the definition of "Collateral." A carbon, photographic or other reproduction of this Mortgage shall be sufficient as a financing statement. Lender shall have the right at any time to file a manually executed counterpart or a carbon, photographic or other reproduction of this Mortgage as a financing statement either in the central or local UCC or real estate records of any jurisdiction where the Collateral is located, but the failure of Lender to do so shall not impair (i) the effectiveness of this Mortgage as a fixture filing permitted by Sections 9-313 and 9-402 of the Illinois UCC, or (ii) the validity or enforceability of this Mortgage in any respect whatsoever. The following information is included for purposes of meeting the requirements of a financing statement:

(A) The name and address of the debtor are:

COMBINED CENTRE RPF III ASSOCIATES  
LIMITED LIABILITY COMPANY  
3003 Summer Street  
P.O. Box 7900  
Stamford, Connecticut 06904-7900  
Attention: General Counsel/Real Estate

(B) The name and address of the secured party are:

PROVIDIAN LIFE AND HEALTH INSURANCE COMPANY  
c/o Providian Capital Management Real Estate Services, Inc.  
400 West Market Street  
Louisville, KY 40202  
Attention: Asset Management Dept., 12th Floor

(C) This financing statement covers all rights, titles and interests now owned and at any time hereafter acquired by Borrower as debtor in all the Collateral. The Collateral includes goods which are or are to become fixtures on the Land. This financing statement is to be filed for record

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in the real estate records. Borrower, as debtor, does have an interest of record in the Land.

(D) Proceeds and products of the Collateral are also covered.

(c) Borrower and Lender agree that the filing of any such financing statement or statements in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether any such item is physically attached to the improvements located on the Land, serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Mortgage, or any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to (A) the proceeds of any insurance policy, or (B) any award in eminent domain proceedings for a taking or for loss of value, or (C) Borrower's interest as landlord in any present or future lease or sublease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to a tenant lease of space in the Property or otherwise, shall not in any way alter any of the rights of Lender as determined by this Mortgage or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Lender in the event any court shall at any time hold with respect to the foregoing clauses (A), (B), or (C) of this sentence, that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. Said security interest shall attach thereto as soon as Borrower obtains any interest in any of the Collateral and before the Collateral becomes fixtures or before the Collateral is installed or affixed to other collateral for the benefit of Lender, to secure payment of the Indebtedness and all other sums and charges which may become due hereunder or under the Loan Documents and the performance and discharge of the Obligations. The security interest held by Lender shall cover cash and non-cash proceeds of the Collateral, but nothing contained herein shall be construed as authorizing, either expressly or by implication, the sale or other disposition of the Collateral by Borrower, which sale or other disposition is hereby expressly prohibited without Lender's prior written consent, or as otherwise provided herein.

(d) Lender shall have all the rights, remedies and recourses with respect to the Collateral afforded to a secured party by the Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Loan Documents or prescribed by general law. If an event of default after the expiration of any applicable notice and/or cure and/or grace period shall occur, Lender may elect, in addition to exercising any and all other rights, remedies and recourses set forth in this Mortgage, to collect and receive all of the rents and to proceed in the manner set forth in Section 9-501(4) of the Uniform Commercial Code as in effect in the State of Illinois relating to the procedure to be followed when a security agreement covers both real and personal Property. Except as otherwise set forth in this grammatical paragraph, at any foreclosure sale held pursuant to this Mortgage, it shall be deemed that the Lender proceeded under such Section 9-501(4) and that



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such sale passed title to all of the Property and other property described herein to the purchaser at such foreclosure sale, including without limitation the Collateral. Lender may elect either prior to or at such sale not to proceed under such Section 9-501(4) by notifying Borrower of the manner in which Lender intends to proceed with regard to the Collateral. It is agreed that the requirements of the Uniform Commercial Code as to reasonable notice of any proposed sale or disposition of the Collateral shall be met if such notice is mailed to the Borrower, as hereinafter provided, at least twenty-one (21) days prior to the time of such sale or disposition.

(e) Borrower agrees that, without the prior written consent of Lender, such consent not to be unreasonably withheld or delayed, Borrower will not remove or permit to be removed from the real property hereby conveyed, any of the Collateral (other than worn out or obsolete Collateral which is not material to the operation of office buildings on the Property) unless the same is replaced immediately with unencumbered collateral of a quality and value equal or superior to that which it replaces. All such replacements, renewals and additions shall become and be immediately subject to the security interest of this Mortgage and be covered thereby. Borrower warrants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto will be, free and clear of liens, encumbrances or security interests of others, except as to the Permitted Exceptions and the security interest created hereby.

(f) Borrower warrants that (i) Borrower's (that is, "Debtor's") name and identity are as referred to in the first paragraph of this Mortgage, and its principal place of business is at the address for Borrower set forth in Paragraph 3.05 below, (ii) Borrower (that is, "Debtor") has been using or operating under said name and identity without change since January 7, 1997 and (iii) the location of all tangible Collateral is upon the Land. Borrower covenants and agrees that Borrower will furnish Lender with notice of any change in the matters addressed by clauses (i) through (iii) of this Subparagraph 1.07(f) within thirty (30) days of the effective date of any such change, and Borrower will promptly execute any financing statements reasonably deemed necessary by Lender to prevent any filed financing statement from becoming misleading or losing its perfected status.

(g) The information in this Subparagraph 1.07(g) is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code for instruments to be filed as financing statements. The "Secured Party" is the Lender; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of "Debtor," are as set forth herein, and a statement indicating the types, or describing the items, of collateral is set forth hereinabove.

(h) Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage and Security Agreement shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Land is located. Information concerning the security interest created by this instrument may be obtained from the Lender, as "Secured Party," or Borrower, as "Debtor," at their respective mailing addresses set out in Paragraph 3.05 hereof.

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(ii) Borrower further covenants and agrees that all of the aforementioned personal property shall be owned by Borrower and shall not be the subject matter of any lease or other instrument, agreement or transaction whereby the ownership or beneficial interest thereof or therein shall be held by any person or entity other than Borrower, except to the extent Lender consents in writing to any lease of any of such property, which consent shall not be unreasonably withheld or delayed or for a lease of office equipment used in the management office on the Property; nor shall Borrower create or cause to be created any security interest covering any such property, other than (i) the security interest created herein in favor of Lender, (ii) the rights of tenants lawfully occupying the Property pursuant to leases approved by Lender, and (iii) the Permitted Exceptions.

(j) Notwithstanding the foregoing provisions of this Paragraph 1.07, Borrower shall be permitted to lease equipment or other personal property for the operation of the Property in the ordinary course of business, subject to Lender receiving a collateral assignment of any such lease.

1.08 After-Acquired Property. The lien and security interest hereof shall automatically attach, without further act, to all after-acquired property owned by Borrower and attached to and/or used in the operation of the Property or any part thereof, to the extent permitted by law.

1.09 Expenses; Hold Harmless. Borrower shall pay or reimburse Lender, upon demand therefor, for all reasonable consultants', reasonable attorneys' fees, reasonable costs and reasonable expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as a party plaintiff or defendant, or otherwise affecting the indebtedness, this Mortgage, or the interest created herein, or the Property, including, without limitation, any foreclosure proceedings, any condemnation action involving the Property, any federal bankruptcy proceeding or state insolvency proceeding involving the priorities or rights of creditors, any action to protect the security hereof, or any action or proceeding commenced by governmental authority with respect to the storage, disposal or clean-up of toxic or Hazardous Materials on, under or about the Property; and any such amounts paid by Lender shall be added to the indebtedness secured by the lien of this Mortgage and shall bear interest from and after the date when paid (i) if not attributable to any act or omission by Borrower, at the Applicable Rate, or (ii) otherwise at the default rate in effect under the Note.

Borrower will, subject to the exculpatory provisions set forth in Article IV hereof, defend, at its own cost and expense and hold Lender harmless from, any action, proceeding or claim affecting the Property or the Loan Documents, or resulting from or arising out of the failure of Borrower to perform or discharge its Obligations or otherwise to comply with the provisions of the Loan Documents, and all costs and expenses incurred by Lender in protecting Lender's interest hereunder in such an event (including without limitation all court costs and reasonable attorneys' fees) shall be borne by Borrower, shall be added to the indebtedness and shall bear interest from and after the date when paid at the Default Rate then in effect under the Note.

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1.10 Subrogation. To the full extent of the Indebtedness, and except for the security interests and liens held by the holder of the secondary financing permitted under Paragraph 7 of Exhibit D to this Mortgage, Lender is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each lien, claim, demand and other encumbrance on the Property which is paid or satisfied, in whole or in part, out of the proceeds of the Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Lender as additional collateral and further security for the Indebtedness and the Obligations, to the same extent they would have been preserved and would have been passed to and held by Lender had they been duly and legally assigned, transferred, set over and delivered unto Lender by assignment, notwithstanding the fact that any instrument providing public notice of the same may be satisfied and canceled of record.

