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Property

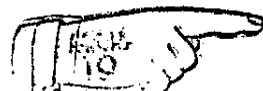
**AMENDED AND RESTATED MORTGAGE,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN FIRST MORTGAGE DATED SEPTEMBER 28, 1992 FROM WATERFALL PLAZA HOLDINGS, INC., AN ILLINOIS CORPORATION ("WATERFALL HOLDINGS") TO MORTGAGEE, RECORDED WITH THE COOK COUNTY, ILLINOIS RECORDER OF DEEDS ("RECORDER") ON OCTOBER 2, 1992 AS DOCUMENT NO. 92-737151, AS AMENDED AND MODIFIED BY (I) ASSUMPTION AGREEMENT DATED MARCH 5, 1993 AMONG WATERFALL HOLDINGS, MORTGAGOR, BENEFICIARY AND MORTGAGEE, RECORDED WITH THE RECORDER AS DOCUMENT NO. 93181686, (II) FIRST AMENDATORY AGREEMENT DATED JUNE 20, 1993 BETWEEN MORTGAGOR AND MORTGAGEE, (III) WATERFALL PLAZA SPREADER AGREEMENT DATED JUNE 10, 1994 BY MORTGAGOR AND BENEFICIARY IN FAVOR OF LENDER, RECORDED WITH THE RECORDER AS DOCUMENT NO. 94320642, (IV) FIRST AMENDMENT TO LOAN DOCUMENTS DATED SEPTEMBER 14, 1994 AMONG MORTGAGOR, MORTGAGEE AND BENEFICIARY, RECORDED WITH THE RECORDER ON OCTOBER 4, 1994 AS DOCUMENT NO. 94858113, AND (V) MODIFICATION AGREEMENT DATED APRIL 1, 1997 AMONG MORTGAGOR, BENEFICIARY, MORTGAGEE AND VARIOUS OTHER PARTIES RECORDED WITH THE RECORDER ON APRIL 16, 1997 AS DOCUMENT NO. 97262638.

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is executed as of July 15, 1999, by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated March 3, 1993 and known as Trust No. 116676-07 ("Mortgagor"), whose address for notice hereunder is c/o M&J Wilkow, 180 North Michigan

W93042-203 (93)

Mail to:
Alison M. Mitchell, Esq.
Rudnick & Wolfe
203 N. LaSalle Street
Chicago, IL 60601



Avenue, Suite 200, Chicago, Illinois 60601, Attention: Marc Wilkow, for the benefit of **GENERAL ELECTRIC CAPITAL CORPORATION**, a New York corporation ("**Mortgagee**"), whose address for notice is 209 West Jackson Boulevard, Suite 200, Chicago, Illinois 60606, Attn: Region Manager, Portfolio Management Operations.

ARTICLE 1

DEFINITIONS

1.1 **Definitions**. As used herein, the following terms shall have the following meanings:

(a) "**Indebtedness**": The sum of all (1) principal, interest and other amounts due under or secured by the Loan Documents, (2) principal, interest and other amounts which may hereafter be loaned by Mortgagee, its successors or assigns, to or for the benefit of the owner of the Mortgaged Property, when evidenced by a promissory note or other instrument which, by its terms, is secured hereby, (3) Participation Interest and Cash Flow Interest (as such terms are defined in the Loan Agreement) and (4) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor and/or First Wilkow Venture, an Illinois limited partnership ("**Beneficiary**") to Mortgagee under documents which recite that they are intended to be secured by this Mortgage.

(b) "**Loan Documents**": The (1) Loan Agreement of even date among Mortgagor, Beneficiary and Mortgagee (the "**Loan Agreement**"), (2) Amended and Restated Senior Promissory Note of even date, executed by Mortgagor and Beneficiary, payable to the order of Mortgagee, in the stated principal amount of \$1,868,448.16 (the "**Senior Note**"), which matures on April 1, 2002 and bears interest at the rate of interest set forth in the Loan Agreement attached hereto as Schedule I, (3) Junior Promissory Note executed by Mortgagor and Beneficiary, payable to the order of Mortgagee, in the stated principal amount of \$200,000 (the "**Junior Note**"; the Senior Note and the Junior Note are collectively referred to herein as the "**Note**"), which matures on April 1, 2002 and bears interest at the rate of interest set forth in the Loan Agreement, (4) this Mortgage, (4) all other documents now or hereafter executed by Mortgagor, or any other person or entity to evidence or secure the payment of the Indebtedness or the performance of the Obligations and (5) all modifications, restatements, extensions, renewals and replacements of the foregoing.

(c) "**Mortgaged Property**": (1) the real property described in Exhibit A, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "**Land**"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "**Improvements**"), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities

and all other utilities whether or not situated in easements (the "**Fixtures**"), (4) all right, title and interest of Mortgagor in and to all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, trademarks, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs (the "**Personalty**"), (5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "**Plans**"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "**Leases**"), (8) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the "**Rents**"), (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Property Agreements**"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (12) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (14) all of Mortgagor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

(d) "**Obligations**": All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor or any other person or entity to Mortgagee or others as set forth in the Loan Documents.

(e) "**Permitted Encumbrances**": The outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage, together with the liens and security interests in favor of Mortgagee created by the Loan Documents.

(f) "**UCC**": The Uniform Commercial Code of Illinois or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than Illinois, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE 2

GRANT

2.1 **Grant.** To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, SELLS and CONVEYS, to Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

ARTICLE 3

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows.

3.1 **Title to Mortgaged Property and Lien of this Instrument.** Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property.

3.2 **First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security

interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Mortgagee).

3.3 **Payment and Performance.** Mortgagor shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

3.4 **Replacement of Fixtures and Personalty.** Mortgagor shall not, without the prior written consent of Mortgagee (not to be unreasonably withheld), permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and, if necessary for the operation of the Mortgaged Property, is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Mortgagee.

3.5 **Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Mortgagor shall comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

3.6 **Inspection.** Mortgagor shall permit Mortgagee, and Mortgagee's agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Mortgagee may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

3.7 **Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (a) the prohibition against the further sale, transfer or encumbering of any of the Mortgaged Property except as otherwise provided in the Loan Agreement, (b) the obligation to pay when due all taxes on the Mortgaged Property or assessed against Mortgagee with respect to the Loan, (c) the right of Mortgagee to inspect the Mortgaged Property except as otherwise provided in the Loan Agreement, (d) the obligation to keep the Mortgaged Property insured as Mortgagee may require, (e) the obligation to comply with all legal requirements (including environmental laws), maintain the Mortgaged Property in good condition, and promptly repair any damage or casualty except as otherwise provided in the Loan Agreement, and (f) except as otherwise permitted under the Loan

Agreement, the obligation of Mortgagor to obtain Mortgagee's consent prior to entering into, modifying or taking other actions with respect to Leases.

3.8 **Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Mortgagor assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement.

(b) **Insurance Proceeds.** Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property subject to the terms of the Loan Agreement. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly, subject to the terms of the Loan Agreement.

ARTICLE 4

DEFAULT AND FORECLOSURE

4.1 **Remedies.** If an Event of Default (as defined in the Loan Agreement) exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Mortgagor agrees that five (5) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7.

