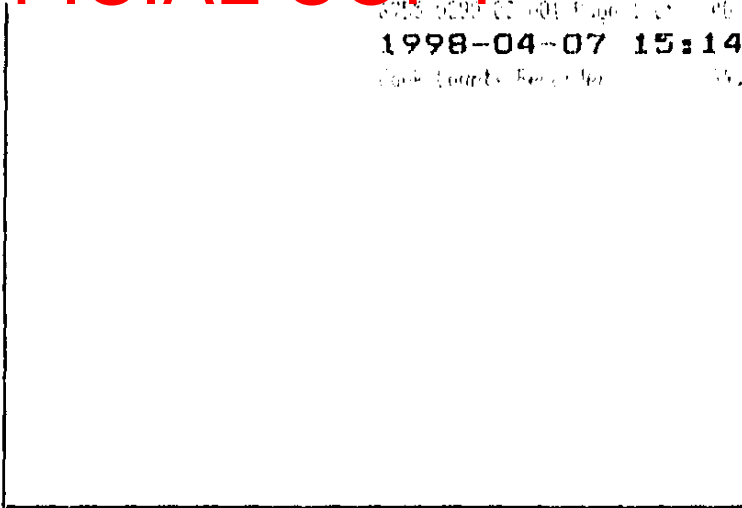


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Cook County Recorder-Deputy



(Above Space for Recorder's Use Only)

7-11-98 15:23:00

Property of Cook County Clerk's Office

TRIANGLE PLAZA VENTURE L.L.C., AS MORTGAGOR

AND

THE CHASE MANHATTAN BANK, FOR ITSELF AND AS ADMINISTRATIVE AGENT, AS MORTGAGEE

MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

Dated: April 6, 1998

**Location: 8750-8770 West Bryn Mawr Avenue, Chicago, Illinois 60631
Permanent Real Estate Tax Index Numbers: 12-02-302-021, 12-02-302-022**

This Mortgage was prepared by and after recording return to:

**Moses & Singer LLP
1301 Avenue of the Americas
New York, New York 10019-6076
Attention: James P. Cornello, Esq.**

BOX 333-CTI

**MORTGAGE, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE made the 6th day of April, 1998, between Triangle Plaza Venture L.L.C., a Delaware limited liability company, having an address at c/o Starwood Capital Group, L.L.C., Three Pickwick Plaza, Suite 250, Greenwich, Connecticut 06830 (hereinafter referred to as the "Mortgagor"), for the benefit of THE CHASE MANHATTAN BANK, a New York banking corporation having an office at 380 Madison Avenue, New York, New York 10017, for itself and as Administrative Agent for the benefit of the Secured Parties under the Credit Agreement hereinafter referred to (the "Mortgagee"),

WITNESSETH

In consideration of the obligations of the Mortgagor under that certain guarantee agreement dated the date hereof executed by the Mortgagor in favor of the Mortgagee (as hereafter amended, supplemented or otherwise modified from time to time, the "Guaranty") wherein Mortgagor guarantees the obligations of the Borrowers under and as defined in that certain Amended and Restated Credit Agreement dated as of December 29, 1997 among Starwood Opportunity Fund IV, L.P., Caystar Corp. II, Caystar Corp. III, the Lenders party thereto, certain other parties and the Mortgagee (as hereafter amended, supplemented or otherwise modified from time to time, the "Credit Agreement") and under that certain note or notes issued under the Credit Agreement (such note or notes as same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Credit Agreement, collectively, the "Note"), the Mortgagor irrevocably mortgages, warrants, grants and conveys to the Mortgagee all of Mortgagor's right, title and interest in and to the premises located in the County of Cook, State of Illinois, and described in Exhibit A attached hereto (the "Premises"), together with all of Mortgagor's right, title and interest in and to the following (the Premises and such other items (a) through (k) being hereinafter collectively referred to as the "Property"):

(a) all buildings and improvements now or hereafter located on the Premises (the "Improvements");

(b) all of the estate, right, title, claim or demand of any nature whatsoever of the Mortgagor, either in law or in equity, in possession or expectancy, in and to the Property or any part thereof;

(c) all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, royalties, mineral, oil and gas rights, water, water courses, water rights and

powers and water stock, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Property (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Premises or now or hereafter transferred to the Premises) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof;

(d) all machinery, apparatus, equipment, fittings, fixtures and other property of every kind and nature whatsoever and all additions thereto and renewals and replacements thereof, and all substitutions therefor now owned or hereafter acquired by the Mortgagor, or in which the Mortgagor has or shall have an interest, now or hereafter located upon or in, or attached to, any portion of the Property or appurtenances thereto, and used or usable in connection with the present or future operation and occupancy of the Property and all building equipment, materials and supplies of any nature whatsoever owned by the Mortgagor, or in which the Mortgagor has or shall have an interest, now or hereafter located upon the Property and whether stored at the Property or off-site (collectively, the "Equipment");

(e) all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Property;

(f) all leases and other agreements affecting the use or occupancy of the Property now or hereafter entered into (the "Leases") and the right to receive and apply the rents, issues and profits of the Property (the "Rents") to the payment of the Debt, subject to paragraph 7 hereof;

(g) all right, title and interest of the Mortgagor in and to (i) all contracts from time to time executed by the Mortgagor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Property or any part thereof and all agreements relating to the purchase or lease of any portion of the Property or any property which is adjacent or peripheral to the Property, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property or any part thereof, and (iii) all drawings, plans, specifications and similar or related items relating to the Property;

(h) all trade names, trade marks, logos, copyrights, good will and books and records relating to or used in connection with the operation of the Property or any part thereof; all general intangibles related to the operation of the Property now existing or hereafter arising;

(i) all proceeds, both cash and non-cash, of the foregoing;

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

(k) the right, in the name and on behalf of the Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Property.

All of the real estate, personal property, and other interests hereby conveyed are intended so to be as a unit and are hereby understood, agreed and declared to form a part of the real estate, and shall, for the purposes of this Mortgage, be deemed to be real estate and conveyed hereby. As to any of the aforesaid which, notwithstanding the aforesaid declaration and agreement, does not form a part of the real estate, this Mortgage is hereby deemed to be, as well, a security agreement under the Uniform Commercial Code of the State in which the Property is located (as in effect from time to time, the "Code"), for the purpose of creating hereby a security interest therein, which security interest Mortgagor, as Debtor, hereby grants to Mortgagee, as Secured Party, in the personal property to further secure the obligations secured hereby.

TO SECURE the payment of all obligations of the Mortgagor under the Guaranty together with all obligations of the Mortgagor under this Mortgage and interest thereon (collectively, the "Debt") provided, however, that the maximum principal amount of the Debt secured hereby shall not exceed \$63,700,000, subject to the provisions of paragraph 51 hereof, plus costs and expenses of collection and enforcement of the Guaranty and this Mortgage, less any payments made by Mortgagor pursuant to the Contribution Agreement (as defined in the Credit Agreement) (other than any payments that are rescinded or must otherwise be restored upon the bankruptcy or reorganization of the Mortgagor, the Fund referred to in the Credit Agreement or any other Credit Party referred to in the Credit Agreement). The foregoing limitation of liability shall not apply to any liability for fraud, intentional misrepresentation, willful misrepresentation or gross negligence.

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

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

1. **Payment of Debt.** The Mortgagor will pay the Debt at the time and in the manner provided for its payment in the Guaranty and in this Mortgage.

2. Warranty of Title, Etc.

(a) Subject only to those exceptions to title specifically set forth in the title policy issued or to be issued by Chicago Title Insurance Company to the Mortgagee and insuring the lien of this Mortgage, the Mortgagor warrants the title to the Premises, the Improvements, the Equipment, the Ground Lease and the balance of the Property. The Mortgagor also represents and warrants that (i) the Mortgagor is now, and after giving effect to this Mortgage, will be in a solvent condition, (ii) the execution and delivery of this Mortgage by the Mortgagor does not constitute a "fraudulent conveyance" within the meaning of Title 11 of the United States Code as now constituted or under any other applicable statute, and (iii) no bankruptcy or insolvency proceedings are pending or contemplated by or against the Mortgagor.

(b) The Mortgagor (and the undersigned representative of the Mortgagor, if any) additionally represents and warrants that: (i) it has full power, authority and legal right to execute this Mortgage, and to mortgage, give, grant, bargain, sell, alien, convey and assign the Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on the Mortgagor's part to be performed, (ii) if the Mortgagor is a corporation, the Mortgagor is a duly organized and presently existing corporation and this Mortgage has been executed by authority of its Board of Directors and with the requisite consent of the holders of the outstanding shares of its capital stock entitled to vote thereon, if such consent is required under the provisions of the certificate of incorporation of the Mortgagor, (iii) if the Mortgagor is a partnership, the Mortgagor is a duly authorized and validly existing partnership and this Mortgage has been executed by a duly authorized general partner, and (iv) if the Mortgagor is a limited liability company, the Mortgagor is a duly authorized and validly existing limited liability company and this Mortgage has been executed by a duly authorized general manager of Mortgagor.