## 1.11 Transfer of the Property; Secondary Financing.

(a) The identity and expertise of Borrower were and continue to be material circumstances upon which Lender has relied in connection with, and which constitute valuable consideration to Lender for, the extending to Borrower of the Indebtedness, and any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness. The occurrence of any of the following (herein referred to as a "Disposition"): the lease of any portion of the Property (except as permitted under the Loan Documents), or the transfer, sale, exchange, assignment, conveyance, pledge, hypothecation, mortgage or other disposition or encumbrance, voluntarily or by operation of law of all or any portion of the Property or the leases or the rents relating thereto (or any interest therein), or (if Borrower is a corporation, partnership, limited liability company, trust, or other entity) the assignment, pledge, sale, transfer, encumbrance, or other disposition of voting control of fifty percent (50%) or more of the financial interest of any general partner or managing member in Borrower, or (if Borrower is a partnership or limited liability company) any transfer, sale, exchange, assignment or conveyance of a general partnership interest or managing member interest in Borrower, shall constitute an Event of Default after the expiration of any applicable notice and/or cure and/or grace period, and Lender may, at Lender's option, enforce any and all of Lender's rights, remedies and recourses set forth in this Mortgage; provided, however, Lender shall not enforce such rights, remedies and recourses if Lender consents in writing to the Disposition in question or the Disposition in question is expressly permitted by the Loan Documents. It is expressly agreed that, subject to the terms of Paragraph 1 of Exhibit D attached hereto, in connection with determining whether to grant or withhold such consent, Lender may, inter alia, (i) consider the creditworthiness of the party to whom such Disposition will be made and its management ability, with respect to the Property, (ii) consider whether or not the security for payment of the Indebtedness and the performance of the Obligations, or Lender's ability to enforce its rights, remedies and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (iii) require as a condition to granting such consent an increase in the rate of interest payable under the Note (subject to the provisions of Paragraph 1.12 hereof) and/or a modification of the Final Maturity Date or any other provision of the Loan Documents, (iv) require that Lender be reimbursed for all reasonable costs and expenses incurred by Lender in investigating the creditworthiness and management ability of the party to whom such Disposition will be made and in determining whether Lender's security will be impaired by the proposed Disposition, (v) require the

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payment to Lender of a reasonable transfer fee to cover the cost of documenting the Disposition in its records (subject to the provisions of Paragraph 1.12 hereof), (vi) require the payment of its reasonable attorneys' fees in connection with such Disposition, (vii) require the express assumption, subject to the exculpatory provisions set forth herein, of payment of the Indebtedness and performance of the Obligations by the party to whom such Disposition will be made (with or without the release of Borrower from liability for such Indebtedness and Obligations), (viii) require the execution of assumption agreements, modification agreements, supplemental security documents and financing statements reasonably satisfactory in form and substance to Lender, (ix) require endorsements (to the extent available under applicable law) to any existing mortgagee title insurance policies insuring Lender's liens and security interests covering the Property, (x) require additional security for the payment of the Indebtedness and performance of the Obligations, and/or (xi) shorten the stated term of the Note or otherwise rearrange the payment terms of the Note. In all events, if Lender consents to any Disposition, the manager of the Property after such Disposition shall be a creditworthy person or entity of sound financial reputation.

(b) The consent by Lender to any Disposition of the Property or the beneficial interests of Borrower shall not be deemed to constitute a novation of the Indebtedness or a consent to any further Disposition, or to waive Lender's right, at its option, to exercise its remedies for default after the expiration of any applicable notice and/or cure and/or grace period, without notice to or demand upon Borrower or to any other person or entity, upon any Disposition to which Lender shall not have consented.

**1.12 Limit on Interest.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Illinois law governing the maximum rate or amount of interest payable or to be paid in connection with the Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Illinois law). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Loan Documents, or contracted for, charged, taken, reserved or received with respect to the loan evidenced by the Note ("Loan"), or if acceleration of the maturity of the Indebtedness or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender be credited on the principal balance of the Note (or, if the Note has been or would thereby be paid in full, refunded to Borrower), and the provisions of the Loan Documents immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. The right to accelerate maturity of the Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the applicable usury ceiling. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of

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Lender 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.

1.13 Performance by Lender of Defaults by Borrower. Borrower covenants and agrees that, if it shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Property; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, then Lender, at its option, but without obligation and with notice, except in the event of an emergency or during the continuance of an Event of Default, may pay, perform or observe the same, and all payments made or costs incurred by Lender in connection therewith shall be part of the indebtedness secured hereby and shall be repaid by Borrower to Lender within ten (10) days after written demand therefor with interest thereon, from the date such payment is made or expense is incurred by Lender to the date Lender is reimbursed therefor, at the default rate provided in the Note. Lender shall be the sole judge, acting in good faith, of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such action, and of the amount necessary to be paid in satisfaction thereof. Lender is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term without thereby becoming liable, except to the extent otherwise provided by applicable law, to Borrower or any person in possession of any portion of the Property holding under Borrower. Borrower expressly acknowledges and agrees, however, that notwithstanding anything contained in this Paragraph 1.13 to the contrary, Lender shall not be obligated under this Paragraph 1.13 to incur any expense or to perform any act whatsoever.

Borrower further acknowledges that performance by Lender of Borrower's obligations shall cure Borrower's default or release Borrower from those or any other obligations under this Mortgage. Borrower hereby indemnifies, subject to the exculpatory provisions set forth in Article IV hereof, Lender against any and all costs, liabilities, or damages arising from or in any way related to the performance of Borrower's obligation by Lender.

## 1.14 Assignment of Leases and Rents.

(a) As additional collateral and to further secure the indebtedness and other obligations of Borrower, Borrower does hereby assign to Lender, its successors and assigns, all of Borrower's interest in, to, and under any and all leases, tenant contracts, and rental agreements, whether written or oral, now or hereafter affecting all or any part of the Property, and any agreement for the use or occupancy of all or any part of said Property which may have been made heretofore or which may be made hereafter, including any and all extensions, renewals, and modifications of the foregoing and guaranties of the performance or obligations of any tenants thereunder, and all other arrangements of any sort resulting in the payment of money to Borrower or in Borrower becoming entitled to the payment of money for the use of the Property or any part thereof whether such user or occupier is tenant, invitee, or licensee (all of the foregoing hereafter referred to collectively as the "Leases" and individually as a "Lease", and said tenants, invitees, and licensees are hereafter referred to collectively as

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"Tenants" and individually as "Tenant" as the context requires), which Leases cover all or any portion of the Property; together with all of Borrower's right, title, and interest in and to all income, rents, issues, royalties, profits, rights and benefits from the Property and all Tenants' security and other similar deposits derived with respect to the Leases and with respect to the Property, including, without limitation, all rents, payments in lieu of rent, bonuses, revenues, and other similar such payments (hereafter collectively referred to as "Income") and the right to collect the same as they become due. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance reasonably satisfactory to Lender, as may hereafter be reasonably requested by Lender further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Lender to any Lease, or to impose upon Lender any obligation with respect thereto; and provided, further, that permission is hereby given to Borrower unless and until Borrower is in default after the expiration of any applicable notice and/or cure and/or grace period as provided herein, to collect the income, rents, issues, expense contributions, and profits relating to the Property as they become due and payable but not in advance, except as provided hereinbelow. Without first obtaining on each occasion the approval of Lender, which approval may be granted or withheld in the sole discretion of Lender, Borrower shall not accept, or permit to be made, any prepayment of any installment of rent or other income thereunder (except for security or similar deposits) more than one (1) month in advance of the date when due. Borrower shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in each of said Leases now or hereafter existing, on the part of Borrower to be kept and performed and shall at all times do all things necessary to compel performance by each other party to said Leases of all obligations, covenants and agreements by such other party to be performed thereunder; Borrower shall, upon written request from Lender therefor, notify Lender promptly of any default (of which Borrower has knowledge) on the part of any other party to said Leases in the performance of any of the terms, covenants or agreements of any such Leases. The foregoing assignment shall be fully operative without any further action on the part of any party hereto, and, specifically, Lender shall be entitled, at its option for so long as a default after the expiration of any applicable notice and/or cure and/or grace period hereunder has occurred and is then continuing, without notice or demand of any kind to Borrower, to collect and retain all such income, rents, issues and profits whether or not Lender takes possession of the Property. Exercise by Lender of its rights under this Paragraph, and the application of any such rents, issues or profits to the indebtedness, shall not cure or waive any default hereunder or invalidate any act done pursuant hereto, but shall be cumulative of all other rights and remedies.