(f) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Mortgage).

4.2 **Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

4.3 **Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

4.4 **Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to a consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

4.5 **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

4.6 **Discontinuance of Proceedings.** If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

4.7 **Application of Proceeds.** Following an Event of Default, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses, (4) costs of advertisement, and (5) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold;

(b) to the payment of all amounts (including interest), other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due to Mortgagee under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

4.8 **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

4.9 **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 4.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in the Loan Agreement), and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

4.10 **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 5

ASSIGNMENT OF RENTS AND LEASES

5.1 **Assignment.** Mortgagor acknowledges and confirms that it has executed and delivered to Mortgagee an Amended and Restated Assignment of Rents and Leases of even date (the "**Assignment of Rents and Leases**"), intending that such instrument create a present, absolute assignment to Mortgagee of the Leases and Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Rents and Leases, Mortgagor hereby assigns to Mortgagee, as further security for the Indebtedness and the Obligations, the Leases and Rents. While any Event of Default exists, Mortgagee shall be entitled to exercise any or all of the remedies provided in the Assignment of Rents and Leases and in Article 4 hereof, including the right to have a receiver appointed. If any conflict or inconsistency exists between the assignment of the Rents and the Leases in this Mortgage and the absolute assignment of the Rents and the Leases in the Assignment of Rents and Leases, the terms of the Assignment of Rents and Leases shall control.

5.2 **No Merger of Estates.** So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

ARTICLE 6

SECURITY AGREEMENT

6.1 **Security Interest.** This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements, including, without limitation, the items listed on Exhibit B attached hereto (collectively referred to herein as the "**Collateral**"). To this end, Mortgagor grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least five (5) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

6.2 **Financing Statements.** Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create,

perfect and preserve such security interest. Mortgagor's chief executive office is in the State of Illinois at the address set forth in the first paragraph of this Mortgage.

6.3 **Fixture Filing.** This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

ARTICLE 7

MISCELLANEOUS

7.1 **Notices.** Any notice required or permitted to be given under this Mortgage shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, personal delivery or otherwise as provided in this Section 7.1). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth on the first page of this Mortgage. Any communication so addressed and mailed shall be deemed to be given on the earliest of (a) when actually delivered, (b) on the first Business Day (as defined in the Loan Agreement) after deposit with an overnight air courier service with instructions for next Business Day delivery, or (c) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by, Mortgagee or Mortgagor, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified in the Loan Agreement and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery, as otherwise provided in this Section 7.1. Any party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

7.2 **Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

7.3 **Attorney-in-Fact.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

7.4 **Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

7.5 **No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

7.6 **Subrogation.** To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

7.7 **Loan Agreement.** If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

7.8 **Release.** Upon payment in full of the Indebtedness and performance in full of the Obligations, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage.

7.9 **Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

7.10 **Limitation on Liability.** Mortgagor's liability hereunder is subject to the limitation on liability provisions of Article 12 of the Loan Agreement.

7.11 **Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

7.12 **Governing Law.** This Mortgage shall be governed by the laws of the State of Illinois.

7.13 **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

7.14 **Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

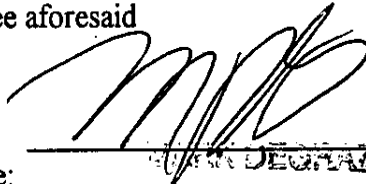
7.15 **Maximum Indebtedness.** The maximum indebtedness hereby secured shall at no time exceed \$100,000,000.

7.16 **Rider.** The Rider attached hereto is made a part hereof by this reference.

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, representation, covenant, undertaking or agreement in this instrument.
Attestation not required by American National Bank and Trust Company of Chicago Bylaws

EXECUTED as of the date first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as trustee aforesaid



By: _____
Name: TRUST OFFICER
Its: TRUST OFFICER

99684133
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JOINDER

The undersigned, being the owner of one hundred percent (100%) of the beneficial interest in, and being the sole beneficiary of the Trust which is described on page 1 of this Mortgage, hereby consents to and joins in the terms and provisions of Article 6 of the foregoing Mortgage, intending hereby to bind any of its interest or any interest of its heirs, executors, administrators, successors or assigns in the Collateral described in the foregoing Mortgage, as fully with the same effect as if the undersigned or any general partner thereof was named as the Mortgagor in said Mortgage. Nothing herein contained shall be deemed to render the undersigned, its members, officers or agents liable upon any obligations for payments or performance (except with respect to the Collateral) provided in the foregoing Mortgage. The liability of the undersigned hereunder is subject to the limitation on liability provisions of Article 12 of the Loan Agreement.

Dated: July 15, 1999

FIRST WILKOW VENTURE,, an Illinois
limited partnership

By: 

Name: Marc R. Wilkow

Its: General Partner

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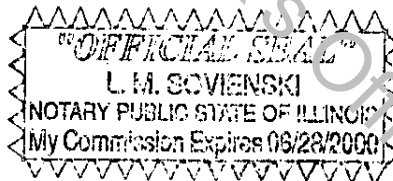
STATE OF IL)
) SS.
 COUNTY OF COOK)

I, _____, a Notary Public, in and for said County, in the State aforesaid, do hereby certify, that ~~MARK DEGRAZIA~~ Assistant Vice President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as trustee under Trust No. 116676-07, and _____, Assistant Secretary of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and said Assistant Secretary then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14 day of July, 1999.

L. M. Sovinski

 Notary Public



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STATE OF Illinois)
) SS.
 COUNTY OF Cook)

I, Jennifer L. Harshbarger, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Maro R. Wilkow, personally known to me to be a general partner of FIRST WILKOW VENTURE, an Illinois limited partnership, whose name is subscribed to the within Instrument, appeared before me this day in person and severally acknowledged that as such general partner, he signed and delivered the said Instrument as general partner of said partnership as his free and voluntary act and as the free and voluntary act and deed of said partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 14th day of July, 1999.

Jennifer L. Harshbarger
 Notary Public

My Commission Expires:

11/18/02

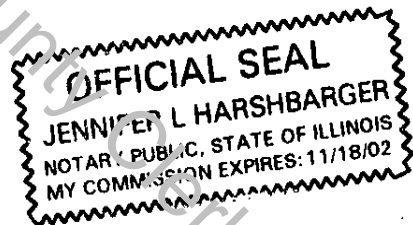


EXHIBIT A

[Legal Description]

PARCEL 1:

THAT PART OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST ½ OF THE SOUTHWEST ¼, AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE, AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET, LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2 (EXCEPT THE SOUTH 158.0 FEET THEREOF) ALL IN ORLAND TOWNSHIP, COOK COUNTY, ILLINOIS.