(c) Mortgagor warrants and represents that the Property is one or more separate and distinct parcels for ad valorem tax purposes, and the Property is not subject to such taxes against any other property. Mortgagor has not, by act or omission, permitted, nor will it hereafter during its ownership of the Property permit, any building or other improvements on property not covered by this Mortgage to rely on the Property or any part of, or interest therein to fulfill any governmental requirement for the existence of such property, building, or improvements; and no Improvements rely upon any property not covered by this Mortgage, or any interest herein, to fulfill any governmental requirement. Mortgagor has not, by act or omission, impaired, nor will it hereafter during its ownership of the Property impair, the integrity of the Property as one or more, separate, subdivided zoning lots, separate and apart from all other property. The conveyance of the Property as one or more separate parcels, either by Mortgagor or an assignee thereof, will not violate any governmental laws, statutes, or ordinances.

3. Insurance.

(a) The Mortgagor (i) will keep the Improvements and the Equipment insured against loss or damage by fire, standard extended coverage perils and such other hazards as the Mortgagee shall from time to time require in amounts approved by the Mortgagee, which amounts shall in no event be less than 100% of the full insurable value of the Improvements and the Equipment and shall be sufficient to meet all applicable co-insurance requirements, and (ii) will maintain such other forms of insurance coverage with respect to the Property as the Mortgagee shall from time to time require in amounts approved by the Mortgagee. All policies of insurance (the "Policies") shall be issued by insurers having a minimum policy holders rating of "A" per the latest rating publication of Property and Casualty Insurers by A.M. Best Company and who are lawfully doing business in the State in which the Property is located and are otherwise acceptable in all respects to the Mortgagee. All Policies shall contain the standard New York Mortgagee non-contribution clause endorsement or an equivalent endorsement satisfactory to the Mortgagee naming the Mortgagee as the person to which all payments made by the insurer thereunder shall be paid and shall otherwise be in form and substance satisfactory in all respects to the Mortgagee and as required under the Credit Agreement. Blanket insurance policies shall be acceptable for the purposes of this paragraph provided such Policy separately identifies the Premises, sets forth the amount of insurance coverage therefor, affords the same protections to the Mortgagee as would Policies individually applicable to the Improvements and Equipment and such Policy is otherwise approved by the Mortgagee. The Mortgagor shall pay the premiums for the Policies as the same become due and payable. At the request of the Mortgagee, the Mortgagor will deliver the Policies to the Mortgagee (or evidence thereof satisfactory to the Mortgagee). Not later than ten (10) days prior to the expiration date of each of the Policies, the Mortgagor will deliver to the Mortgagee a renewal policy or policies (or evidence thereof satisfactory to the Mortgagee) marked "premium paid" or accompanied by other evidence of payment of premium satisfactory to the Mortgagee. If at any time the Mortgagee is not in receipt of written evidence that all insurance required hereunder is in full force and effect, the Mortgagee shall have the right without notice to the Mortgagor to take such action as the Mortgagee deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as the Mortgagee in its sole discretion deems appropriate, and all expenses incurred by the Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by the Mortgagor to the Mortgagee upon demand. The Mortgagor shall at all times comply with and shall cause the Improvements and Equipment and the use, occupancy, operation, maintenance, alteration, repair and restoration thereof to comply with the terms, conditions, stipulations and requirements of the Policies. If the Premises, or any portion of the Improvements or the Equipment, is located in a Federally designated "special flood hazard area," in addition to the other Policies required under this paragraph, a flood insurance policy shall be delivered by the Mortgagor to the Mortgagee. If no portion of the Premises is located in a Federally designated "special flood hazard area" such fact shall be substantiated by a certificate in form satisfactory to the Mortgagee from a licensed surveyor, appraiser or professional engineer or

other qualified person. If the Property shall be damaged or destroyed, in whole or in part, by fire or other property hazard or casualty, the Mortgagor shall give prompt notice thereof to the Mortgagee and all insurance proceeds therefor shall be paid to the Mortgagee and may be retained and applied by the Mortgagee toward payment of the Debt as and to the extent such payment would be required under Section 2.08(d) of the Credit Agreement or if an Event of Default has occurred and is continuing. In all other events, the same shall be applied as, and subject to the requirements, set forth in paragraph 3(b) below. If the Mortgagee shall receive and retain such insurance proceeds, the lien of this Mortgage and the Debt shall be reduced only by the amount thereof received and retained by the Mortgagee and actually applied by the Mortgagee in reduction of the Debt.

(b) Without waiving or derogating from the requirements of Section 2.08(d) of the Credit Agreement, the Mortgagor shall repair any portion of the Improvements damaged by fire or other casualty as near as possible to its value, condition and character immediately prior to such damage or destruction and, provided no Event of Default has occurred and is continuing, the Mortgagee shall deliver to the Mortgagor the proceeds of insurance from time to time as the work progresses for repair and restoration of the Improvements, on such terms and subject to such conditions as the Mortgagee shall in its reasonable discretion determine, and the Mortgagor covenants and agrees with the Mortgagee, and hereby undertakes, to fund any and all deficiencies, so that at all times the funds held by the Mortgagee and remaining to be disbursed for purposes of repair and restoration shall be sufficient to complete the work.

4. Payment of Taxes, etc.

(a) The Mortgagor shall pay all taxes, assessments, water rates, sewer rents and other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed against the Property and all insurance premiums (the "Taxes") prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed for the nonpayment thereof. The Mortgagor shall deliver to the Mortgagee, upon request, receipted bills, canceled checks and other evidence satisfactory to the Mortgagee evidencing the payment of the Taxes prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed for the nonpayment thereof.

(b) After prior notice to the Mortgagee, Mortgagor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no default shall have occurred and shall be continuing under this Mortgage, the Guaranty or the Credit Agreement, (ii) such proceeding shall suspend the collection of the contested Taxes from the Mortgagor and from the Property, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Mortgagor or the Property is subject and shall not constitute a default thereunder, (iv) neither the Property nor any part thereof nor any interest therein will

in the reasonable opinion of the Mortgagee be in danger of being sold, forfeited, terminated, cancelled or lost, (v) if at any time payment of any tax, assessment or other charge shall become necessary to prevent the delivery of a tax deed conveying the Property or any portion thereof because of non-payment of any such sums, then the Mortgagor shall pay or cause to be paid the sums in sufficient time to prevent the delivery of such tax deed, and (vi) adequate reserves shall have been set aside or reserved by Mortgagor to assure payment of such Taxes so contested.

(c) If an Event of Default shall occur under the Mortgage, the Guaranty or the Credit Agreement either prior to, or after, initiating said proceeding, the Mortgagee shall have the right to either initiate or continue said proceeding, as the case may be, either in its own name or as agent of the Mortgagor. The Mortgagor shall cooperate with the Mortgagee and make available to the Mortgagee upon demand any and all information, and execute any documents or pleadings which the Mortgagee may reasonably require. The Mortgagee shall then conduct said proceeding in a manner it deems appropriate, and at its own expense, subject to any right of reimbursement from the Mortgagor in accordance with the provisions of this Mortgage.

5. Escrow Fund. The Mortgagor will pay to the Mortgagee on the first day of each calendar month one-twelfth of an amount (the "Escrow Fund") which would be sufficient to pay the Taxes payable, or estimated by the Mortgagee to be payable, during the ensuing twelve (12) months. The Mortgagee will apply the Escrow Fund to the payment of Taxes which are required to be paid by the Mortgagor pursuant to the provisions of this Mortgage. If the amount of the Escrow Fund shall exceed the amount of the Taxes payable by the Mortgagor pursuant to the provisions of this Mortgage, the Mortgagee shall, in its discretion, (a) return any excess to the Mortgagor, or (b) credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, the Mortgagee may deal with the person shown on the records of the Mortgagee to be the owner of the Property. If the Escrow Fund is not sufficient to pay the Taxes, as the same become payable, the Mortgagor shall pay to the Mortgagee, upon request, an amount which the Mortgagee shall estimate as sufficient to make up the deficiency. Until expended or applied as above provided, any amounts in the Escrow Fund may be commingled with the general funds of the Mortgagee and shall constitute additional security for the Debt and shall not bear interest. Notwithstanding the foregoing provisions of this paragraph, the Mortgagee shall not exercise its option to require the establishment of an Escrow Fund in accordance with the provisions of this paragraph unless and until the Mortgagor shall at any time fail to make prompt and timely the payment of the Taxes as required herein or an Event of Default shall have occurred and be continuing. If in the enforcement hereof the Property is sold or the Property is otherwise acquired by the Mortgagee, the Mortgagee shall apply, no later than immediately prior to the sale of the Property or its acquisition by the Mortgagee, the Escrow Fund held by the Mortgagee at the time of application as a credit against the Debt.