- (b) Borrower hereby represents, warrants, and agrees as follows:
- (i) Borrower is the sole holder of the landlord's interest under the Leases, is entitled to receive the income from the Leases and from the Property, and has the full right to sell, assign, transfer, and set over the same and to grant to and confer upon Lender the rights, interests, powers, and authorities herein granted and conferred;
  - (ii) Except to secure the approved secondary financing on the Property described in Paragraph 7 of Exhibit D to this Mortgage, Borrower has

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made no pledge or assignment of the Leases or Income, prior to the date hereof, and Borrower shall not, after the date hereof which is currently effective, make or permit any such pledge or assignment other than to Lender;

(iii) To the best of Borrower's knowledge, Borrower has neither done any act nor failed to do any act which would prevent Lender from, or materially limit Lender in, acting under any of the provisions of this Mortgage;

(iv) The Leases set out in the rent roll provided to Lender in connection herewith are to the best of Borrower's knowledge, valid, enforceable, and in full force and effect, subject to applicable bankruptcy, insolvency, and debtor relief laws, rules and regulations, and Borrower has delivered to Lender a true, complete, and correct copy of the Lease form presently in use with respect to Leases;

(v) Except as otherwise disclosed to Lender in writing, all Leases provide for rental to be paid monthly, in advance, and Borrower has not accepted, and shall not, after the date hereof, accept or permit payment of rental or other income (other than security, pet or similar deposits) under any of the Leases for more than one (1) month in advance of the due date thereof.

(vi) To the best of Borrower's knowledge, no security deposit has been made by any Tenant under any Lease except as set forth in the rent roll;

(vii) To the best of Borrower's knowledge, except as disclosed to Lender in writing, there exists no default or event of default or any state of facts which would or could, with the passage of time or the giving of notice, or both, constitute a default or event of default on the part of Borrower under the terms of any of the Leases;

(viii) Neither the performance of each and every covenant of Borrower under the Leases, nor the satisfaction of each and every condition contained in the Leases, conflicts with, or constitutes a breach or default under, any agreement, indenture, or other instrument to which Borrower is a party or is subject, or, to the best of Borrower's knowledge, any law, ordinance, administrative regulation, or court decree which is applicable to Borrower; and

(ix) No action has been brought or, to the best of Borrower's knowledge, is threatened, which would interfere in any way with the right of Borrower to execute the Leases and perform all of Borrower's obligations contained in the Leases.

(c) Borrower hereby covenants and agrees as follows:

(i) Borrower shall (A) fulfill, perform, and observe each and every condition and covenant of landlord or lessor contained in each of the Leases, to the extent consistent with prudent business practice; (B) at no cost or



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expense to Lender, enforce, to the extent consistent with prudent business practice, the performance and observance of each and every covenant and condition of the Leases to be performed or observed by the Tenants thereunder; (C) enforce, to the extent consistent with prudent business practice, the Leases and all remedies available to Borrower against the Tenants in the event of default under any Lease by any Tenant; and (D) appear in and defend, to the extent consistent with prudent business practice, any action arising out of, or in any manner connected with, any of the Leases, or the obligations or liabilities of Borrower as the landlord thereunder, or of the Tenant or any guarantors thereunder;

(ii) Subject to the terms of Subparagraph (d) below, Borrower shall not, without the prior written consent of Lender, such consent not to be unreasonably withheld or delayed, (A) enter into any lease of all or any part of the Property or any amendment to any such lease, or consent to any subletting or assignment for which the consent of Borrower is required; (B) waive or release any Tenant from the performance or observance by such Tenant of any obligation or condition of any of the Leases except in the ordinary course of business and consistent with prudent business practice; (C) permit the prepayment of any rents under any Lease or of any income (other than security or similar deposits) for more than one (1) month prior to the due date thereof; (D) discount any future accruing rents under the Leases or other income except in the ordinary course of business and consistent with prudent business practice; (E) grant any rental concessions in connection with any of the Leases except in the ordinary course of business and consistent with prudent business practice; or (F) except to secure the approved secondary financing on the Property described in Paragraph 7 of Exhibit D to this Mortgage, assign its interest in, to, or under any Lease or Income to any person or entity other than Lender; and any attempt to violate the provisions of this subparagraph (ii) shall be void;

(iii) Borrower shall take no action that will cause or permit the estate of any Tenant under any of the Leases to merge with the interests of Borrower in the Property or any portion thereof,

(iv) Borrower shall, subject to the exculpatory provisions set forth in Article IV hereof, protect, indemnify, and hold Lender harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, reasonable attorney's fees and court costs) imposed upon or incurred by Lender by reason of this Mortgage or in exercising, performing, enforcing, or protecting its rights, title, or interests set forth herein, and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under this Mortgage;

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(iv) Borrower shall not do, or fail to do, any act if such action or failure would constitute a violation of a material number of the Leases, or commit any act or omission that may create in a material number of the Tenants a right to cease or reduce payment of rent or terminate its Lease or otherwise affect or impair the benefits of this Mortgage;

(vi) Borrower shall authorize and direct, and does hereby authorize and direct, each and every present and future Tenant of the whole or any part of the Property to pay all rental to Lender following the occurrence of an Event of Default and a continuing acceleration of the Indebtedness by Lender, upon receipt of written demand from Lender to do so, without requiring any determination of Lender's right thereto;

(vii) Borrower shall furnish to Lender, within ten (10) days after a written request by Lender to do so, a written affidavit sworn to, subject to the exculpatory provisions set forth in Article IV hereof, and signed by Borrower setting forth the rent roll information specified in Paragraph 1.16 hereof, and stating whether, to the best of Borrower's knowledge, any defaults, off-sets or defenses exist or are claimed under or in connection with any of said Leases; and

(viii) Neither this Mortgage nor the proper exercise of rights hereunder shall be deemed to make Lender a Mortgagee in possession.

(d) Notwithstanding the foregoing provisions of subparagraph (c), no consent shall be required from Lender for any lease, or any amendment to any lease, or any subletting or assignment of any lease, which in each case comprises less than 5,000 square feet and is for a primary term of five years or less, whether or not there is a renewal term, providing Borrower is acting in Borrower's best judgment and in the best interest of the Property and the tenant, or sublessee or assignee, as the case may be, is not an affiliate of Borrower and such instrument is on substantially fair market terms pursuant to an arms-length agreement on a form previously approved by Lender without material modification.

(e) As long as no default or event of default after the expiration of any applicable notice and/or cure and/or grace period as defined in Paragraph 2.01 below, shall have occurred, Lender shall not demand that such Income be paid directly to Lender, and Borrower shall have a license to collect, but not more than one (1) month prior to the due date thereof all such Income from the Property (including, without limitation, all rental payments under the Leases).

(f) Except to secure the approved secondary financing on the Property described in Paragraph 7 of Exhibit D to this Mortgage, Borrower shall not, without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion, further assign the income, rents, issues or profits or any part thereof from the Property, and any such assignment without the express written consent of Lender shall be void as against Lender.

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(g) Each Lease pertaining to the Property, or any part thereof, which is executed after the date of this Mortgage, shall be deemed to provide that, in the event of the enforcement by Lender of the remedies provided by law or by this Mortgage, the Tenant thereunder will, upon request of Lender or any other person or entity succeeding to the interest of Lender as a result of such enforcement, automatically attorn to and become the tenant of Lender or said successor in interest, without change in the terms or other provisions of said Lease; provided, however, that (i) neither Lender nor any such successor in interest shall be bound by (A) any payment of rental, additional rental or other income for more than one (1) month in advance, or (B) any amendment or modification of said Lease, made without the express written consent of Lender or said successor in interest; (ii) neither Lender nor such successor in interest will be liable for (A) any act or omission or warranties of any prior landlord (including Borrower), or (B) the breach of any warranties or obligations relating to construction of Improvements on the Property or any tenant finish work performed or to have been performed by any prior landlord (including Borrower), or (C) the return of any security deposit, and (iii) neither Lender nor such successor in interest shall be subject to any offsets or defenses which the Tenant might have against any prior landlord (including Borrower). Each Lease pertaining to the Property which is executed after the date of this Mortgage, shall also be deemed to provide that, upon request by said successor in interest, the Tenant thereunder shall deliver an instrument confirming such attornment, and that such Tenant shall give Lender notice of any claim of Borrower's default and a reasonable opportunity to cure such default. The foregoing provisions of this subparagraph (g) are intended to provide constructive notice to Tenants and shall not require that any lease include such terms or agreements.

(h) The collateral assignment of leases and rents set forth herein is in addition to, and not in lieu of, the absolute assignment thereof set forth in the Lease Assignment. If and to the extent a conflict is perceived to exist between the collateral assignment contained herein and the absolute assignment contained in the Lease Assignment, such conflict shall be resolved in favor of the absolute assignment contained in the Lease Assignment.

(i) In the event of enforcement of Lender's collateral assignment of rents contained in this Paragraph 1.14 following the occurrence of an Event of Default after the expiration of any applicable notice and/or cure and/or grace period, Lender shall be entitled to its pro rata share of all Income paid or accruing during the month in which such Event of Default occurred, and no part of the Income for such month shall be apportioned to Borrower.