ALSO

PARCEL 2:

THE WEST 170.0 FEET OF THE SOUTH 158.0 FEET OF THAT PART OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST ½ OF THE SOUTHWEST ¼ AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE, AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET, AND LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2, ALL IN ORLAND TOWNSHIP, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCELS 1 AND 2 MADE BY AND BETWEEN FORD CITY BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 29, 1980 AND KNOWN AS TRUST NUMBER 3376 AND EAST SIDE BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 14, 1979 AND KNOWN AS TRUST NUMBER 1217 CREATED BY THAT CERTAIN EASEMENT AGREEMENT DATED MARCH 15, 1984 AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, COOK COUNTY, ILLINOIS, AS DOCUMENT NO. 27062950 OVER THE FOLLOWING DESCRIBED PROPERTY:

THE EAST 33.00 FEET OF THE WEST 203.00 FEET OF THE SOUTH 158.0 FEET OF THAT PART OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND

ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST ½ OF THE SOUTHWEST ¼ AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE, AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET, AND LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2, ALL IN ORLAND TOWNSHIP, IN COOK COUNTY, ILLINOIS

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 FOR THE INSTALLATION AND MAINTENANCE OF A SIGN PYLON CREATED BY THAT CERTAIN EASEMENT AGREEMENT DATED MARCH 15, 1984 AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, COOK COUNTY, ILLINOIS, AS DOCUMENT NO. 27062950 MADE BY AND BETWEEN FORD CITY BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 29, 1980 AND KNOWN AS TRUST NUMBER 3376 AND EAST SIDE BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 14, 1979 AND KNOWN AS TRUST NUMBER 1217 OVER THE FOLLOWING DESCRIBED PROPERTY:

THE EAST 10.00 FEET OF THE WEST 213.00 FEET OF THE SOUTH 24 FEET OF THAT PART OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST ½ OF THE SOUTHWEST ¼ AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE, AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET, AND LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2, ALL IN ORLAND TOWNSHIP, IN COOK COUNTY, ILLINOIS

PARCEL 5:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 FOR PUBLIC UTILITIES CREATED BY THAT CERTAIN EASEMENT AGREEMENT DATED MARCH 15, 1984 AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, COOK COUNTY, ILLINOIS, AS DOCUMENT NO. 27062950 MADE BY AND BETWEEN FORD CITY BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 29, 1980 AND KNOWN AS TRUST NUMBER 3376 AND EAST SIDE BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 14, 1979 AND KNOWN AS TRUST NUMBER 1217 OVER THE FOLLOWING DESCRIBED PROPERTY:

THOSE PORTIONS OF 2 PUBLIC UTILITY EASEMENTS (10 FEET WIDE) AS CREATED BY A DOCUMENT ENTITLED "PLAT OF EASEMENT" RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS ON AUGUST 4, 1981 AS DOCUMENT 25957953 AND AS SHOWN ON THE PLAT ATTACHED THERETO FALLING

WITHIN THE BOUNDARY OF THE FOLLOWING DESCRIBED PARCEL OF LAND: THAT PART OF THE WEST ½ OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND ABUTTING A LINE 170 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST HALF OF THE SOUTHWEST 1/4 LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET AND LYING SOUTH OF A LINE 158 FEET NORTH OF AND PARALLEL WITH THE AFORESAID NORTH LINE OF 159TH STREET, ALL IN ORLAND TOWNSHIP, SAID EASEMENTS BEING THROUGH THE SOUTH 10 FEET AND THE SOUTH 10 FEET OF THE NORTH 14 FEET OF SAID PARCEL, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY CERTAIN EASEMENT AGREEMENT DATED JUNE 18, 1992 AND RECORDED SEPTEMBER 14, 1992 AS DOCUMENT 92680636 MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1987 AND KNOWN AS TRUST NUMBER 10427-04 ("WATERFALL OWNER") AND FIRST COLONIAL BANK NORTHWEST AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 17, 1988 KNOWN AS TRUST NUMBER 916 ("OUTLOT OWNER") FOR A PASSENGER VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS, AND PASSENGER VEHICULAR PARKING, OVER, UPON, THROUGH AND ACROSS THE SOUTH 158.0 FEET OF THAT PART OF THE WEST ½ OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST ½ OF THE SOUTHWEST 1/4 AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET, AND LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2 (EXCEPT THE WEST 170.0 FEET THEREOF) ALL IN ORLAND TOWNSHIP, IN COOK COUNTY, ILLINOIS.

THE SOUTH 158.0 FEET OF THAT PART OF THE WEST ½ OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST ½ OF THE SOUTHWEST 1/4 AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET AND LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2 (EXCEPT THE WEST 170.0 FEET THEREOF) ALL IN ORLAND TOWNSHIP, COOK COUNTY, ILLINOIS

EXHIBIT B

All contract rights, groundwater rights, deposit accounts, certificates of deposit, money, equipment, machinery, fixtures, goods, inventory, accounts, general intangibles, documents, instruments and chattel paper, and all other personal property (as said terms are defined in or encompassed by the Uniform Commercial Code of the State of Illinois) of every kind and description, whether now existing or hereafter acquired, now or at any time hereafter attached to, erected upon, situated in or upon, forming a part of, appurtenant to, used or useful in the construction or operation of or in connection with, or arising from the use or enjoyment of all or any portion of, or from any lease or agreement pertaining to, the Mortgaged Property, including without limitation:

A. All income, rents, royalties, revenue, issues, profits, proceeds and other benefits from any and all of the Mortgaged Property;

B. All deposits made with or other security given to utility companies by Mortgagor with respect to the Mortgaged Property and the improvements thereon, and all advance payments of insurance premiums made by Mortgagor with respect thereon, and all advance payments of insurance premiums made by Mortgagor with respect thereto and all claims or demands relating to such deposits, other security and/or such insurance;

C. All fixtures now or hereafter affixed to the Mortgaged Property, including all buildings, structures and improvements of every kind and description now or hereafter erected or placed thereon and any and all machinery, motors, elevators, boilers, equipment (including, without limitation, all equipment for the generation or distribution of air, water, heat, electricity, light, fuel or refrigeration or for ventilating or air conditioning purposes or for sanitary or drainage purposes or for the removal of dust, refuse or garbage), partitions, appliances, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, fittings, furniture, furnishings, building service equipment, building materials, supplies, ranges, refrigerators, cabinets, laundry equipment, kitchen and restaurant equipment, computers and software, radios, televisions, awnings, shades, blinds, drapes, curtains and drapery rods and brackets, screens, carpeting, rugs and other floor coverings, lobby furnishings, games and recreational and swimming pool equipment, incinerators, incinerating and elevator plants and other property of every kind and description now or hereafter placed, attached, affixed or installed in such buildings, structures, or improvements (all of such being referred to hereinafter as the "Improvements");

D. All damages, royalties and revenue of every kind, nature and description whatsoever that Mortgagor may be entitled to receive, either before or after any default hereunder, from any person or entity owing or having or hereafter acquiring a right to the groundwater, oil, gas or mineral rights and reservations of the Mortgaged Property;

E. All proceeds and claims arising on account of any damage to or taking of the Mortgaged Property or the Improvements thereon or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Mortgaged Property or the Improvements;

F. All licenses (including, but not limited to, any operating licenses or similar licenses), contracts, management contracts or agreements, franchise agreements, permits, authorities or certificates and all books and records required or used in connection with the ownership of, or the operation or maintenance of, the Improvements;

G. All governmental permits relating to construction, all names under or by which the Mortgaged Property or the Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, patents pending and good will;

H. All water stock relating to the Mortgaged Property, shares of stock or other evidence of ownership of any part of the Mortgaged Property that is owned by Mortgagor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Mortgaged Property;

I. All plans and specifications prepared for construction of the Improvements and all studies, data and drawing related thereto; and also all contracts and agreements of Mortgagor relating to the aforesaid plans and specifications or construction of the Improvements;

J. All sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into with respect to the sale to any purchases of any part of the Mortgaged Property or any buildings or structures on the Mortgaged Property, together with all deposits and other proceeds of the sale thereof; and

K. All escrow accounts and Mortgagor's interest in escrow accounts including escrow accounts into which earnest money is deposited in connection with the contemplated sale of houses.