6. Condemnation.

(a) Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, the Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Guaranty and this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by the Mortgagee to the discharge of the Debt. The Mortgagee may apply the entire amount of any such award or payment to the discharge of the Debt as and to the extent such payment would be required under Section 2.08(d) of the Credit Agreement or if an Event of Default has occurred and is continuing. If the Property is sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of such award or payment, the Mortgagee shall have the right, whether or not a deficiency judgment on the Note or Guaranty shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Debt, whichever is less. In all other events, any award shall be applied as, and subject to the requirements, set forth in paragraph 6(b) below. The Mortgagor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to the Mortgagee. The Mortgagor hereby irrevocably authorizes and empowers the Mortgagee, in the name of the Mortgagor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, the Mortgagor shall, upon demand of the Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to the Mortgagee, free and clear of any encumbrances of any kind or nature whatsoever.

(b) Without waiving or derogating from the requirements of Section 2.08(d) of the Credit Agreement, after any taking by eminent domain the Mortgagor shall repair and restore the remainder of the Property as near as possible to its value, condition and character immediately prior to such taking and, provided no Event of Default has occurred and is continuing, the Mortgagee shall deliver to the Mortgagor the award or payment from time to time as the work progresses for repair and restoration of the remainder of the Property, on such terms and subject to such conditions as the Mortgagee shall in its reasonable discretion determine, and the Mortgagor covenants and agrees with the Mortgagee, and hereby undertakes, to fund any and all deficiencies, so that at all times the funds held by the Mortgagee and remaining to be disbursed for purposes of repair and restoration shall be sufficient to complete the work.

7. Leases and Rents. The Mortgagor hereby assigns and transfers to the Mortgagee all of the Rents and hereby gives to and confers upon the Mortgagee the right, power and authority to collect such Rents. The Mortgagor shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in payment of the Debt. The Mortgagor irrevocably appoints the Mortgagee its true and lawful attorney-in-fact, at the option of the Mortgagee at any time and from time to time, to demand, receive and

enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of the Mortgagor or the Mortgagee, for all such Rents and apply the same to the Debt; provided, however, that the Mortgagor shall have the right to collect such Rents prior to or at any time there is not an Event of Default. Mortgagee may retain and apply the Rents toward payment of the Debt in such order, priority and proportions as the Mortgagee, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Property, and irrespective of whether the Mortgagee shall have commenced a foreclosure of this Mortgage or shall have applied or arranged for the appointment of a receiver. The assignment of the Rents is an absolute assignment from the Mortgagor to the Mortgagee and not merely the passing of a security interest.

Upon any Event of Default, Mortgagee may, at any time, without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the solvency of the Mortgagor, or whether waste is being committed upon the Property, or the adequacy of any security for the Debt, enter upon and take possession of the Property, or any part thereof, in its own name sue for or otherwise collect such Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorney's fees, upon any Debt, and in such order as Mortgagee may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

The Mortgagor shall not, without the consent of the Mortgagee, enter into any new Leases or modify any Leases (other than Leases or modifications at fair market rentals made with tenants which are appropriate for the Improvements on commercially reasonable and customary terms and otherwise typically made in the usual and ordinary course of arm's length negotiations of leases of space in improvements comparable to the Improvements) or terminate any Leases (other than in accordance with the provisions of this paragraph hereinafter set forth) or accept prepayments of installments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. The Mortgagor shall (a) fulfill or perform each and every provision of the Leases on the part of the Mortgagor to be fulfilled or performed, (b) promptly send copies of all notices of default which the Mortgagor shall send or receive under the Leases to the Mortgagee, and (c) enforce, short of termination of the Leases, the performance or observance of the provisions thereof by the tenants thereunder. The Mortgagor shall from time to time, but not less frequently than once every one hundred eighty (180) days, provide to the Mortgagee a complete and detailed leasing status report with respect to the Property, which leasing status report shall be in form and substance satisfactory in all respects to the Mortgagee. In addition to the rights which the Mortgagee may have herein, in the event of any default under this Mortgage, the Mortgagee, at its option, may require the Mortgagor to pay monthly in advance to the Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be used by the Mortgagor as offices. Upon

default in any such payment, the Mortgagor will vacate and surrender possession of such portion of the Property to the Mortgagee, or to such receiver, and, in default thereof, the Mortgagor may, to the extent permitted by law, be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be construed as imposing on the Mortgagee any of the obligations of the lessor under the Leases. Anything contained in this paragraph 7 to the contrary notwithstanding, and provided that the Mortgagor is not in default hereunder, the Mortgagor shall have the right to terminate or modify any existing Lease (or other Lease entered into in accordance with the provisions hereof or which is otherwise approved by Mortgagee) provided that (x) with respect to any modification, the terms of such Lease after such modification would satisfy the requirements of this paragraph 7 if such Lease were a new lease and (y) with respect to the termination of a Lease, any such Lease to be so terminated is replaced by another Lease which satisfies the requirement of this paragraph 7 or is terminated as a result of a default by tenant thereunder.

8. Maintenance of the Property.

(a) The Mortgagor shall cause the Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Property. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of the Mortgagee. The Mortgagor shall promptly comply with all existing and future governmental laws, orders, ordinances, rules and regulations affecting the Property, or any portion thereof or the use thereof. The Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be damaged or destroyed by fire or other property hazard or casualty (including any fire or other property hazard or casualty for which insurance was not obtained or obtainable) or which may be affected by any taking by any public or quasi-public authority through eminent domain or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. If such fire or other property hazard or casualty shall be covered by the Policies, the Mortgagor's obligation to repair, replace or rebuild such portion of the Property shall be contingent upon the Mortgagee paying the Mortgagor the proceeds of the Policies, or such portion thereof as shall be sufficient to complete such repair, replacement or rebuilding, whichever is less as provided in paragraph 6(b) hereof. The Mortgagor will not, without obtaining the prior consent of the Mortgagee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Property or any part thereof.

(b) If the Mortgagor shall first notify the Mortgagee in writing of its intention so to do, the Mortgagor may, at its expense and in its own name and behalf, in good faith contest any statute, ordinance, order, violation or regulation concerning the Property by appropriate legal proceedings, provided, in the event of any such contest, that all necessary steps are taken to protect the lien of this Mortgage on the Property and that adequate reserves shall have been set aside or made, adequate bonds shall have been obtained, or sufficient funds

or other security reasonably satisfactory to the Mortgagee have been provided in a manner reasonably satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation under this paragraph 8 with respect to such statutes, ordinances, orders, violations and regulations and provided further that if any time payment of any assessment or other charge shall become necessary to prevent the loss of priority of the Mortgagee's lien interest in the Property, then the Mortgagor shall immediately pay the sums in sufficient time to prevent such loss of priority of the Mortgagee's security interest in the Property.

9. Environmental Provisions.

(a) For the purposes of this paragraph the following terms shall have the following meanings: (i) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, asbestos, asbestos-containing materials or polychlorinated biphenyls, (ii) the "Environmental Requirements" shall collectively mean all present and future laws, statutes, common law, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health or any remediation program required by the Mortgagee, and (iii) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(b) The Mortgagor hereby represents and warrants to the Mortgagee that, to Mortgagor's knowledge, except as may have been disclosed in writing to the Mortgagee (i) no Hazardous Material is currently located at, on, in, under or about the Property, (ii) no releasing, emitting, discharging, leaching, dumping, disposing or transporting of any Hazardous Material from the Property onto any other property or from any other property onto or into the Property has occurred or is occurring in violation of any Environmental Requirement, (iii) no notice of violation, non-compliance, liability or potential liability, lien, complaint, suit, order or other notice with respect to the Property is presently outstanding under any Environmental Requirement, nor does the Mortgagor have knowledge or reason to believe that any such notice will be received or is being threatened, and (iv) the Property and the operation thereof are in full compliance with all Environmental Requirements.

(c) The Mortgagor shall comply, and shall cause all tenants or other occupants of the Property to comply, in all respects with all Environmental

Requirements, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any tenant or other occupant of the Property to generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in, on, or about the Property in a manner that could lead or potentially lead to the imposition on the Mortgagor, the Mortgagee or the Property of any liability or lien of any nature whatsoever under any Environmental Requirement. The Mortgagor shall notify the Mortgagee promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Property which is required to be reported to a Governmental Authority under any Environmental Requirement, will promptly forward to the Mortgagee copies of any notices received by the Mortgagor relating to alleged violations of any Environmental Requirement or any potential liability under any Environmental Requirement and will promptly pay when due any fine or assessment against the Mortgagee, the Mortgagor or the Property relating to any Environmental Requirement. If at any time it is determined that the operation or use of the Property in violation of any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Property that violate any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Property which, under any Environmental Requirement, require special handling in collection, storage, treatment or disposal, or any form of cleanup or corrective action (other than those Hazardous Materials which are used in connection with the normal, customary, day to day operation of the Property as an office building in compliance with all Environmental Requirements) and, the Mortgagor shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority or from the Mortgagee, take, at the Mortgagor's sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Requirements, provided, however, that if such compliance cannot reasonably be completed within such thirty (30) day period, the Mortgagor shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to fully comply in all respects and in a timely fashion with all Environmental Requirements.