1.15 Estoppe! Affidavits. Both Lender and Borrower, upon ten (10) days' prior written notice, shall furnish each other a written affidavit, sworn to and signed accordingly, setting forth (i) the unpaid principal of, and interest on, the Indebtedness, (ii) whether or not any off-sets or defenses exist against such principal and interest, (iii) whether or not any "default" or "event of default" after the expiration of any applicable notice and/or cure and/or grace period (or any fact or circumstance that, with lapse of time or notice, or both, would constitute a "default" or "event of default" after the expiration of any applicable notice and/or cure and/or grace period) exists under any of the Loan Documents, and (iv) the state of facts relative to the condition of the Property.

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1.16 Books, Records, Accounts and Reports. Borrower shall keep and maintain, or shall cause to be kept and maintained, at Borrower's cost and expense, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Property and in connection with any services, equipment, or furnishings provided in connection with the operation of the Property. Lender and Lender's agents, accountants and attorneys shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of Borrower or such other person or entity maintaining such books, records or accounts and to make copies or extracts thereof as Lender shall desire and to discuss Borrower's affairs, finances and accounts with Borrower and with the officers and principals of Borrower, at such reasonable times as may be requested by Lender. Borrower (and not any third-party property manager) shall furnish to Lender annually within one hundred twenty (120) days after the end of Borrower's fiscal year, at Borrower's expense, a statement of the operation of the Property for such fiscal year showing in detail all revenues derived from rents, profits and all other sources, and all expenses and disbursements made in connection with the Property, annual comparative balance sheets, profit and loss statements, and all supporting schedules covering the operation of the Property, together with a rent roll for the Property containing, at a minimum, the names of all tenants of any Leases, the rentable square footage of each leased space, a schedule of past due rents, dates of occupancy, terms of the Leases, base rents, rental concessions, and security deposits. From and after an event of default, after the expiration of any applicable notice and/or cure and/or grace period, Borrower (and not any third party property manager) shall further provide Lender, on a quarterly basis, with such interim balance sheet and profit and loss statements as Lender may require, which statements shall cover such additional financial matters as Lender may reasonably request, and shall be certified, subject to the exculpatory provisions set forth in Article IV hereof, by Borrower's principal financial or accounting officer. From and after an event of default, after the expiration of any applicable notice and/or cure and/or grace period, in the event it deems necessary, Lender may require that any such statements shall be audited and/or prepared and certified by an independent certified public accountant selected or approved by Lender. All of the foregoing financial statements shall fairly and accurately present the financial condition of the subject thereof as of the dates thereof and shall be certified, subject to the exculpatory provisions set forth in Article IV hereof, by Borrower's principal financial or accounting officer. In the event that Borrower shall refuse or fail to furnish any statement as aforescribed, or in the event such statement shall be inaccurate or false in any material respect, or in the event of failure of Borrower to permit Lender or its representatives to inspect the Property or the said books and records, such acts of Borrower shall be a default after the expiration of any applicable notice and/or cure and/or grace period hereunder and Lender may proceed in accordance with the rights and remedies afforded it under the provisions hereof.

## 1.17 Hazardous Material.

(a) Borrower represents and warrants that to its knowledge no Hazardous Materials exist on, under or about the Property in violation of any applicable law or regulation or to the best of Borrower's knowledge after diligent inquiry, have been transported to or from the Property or used, generated, manufactured, stored or disposed of on, under or about the Property in violation of any applicable law or regulation, and to its knowledge the Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial

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settlement, consent or compromise might impair the value of Lender's security hereunder; Lender's prior consent shall not, however, be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either (i) poses an immediate threat to the health, safety or welfare of any individual, or (ii) is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Lender's consent prior to undertaking such action. In the event Borrower undertakes any remedial action with respect to any Hazardous Materials on, under or about the Property, Borrower shall immediately notify Lender of any such remedial action, and shall conduct and complete such remedial action (A) in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies, and (B) in accordance with the orders and directives of all federal, state and local governmental authorities.

(d) Borrower shall, subject to the exculpatory provisions set forth in Article IV of this Mortgage, protect, indemnify and hold (i) Lender, its directors, officers, employees and agents, (ii) any successors to Lender as holder of the Note, (iii) any person or entity who acquires any portion of the Property at a foreclosure sale, pursuant to this Mortgage or by the exercise of any power of sale pursuant to this Mortgage or receipt of a deed in lieu of foreclosure pursuant to this Mortgage, and (iv) any person or entity who acquires any portion of the Property from Lender, and all directors, officers, employees and agents of all of the aforementioned indemnified parties, harmless from and against any and all claims, proceedings, lawsuits, liabilities, damages, losses, fines, penalties, judgments, awards, costs and expenses (including, without limitation, reasonable attorney fees and costs and expenses of investigation) which arise out of or relate in any way to any use, handling, production, transportation, disposal or storage of any Hazardous Materials in, on or about the Property whether by Borrower or any Tenant or any other person or entity in violation of any applicable law or regulation, including, without limitation, (i) all actual damages incurred by Lender directly or indirectly arising out of (A) the use, generation, storage, discharge or disposal of Hazardous Materials by Borrower, any prior owner or operator of the Property, or any person or entity on or about the Property, or (B) any residual contamination affecting any natural resource or the environment, and (ii) the costs of any required or necessary repair, cleanup, or detoxification of the Property and the preparation of any closure or other required plans (all such costs, damages, and expenses referred to in this Paragraph 1.17(d) hereafter referred to as "Expenses"). In addition, Borrower agrees that in the event any Hazardous Material is caused to be removed from the Property by Borrower, Lender, or any other such indemnified person or entity, the number assigned by the Environmental Protection Agency to such Hazardous Material shall be solely in the name of Borrower and Borrower shall assume any and all liability for such removed Hazardous Material. In the event Lender pays any Expenses, such Expenses shall be additional Indebtedness secured hereby and shall become due and payable within thirty (30) days after written notice from Lender to Borrower with interest thereon at the default rate specified in the Note. Notwithstanding the foregoing or the provisions elsewhere set forth in this Article, the aforesaid indemnity and payment and reimbursement obligations elsewhere set forth herein shall not apply to a transferor of the Property that conveys title pursuant to the terms of Paragraph 1.11, as amended by Paragraph 1 of Exhibit D to this Mortgage, above, with respect to any Expenses or other loss, cost, damages or expenses which arise or accrue as a result of acts or omissions occurring subsequent to such permitted transfer.

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(iv) An event shall occur which under the specific terms of Paragraph 1.05 shall give the Lender the option to accelerate the maturity of the Indebtedness;

(v) Failure by Borrower duly to observe or perform any other term, covenant, condition or agreement of this Mortgage or the other Loan Documents within thirty (30) days after written notice of such failure from Lender to Borrower; provided, however, if such failure cannot be cured within such thirty (30) day period, then failure by Borrower to commence the curing thereof within such thirty (30) day period and diligently to prosecute such curing to completion within a reasonable time thereafter, but in no event to exceed one hundred twenty (120) days;

(vi) The fact that any material representation or warranty of Borrower contained in this Mortgage or in any other Loan Document proves to be untrue or misleading in any material respect as of the time made;

(vii) The occurrence of any default, event of default or Event of Default under any of the other Loan Documents, after expiration of any applicable notice, grace and/or cure period;

(viii) The filing of any federal tax lien against the Property which is not released or bonded over within no more than thirty (30) days of the date of notice thereof to Borrower but in any event within at least ten (10) days prior to a date of sale with respect thereto;

(ix) The filing by Borrower, any principal of Borrower or any endorser or guarantor of the Note of a voluntary petition in bankruptcy pursuant to any federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors (hereafter referred to collectively as "Bankruptcy Law") or the issuing of an order for relief against Borrower, any principal of Borrower or any endorser or guarantor of the Note under any such Bankruptcy Law, or the filing by Borrower, any principal of Borrower or any endorser or guarantor of the Note of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future Bankruptcy Law;

(x) Borrower's, or any of its principals or any such endorser's or guarantor's seeking or consenting to or acquiescing in the appointment of any trustee, custodian, receiver, or liquidator of Borrower, a principal of Borrower, any such endorser or guarantor, or of all or any substantial part of the Property or of any or all of the income, rents, revenues, issues, earnings, profits or income thereof or of any other property or assets of Borrower, any principal of Borrower or of

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agreement pertaining to management of the Property; terminates, cancels, amends or modifies any such management agreement; or consents to any termination, cancellation, amendment, or modification of any such management agreement; provided, however, that Lender has approved the identity and creditworthiness of HP-Combined, L.L.C. as manager of the Property and the Real Estate Management Agreement dated January 8, 1997 executed between Borrower and HP-Combined, L.L.C.; provided further, however, Borrower may enter into any such agreement, terminate, cancel, amend or modify same, or consent thereto, to the extent permitted under any Loan Document; or

(xvii) The filing of any action under any federal or state law, which permits forfeiture of Borrower's interest in the Property, including but not limited to, any indictment under the Racketeer Influence and Corrupt Organization Act of 1970 (RICO) unless such action is dismissed or bonded over within thirty (30) days.