All replacements, repairs and substitutions of, appurtenances, and accessions and additions to, any of the foregoing.

All proceeds of any of the foregoing, including, without limitation, proceeds of any voluntary or involuntary disposition or claim respected any item thereof (pursuant to judgment, condemnation award or otherwise) and all goods, documents, general intangibles, chattel paper and accounts, wherever located, acquired with cash proceeds of any of the foregoing or proceeds thereof.

RIDER

R-1 **Illinois Mortgage Foreclosure Law.** The Mortgage is hereby amended by adding the following paragraph thereto.

1. **Benefits to Act.** Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101) (the "Act"), including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

2. **Insurance.** Wherever provision is made in the Mortgage or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.

3. **Protective Advances.** 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 the Mortgage, the Loan Agreement or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Mortgagee in accordance with the terms of the Mortgage or the Loan Agreement to: (1) preserve or maintain, repair, restore or rebuild the improvements upon the mortgaged real estate; (2) preserve the lien of the Mortgage or the priority thereof; or (3) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(b) payments by Mortgagee of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (2) 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 Mortgaged Property or any part thereof; (3) other obligations authorized by the Mortgage or the Loan Agreement; or (4) 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 5/15-1505 of the Act;

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

(d) reasonable attorneys' fees and other costs incurred: (1) in connection with the foreclosure of the Mortgage as referred to in Sections 1504 (d)(2) and 5/15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to the Mortgage or the mortgaged real estate;

(e) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the Act;

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Mortgagor's interest in the Mortgaged 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; (3) 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 Mortgaged Property imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the mortgaged real estate 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 Mortgaged Property; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (7) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) pursuant to any lease or other agreement for occupancy of the Mortgaged Property for amounts required to be paid by mortgagor; and (9) if the Mortgage is insured, payments of FHA or private mortgage insurance required to keep insurance in force.

All Protective Advances shall be so much additional indebtedness secured by the Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note.

The Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

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 Act, apply to and be included in:

- (i) determination of the amount of indebtedness secured by the 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 has not been waived by the Mortgagor in the Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;
- (iv) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (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 5/15-1508 and Section 5/15-1511 of the Act.

4. **Mortgagee in Possession.** In addition to any provision of the Mortgage or Loan Agreement authorizing the Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage or Loan Agreement, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

5. **Waiver of Redemption.** Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or

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residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601 (b) of the Act, Mortgagor hereby waives any and all right to redemption.

Property of Cook County Clerk's Office

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SCHEDULE I

Loan Agreement/Interest Rate

Property of Cook County Clerk's Office

LOAN AGREEMENT

between

**AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, NOT
PERSONALLY BUT SOLELY AS TRUSTEE UNDER TRUST AGREEMENT DATED
MARCH 3, 1993 AND KNOWN AS TRUST NO. 116676-07 AND
FIRST WILKOW VENTURE, AN ILLINOIS LIMITED PARTNERSHIP
collectively, as Borrower**

and

**GENERAL ELECTRIC CAPITAL CORPORATION
as Lender**

July 15, 1999

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is entered into as of July 15, 1999 between GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation ("Lender"), and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated March 3, 1993 and known as Trust No. 116676-07 ("Trustee") and FIRST WILKOW VENTURE, an Illinois limited partnership, ("Beneficiary"; Trustee and Beneficiary are collectively, "Borrower").

ARTICLE 1

CERTAIN DEFINITIONS

1.1 Certain Definitions. As used herein, the following terms have the meanings indicated:

(1) "Adjusted Operating Expenses" means Operating Expenses as determined and adjusted by Lender in accordance with its then current audit policies and procedures.

(2) "Adjusted Operating Revenues" means Operating Revenues as determined and adjusted by Lender in accordance with its then current audit policies and procedures.

(3) "Affiliate" means (a) any corporation in which Beneficiary or any partner, shareholder, director, officer, member, or manager of Beneficiary directly or indirectly owns or controls more than ten percent (10%) of the beneficial interest, (b) any partnership, joint venture or limited liability company in which Beneficiary or any partner, shareholder, director, officer, member, or manager of Beneficiary is a partner, joint venturer or member, (c) any trust in which Beneficiary or any partner, shareholder, director, officer, member or manager of Beneficiary is a trustee or beneficiary, (d) any entity of any type which is directly or indirectly owned or controlled by Beneficiary or any partner, shareholder, director, officer, member or manager of Beneficiary, (e) any partner, shareholder, director, officer, member, manager or employee of Beneficiary, (f) any Person related by birth, adoption or marriage to any partner, shareholder, director, officer, member, manager, or employee of Beneficiary, or (g) any Beneficiary Party.

(4) "Agreement" means this Loan Agreement, as amended from time to time.

(5) "**Applicable Base Percentage Rate**" means the rate of interest to be paid hereunder prior to the Maturity Date which shall be as follows:

Initial Disbursement Date through 9/30/1999	7.75%
10/1/1999 through 9/30/2000	8.25%
10/1/2000 through 9/30/2001	8.75%
10/1/2001 through Maturity Date	9.25%

(6) "**Assignment of Rents and Leases**" means the Amended and Restated Assignment of Rents and Leases, executed by Borrower for the benefit of Lender, and pertaining to leases of space in the Project.

(7) "**Borrower's Equity**" means an amount equal to \$200,000.

(8) "**Borrower's Equity Return**" means, as of the date such calculation or determination is being made, an amount equal to an annual, non-compounded, cumulative return on Borrower's Equity calculated at Nine Percent (9%) per annum for the period commencing on the Initial Disbursement Date and ending on the date such calculation or determination is made.

(9) "**Borrower's Letter of Credit Return**" means as of the date such calculation or determination is being made, an amount equal to an annual, non-compounded, cumulative return on the Letter of Credit Proceeds calculated at Nine Percent (9%) per annum for the period commencing on the Draw Date and ending on the date such calculation or determination is made.

(10) "**Borrower's Paid Equity Return**" means, as of the date such calculation or determination is being made, the aggregate amounts deducted from Net Cash Flow and retained by Borrower under Section 2.3(4)(b) to the date such calculation or determination is being made.

(11) "**Borrower's Paid Letter of Credit Return**" means as of the date such calculation or determination is being made, the aggregate amounts deducted from Net Cash Flow and retained by Borrower under Section 2.3(4)(c) to the date such calculation or determination is being made.