(d) If the Mortgagor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action described in clause (c) above, the Mortgagee may, in its sole and absolute discretion, make advances or pay on its toward the performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums so advanced or paid by the Mortgagee (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from the Mortgagor and shall bear interest at the Default Rate (as hereinafter defined) from the date any such sums are so advanced or paid by the Mortgagee until the date any such sums are repaid by the Mortgagor to the Mortgagee. The Mortgagor will

execute and deliver, promptly upon request, such instruments as the Mortgagee may deem useful or necessary to permit the Mortgagee to take any such action, and such additional notes and mortgages, as the Mortgagee may require to secure all sums so advanced or paid by the Mortgagee. If a lien is filed against the Property by any Governmental Authority resulting from the need to expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of the Mortgagor or for which the Mortgagor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Material into the waters or onto land located within or without the State where the Property is located, then the Mortgagor will, within thirty (30) days from the date that the Mortgagor is first given notice that such lien has been placed against the Property (or within such shorter period of time as may be specified by the Mortgagee if such Governmental Authority has commenced steps to cause the Property to be sold pursuant to such lien), either (x) pay the claim and remove the lien, or (y) furnish a cash deposit, bond, or such other security with respect thereto as is satisfactory in all respects to the Mortgagee and is sufficient to effect a complete discharge of such lien on the Property.

(e) The Mortgagee may, at its option, at intervals of not less than one year, or more frequently if the Mortgagee reasonably believes that a Hazardous Material or other environmental condition violates or threatens to violate any Environmental Requirement, cause an environmental audit of the Property or portions thereof to be conducted to confirm the Mortgagor's compliance with the provisions of this paragraph, and the Mortgagor shall cooperate in all reasonable ways with the Mortgagee in connection with any such audit. If such audit discloses that a violation of or a liability under an Environmental Requirement exists or if such audit was required or prescribed by law, regulation or governmental or quasi-governmental authority, the Mortgagor shall pay all costs and expenses incurred in connection with such audit; otherwise, the costs and expenses of such audit shall, notwithstanding anything to the contrary set forth in this paragraph, be paid by the Mortgagee.

(f) If this Mortgage is foreclosed, or if the Property is sold pursuant to the provisions of this Mortgage, or if the Mortgagor tenders a deed or assignment in lieu of foreclosure or sale, the Mortgagor shall deliver the Property to the purchaser at foreclosure or sale or to the Mortgagee, its nominee, or wholly-owned subsidiary, as the case may be, in a condition that complies in all respects with all Environmental Requirements.

(g) The Mortgagor will defend, indemnify, and hold harmless the Mortgagee, its co-lenders, participants, employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without

limitation, reasonable counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by the Mortgagor of any of the provisions of this paragraph 9, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Property or on any other property or otherwise, (iii) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (iv) any violation of any Environmental Requirement relating in any way directly or indirectly, to the Property. The aforesaid indemnification shall, notwithstanding any exculpatory or other provision of any Loan Document (as defined in the Credit Agreement) now or hereafter executed and delivered, constitute the personal recourse undertakings, obligations and liabilities of the Mortgagor.

(h) The aforesaid indemnification shall not be applicable to any claim, demand, penalty, cause of action, fine, liability, settlement, damage, cost or other expense of any type whatsoever occasioned, arising and caused solely and directly as the result of the gross negligence or willful misconduct of the Mortgagee, its nominee or wholly-owned subsidiary or their respective employees or agents subsequent to the date upon which the Mortgagee, its nominee or wholly-owned subsidiary acquires possession of the Property following foreclosure of this Mortgage, acceptance of a deed or assignment in lieu of foreclosure or sale or otherwise.

The obligations and liabilities of the Mortgagor under this paragraph 9 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of this Mortgage, sale of the Property pursuant to the provisions of this Mortgage or acceptance by the Mortgagee, its nominee or affiliate of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

10. **Estoppel Certificates.** The Mortgagor, within ten (10) days after request by the Mortgagee and at its expense, will furnish the Mortgagee with a statement, duly acknowledged and certified, setting forth the amount of the Debt and the offsets or defenses thereto, if any.

11. **Transfer or Encumbrance of the Property.**

No part of the Property nor any interest of any nature whatsoever therein nor any interest of any nature whatsoever in the Mortgagor (whether partnership, stock, equity, beneficial, profit, loss or otherwise), shall in any manner, directly or indirectly, be further

encumbered, sold, transferred or conveyed, or permitted to be further encumbered, sold, transferred, assigned or conveyed without the prior consent of the Mortgagee, which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Mortgagee. The provisions of the foregoing sentence of this paragraph shall apply to each and every such further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not the Mortgagee has consented to, or waived by its action or inaction its rights hereunder with respect to, any such previous further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of law or is otherwise made. The foregoing shall not be deemed to restrict the right of the Mortgagor to enter into Leases as expressly permitted pursuant to this Mortgage.

12. Notices. Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be made in accordance with the provisions of Section 9.01 of the Credit Agreement and such notices, requests, demands and other communications to the Mortgagor shall be addressed to its care of the Fund referred to in the Credit Agreement.

13. Bankruptcy Covenants. In consideration of Mortgagee's agreement to make the loan evidenced by the Note and secured in part by the Guaranty and this Mortgage, Mortgagor covenants that, for so long as any portion of the Debt remains outstanding:

(a) Notwithstanding any covenant of Mortgagor herein to refrain from filing for or seeking relief under Chapter 11 of the Bankruptcy Code, if Mortgagor shall file for such relief, then Mortgagor consents to and will not oppose or object, or cooperate in any opposition or objection, to Mortgagee's motion for relief from stay pursuant to Section 362 of the Bankruptcy Code in order to permit Mortgagee to take any act or to exercise any right or remedy authorized or permitted by this Mortgage, the other Loan Documents or applicable law as if Mortgagor had not filed for relief under the Bankruptcy Code. Such agreement by Mortgagor is premised in part upon Mortgagor's understanding that (i) in the event of such a filing, Mortgagee would be denied adequate protection; and (ii) there is no prospect of Mortgagor's successful reorganization pursuant to such bankruptcy proceeding.

(b) Mortgagor shall not take any action, and hereby covenants to refrain from any action or, cooperating in any attempt, to delay, hinder or obstruct Mortgagee's foreclosure of its liens after the occurrence of an Event of Default.

(c) Effective as of an Event of Default, Mortgagor shall consent, (and does hereby consent) to the appointment of a receiver and agree that they shall neither oppose, nor cooperate in any opposition to, such appointment, file for or seek relief or induce others to file for or seek relief under Bankruptcy Code while such a request is pending, nor seek, or induce others to seek, or cooperate in any effort to seek, in any

proceeding under the Bankruptcy Code, to remove any receiver who has been appointed.

(d) Any filing for protection or relief under Chapter 11 of the Bankruptcy Code, if taken after the occurrence of an Event of Default or in anticipation of the occurrence of an Event of Default, will have been done in bad faith and solely for the purpose of delay.

(e) Mortgagor shall timely pay all "non-insider" unsecured creditors when such claims shall come due, prior to expiration of any applicable notice or grace periods; if Mortgagor does not so pay such claims, then Mortgagee may, at its sole option, upon five (5) days written notice to Mortgagor, pay such claims, whether such payments shall occur before or after any petition for relief is filed under the Bankruptcy Code, and add the amount thereof to the Debt. Mortgagor acknowledges that Mortgagee is under no obligation to pay such claims. Notwithstanding the foregoing, if Mortgagor, in good faith and by appropriate legal action, shall contest the validity, applicability, or amount of any asserted claim and shall have established prior to delinquency, by deposit of cash, letter of credit, bond or other security reasonably acceptable to Mortgagee, as Mortgagor may elect, a reserve adequate to cover the payment of such claim with interest, costs, and penalties (which reserve shall be returned to Mortgagor upon payment or other settlement of all such claims, costs and penalties) then, to the extent permitted by law, Mortgagor shall not be required pursuant to this subsection to pay such claim or lien so long as the contest is maintained and prosecuted with diligence and shall not have been terminated or discontinued adversely to Mortgagor.