(b) So long as the Property is owned by Combined Centre RPFIII Associates Limited Liability Company, the term "principal of Borrower" or "endorser" or "guarantor," as used in this Mortgage, shall not be deemed to refer to any party other than Combined Centre RPFIII Associates Limited Liability Company, and accordingly, clauses (ix), (x), (xi), and (xii) of subparagraph (a) of this Section 2.01 shall during such period of ownership apply solely to Borrower.

**2.02 Acceleration of Maturity.** If an Event of Default after the expiration of any applicable notice and/or cure and/or grace period shall have occurred, then Lender shall be entitled, subject to the exculpatory provisions set forth in Article IV hereof, to any legal or equitable remedy available, including without limitation, declaring the Principal Balance (defined hereby as meaning the then unpaid principal balance on the Note), the accrued interest thereon and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without further notice (including notice of intent to accelerate and notice of acceleration), presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Borrower), whereupon the same shall become immediately due and payable.

**2.03 Lender's Right to Enter and Take Possession, Operate and Apply Revenues.**

(a) If an Event of Default after the expiration of any applicable notice and/or cure and/or grace period shall have occurred, Borrower upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Property and if, and to the extent, permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all the Property without the appointment of a receiver, or an application therefor, and may exclude Borrower and its respective agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers and accounts of Borrower. In addition, Lender shall have the right to appoint a substitute management company for the Property.

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(b) If Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Property to Lender, to the entry of which judgment or decree Borrower hereby specifically consents. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents; and all such expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) During continuing acceleration of the Indebtedness by Lender following the occurrence of an Event of Default, Lender may hold, store, use, operate, manage and control the Property and conduct the business thereof and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Property insured; (iii) manage and operate the Property and exercise all the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be in its best interest; and (v) perform all acts required of Borrower as lessor under any lease of all or any part of the Property, all as Lender may from time to time determine to be to its best advantage. During a continuing acceleration of the Indebtedness by Lender following the occurrence of an Event of Default, Lender may collect and receive all the income, rents, issues, profits and revenues from the Property, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Property or any part thereof; and (F) the compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the moneys and proceeds so received by Lender to the payment of principal and interest in whatever order or priority Lender may elect. Anything in this Paragraph 2.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as the result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues, profits and revenues actually received by Lender. Furthermore, in the exercise of the foregoing rights, Lender will not be liable to Borrower for any loss or damage thereby sustained unless due to Lender's gross negligence or willful misconduct.

(d) For the purpose of carrying out the provisions of this Paragraph 2.03, Borrower hereby irrevocably constitutes and appoints Lender, during a continuing acceleration of the Indebtedness by Lender following the occurrence of an Event of Default, the true and lawful attorney-in-fact (with full power of substitution) of Borrower to do and perform, from time to time, any and all actions necessary and incidental to such purpose, and Borrower does, by these presents, ratify and confirm any and all actions of said attorney-in-fact in the

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Property. This appointment is coupled with an interest and is irrevocable, except that this power of attorney shall terminate on payment in full of the Indebtedness.

(e) In the event that all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage, shall have been paid and all Events of Default, after the expiration of any applicable notice and/or cure and/or grace period, cured and satisfied, and as a result thereof, Lender surrenders possession of the Property to Borrower, the same right of taking possession shall exist if any subsequent Event of Default after the expiration of any applicable notice and/or cure and/or grace period shall occur.

**2.04 Receiver.** If an Event of Default after the expiration of any applicable notice and/or cure and/or grace period shall have occurred, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right and without notice, to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the income, rents, issues, profits, and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the State of Illinois in similar cases. Borrower shall pay to Lender upon demand all expenses, including receiver's fees, actual attorneys' fees, costs, and agent's compensation, incurred pursuant to the provisions of this Paragraph 2.04 (which shall be based upon standard hourly rates and expenses and shall be customary and appropriate); and all such expenses shall be secured by this Mortgage.

**2.05 Enforcement.** (a) If an Event of Default shall have occurred, Lender may commence and maintain any action or actions in any court of competent jurisdiction to foreclose this instrument as a Mortgage or to specific performance of the covenants of Borrower hereunder, and Borrower agrees that such covenants shall be specifically enforceable by injunction or by any other appropriate remedy.

(b) Lender shall have the right, subject to the exculpatory provisions set forth in Article IV hereof, from time to time to enforce any legal or equitable remedy against Borrower, including, without limitation, suing for any sums, whether interest, principal or any installment of either or both, taxes, penalties or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not all of the Indebtedness shall be due, and without prejudice to the right of Lender thereafter to enforce any other remedy, including, without limitation, an action of foreclosure, whether or not such other remedy be based upon a Default after the expiration of any applicable notice and/or cure and/or grace period which existed at the time of commencement of an earlier or pending action, and whether or not such other remedy be based upon the same Default after the expiration of any applicable notice and/or cure and/or grace period upon which an earlier or pending action is based.

**2.06 Application of Proceeds of Sale.** To the extent not otherwise provided by statute, the proceeds of any sale of the Property shall be applied by Lender (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following orders of priority:

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(a) first, to the payment of the costs and expenses of taking possession of the Property and of holding, managing, operating, using, leasing, repairing, improving and selling the same, including without limitation any one or more of the following to the extent Lender deems appropriate (i) trustees' and receivers fees, (ii) court costs, (iii) attorneys', brokers', managers', accountants' and appraisers' fees and expenses, (iv) costs of advertisement, and (v) the payment of any and all taxes, assessments, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Mortgage (except those to which the Property has been or will be sold subject to and without in any way implying Lender's prior consent to the creation thereof);

(b) second, to that portion, if any, of the Indebtedness for which no person or entity is personally liable (the non-recourse portion) in the following order:

(i) to the payment of all amounts (other than the Principal Balance and accrued but unpaid interest on the Note) which may be due to Lender under the Loan Documents, together with interest thereon as provided therein;

(ii) to the payment of all accrued but unpaid interest due on the Note;

and

(iii) to the payment of the Principal Balance;

(c) third, to that portion, if any, of the Indebtedness for which persons or entities as well as the Property may be liable (the recourse portion) in the following order:

(i) to the payment of all amounts (other than the Principal Balance and accrued but unpaid interest on the Note) which may be due to Lender under the Loan Documents, together with interest thereon as provided therein;

(ii) to the payment of all accrued but unpaid interest due on the Note; and

(iii) to the payment of the Principal Balance;

(d) fourth, to the extent permitted by law, funds are available therefor out of the sale proceeds and known by Lender, to the payment of any indebtedness or obligation secured by a subordinate Mortgage on or security interest in the Property, or to any other party legally entitled thereto, and

(e) fifth, to Borrower.

**2.07 Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Paragraph 2.06 shall become the legal owner of the Property. Borrower shall become a tenant at sufferance of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Property other than the statutory action of forcible detainer in any court having jurisdiction over the Property.

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2.08 Separate Sales. The Property may be sold in one or more parcels and in such manner and order as Lender, in its sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default after the expiration of any applicable notice and/or cure and/or grace period shall not be exhausted by any one or more sales.

2.09 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceeding shall have been withdrawn, discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case (i) Borrower and Lender shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken, (iii) each and every Default after the expiration of any applicable notice and/or cure and/or grace period declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall be deemed to be a continuing Default, and (iv) neither this Mortgage, nor the Note nor the Indebtedness, nor any other of the Loan Documents shall be or shall be deemed to have been reinstated, released or otherwise affected by such withdrawal, discontinuance or abandonment; and Borrower hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the above.

2.10 Acceleration Following Certain Events. Notwithstanding anything to the contrary contained in or inferable from any provision hereof, upon the occurrence of any of the Events of Default listed in Subparagraphs 2.01 (a) (ix) or (x), the Principal Balance, the unpaid accrued interest under the Note and any other accrued but unpaid portion of the Indebtedness shall be automatically and immediately due and payable in full without the necessity of any action on the part of Lender.

2.11 Remedies Cumulative. Lender shall, subject to the exculpatory provisions set forth in Article IV hereof, have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including specifically those granted by the Uniform Commercial Code in effect and applicable to the Property or any portion thereof and same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively or concurrently against Borrower or others obligated under the Note, or against the Property, or against any one or more of them, at the sole discretion of Lender; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (d) are intended to be, and shall be, nonexclusive.