(12) "**Borrower Party**" means any Joinder Party, any Guarantor, any general partner in Beneficiary, any member of Beneficiary and any general partner in any partnership that is a general partner or member in Beneficiary, at any level.

(13) "**Borrower's Unpaid Equity Return**" means, as of the date such calculation or determination is being made, the amount by which (i) Borrower's Equity Return as of such date exceeds (ii) Borrower's Paid Equity Return as of such date.

(14) "**Borrower's Unpaid Letter of Credit Return**" means, as of the date such calculation or determination is being made, the amount by which (i) Borrower's Letter of Credit Return as of such date exceeds (ii) Borrower's Paid Letter of Credit Return as of such date.

(15) "**Cash Flow Interest**" has the meaning assigned in Section 2.3(4)(d).

(16) "**Cash on Cash Return**" means the ratio, expressed as a percentage, of (a) annualized Net Operating Income, to (b) the outstanding principal balance of the Loan.

(17) "**Debt**" means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person is liable, and (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

(18) "**Debt Service**" means the aggregate interest, fixed principal, and other payments due under the Loan, and on any other outstanding permitted Debt relating to the Project approved by Lender for the period of time for which calculated, but excluding payment of Net Cash Flow applied to (a) reduction of principal, (b) escrows or reserves required by Lender, (c) Participation Interest, if any and (d) Cash Flow Interest.

(19) "**Debt Service Coverage**" means, for the period of time for which calculation is being made, the ratio of Net Operating Income to Debt Service.

(20) "**Default Rate**" means the lesser of (a) the maximum rate of interest allowed by applicable law, and (b) five percent (5%) per annum in excess of the Senior Note Contract Rate.

(21) "**Draw Date**" means the first date the Letter of Credit is drawn to cover a Shortfall set forth in Schedule 2.4(1)(e).

(22) "**Environmental Laws**" has the meaning assigned in Article 4.

(23) "**Event of Default**" has the meaning assigned in Article 9.

(24) "**Guarantors**" means the Persons, if any, executing a Guaranty.

- (25) "**Guaranty**" means the instruments of guaranty, if any, now or hereafter in effect from a Guarantor to Lender.
- (26) "**Hazardous Materials**" has the meaning assigned in Article 4.
- (27) "**Initial Disbursement Date**" means July 15, 1999.
- (28) "**Joinder Party**" means the Persons, if any, executing the Joinder hereto.
- (29) "**Junior Note Base Interest**" has the meaning assigned in Section 2.2.
- (30) "**Junior Note**" means the Junior Promissory Note of even date, in the stated principal amount of \$200,000, executed by Borrower and payable to the order of Lender which, together with the Senior Note, is evidence of the Loan.
- (31) "**Junior Note Paid Base Interest**" means, as of the date such calculation or determination is made, the aggregate amounts deducted from Net Cash Flow and paid to Lender under Section 2.3(4)(h) to the date such calculation or determination is made.
- (32) "**Junior Note Unpaid Base Interest**" means, as of the date such calculation or determination is made, the amount by which (i) the Junior Note Base Interest as of such date exceeds (ii) the Junior Note Paid Base Interest.
- (33) "**Letter of Credit**" has the meaning assigned in Schedule 2.4(1).
- (34) "**Letter of Credit Proceeds**" means the amount of the Letter of Credit drawn upon by Lender, at the request of Borrower, to cover the Shortfall as set forth in Schedule 2.4(1)(e), as said amount may increase from time to time.
- (35) "**Lien**" means any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.
- (36) "**Loan**" means the loan to be made by Lender to Borrower under this Agreement and all other amounts secured by the Loan Documents.
- (37) "**Loan Documents**" means: (a) this Agreement, (b) the Note, (c) the Guaranty, (d) any letter of credit (including the Letter of Credit) provided to Lender in connection with the Loan, (e) the Mortgage, (f) the Assignment of Rents and Leases, (g) Uniform Commercial Code financing statements, (h) such assignments of management

agreements, contracts and other rights as may be requested by Lender, (i) all other documents evidencing, securing, governing or otherwise pertaining to the Loan, and (j) all amendments, modifications, renewals, substitutions and replacements of any of the foregoing.

(38) "**Loan Year**" means the period between the Initial Disbursement Date and July 31, 2000 for the first Loan Year and the period between each succeeding August 1st and July 31st until the Maturity Date.

(39) "**Maturity Date**" means the earlier of (a) April 1, 2002, or (b) any earlier date on which the entire Loan is elected or required to be paid in full, by prepayment, acceleration or otherwise, under this Agreement or any of the other Loan Documents.

(40) "**Mortgage**" means the Amended and Restated Mortgage, Security Agreement and Fixture Filing, executed by Borrower in favor of Lender, covering the Project.

(41) "**Net Cash Flow**" means, for any period, the amount by which Operating Revenues exceed the sum of (a) Operating Expenses, (b) Debt Service (exclusive of any Senior Note Deferred Base Interest paid to Lender pursuant to Section 2.3(4)(a) and any Junior Note Unpaid Base Interest paid to Lender pursuant to Section 2.3(4)(b)), and (c) any actual payment into impounds, escrows, or reserves required by Lender (including under Schedule 2.4(2) hereof), except to the extent included within the definition of Operating Expenses.

(42) "**Net Operating Income**" means the amount by which Adjusted Operating Revenues exceed Adjusted Operating Expenses.

(43) "**Note**" means collectively, the Senior Note and the Junior Note.

(44) "**Operating Expenses**" means all reasonable and customary or necessary expenses of operating the Project in the ordinary course of business which are paid in cash by or for the account of Borrower and which are directly associated with and fairly allocable to the Project for the applicable period, including utility expenses, leasing expenses if and to the extent previously approved by Lender, ad valorem real estate taxes and assessments, insurance premiums, regularly scheduled tax impounds paid to Lender, maintenance costs, management fees not to exceed five percent (5%) of Operating Revenues, and other management costs approved by Lender, accounting, legal, and other professional fees, fees relating to environmental and Net Cash Flow and Net Operating Income audits, costs of environmental remediation and approved by Lender in the annual operating budget and other expenses incurred by Lender and reimbursed by Borrower under this Agreement and the other Loan Documents, deposits to any capital replacement reserves required by Lender or capital replacement expenditures in lieu thereof previously approved by Lender or other reserves which have been approved by Lender, wages, salaries, and personnel expenses (including those of the property manager to the extent reimbursed by Borrower and approved by Lender in the annual operating budget), broker's commissions previously approved by Lender (and not paid for from the Project Reserve, or any other reserve), costs of tenant improvements

previously approved by Lender or for which Lender approval is not required (and not paid for from the Project Reserve, or any other reserve) and other expenditures previously approved by Lender, but excluding Debt Service, capital expenditures not previously approved by Lender, any of the foregoing expenses which are paid from deposits to cash reserves previously included as Operating Expenses, any payment or expense for which Borrower was or is to be reimbursed from proceeds of the Loan or insurance or by any third party, and any non-cash charges such as depreciation and amortization. Any management fee or other expense payable to Borrower or to an Affiliate of Borrower in excess of 5% of Operating Revenues shall be included as an Operating Expense only with Lender's prior approval. Operating Expenses shall not include federal, state or local income taxes or legal and other professional fees unrelated to the operation of the Project.