14. Changes in Laws Regarding Taxation. In the event of the passage after the date of this Mortgage of any law of the State in which the Property is located or the State of New York imposing a tax, either directly or indirectly, on this Mortgage, the Note, the Guaranty or the Debt, the Mortgagor shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand by the Mortgagee, whichever is less, provided, however, that if, in the opinion of the attorneys for the Mortgagee, the Mortgagor is not permitted by law to pay such taxes, the Mortgagee shall have the right, at its option, to declare the Debt due and payable on a date specified in a prior notice to the Mortgagor of not less than thirty (30) days.

15. No Credits on Account of the Debt. The Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Property, or any part thereof, by reason of this Mortgage or the Debt. Subject to the provisions of Section 2.08(b) of the Credit Agreement, if at any time this Mortgage shall secure less than all of the principal amount of the Debt, it is expressly agreed that any repayment of the principal amount of the Debt shall not reduce the amount of the lien

of this Mortgage until the lien amount shall equal the principal amount of the Debt outstanding.

16. **Offsets, Counterclaims and Defenses.** Any assignee of the Mortgagee's interests under this Mortgage and the Guaranty shall take the same free and clear of all offsets, counterclaims or defenses of any nature whatsoever which the Mortgagor may have against any assignor of this Mortgage and the Guaranty, and no such offset, counterclaim or defense shall be interposed or asserted by the Mortgagor in any action or proceeding brought by any such assignee upon this Mortgage or the Guaranty and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Mortgagor.

17. **Other Security for the Debt.** The Mortgagor shall observe and perform all of the terms, covenants and provisions contained in the Guaranty and in all other Loan Documents.

18. **Documentary Stamps.** If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Guaranty of this Mortgage, the Mortgagor will pay for the same, with interest and penalties thereon, if any.

19. **Right of Entry.** Upon prior notice, the Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times.

20. **Books and Records.** The Mortgagor will keep and maintain or will cause to be kept and maintained on a calendar year basis in accordance with generally accepted accounting practices consistently applied proper and accurate books, records and accounts reflecting all of the financial affairs and all items of income and expense, in connection with the operation of the Property or in connection with any services, equipment or furnishings provided in connection with the operation of the Property, whether such income or expense be realized by the Mortgagor or by any other person whatsoever excepting lessees unrelated to and unaffiliated with the Mortgagor who have leased from the Mortgagor portions of the Property for the purpose of occupying the same. The Mortgagee 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 the Mortgagor or other person maintaining such books, records and accounts and to make copies or extracts thereof as the Mortgagee shall desire. The Mortgagor will furnish the Mortgagee annually, within one hundred twenty (120) days following the end of each calendar year, a personal financial statement in form and substance satisfactory to the Mortgagee. The Mortgagor shall furnish to the Mortgagee, within ten (10) days after request, such further detailed information covering the operation of the Property and the financial affairs of the Mortgagor or any affiliate of the Mortgagor as may be requested by the Mortgagee.

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

22. **Events of Default; Remedies.** Time is of the essence hereof, and the Debt shall become due at the option of the Mortgagee upon the occurrence of any one or more of the following events (herein collectively referred to as "Events of Default"):

(a) if any portion of the principal of the Debt is not paid when due or if any other portion of the Debt is not paid within three (3) business days after such payment is due;

(b) if an "Event of Default" as contemplated by and defined in the Credit Agreement shall occur;

(c) subject to Mortgagor's rights under paragraph 4(b) hereof, if the Mortgagor shall fail to pay within the later of (I) ten (10) days prior to the date due, or (II) twenty (20) days of notice and demand by the Mortgagee, any installment of any assessment against the Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a lien on the Property;

(d) if any Federal tax lien is filed against the Mortgagor or the Property and the same is not discharged of record within thirty (30) days after the same is filed;

(e) if without the consent of the Mortgagee (which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Mortgagee) any part of the Property or any interest of any nature whatsoever therein or any interest of any nature whatsoever in the Mortgagor (whether partnership, stock, equity, beneficial, profit, loss or otherwise) is in any manner, by operation of law or otherwise, whether directly or indirectly, further encumbered, sold, transferred, assigned or conveyed, and irrespective of whether any such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason or operation of law or is otherwise made (the foregoing shall not be deemed to restrict the right of the Mortgagor to enter into Leases as expressly permitted pursuant to this Mortgage);

(f) subject to Mortgagor's rights under paragraph 8(b) hereof, if the Mortgagor shall fail to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Property within the time period set forth therein;

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

(h) if the Mortgagor shall fail to pay the Mortgagee on demand for all Premiums and/or Taxes paid by the Mortgagee pursuant to this Mortgage, together with any late payment charge and interest thereon calculated at the Default Rate;

(i) if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned;

(j) if any representation or warranty of the Mortgagor made herein or in any Loan Document, or in any certificate, report, financial statement or other instrument furnished in connection therewith shall prove false or misleading in any material respect;

(k) if the Mortgagor shall make an assignment for the benefit of creditors;

(l) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Mortgagor or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, Mortgagee, custodian, sequestrator, conservator or similar official for the Mortgagor or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(m) the Mortgagor shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (l) of this paragraph, (iii) apply for or consent to the appointment of a receiver, Mortgagee, custodian, sequestrator, conservator or similar official for itself or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or (v) take any action for the purpose of effecting any of the foregoing;

(n) if the Mortgagor or other person shall be in default under any mortgage or Mortgage covering any part of the Property whether superior or inferior in lien to this Mortgage, and including, without limitation, any such mortgage or Mortgage now or hereafter held by the Mortgagee, or if the Mortgagor or any other person shall be in default in respect of any other indebtedness owed by the Mortgagor to the Mortgagee;

(v) if the Property shall become subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not delinquent and subject to penalty, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's lien, mechanic's or materialman's lien or other lien of any nature whatsoever, and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of the Mortgagee by the title company insuring the lien of this Mortgage within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of this Mortgage and irrespective of whether the same constitutes a perfected or inchoate lien or encumbered on the Property or is only a matter of record or notice;

(vi) if the Mortgagor shall continue to be in default under any of the other terms, covenants or conditions of this Mortgage for five (5) days after notice from the Mortgagee in the case of any default which can be cured by the payment of a sum of money or for twenty (20) days after notice from the Mortgagee in the case of any other default, provided that if such default cannot reasonably be cured within such twenty (20) day period and the Mortgagor shall have commenced to cure such default within such twenty (20) day period and thereafter diligently and expeditiously proceeds to cure the same, such twenty (20) day period shall be extended for so long as it shall require the Mortgagor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days;

Upon the occurrence of an Event of Default, Mortgagee shall have the right to accelerate the maturity of the entire Debt and when the indebtedness secured hereby or any part thereof shall become due, whether by lapse of time, acceleration or otherwise, then Mortgagee shall have the right to foreclose the lien hereof by judicial action. In any suit to foreclose the lien hereof or in any other action to enforce any other remedy of Mortgagee under this Mortgage or with respect to any of the Debt, there shall be allowed and included as additional indebtedness in the decree for sale, judgment of foreclosure or other judgment or decree all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys, appraisers, consultants and contractors, outlays related to compliance with any Environmental Requirement, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including but not limited to the fees of any attorney employed by Mortgagee in any litigation or

proceeding affecting this Mortgage, the Debt or the Property, including, without limitation, bankruptcy proceedings, or in the preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon from the date incurred at the Default Rate, and shall be secured by this Mortgage.

Without limitation on the foregoing, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et seq.* ("Foreclosure Law"), shall have the benefit of all applicable provisions of the Foreclosure Law, including those provisions of the Foreclosure Law hereinbelow referred to (collectively, "Protective Advances"):

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the Improvements; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Foreclosure Law;

(b) payments by Mortgagee of: (i) when due of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Foreclosure Law;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other expenses incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Foreclosure Law; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Foreclosure Law;

(f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Foreclosure Law;

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by subsection (c)(1) of Section 15-1704 of the Foreclosure Law; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; and (vii) pursuant to any Lease or other agreement for occupancy of the Property.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Date. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(5) of Section 15-1302 of the Foreclosure Law. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Foreclosure Law, apply to and be included in: (i) determination of the amount of indebtedness secured by this Mortgage at any time; (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (iii) if right of redemption is deemed not to be waived by this Mortgage, computation of amount required to redeem, pursuant to subsections (d)(2) and (e) of Section 15-1603 of the Foreclosure Law; (iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Foreclosure Law; (v) application of income in the hands of any receiver or Mortgagee in possession; and (vi) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of Sections 15-1508 and Section 15-1511 of the Foreclosure Law.

Upon any sale made under or by virtue of this paragraph or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of Mortgagor secured by this Mortgage the sale price, after deducting therefrom the expenses of the sale and the cost of the action and any other sums which Mortgagor is required to pay or that Mortgagee is authorized to deduct under this Mortgage.