2.12 Suits to Protect the Property. Lender shall, subject to the exculpatory provisions set forth in Article IV hereof, have the power (i) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Mortgage, (ii) to preserve or protect its interest in the Property and in the income, rents, issues, profits and revenues arising therefrom, and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement



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of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

2.13 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount of the indebtedness at the date of the institution of such proceedings and for any additional amount of the indebtedness after such date.

2.14 Waiver of Redemption, Notice and Marshaling of Assets.

(a) To the fullest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases for itself, its successors and assigns and all persons claiming by, through or under Borrower, (i) all benefits that might accrue to Borrower by virtue of any present or future moratorium law or other law exempting the Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (ii) except as otherwise provided in this Mortgage or the other Loan Documents, all notices of any Event of Default or of Lender's intention to accelerate maturity of the indebtedness or of Lender's election to exercise or his actual exercise of any right, remedy or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(b) Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law, which is referred to elsewhere in this Mortgage as the "Act") or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuations, appraisements, homestead exemption, stay, redemption, and moratorium laws under any state or federal law.

2.15 Security Deposits. If Borrower shall obtain from a Tenant or subtenant of the Property, or a part thereof, a deposit to secure such Tenant's or subtenant's obligations, such funds, following any default after the expiration of any applicable notice and/or cure and/or grace period under this Mortgage, shall be deposited with Lender in an account maintained by Lender in its name; but any such deposit shall be returned to Borrower, without interest, when required, by the terms of any Lease, to be paid over to the Tenant or subtenant; and Borrower represents that the provisions of any applicable laws relating to security deposits have been satisfied with respect to each existing Tenant, subtenant or occupant of the Property and agrees that they will be satisfied with respect to each new Tenant, subtenant, or occupant of the Property; and Borrower will furnish details of such satisfaction from time to time upon the written request of Lender in such detail as Lender may reasonably require.

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2.16 Waiver of Homestead. To the full extent permitted by applicable law, Borrower hereby waives and renounces all homestead right, entitlement, and exemption provided for by the Constitution and the laws of the United States of America and of any state, in and to the Property as against the collection of the Indebtedness, or any part hereof.

2.17 No Conditions Precedent to Exercise of Remedies. Neither Borrower nor any other person hereafter obligated for payment of all or any part of the Indebtedness or fulfillment of all or any of the Obligations shall be relieved of such obligation by reason of (a) the failure of Lender to comply with any request of Borrower or any other person so obligated to foreclose the lien of this Mortgage or to enforce any provisions of the other Loan Documents; (b) the release, regardless of consideration, of the Property or any portion thereof or the addition of any other property to the Property; (c) any agreement or stipulation between any subsequent owner of the Property and Lender extending, renewing, rearranging or in any other way modifying the terms of the Loan Documents without first having obtained the consent of, given notice to or paid any consideration to Borrower or such other person, and in such event Borrower and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by Lender or as otherwise provided under Paragraph 1.11 or Paragraph 1 of Exhibit D hereto; or (d) by any other act or occurrence save and except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations or as otherwise provided under Paragraph 1.11 or Paragraph 1 of Exhibit D hereto.

2.18 Release of and Resort to Collateral. Lender may release, regardless of consideration, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Property, and without in any way releasing or diminishing the liability of any person or entity liable for the repayment of the Indebtedness or the performance of the Obligations. For payment of the Indebtedness, Lender may resort to any other security therefor held by Lender in such order and manner as Lender may elect.

2.19 Prepayment Premium. Following the occurrence of an Event of Default after the expiration of any applicable notice and/or cure and/or grace period causing an acceleration of maturity of the Indebtedness, Borrower shall also be responsible for the prepayment premium described in the Note (subject to the limitations referred to therein).

2.20 Other Rights. Lender may, so long as an Event of Default has occurred and is then continuing, (i) apply the reserve for impositions, and insurance premiums, if any, required by the provisions of this Mortgage, toward payment of the Indebtedness, and (ii) Lender shall have and may exercise any and all other rights and remedies which Lender may have at law or in equity, or by virtue of any Loan Document or under the Illinois UCC, or otherwise subject to the provisions of Article IV hereof.

2.21 Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions

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of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the Indebtedness.

2.22 Maximum Amount Secured. The maximum aggregate amount of principal, interest, premium, if any, future advances, or other indebtedness (now owed or hereafter owed) secured by this Mortgage is \$100,000,000.00.

2.23 Purchase by Mortgagee. Upon any foreclosure sale, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Indebtedness to the Purchase Price.

2.24 No Reinstatement. If a default under paragraph 2.01(a)(i) shall have occurred and Lender shall have proceeded to enforce any right, power, or remedy permitted hereunder, then a tender of payment by Borrower or anyone on behalf of Borrower of the amount necessary to satisfy all sums due hereunder made at any time prior to foreclosure or the acceptance by Lender of any such payment or tender shall not constitute a reinstatement of the Note or this Mortgage. To the extent permitted by law, Borrower expressly waives any right of reinstatement under Section 15-1602 of the Act.

## ARTICLE III

3.01 Successors and Assigns. Subject to Paragraph 1.11(a) hereof and Paragraph 1 of Exhibit D attached hereto this Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective legal representatives, successors, and assigns. Whenever a reference is made in this Mortgage to Borrower or Lender, such reference shall be deemed to include a reference to the heirs, devisees, legal representatives, successors, and assigns of Borrower or Lender, whether so expressed or not.

3.02 Terminology. All personal pronouns used in this Mortgage (whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage itself and all references herein to Articles, Paragraphs, or Subparagraphs shall refer to the corresponding Articles, Paragraphs, or Subparagraphs of this Mortgage unless specific reference is made to such Articles, Paragraphs or Subparagraphs of another document or instrument.

3.03 Severability. If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

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3.04 Applicable Law. This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Illinois and the federal laws of the United States of America for applicable United States federal law to the extent it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than permitted under Illinois law).

3.05 Notices, Demands, and Requests. All notices, demands or requests provided for or permitted to be given pursuant to this Mortgage shall be in writing and shall be delivered in person or sent by registered or certified United States mail, postage prepaid, return receipt requested, or by overnight courier, to the addresses set out below or to such other addresses as are specified by no less than ten (10) days' prior written notice delivered in accordance herewith:

Lender: c/o Providian Capital Management Real Estate Services, Inc.  
400 W. Market Street  
Louisville, Kentucky 40202  
Attn: Asset Management Department

With copy to: GMAC Commercial Mortgage  
100 S. Wacker Dr., Suite 400  
Chicago, IL 60606

Borrower: c/o General Electric Investment Corporation  
3003 Summer Street  
P.O. Box 7900  
Stamford, Connecticut 06904-7900  
Attn: Real Estate/General Counsel

All such notices, demands and requests shall be deemed effectively given and delivered three (3) days after the postmark date of mailing, the first (1st) business day after the date of delivery to the overnight courier or, if delivered personally, when received. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given shall be deemed to the receipt of the notice, demand, or request sent.

3.06 Consents and Approvals. All approvals and consents hereunder shall be in writing and no approval or consent shall be deemed to have been given hereunder unless evidenced in a writing signed by the party from whom the approval or consent is sought.

### 3.07 Waiver.

(a) No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default after the expiration of any applicable notice and/or cure and/or grace period shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, express or implied, by Lender to or of any breach or default after the expiration of any applicable notice and/or cure and/or grace period by Borrower in the performance of the obligations hereunder

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shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or to declare an Event of Default after the expiration of any applicable notice and/or cure and/or grace period, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies consequent on any breach or default by Borrower.

(b) If Lender (i) grants forbearance of an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Note; (iv) releases any part of the Property from the lien of this Mortgage or other changes any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consents to the filing of any map, plat or replat affecting the Property; or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of Borrower. In no event, however shall the provisions of this Paragraph 3.07(b) be construed in derogation of Paragraph 1.11 hereof or Paragraph 1 of Exhibit D attached hereto.

**3.08 Replacement of Note: Affiliate or Assignor's Participation.** Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery from a credit-worthy entity (as reasonably determined by Borrower) of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement Note.

**3.09 Assignment.** This Mortgage is assignable by Lender, and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

**3.10 Time of the Essence.** TIME IS OF THE ESSENCE with respect to each and every covenant, agreement, and obligation of Borrower under this Mortgage, the Note and any and all other Loan Documents, subject, however, to all applicable notice, grace and/or cure periods.

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3.11 Attorneys' Fees. The meaning of the terms "legal fees" or "attorneys' fees" or any other reference to the fees of attorneys or counsel, wherever used in this Mortgage, shall be deemed to include, without limitation, all reasonable legal fees incurred in enforcing the Loan Documents whether or not any suit or legal proceeding is commenced, and all legal fees relating to litigation or appeals at any and all levels of courts and administrative tribunals.

3.12 Covenants Run With the Land. All of the grants, covenants, terms, provisions and conditions (the Obligations) herein contained are intended to and shall run with the land and shall apply to, bind and inure to the benefit of, the successors and assigns of Borrower and Lender.