(45) "**Operating Revenues**" means all cash receipts of Borrower from operation of the Project or otherwise arising in respect of the Project after the date hereof which are properly allocated to the Project for the applicable period, including receipts from leases and parking agreements, concession fees and charges and other miscellaneous operating revenues, proceeds from rental or business interruption insurance, proceeds of any loans (other than the Loan and any refinancing of the Loan) obtained by Borrower after the date hereof which are secured by the Project (less only reasonable and customary expenses incurred in procuring and closing such loan and actually paid in cash to individuals or entities other than Borrower or any Affiliate of Borrower and without implying any consent of Lender to the granting of any security for any such loans), withdrawals from cash reserves (except to the extent any operating expenses paid therewith are excluded from Operating Expenses), but excluding security deposits and earnest money deposits until they are forfeited by the depositor, advance rentals until they are earned, and proceeds from a sale or other disposition.

(46) "**Participation Interest**" has the meaning assigned in Schedule 2.3(8).

(47) "**Payment Date**" means the fifteenth (15th) day of each January, April, July, and October during the term of the Loan.

(48) "**Payment Period**" means, as applicable, either (a) January, February and March; or (b) April, May and June; or (c) July, August and September; or (d) October, November and December.

(49) "**Person**" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

(50) "**Potential Default**" means the occurrence of any event or condition which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

(51) "**Project**" means Waterfall Plaza, Orland Park, Illinois, and all related facilities, amenities, fixtures, and personal property owned by Borrower and any improvements now or hereafter located on the real property described in Exhibit A.

(52) "**Project Expenditures**" has the meaning assigned in Schedule 2.4(2).

(53) "**Project Reserve**" has the meaning assigned in Schedule 2.4(2).

(54) "**Reserve Income**" means, for any period, the amount by which Operating Revenues exceed the sum of (a) Operating Expenses and (b) Debt Service (exclusive of any Senior Note Deferred Base Interest paid to Lender pursuant to Section 2.3(4)(a) and any Junior Note Unpaid Base Interest paid to Lender pursuant to Section 2.3(4)(b)).

(55) "**Senior Note**" means the Amended and Restated Senior Promissory Note of even date, in the stated principal amount of \$1,868,448.16, executed by Borrower, and payable to the order of Lender which, together with the Junior Note, is evidence of the Loan.

(56) "**Senior Note Base Interest**" has the meaning assigned in Section 2.3(1).

(57) "**Senior Note Contract Rate**" has the meaning assigned in Section 2.2.

(58) "**Senior Note Deferred Base Interest**" has the meaning assigned in Section 2.3(2).

(59) "**Senior Note Principal Sum**" means the entire outstanding principal balance of the Senior Note as of the date upon which such calculation or determination shall be made, which amount shall include all amounts added to principal pursuant to the terms of this Agreement or the other Loan Documents.

(60) "**Shortfall**" has the meaning assigned in Schedule 2.4(1)(e).

(61) "**Single Purpose Entity**" shall mean a Person (other than an individual, a government, or any agency or political subdivision thereof), which exists solely for the purpose of owning the Project, conducts business only in its own name, does not engage in any business or have any assets unrelated to the Project, does not have any indebtedness other than as permitted by this Agreement, has its own separate books, records, and accounts (with no commingling of assets), holds itself out as being a Person separate and apart from any other Person, and observes corporate and partnership formalities independent of any other entity.

(62) "**Site Assessment**" means an environmental engineering report for the Project based upon an investigation relating to and making appropriate inquiries concerning the existence of Hazardous Materials on or about the Project, and the past or present discharge, disposal, release or escape of any such substances, all consistent with good customary and commercial practice.

(63) "State" means the State of Illinois.

ARTICLE 2

LOAN TERMS

2.1 **The Loan.** The Loan of up to Two Million Sixty-Eight Thousand Four Hundred Forty-Eight and 16/100 (\$2,068,448.16) shall be funded and repaid in accordance with this Agreement. The advance of the Loan shall be made upon Borrower's satisfaction of the conditions to initial advance described in Schedule 2.1. Any subsequent advances of the Loan made pursuant to the terms of the Loan Documents shall be deemed to be made under the Senior Note.

2.2 **Interest Rate; Late Charge.** The outstanding principal balance of the Loan (including any amounts added to principal under the Loan Documents) shall bear interest as follows:

(a) the Senior Note shall bear interest from the Initial Disbursement Date until the Loan is paid in full at a rate of interest equal to 9.65% per annum (the "**Senior Note Contract Rate**"); and

(b) the Junior Note shall bear interest (the "**Junior Note Base Interest**") from the Initial Disbursement Date until the Loan is paid in full at a rate of interest equal to 9.00% per annum (the "**Junior Note Contract Rate**").

Interest shall be computed on the basis of a fraction, the denominator of which is three hundred sixty (360) and the numerator of which is the actual number of days elapsed from the date of the initial advance or the date on which the immediately preceding payment was due. If Borrower fails to pay any installment of interest or principal within five (5) days after the date on which the same is due, Borrower shall pay to Lender a late charge on such past-due amount, as liquidated damages and not as a penalty, equal to the greater of (a) interest at the Default Rate on such amount from the date when due until paid, or (b) five percent (5%) of such amount, but not in excess of the maximum amount of interest allowed by applicable law. Notwithstanding anything herein to the contrary, while any Event of Default exists, the Loan shall bear interest at the Default Rate.

2.3 **Terms of Payment.** The Loan shall be payable as follows:

(1) **Base Interest on Senior Note.** Borrower shall pay to Lender monthly in arrears commencing on the first day of the month immediately following the Initial Disbursement Date, and on the first day of each and every calendar month thereafter (such date for any particular month being hereinafter referred to as the "**Due Date**") through and including the day on which the Senior Note is paid in full, interest accrued for the preceding month on the Senior Note Principal Sum at the Senior Note Contract Rate. The interest payable in accordance with this Section 2.3(1) is hereinafter called the "**Senior Note Base Interest.**"

(2) **Deferral of Senior Note Base Interest.** Provided that there has occurred no Event of Default, Borrower shall be permitted to defer payment of that portion of Senior Note Base Interest due and payable for any month which is in excess of the amount of interest which would have accrued during such month on the Senior Note Principal Sum at the Applicable Base Percentage Rate; provided that Borrower's right to defer payment of Senior Note Base Interest pursuant to this Section 2.3(2) shall be limited so that the aggregate amount of interest deferred under this Section 2.3(2) shall not at any time exceed the lesser of (i) Ten Percent (10%) of the then Senior Note Principal Sum (reduced by the amount included therein of Senior Note Deferred Base Interest) or (ii) One Hundred Eighty-Six Thousand Eight Hundred Forty-Five Dollars (\$186,845.00). The amount of Senior Note Base Interest with respect to which payment is deferred by Borrower in accordance with this Section 2.3(2) is referred to in this Note as "**Senior Note Deferred Base Interest.**"

(3) **Capitalization of Deferred Senior Note Base Interest.** At the election of Borrower, exercised by written notice actually received by Lender at least ten (10) days prior to the expiration of each calendar month during the term of the Loan, the unpaid Senior Note Deferred Base Interest for that calendar month may be (i) paid in full, or (ii) added to the principal balance of the Senior Note as of the fifth (5th) day of the next succeeding month, interest upon which unpaid Senior Note Deferred Base Interest shall thereafter accrue and be payable on an equivalent basis with interest on any other component of the Senior Note Principal Sum. In the absence of any written notice to Lender within the time set forth, Borrower will be deemed to have elected the method described in clause (ii) of this Subsection (3) with respect to the calendar month in question. Borrower may at any time, and from time to time, pay all or any portion of the outstanding Senior Note Deferred Base Interest without premium or penalty notwithstanding that it has been added to the principal balance of the Senior Note.