The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings (or sale, as the case may be), including all such items as are mentioned in the preceding paragraph hereof; second, to the repayment of the Debt and all other items which under the terms hereof constitute secured indebtedness additional to that constituting the Debt, with interest thereon as herein provided; and third, any overplus to Mortgagor, its successors or assigns, as their rights may appear or as a court may direct.

Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, if requested to do so by the Mortgagee appoint a receiver of the Property. To the extent permitted by law, Mortgagee shall also be entitled to the appointment of a receiver of the Property prior to the filing of any such foreclosure complaint, upon or at any time after the occurrence of an Event of Default. Any appointment of a receiver may be made either before or after sale, without notice if permitted by law, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Property, and Mortgagee hereunder may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from any judgment or decree of foreclosure, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part to: (x) the Debt or any tax, special assessment or other lien which may be or

become superior to the lien hereof or of such decree, provided such application is made prior to any foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

In any case in which under the provisions of this Mortgage, Mortgagee has a right to foreclose the lien hereof, Mortgagor shall, forthwith, upon demand by Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled, to the fullest extent permitted by law, to take actual possession of, the Property or any part thereof personally or by its agents or attorneys. In such event, Mortgagee in its discretion may, in accordance with law, enter upon and take and maintain possession of all or any part of the Property together with all documents, books, records, papers and accruals of Mortgagor or the then owner of the Property relating thereto and may exclude Mortgagor its agents or servants wholly therefrom and may, as attorney-in-fact, as agent for Mortgagor or in its own name as Mortgagee, and under the powers herein granted, hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of Rents, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any Lease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) subject to the terms of any subordination, non-disturbance and attornment agreement agreed to by Mortgagee, to elect to disaffirm any Lease which is then subordinate to the lien hereof; (c) to extend or modify any then existing Leases and to make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) to receive all of such avails, rents, issues and profits; Mortgagor hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor. Without limitation on the foregoing, in addition to any rights granted Mortgagee hereunder or under applicable law, Mortgagee shall have all powers, rights and duties as provided for in Sections 15-1701, 15-1702 and 15-1703 of the Foreclosure Law.

From and after an Event of Default, Mortgagor shall be deemed to have constituted and appointed Mortgagee its true and lawful attorney-in-fact (which appointment is irrevocable until termination of this Mortgage and coupled with an interest) with full power of substitution

either in the name of Mortgagee or Mortgagor, to exercise any of the powers granted to Mortgagee pursuant to this paragraph. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage (except for any such liability, loss or damage which may be caused by the willful misconduct or gross negligence of Mortgagee) which Mortgagee may or might incur by reason of its performance of any action authorized under this paragraph and of and from any and all claims and demands whatsoever (except for any such liability, loss or damage which may be caused by the willful misconduct or gross negligence of Mortgagee) which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor.

Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as Mortgagee may determine:

- (a) to the payment of any portion of the Debt secured hereby or any deficiency which may result from any foreclosure sale;
- (b) to the payment of taxes and special assessments now due or which may hereafter become due on the Property;
- (c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the Property and of placing the Property in such condition as which, in the judgment of Mortgagee, make it readily rentable; and
- (d) to the payment of the operating expenses of the Property, including but not limited to the cost of the management and leasing thereof, judgments, claims for damages, if any, and premiums on insurance hereinabove authorized.

23. Right to Cure Defaults. If default in the performance of any of the covenants of the Mortgage herein occurs after notice and reasonable opportunity to cure (except in an emergency), the Mortgagee may, at its discretion, remedy the same and for such purpose shall have the right to enter upon the Property or any portion thereof without thereby becoming liable to the Mortgagor or any person in possession thereof holding under the Mortgagor. If the Mortgagee shall remedy such a default or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, the costs and expenses thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph, shall be paid by the Mortgagor to the Mortgagee upon demand. All such costs and expenses incurred by the Mortgagee in remedying such default or in appearing in, defending, or bringing any such action or

proceeding shall be paid by the Mortgagor to the Mortgagee upon demand, with interest (calculated for the actual number of days elapsed on the basis of a 360-day year) at a rate per annum equal to the rate of interest provided in the Credit Agreement on past due payments (herein referred to as the "Default Rate"), provided, however, that the Default Rate shall in no event exceed the maximum interest rate which the Mortgagor may by law pay, for the period after notice from the Mortgagee that such costs or expenses were incurred to the date of payment to the Mortgagee. To the extent any of the aforementioned costs or expenses paid by the Mortgagee after default by the Mortgagor shall constitute payment of (i) taxes, charges or assessments which may be imposed by law upon the Property, (ii) premiums on insurance policies covering the Property, (iii) expenses incurred in upholding the lien of this Mortgage, including, but not limited to, the costs and expenses of any litigation to collect the indebtedness secured by this Mortgage or to prosecute, defend, protect or preserve the rights and the lien created by this Mortgage, or (iv) any amount, cost or charge to which the Mortgagee becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority; then, and in each such event, such costs, expenses and amounts, together with interest thereon at the Default Rate, shall be added to the indebtedness secured by this Mortgage and shall be secured by this Mortgage.

24. Mortgagee in Possession. Any action taken by the Mortgagee hereunder shall be deemed to be in the context of protecting its security, is not intended to and should not be deemed as imputing to the Mortgagee the characteristics of an owner of the Property, and will not constitute Mortgagee acting as a lender or mortgagee "in possession".

25. Non-Waiver. The failure of the Mortgagee to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. The Mortgagor shall not be relieved of the Mortgagor's obligation to pay the Debt at the time and in the manner provided for its payment in the Guaranty and this Mortgage by reason of (i) failure of the Mortgagee to comply with any request of the Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions thereof or of the Guaranty or any other Loan Document, (ii) the release, regardless of consideration, of the whole or any part of the Property or any other security for the Debt, or (iii) any agreement or stipulation between the Mortgagee and any subsequent owner or owners of the Property or other person extending the time of payment or otherwise modifying or supplementing the terms of this Mortgage or any other Loan Document, without first having obtained the consent of the Mortgagor, and in the latter event, the Mortgagor shall continue to be obligated to pay the Debt at the time and in the manner provided in the Guaranty and this Mortgage, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by the Mortgagee in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Property, the Mortgagee may release any person at any time liable for the payment of the Debt or any portion thereof or any part of the security held for the Debt and may extend the time of payment or otherwise modify the terms of the Guaranty or this Mortgage, including, without limitation, a modification of the interest rate payable on the

principal balance of the Note, without in any manner impairing or affecting this Mortgage or the lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Debt over any such subordinate lien, encumbrance, right, title or interest. The Mortgagee may resort for the payment of the Debt to any other security held by the Mortgagee in such order and manner as the Mortgagee, in its discretion, may elect. The Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of the Mortgagee thereafter to foreclose this Mortgage. The Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of the Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

26. Liability. If the Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

27. Construction; Severability. This Mortgage was negotiated in the State of New York, and made by the Mortgagor and accepted by the Mortgagee in the State of New York, and the proceeds of the Note secured by the Guaranty were disbursed from the State of New York, which State the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance, this Mortgage and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such State and any applicable laws of the United States of America, except with respect to the provisions hereof which relate to the realization upon the security covered by this Mortgage, in which case such provisions shall be governed by the law of the State of where the Property is located. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be unenforceable or prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Mortgage.

28. Security Agreement.

(a) This Mortgage constitutes both a real property mortgage and a "security agreement," within the meaning of the Code, and the Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of the Mortgagor in the Property. The Mortgagor by executing and delivering this Mortgage has granted to the Mortgagee, as security for the Debt, a security interest in the Equipment. Upon an Event of Default under this Mortgage, the Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a

secured party upon default under the Code, including, without limiting the generality of the foregoing, the right to take possession of the Equipment or any part thereof, and to take such other measures as the Mortgagee may deem necessary for the care, protection and preservation of the Equipment. Upon request or demand of the Mortgagee, the Mortgagor shall at its expense assemble the Equipment and make it available to the Mortgagee at a convenient place acceptable to the Mortgagee. The Mortgagor shall pay to the Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by the Mortgagee in protecting its interest in the Equipment and in enforcing its rights hereunder with respect to the Equipment. Any notice of sale, disposition or other intended action by the Mortgagee with respect to the Equipment sent to the Mortgagor in accordance with the provisions of this Mortgage at least ten (10) days prior to the date of any such sale, disposition or other action, shall constitute reasonable notice to the Mortgagor, and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the Code unless objected to in writing by the Mortgagor within five (5) days after receipt by the Mortgagor of such notice. The proceeds of any sale or disposition of the Equipment, or any part thereof, may be applied by the Mortgagee to the payment of the Debt in such order, priority and proportions as the Mortgagee in its discretion shall deem proper. If any change shall occur in the Mortgagor's name, the Mortgagor shall promptly cause to be filed at its own expense, new financing statements as required under the Code to replace those on file in favor of the Mortgagee.