3.13 Entire Agreement and Modification. The Loan Documents contain the entire agreement between the parties relating to the subject matter hereof and thereof and all prior agreements relating thereto which are not contained herein or therein are terminated. The Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party in which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

3.14 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full.

3.15 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument.

3.16 Further Stipulations. The covenants, agreements and provisions set forth in Exhibit "D" attached hereto are hereby made a part of this Mortgage. In the event of conflict between such further stipulations and any of the other provisions in the body of this Mortgage, such further stipulations shall be deemed to control.

#### ARTICLE IV

4.01 Exculpatory Provision. Except as hereafter provided, Lender agrees that (i) Borrower, its members and their respective partners, officers, directors, employees, advisors, agents, affiliates, successors and assigns shall have no personal liability with respect to the payment or performance of any indebtedness or obligations evidenced or secured by, or otherwise pertaining to the Loan Documents, and Lender shall look solely to the Property and any other collateral for the Indebtedness for any recovery in the event of any default in respect of the Indebtedness or Obligations, (ii) if default occurs in the timely and proper payment of all or any part of such indebtedness, any judicial or other proceedings brought by Lender against Borrower, its members or any of their respective partners, officers, directors, employees, advisors, agents, affiliates, successors or assigns shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, security titles, estates, assignments, rights and security interests now or at any time hereafter securing the payment

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of the Indebtedness, and no attachment, execution or other writ of process shall be sought, issued or levied upon any assets, properties or funds of Borrower, its members or any of their respective partners, officers, directors, employees, advisors, agents, affiliates successors or assigns other than the Property and any other collateral for the Indebtedness, and (iii) in the event of a foreclosure of such liens, security titles, estates, assignments, rights and security interests securing the payment of the Indebtedness, no judgment for any deficiency upon such Indebtedness or any other money judgment, shall be sought or obtained by Lender against Borrower, its members or any of their respective partners, officers, directors, employees, advisors, agents, affiliates, successors or assigns; PROVIDED, HOWEVER, that, notwithstanding the foregoing provisions of this Paragraph 4.01, Borrower (but not any of its members nor any of Borrower's or its members' respective partners, officers, directors, employees, advisors, or agents, affiliates, successors or assigns) shall be fully and personally liable at all times (a) for any actual damages resulting from fraud or Material Misrepresentations (as defined and limited below), and (b) for the Misapplication (as defined and limited below), to the extent of the funds so misapplied, of (i) proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the Property, to the full extent of such proceeds, (ii) proceeds or awards resulting from the condemnation or other taking in lieu of condemnation of any portion of the Property, to the full extent of such proceeds or awards, or (iii) from and after written notice of a default and the expiration without cure of any applicable grace and/or cure period, income, rents, issues, profits and revenues arising or issuing after such date from or out of the Property or any portion thereof. Nothing contained in this Paragraph 4.01 shall (A) be deemed to be a release or impairment of the Indebtedness or the lien of the Loan Documents upon the Property, or (B) preclude Lender from foreclosing the Loan Documents in case of any event of default or from enforcing any of the other rights of Lender except as expressly stated in this Paragraph 4.01.

"Material Misrepresentations" as used in subparagraph (a) of this Paragraph 4.01 shall be solely limited to (x) material misrepresentations made prior to and after the date hereof by Borrower (but not by third parties, including without limitation any third party manager of the Property, on behalf of Borrower), to Lender, its agents or affiliates, with respect to the creditworthiness, experience and/or management ability of Borrower; (y) material misrepresentations made after the date hereof by Borrower to Lender, its agents or affiliates, but not by third parties on behalf of Borrower (including, without limitation, any third party manager of the Property), with respect to then current economic information of the Property required pursuant to Paragraph 1.16 of this Mortgage, including, but not limited to, income, expenses, taxes and insurance attributable to the Property; and (z) intentional material misrepresentations made from and after the date hereof by Borrower to Lender, its agents or affiliates, but not by third parties on behalf of Borrower (including, without limitation, any third party manager of the Property), with respect to hazardous materials located on the Property.

"Misapplication" as used in subparagraph (b) of this Paragraph 4.01 shall mean the application or retention of funds by Borrower for any purpose other than payment of debt service on the Indebtedness and any other indebtedness specifically allowed under the terms of the Loan Documents or for the payment of usual and customary operating expenses pertaining to the Property, or such other expenditures approved in writing by Lender.



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STATE OF ILLINOIS  
CLERK OF THE SUPREME COURT  
JANUARY 20 11 00 AM '11

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## EXHIBIT A - LEGAL DESCRIPTION

### Parcel I (500 Skokie Boulevard):

Lot 2 in Lane Park Subdivision in the South East 1/4 of Section 2, Township 42 North, Range 12 East of the Third Principal Meridian, according to the plat thereof recorded July 15, 1976 as Document No. 23,560,771 in Cook County, Illinois.

### Parcel II (500 Skokie Boulevard):

A Permanent non-exclusive easement for parking purposes as created by easement dated April 19, 1985 and recorded May 17, 1985 as Document 85025100, on, over and across that part of lot 3 in Lane Park Subdivision in the Southeast 1/4 of Section 2, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois, which part of said lot 3 is bounded and described as follows: Beginning at the Northwesternly corner of said lot 3 and running thence East along the North line of said lot 3 a distance of 152.07 feet; thence Southwesterly along a line which is perpendicular to the Westerly line of said lot 3 a distance of 136.06 feet to a point on said Westerly line; thence Northwesterly along said Westerly line a distance of 67.85 feet to the point of beginning.

### Parcel III (555 Skokie Boulevard):

Lot 3 in Northwood Edens, a Subdivision of part of Hughes, Brown, Moore Corporation Resubdivision of United Realty Company's Dundee Road Subdivision in the Southeast 1/4 of Section 2, Township 42 North, Range 12 East of the Third Principal Meridian, according to the plat thereof recorded January 12, 1968 as Document Number 20,377,823 (except that part of said lot 3 described as follows:

Beginning at the Southeast corner of said lot 3; thence Westerly along the center line of vacated Maple Hill Drive, on a curve to the left having a radius of 524.13 feet, a distance of 410.77 feet to a point of tangency; thence continuing along said center line, tangent to the last described curve, taken as being South 66 Degrees, 15 Minutes, 30 Seconds West, for this description, a distance of 22.22 feet to the Northeasternly line of Skokie Boulevard, being the Southwesterly line of said lot 3, or the Southeasternly extension of said Southwesterly line; thence along said Northeasternly line of Skokie Boulevard, taken as being North 26 Degrees, 07 Minutes, 00 Seconds West, for this description, a distance of 65 feet; thence parallel to and 65 feet Northwesternly of the aforesaid center line of vacated Maple Hill Drive North 66 Degrees, 15 Minutes, 30 Seconds East, a distance of 29.28 feet to a point of curve; thence concentric with and 65 feet Northerly of said center line, on a curve to the right having a radius of 589.13 feet, a distance of 231.87 feet to a point, said point being 128 feet Southwesterly from, measured at right angles to, the Northeasternly line of said lot 3; thence parallel to and 128 feet Southwesterly of said Northeasternly line of lot 3, North 26 Degrees, 06 Minutes, 00 Seconds West, a distance of 49.84 feet; thence at right angles to the last described line, North 63 degrees, 54 Minutes, 00

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Seconds East, a distance of 128 feet to a point in the aforesaid Northeasterly line of Lot 3; thence along said Northeasterly line of Lot 3, South 26 Degrees, 06 Minutes, 00 Seconds East, a distance of 95.40 feet to an angle point; thence continuing along said Northeasterly line, South 26 Degrees 45 Minutes 00 Seconds East, a distance of 129.60 feet to the point of beginning); in Cook County, Illinois.

Parcel IV (555 Skokie Boulevard Frontage Road Portion):

That part of vacated Henrici Drive (also known as Frontage Road) being that part of Block 11 in Hughes-Brown-Moore Corporation's Resubdivision of United Realty Company's Dundee Road subdivision in the Southeast 1/4 of Section 2, Township 42 North, Range 12, East of the Third Principal Meridian, according to the Plat thereof recorded June 21, 1927 as Document No. 9692524, described as follows: Beginning at the most Northerly corner of Lot 3 in Northwood Adams, a subdivision in the Southeast 1/4 of Section 2, aforesaid, according to the Plat thereof recorded January 12, 1968 as Document No. 20377823; thence Northeasterly along the Northeasterly extension of the Northwesterly line of said Lot 3, 69.0 feet; thence Southeasterly along a line parallel with the Northeasterly line of said Lot 3, 268.29 feet; thence Southwesterly along a line parallel with the Northwesterly line of said Lot 3, 69.0 feet to an intersection with the Northeasterly line of said Lot 3; thence Northwesterly along the Northeasterly line of said Lot 3, 268.29 feet to the place of beginning, in Cook County, Illinois.