(4) **Net Operating Income.** Borrower shall pay (or retain) the Net Cash Flow on each Payment Date for the preceding Payment Period (or portion thereof with respect to the first and last Payment Period) as follows:

(a) First, Borrower shall pay to Lender all Senior Note Deferred Base Interest which is unpaid as of the last day of the preceding Payment Period and whether or not then added to the principal balance. In the event that any audit (conducted pursuant to Section 7.5 hereof) shall reflect a discrepancy in the amount of Net Cash Flow due, the Borrower and Lender shall account to the other, either for payment of the Net Cash Flow determined to be due or for refund of any overpayment, which amount will be paid within five (5) days after notice from the party to whom the payment is due. All sums due from the Borrower shall bear interest at the Senior Note Contract Rate from the original due date therefor;

(b) Second, if there is any Net Cash Flow remaining after the application in subsection (a) above, Borrower shall (i) pay to Lender an amount equal to the lesser of (y) 50% of the Net Cash Flow remaining after the application in subsection (a) above and (z) the Junior Note Unpaid Base Interest and (ii) retain an amount equal

to the lesser of (y) 50% of the Net Cash Flow remaining after the application in subsection (a) above and (z) Borrower's Unpaid Equity Return;

(c) Third, if there is any Net Cash Flow remaining after the application in subsections (a) and (b) above, Borrower shall retain an amount, if any, equal to Borrower's Unpaid Letter of Credit Return; and

(d) Fourth, 50% of the Net Cash Flow remaining after application pursuant to subsections (a), (b) and (c) above shall be paid to Lender as additional interest on the Loan ("**Cash Flow Interest**") and 50% of the Net Cash Flow remaining after application pursuant to subsections (a), (b) and (c) above shall be retained by Borrower.

(5) **Maturity.** On the Maturity Date, Borrower shall pay to Lender all outstanding principal, accrued and unpaid interest (including, without limitation Senior Note Deferred Base Interest and Junior Note Unpaid Base Interest), and any other amounts due under the Loan Documents.

(6) **Prepayment.** Upon not less than fifteen (15) days' prior written notice to Lender, Borrower may prepay the Loan, in whole but not in part (provided, however, any payment of the Loan in part pursuant to Sections 3.2 and 3.4 hereof is permitted), upon payment of a prepayment premium equal to the Yield Maintenance Amount, calculated as provided in Schedule 2.3(4). If the Loan is accelerated for any reason other than casualty or condemnation, Borrower shall pay to Lender with respect to the Senior Note, the prepayment premium described above and with respect to the Junior Note, Borrower shall pay to Lender, in addition to all other amounts outstanding under the Loan Documents a prepayment premium equal to five percent (5%) of the outstanding balance of the Junior Note. Any payment of the Loan pursuant to Sections 3.2 or 3.4 hereof or made during the last sixty (60) days of the term of the Loan shall be made without any prepayment premium. The Borrower expressly agrees that: (i) the prepayment premium provided for herein is reasonable; (ii) the prepayment premium shall be payable notwithstanding the then prevailing market interest rates existing at the time prepayment is made; (iii) there has been a course of conduct between the Lender and the Borrower giving specific consideration in this loan transaction for such agreement to pay the prepayment premium; and (iv) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this Section. The Borrower expressly acknowledges that its agreement to pay the prepayment premium to the Lender as herein described is a material inducement to the Lender to enter into this Agreement.

(7) **Application of Payments.** All payments received by Lender under the Loan Documents shall be applied: first, to any fees and expenses due to Lender under the Loan Documents; second, to any Default Rate interest or late charges due under the Loan Documents; third, to Senior Note Deferred Base Interest; fourth, to other accrued and unpaid interest under the Senior Note (including, Cash Flow Interest); fifth, to Junior Note Unpaid Base Interest; sixth, to the Senior Note Principal Sum; seventh, to the principal sum of the Junior Note; eighth, to other amounts due under the Loan Documents, except participation amounts under Schedule 2.3(8); and ninth, to participation amounts under Schedule 2.3(8).

(8) **Participation.** In addition to other payments hereunder, Borrower shall pay to Lender the amounts due under Schedule 2.3(8), including, without limitation, Participation Interest.

2.4 **Security.** The Loan shall be secured by the Mortgage creating a first lien on the Project, the Assignment of Rents and Leases and the other Loan Documents. As further security for the Loan, Borrower agrees:

(1) to provide Lender with the Letter of Credit in accordance with Schedule 2.4(1); and

(2) to fund the Project Reserve in accordance with Schedule 2.4(2).

ARTICLE 3

INSURANCE, CONDEMNATION, AND IMPOUNDS

3.1 **Insurance.** Borrower shall maintain insurance as follows:

(1) **Casualty; Business Interruption.** Borrower shall keep the Project insured against damage by fire and the other hazards covered by a standard extended coverage and all-risk insurance policy for the full insurable value thereof (without reduction for depreciation or co-insurance), and shall maintain such other casualty insurance as reasonably required by Lender. Borrower shall keep the Project insured against loss by flood if the Project is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount at least equal to the lesser of (i) the maximum amount of the Loan or (ii) the maximum limit of coverage available under said act. Borrower shall maintain use and occupancy insurance covering, as applicable, rental income or business interruption, with coverage in an amount not less than twelve (12)-months anticipated gross rental income or gross business earnings, as applicable in each case, attributable to the Project. Borrower shall not maintain any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to Lender in all respects. The proceeds of insurance paid on account of any damage or destruction to the Project shall be paid to Lender to be applied as provided in Section 3.2.

(2) **Liability.** Borrower shall maintain (a) commercial general liability insurance with respect to the Project providing for limits of liability of not less than \$5,000,000 for both injury to or death of a person and for property damage per occurrence, and (b) other liability insurance as reasonably required by Lender.