(b) Certain of the personal property described in the granting clauses of this Mortgage are or are to become fixtures on the Property. With respect to the Mortgagor's interest in the fixtures hereinabove described, this Mortgage shall constitute a security agreement and financing statement between the Mortgagor and the Mortgagee. This security agreement and financing statement covers the above-described fixtures and cumulative of all other rights of the Mortgagee hereunder, the Mortgagee shall have all of the rights conferred on secured parties by the Code with respect to such fixtures. On demand, the Mortgagor will promptly execute and pay all costs and expenses of filing financing statements, continuation statements, partial releases and termination statements deemed necessary or appropriate by the Mortgagee to establish and maintain the validity and priority of the security interest of the Mortgagee, or any modification thereof, and all costs and expenses of any searches reasonably required by the Mortgagee. The Mortgagee may exercise any or all of the remedies of a secured party available to it under the Code with respect to such fixtures, and it is expressly agreed that if upon default the Mortgagee should proceed to dispose of the collateral in accordance with the provisions of the Code, ten (10) days' notice by the Mortgagee to the Mortgagor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that the Mortgagee may at its option dispose of the collateral in accordance with the Mortgagee's rights and remedies in respect of the real property pursuant to the provisions of this

Mortgage, in lieu of proceeding under the Code. Information concerning the security interest created by this Mortgage may be obtained from the Mortgagee, as Secured Party, at the address set forth on the first page of this Mortgage.

29. **Further Acts, etc.** The Mortgagor will, at the cost of the Mortgagor, and without expense to the Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as the Mortgagee shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby mortgaged or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage and, on demand, will execute and deliver and hereby authorizes the Mortgagee to execute in the name of the Mortgagor to the extent the Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Property.

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

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

32. **Usury Laws.** This Mortgage and the Guaranty are subject to the express condition that at no time shall the Mortgagor be obligated or required to pay interest on the principal balance due under the Note or Guaranty at a rate which could subject the holder of the Note to the Guaranty to either civil or criminal liability as a result of being in excess of the maximum interest rate which the Mortgagor is permitted by law to contract or agree to pay. If by the terms of this Mortgage, the Guaranty or the Note, the Mortgagor is at any time

required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Debt.

33. Intentionally Omitted.

34. Reasonableness. If at any time the Mortgagor believes that the Mortgagee has not acted reasonably in granting or withholding any approval or consent under the Note, this Mortgage or any other Loan Document, as to which approval or consent either (I) the Mortgagee has expressly agreed to act reasonably, or (II) absent such agreement, applicable law would nonetheless require the Mortgagee to act reasonably, then the Mortgagor's remedies shall include the right to seek injunctive relief or specific performance.

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

36. Actions and Proceedings. The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of the Mortgagor, which the Mortgagee, in its discretion, determines should be brought to protect its interest in the Property.

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

38. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

39. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided in this Mortgage, words used in this Mortgage shall be used interchangeably in singular or plural form and the word "Mortgagor" shall mean each Mortgagor and any subsequent owner or owners of the Property or any part thereof or interest therein; the word "Mortgagee" shall mean the Mortgagee or any subsequent holder of the Note or Guaranty; the word "Note" shall mean the Note or any other evidence of indebtedness guaranteed by the Guaranty and secured by this Mortgage; the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government,

governmental authority, or other entity; the word "Property" shall include any portion of the Property or interest therein; and the word "Debt" shall mean all sums secured by this Mortgage; and the word "default" shall mean the occurrence of any default by the Mortgagor or other person in the observance or performance of any of the terms, covenants or provisions of the Note, the Guaranty or this Mortgage on the part of the Mortgagor or such other person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Mortgage. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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

41. No Oral Change. This Mortgage may only be modified, amended or changed by an agreement in writing signed by the Mortgagor and the Mortgagee, and may only be released, discharged or satisfied of record by an agreement in writing signed by the Mortgagee. No waiver of any term, covenant or provision of this Mortgage shall be effective unless given in writing by the Mortgagee and if so given by the Mortgagee shall only be effective in the specific instance in which given. The Mortgagor acknowledges that the Guaranty, this Mortgage and the other Loan Documents set forth the entire agreement and understanding of the Mortgagor and the Mortgagee with respect to the Debt secured hereby and that no oral or other agreements, understanding, representation or warranties exist with respect to the Debt secured hereby other than those set forth in the Guaranty, this Mortgage and such other Loan Documents.

42. Absolute and Unconditional Obligation. The Mortgagor acknowledges that the Mortgagor's obligation to pay the Debt in accordance with the provision of the Guaranty and this Mortgage is and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to the Guaranty or this Mortgage or the obligation of the Mortgagor thereunder to pay the Debt or the obligations of any other person relating to the Guaranty, this Mortgage or the other Loan Documents or the obligations of the Mortgagor or any other person under the Guaranty, this Mortgage or the other Loan Documents or otherwise with respect to the Debt secured hereby, and the Mortgagor absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligation of the Mortgagor to pay the Debt in accordance with the provisions of the Guaranty and this Mortgage or the obligations of any other person relating to the Guaranty.

this Mortgage or the other Loan Documents or obligations of the Mortgagor or any other person under the Guaranty, this Mortgage or the other Loan Documents or otherwise with respect to the Debt secured hereby in any action or proceeding brought by the Mortgagee to collect the Debt, or any portion thereof, or to enforce, foreclose and realize upon the lien and security interest created by this Mortgage or any other Loan Document, in whole or in part.

43. Waiver of Trial by Jury. To the extent permitted by applicable law, the Mortgagor hereby irrevocably and unconditionally waives, and the Mortgagee by its acceptance of the Guaranty and this Mortgage irrevocably and unconditionally waives, any and all rights to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to the Guaranty, this Mortgage or any other Loan Document.

44. Waivers. The Mortgagor waives all the rights and benefit of all laws now existing or that hereafter may be enacted providing for (a) any appraisal before sale of any portion of the Property, (b) extension of the time for the enforcement or collection of the Guaranty, the Note or the indebtedness evidenced thereby, or (c) creation of an extension of the period of redemption from or a moratorium on any sale made pursuant to this Mortgage. To the full extent the Mortgagor may do so, the Mortgagor agrees that the Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, redemption or moratorium, and the Mortgagor, for the Mortgagor, the Mortgagor's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, moratorium, stay of execution, notice of election to make or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this paragraph and now in force, of which the Mortgagor, the Mortgagor's successors and assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. The foregoing waiver of the right of redemption is made pursuant to Section 15-1601 of the Foreclosure Law. The Mortgagor waives, to the full extent permitted by law, all statutes of limitations as a defense to this Mortgage and any obligation secured by this Mortgage.

45. Brokerage. The Mortgagor covenants and agrees that no brokerage commission or other fee, commission or compensation is to be paid by the Mortgagee on account of the loan or other financing obligations evidenced by the Note or the Guaranty and/or secured by this Mortgage and the Mortgagor agrees to indemnify the Mortgagee against any claims for any of the same.

46. Indemnity. Anything in this Mortgage or the other Loan Documents to the contrary notwithstanding, the Mortgagor shall indemnify and hold the Mortgagee harmless and defend the Mortgagee at the Mortgagor's sole cost and expense against any loss or liability,

cost or expense (including, without limitation, title insurance premiums and charges and reasonable attorneys' fees and disbursements of the Mortgagee's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with (i) any ongoing matters arising out of the transaction contemplated hereby, the Debt, this Mortgage, the Note, the Guaranty, the Credit Agreement or any other Loan Document and/or the Property, including, but not limited to, all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, the Mortgagee or any governmental or quasi-governmental authority, (ii) any amendment to, or restructuring of, the Debt, this Mortgage, the Guaranty, the Note or any of the other Loan Documents, and (iii) any and all lawful action that may be taken by the Mortgagee in connection with the enforcement of the provisions of this Mortgage, the Guaranty, the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Mortgagor, any guarantor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding. All sums expended by the Mortgagee shall be payable on demand and, until reimbursed by the Mortgagor pursuant hereto, shall be deemed additional principal of the Debt and secured hereby and shall bear interest at the Default Rate. The obligations of the Mortgagor under this paragraph shall, notwithstanding any exculpatory or other provisions of any nature whatsoever set forth in the Loan Documents, constitute the personal recourse undertakings, obligations and liabilities of the Mortgagor. The foregoing indemnity shall not be applicable to any claim, loss, liability, loss or expense occasioned, arising and caused solely and directly as the result of the gross negligence or willful misconduct of the Mortgagee.

47. Relationship. The relationship of the Mortgagee to the Mortgagor hereunder is strictly and solely that of Mortgagee and Mortgagor and Mortgagor and Mortgagee and nothing contained in the Note, the Guaranty, this Mortgage, or any other Loan Document is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Mortgagee and the Mortgagor other than as lender and borrower.