Parcel V (707 Skokie Boulevard):

Lot 1 in 707 Consolidated Subdivision, being a resubdivision of part of the Southeast 1/4 of Section 2, Township 42 North, Range 12 East of the Third Principal Meridian, according to the plat thereof recorded July 3, 1979 as Document Number 25,034,175 in Cook County, Illinois.

Parcel VI (707 Skokie Boulevard Frontage Road Portion):

That part of the East 1/2 of the Southeast 1/4 of Section 2, Township 42 North, Range 12 East of the Third Principal Meridian, bounded and described as follows:

Beginning at the most Northerly corner of Lot 1 in 707 Consolidated Subdivision, being a resubdivision of part of the Southeast 1/4 of Section 2, aforesaid; thence North 63 Degrees 27 Minutes 13 Seconds East along the Northeasterly extension of the Northwesterly line of said Lot 1, 69.55 feet; thence South 26 Degrees 29 Minutes 35 Seconds East 292.80 feet; thence south 24 Degrees 38 Minutes 13 Seconds East, 94.41 feet; thence South 13 Degrees 24 Minutes 33 Seconds East, 100.37 feet; thence South 05 Degrees 16 Minutes 30 Seconds East, 100.15 feet; thence South 02 Degrees 12 Minutes 33 Seconds East, 82.27 feet to an intersection with an Easterly extension of the South line of said Lot 1; thence North 89 Degrees 19 Minutes 56 Seconds West along said last described line, 63.43 feet to the Southeast corner of said Lot 1; thence North 00 Degrees 49 Minutes 56 Seconds West along the East line of said Lot 1, 195.60 feet to a

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corner of said lot 1; thence North 26 Degrees 44 Minutes 37 Seconds West along the  
Northeasterly line of said lot 1, 447.95 feet to the place of beginning, in Cook  
County, Illinois.

Permanent Tax Number: 04-02-402-030      Volume: 131  
Affects Parcel I

04-02-412-023  
Affects Parcel III

04-02-424-034  
Affects Parcel V

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## EXHIBIT B Permitted Exceptions

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1. General Taxes for the years 1996 and 1997, a lien not yet due and payable.
  2. An easement for public utilities and also for ingress and egress (North 20 feet as disclosed by the Plat of Subdivision).  
Recorded: July 15, 1976  
Document: 23,560,771

Affects : North 20 feet and South 20 feet, Lot 2; North 20 feet, Lot 1

NOTE: Shown on Plat of Survey No. 9704015 dated April 28, 1997 and revised May 7, 1997 by Chicago Guarantee Survey Company.

3. 50 foot building line established by the Plat of Subdivision.  
Location: East Line  
Recorded: July 15, 1976  
Document: 23,560,771

(Affects Parcel 1 only)

NOTE: Shown on Plat of Survey No. 9704015 dated April 28, 1997 and revised May 7, 1997 by Chicago Guarantee Survey Company.

4. An easement for the purposes stated herein.  
In favor of: Commonwealth Edison Company  
For : the right to construct, operate, maintain, renew, replace and remove equipment necessary for electric service  
Recorded : October 7, 1980  
Document : 25,614,441  
Affects : South 10 feet of the North 10 feet of Parcel 1

NOTE: Shown on Plat of Survey No. 9704015 dated April 28, 1997 and revised May 7, 1997 by Chicago Guarantee Survey Company.

5. An easement for the purposes stated herein.  
In favor of: Village of Northbrook  
For : Water Main  
Recorded : November 13, 1984  
Document : 27,334,900  
Affects : Westerly 10 feet of Parcel 1 only extending from North property line a distance of 320 feet as set forth in Exhibit A thereto

NOTE: Shown on Plat of Survey No. 9704015 dated April 28, 1997 and revised May 7, 1997 by Chicago Guarantee Survey Company.

6. Easement for Access as created by Instrument executed by American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 15, 1984 and known as Trust No. 68546 and others amending and modifying a Declaration and Grant of Easement recorded January 16, 1975 as Document Number 22,963,582 (as corrected by instrument recorded November 28, 1983 as Document No. 26,076,733) in various respects including the creation of the subject easement on a portion of the land, said Instrument being dated August 30, 1985 and recorded December 2, 1985 as Document Number 85,304,544.

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(For further particulars, see record)

Consent recorded December 20, 1965 as Document Number 85,331,962 executed by Combined Insurance Company of America consenting to Declaration and Grant of Easement recorded December 2, 1965 as Document Number 85,304,544.

(Affects Parcel I only)

NOTE: Shown on Plat of Survey No. 9704015 dated April 28, 1997 and revised May 7, 1997 by Chicago Guarantee Survey Company.

7. An easement for the purposes stated herein.

In favor of: Village of Northbrook  
For : Water Transmission Main  
Recorded : August 29, 1991  
Document : 91,448,473  
Re-recorded: March 2, 1994  
Document : 88,199,119  
Affects : The part of Parcel I as described on Exhibit B thereto

NOTE: Shown on Plat of Survey No. 9704015 dated April 28, 1997 and revised May 7, 1997 by Chicago Guarantee Survey Company.

8. An easement for the purposes stated herein.

In favor of: Village of Northbrook  
For : Storm Sewer  
Recorded : August 29, 1991  
Document : 91,448,474  
Affects : The Northeastern 10.0 feet of Parcel I only

NOTE: Shown on Plat of Survey No. 9704015 dated April 28, 1997 and revised May 7, 1997 by Chicago Guarantee Survey Company.

9. Terms and conditions of Ordinance No. 97-09 of the Village of Northbrook recorded \_\_\_\_\_ as Document No. \_\_\_\_\_ to include a development restriction, reservation of access easement and reservation of utility easements.

(Affects Parcel IV)

10. Terms, conditions and provisions affecting the easement described in Schedule A as set forth in the instrument creating said easement. (Affects Parcel II)

11. Rights of the adjoining owners, if any, to the concurrent use of said easement. (Affects Parcel II)

12. Parcel IV is not currently being assessed.

13. Rights of public or quasi-public utilities, if any, for the maintenance of any utility facilities. (Affects Parcel IV only)

14. An easement in favor of Commonwealth Edison Company and the Illinois Bell Telephone Company for pole lines, conduits and incidental purposes.

Recorded: September 18, 1968  
Document: 20,610,818  
Affects : Northeastern 10 feet of Parcel III only

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Said easement area is referred to in Note B on Plat of Survey No. 970189(A) dated April 30, 1997 by Edward J. Molloy & Associates, Ltd.

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15. Drainage Easement.

Document: 20,779,555  
Recorded: March 12, 1969  
Affects: Northerly 10 feet of Parcel III only

Said easement area is referred to in Note C on Plat of Survey No. 970389(A) dated April 30, 1997 by Edward J. Molloy & Associates, Ltd.

16. An easement for the purposes stated herein.

For : Ingress and egress  
Recorded: March 12, 1969  
Document: 20,779,555  
Affects : The Southeasterly 10 feet of the Northwesterly 20 feet of Parcel III only

Said easement area is referred to in Note D on Plat of Survey No. 970389(A) dated April 30, 1997 by Edward J. Molloy & Associates, Ltd.

17. Covenants, conditions and restrictions contained in a Deed. Said covenants, conditions and restrictions provide as follows:

No intoxicating liquors shall ever be sold on the property so long as there is a liquor license in effect for Lot 2 in Northwood Plaza

Recorded: August 13, 1970  
Document: 21,237,248  
Affects : Parcel III only

18. An easement for the purposes stated herein.

In favor of: Commonwealth Edison Company  
For : Electric Service  
Recorded : July 24, 1979  
Document : 25,065,672  
Affects : The Southeasterly 10 feet of the Northwesterly 124 feet of the Southwestery 180.32 feet of the Northwesterly 190.32 feet of Lot 3 of Parcel III only

Said easement area is referred to in Note E on Plat of Survey No. 970389(A) dated April 30, 1997 by Edward J. Molloy & Associates, Ltd.

19. Rights of others, if any, to the use for drainage of the 11 foot wide box culvert located at the Northernmost corner of Parcel IV.

20. Rights of the State of Illinois, the municipality and the public in and to that part of the land which may fall in streets and highways.

(Affects Parcel IV only)

21. Parcel VI is not currently being assessed.

22. An easement in favor of the Commonwealth Edison Company and the Illinois Bell Telephone Company, for providing telephone and electric service.

Recorded: December 27, 1979  
Document: 25,294,934  
Affects : That part of Parcel V as shown on sketch marked Exhibit "A" and attached thereto and as shown on Plat of Survey No. 970389(B) dated April 30, 1997 by Edward J. Molloy & Associates, Ltd.

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23. Rights of the State of Illinois, the municipality and the public in and to that part of the land which may fall in streets and highways.

(Affects Parcel VI)



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