48. Mortgagor's Copy. The Mortgagor shall be furnished a conformed copy of this Mortgage at the time of execution or after recordation hereof.

49. Intentionally Omitted.

50. Time of Essence. Time is of the essence of each covenant in this Mortgage.

51. Guaranty. This Mortgage secures the obligations of the Mortgagor under the Guaranty. It is therefore expressly understood and agreed by the Mortgagor and, as an inducement to cause the Mortgagee to extend credit under the Credit Agreement and to accept the aforesaid Guaranty, that if the Mortgagor shall fail to make any payment required to be made by the Mortgagor in accordance with the terms of the Guaranty then the entire

indebtedness secured hereby or so much thereof as shall then be outstanding shall become immediately due and payable and collectible hereunder, and the Mortgagee shall have the right to avail itself of whatever remedies are available to the Mortgagee by law, equity or by the terms of this Mortgage (including, without limitation, the right to foreclose this Mortgage and the right to the appointment of a receiver of the Rents). Subject to the provisions of Section 2.08(b) of the Credit Agreement, (i) this Mortgage shall remain in full force and effect as a lien upon the Property until such time as all obligations guaranteed by the Mortgagor have been paid and discharged in full and (ii) the lien of this Mortgage shall not be or be deemed to be reduced by any prepayment or repayment of the principal amount of the obligations which are partially secured hereby so long as the principal indebtedness of such obligations remaining unpaid equals or exceeds the maximum principal amount secured by this Mortgage, and that portion of the principal indebtedness last remaining unpaid shall be and be deemed to be secured hereby.

52. Intentionally Omitted.

53. Single Purpose Entity; Corporate Existence; Authorization. In consideration of Mortgagee's agreement to make the loan evidenced by the Note and secured in part by the Guaranty and this Mortgage, Mortgagor represents, warrants and covenants that, for so long as any portion of the Debt remains outstanding:

(a) Other than as expressly disclosed to Mortgagee in writing, Mortgagor does not and will not own any asset or property other than the Property.

(b) Other than as expressly disclosed to Mortgagee in writing, Mortgagor does not and will not engage in any business other than the ownership, management and operation of the Property, and Mortgagor will conduct and operate its business as presently conducted and operated.

(c) Mortgagor will not enter into, renew, or extend any contract or agreement regarding the purchase or sale of any goods or services with any of its affiliates except for such agreements for the management of the Property as are currently in effect or which may be entered into in the future pursuant to terms and conditions substantially the same as those currently in effect and/or upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length third-party basis for similar properties.

(d) Mortgagor has not incurred nor will incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than: (i) the Debt; and (ii) trade and operational debt incurred in the ordinary course of business with trade creditors and in amounts as are customary and reasonable under the circumstances. Except with Mortgagee's prior written approval in each instance, no indebtedness, whether senior or junior to the Debt, is or shall be

secured by the Property. Mortgagee's approval shall be granted or withheld at Mortgagee's sole discretion and in connection with any such financing approved by Mortgagee, Mortgagor shall be required to obtain and deliver to Mortgagee a subordination and standstill agreement from such Mortgagee which shall be in form and substance satisfactory to Mortgagee in its sole discretion.

(e) Mortgagor has not made, nor will make, any loans or advances to any third party (including any constituent party or affiliate of Mortgagor).

(f) After giving effect to the Debt, Mortgagor will remain able to satisfy its obligations from its assets as they become due.

(g) Mortgagor has done or has caused to be done, and will do or cause to be done, all things necessary to preserve its existence, and Mortgagor will not, nor will Mortgagor permit any constituent party thereof to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents, as the case may be, of Mortgagor or such constituent party in a manner which would adversely affect Mortgagor's existence as a single purpose entity.

(h) Mortgagor will maintain books and records and bank accounts separate from those of any of its constituent parties or any of their respective affiliates.

(i) Mortgagor is and will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any of its affiliates or constituent parties.)

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

(k) Neither Mortgagor nor any of its constituent parties will cause or seek the dissolution or winding up, in whole or in part, of Mortgagor.

(l) Mortgagor will not commingle its funds and other assets with those of any other person.

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

(n) Mortgagor does not and will not hold itself out to be responsible for the debts or obligations of any other person except as set forth herein, in the Guaranty or in any other Loan Document executed by the Mortgagor.

54. Release. Subject to the provisions of Section 2.08(b) of the Credit Agreement, upon payment of all sums secured by this Mortgage, Mortgagee shall release this Mortgage without charge to Mortgagor and without representation, warranty or recourse to the Mortgagee. Mortgagor shall pay all costs of recordation and reasonable charges related to such release. Nothing therein or herein shall limit or impair the right of the Mortgagee or the Mortgagee to enforce and realize upon any of the Property.

55. Future Advances. This Mortgage is given to secure guaranteed obligations including obligations involving a revolving credit facility and secures not only present indebtedness but also any and all future advances (including but not limited to reimbursement and indemnity obligations in respect of letters of credit heretofore or hereafter issued), whether such future advances are obligatory or are to be made at the option of Mortgagee, or otherwise as are to be made within twenty (20) years of the date hereof. Nothing in this Section or in any other provision of this Mortgage shall be deemed either (a) an obligation on the part of Mortgagee to make any future advances of any sort other than as expressly set forth in the Credit Agreement or (b) an agreement on the part of Mortgagee to increase the amount of the Debt.

56. Maximum Amount of Indebtedness Secured. Notwithstanding anything to the contrary set forth in this Mortgage, Mortgagor acknowledges that the principal amount of the Debt secured hereby is SIXTY-THREE MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$63,700,000) and that the maximum aggregate amount of principal, interest and other indebtedness (now or hereafter owed) secured by this Mortgage is ONE HUNDRED NINETY-ONE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$191,100,000).

57. Business Loan Recital/Statutory Exemptions.

(a) Mortgagor acknowledges and agrees that (i) the Debt secured hereby constitutes a business loan which comes with the purview of Section 4 of the Interest Act (815 ILCS 205/0/01 *et seq.*) and (ii) that the Debt is an exempt transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 *et seq.*

(b) Mortgagor acknowledges and agrees 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 Foreclosure Law) or residential real estate (as defined in Section 15-1219 of the Foreclosure Law).

IN WITNESS WHEREOF, the Mortgagor has duly executed this Mortgage the day and year first above written.

TRIANGLE PLAZA VENTURE L.L.C.,
a Delaware limited liability company

By: **SOFI-IV Equity IV, L.L.C.,** a
Connecticut limited liability company and
its general manager

By: **SOFI IV Management, L.L.C.,** a
Connecticut limited liability company and
its general manager

By: **Starwood Capital Group, L.L.C.,** a
Connecticut limited liability company and
its general manager

By: _____

Name: Jerome C. Silvey

Title: Senior Vice President

Property of Cook County Clerk's Office

STATE OF Connecticut)
) : SS
COUNTY OF Fairfield)

I, the undersigned Notary Public, certify that Jerome C. S. Ivey, personally came before me this day and acknowledged that he is the Senior Vice President of Starwood Capital Group, L.L.C., a Connecticut limited liability company, as general manager of SOFI IV Management, L.L.C., a Connecticut limited liability company, as general manager of SOFI-IV Equity IV, L.L.C., a Connecticut limited liability company, as general manager of Triangle Plaza Venture, L.L.C., a Delaware limited liability company, and that by authority duly given and as the act of the Senior Vice President of Starwood Capital Group LLC the foregoing instrument was signed for the purposes therein expressed, for and on behalf of Triangle Plaza Venture L.L.C.

Witness my hand and Notarial Stamp/Seal this 1st day of April, 1998.

Costas Thanassoulis
Notary Public Costas Thanassoulis
My Commission Expires: February 28, 2002

COSTAS THANASOULIS
NOTARY PUBLIC
MY COMMISSION EXPIRES FEB. 28, 2002

EXHIBIT A

(Description of Property)

THE SOUTH 30 ACRES OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THEREFROM THE EAST 663 FEET AS MEASURED PERPENDICULAR TO THE EAST LINE OF SAID SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 2; ALSO EXCEPT THE SOUTH 50 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 2 AND EXCEPT ALL THOSE PORTIONS OF SAID SOUTH 30 ACRES LYING NORTHERLY AND WESTERLY OF THE SOUTHERLY AND EASTERLY LINES OF THE PROPERTY AS DEEDED TO THE COUNTY OF COOK FOR HIGHWAY PURPOSES BY DEEDS RECORDED AS DOC. NOS. 17222711, 17222712, 17222714, 17237847, 17241632 AND BY CONDEMNATION CASE 58S3896, PARCEL NT-45), IN COOK COUNTY, ILLINOIS.