(3) **Form and Quality.** All insurance policies shall be endorsed in form and substance acceptable to Lender to name Lender as an additional insured, loss payee or mortgagee thereunder, as its interest may appear, with loss payable to Lender, without

contribution, under a standard New York (or local equivalent) mortgagee clause. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State, with a rating of "A-IX" or better as established by Best's Rating Guide (or an equivalent rating approved in writing by Lender). Each policy shall provide that such policy may not be canceled or materially changed except upon thirty (30) days' prior written notice of intention of non-renewal, cancellation or material change to Lender and that no act or thing done by Borrower shall invalidate any policy as against Lender. If Borrower fails to maintain insurance in compliance with this Section 3.1, Lender may obtain such insurance and pay the premium therefor and Borrower shall, on demand, reimburse Lender for all expenses incurred in connection therewith. Borrower shall assign the policies or proofs of insurance to Lender, in such manner and form that Lender and its successors and assigns shall at all times have and hold the same as security for the payment of the Loan. Borrower shall deliver copies of all original policies certified to Lender by the insurance company or authorized agent as being true copies, together with the endorsements required hereunder. The proceeds of insurance policies coming into the possession of Lender shall not be deemed trust funds, and Lender shall be entitled to apply such proceeds as herein provided.

(4) **Adjustments.** Borrower shall give immediate written notice of any loss to the insurance carrier and to Lender. With respect to any damage for which repair is reasonably expected to cost \$25,000 or more Borrower hereby irrevocably authorizes and empowers Lender, as attorney-in-fact for Borrower coupled with an interest, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds. Nothing contained in this Section 3.1(4), however, shall require Lender to incur any expense or take any action hereunder.

3.2 **Use and Application of Insurance Proceeds.** Lender shall apply insurance proceeds to costs of restoring the Project or the Loan as follows:

(1) if the loss is less than or equal to \$50,000, Lender shall apply the insurance proceeds to restoration provided (a) no Event of Default or Potential Default exists, and (b) Borrower promptly commences and is diligently pursuing restoration of the Project;

(2) if the loss exceeds \$50,000 but is not more than 10% of the replacement value of the improvements (for projects containing multiple phases or stand alone structures, such calculation to be based on the damaged phase or structure, not the project as a whole), Lender shall apply the insurance proceeds to restoration provided that at all times during such restoration (a) no Event of Default or Potential Default exists; (b) Lender determines that there are sufficient funds available to restore and repair the Project to a condition reasonably approved by Lender; (c) Lender determines that the Net Operating Income of the Project during restoration will be sufficient to pay Debt Service; (d) Lender determines (based on leases which will remain in effect after restoration is complete if the Project is not a multi-family project) that after restoration the Debt Service Coverage will be at least 1:20:1 and the Cash on Cash Return will be at least eleven percent (11%); (e) Lender determines that

restoration and repair of the Project to a condition approved by Lender will be completed within six months after the date of loss or casualty and in any event ninety (90) days prior to the Maturity Date; and (f) Borrower promptly commences and is diligently pursuing restoration of the Project;

(3) if the conditions set forth above are not satisfied or the loss exceeds the maximum amount specified in Subsection 3.2(2) above, in Lender's sole discretion, Lender may apply any insurance proceeds it may receive to the payment of the Loan or allow all or a portion of such proceeds to be used for the restoration of the Project; and

(4) insurance proceeds applied to restoration will be disbursed on receipt of satisfactory plans and specifications, contracts and subcontracts, schedules, budgets, lien waivers and architects' certificates, and otherwise in accordance with prudent commercial construction lending practices for construction loan advances, including, as applicable, the advance conditions under Schedule 2.1.

3.3 **Condemnation Awards.** Borrower shall immediately notify Lender of the institution of any proceeding for the condemnation or other taking of the Project or any portion thereof. Lender may participate in any such proceeding and Borrower will deliver to Lender all instruments necessary or required by Lender to permit such participation. Without Lender's prior consent, which consent shall not be unreasonably withheld or delayed, Borrower (1) shall not agree to any compensation or award, and (2) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or purchase in lieu of condemnation of the Project or any part thereof are hereby assigned to and shall be paid to Lender. Borrower authorizes Lender to collect and receive such awards and compensation, to give proper receipts and acquittances therefor, and in Lender's sole discretion to apply the same toward the payment of the Loan, notwithstanding that the Loan may not then be due and payable, or to the restoration of the Project; however, if the award is less than or equal to \$50,000 and Borrower requests that such proceeds be used for non-structural site improvements (such as landscape, driveway, walkway and parking area repairs) required to be made as a result of such condemnation, Lender will apply the award to such restoration in accordance with disbursement procedures applicable to insurance proceeds provided there exists no Potential Default or Event of Default. Borrower, upon request by Lender, shall execute all instruments requested to confirm the assignment of the awards and compensation to Lender, free and clear of all liens, charges or encumbrances.

3.4 **Impounds.** Borrower shall deposit with Lender, monthly, one-twelfth (1/12th) of the annual charges for ground or other rent, if any, and real estate taxes, assessments and similar charges relating to the Project. At or before the initial advance of the Loan, Borrower shall deposit with Lender a sum of money which together with the monthly installments will be sufficient to make each of such payments thirty (30) days prior to the date any delinquency or penalty becomes due with respect to such payments. Deposits shall be made on the basis of Lender's estimate from time to time of the charges for the current year (after giving effect to any reassessment or, at Lender's election, on the basis of the charges for the prior year, with adjustments when the charges are fixed for the then current year). All funds so deposited shall be held by Lender, without interest, and may be commingled with Lender's general funds. Borrower hereby grants to Lender a security interest in all funds so deposited with Lender for the purpose of securing the Loan. While an Event of Default

exists, the funds deposited may be applied in payment of the charges for which such funds have been deposited, or to the payment of the Loan or any other charges affecting the security of Lender, as Lender may elect, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender. Borrower shall furnish Lender with bills for the charges for which such deposits are required at least thirty (30) days prior to the date on which the charges first become payable. If at any time the amount on deposit with Lender, together with amounts to be deposited by Borrower before such charges are payable, is insufficient to pay such charges, Borrower shall deposit any deficiency with Lender immediately upon demand. Lender shall pay such charges when the amount on deposit with Lender is sufficient to pay such charges and Lender has received a bill for such charges.

ARTICLE 4

ENVIRONMENTAL MATTERS

4.1 **Certain Definitions.** As used herein, the following terms have the meanings indicated:

(1) "**Environmental Laws**" means any federal, state or local law (whether imposed by statute, or administrative or judicial order, or common law), now or hereafter enacted, governing health, safety, industrial hygiene, the environment or natural resources, or Hazardous Materials, including, such laws governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, discharge of, or exposure to, Hazardous Materials.

(2) "**Hazardous Materials**" means (a) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by-product thereof, (b) asbestos or asbestos-containing materials, (c) polychlorinated biphenyls (pcbs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead-based paint, or (h) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any governmental authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws.

4.2 **Representations and Warranties on Environmental Matters.** To Borrower's knowledge, except as set forth in the Site Assessment, (1) no Hazardous Material is now or was formerly used, stored, generated, manufactured, installed, disposed of or otherwise present at or about the Project or any property adjacent to the Project (except for cleaning and other products currently used in connection with the routine maintenance or repair of the Project in full compliance with Environmental Laws), (2) all permits, licenses, approvals and filings required by Environmental Laws have been obtained, and the use, operation and condition of the Project does not, and did not previously, violate any Environmental Laws, and (3) no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought or been threatened, nor have any settlements been reached by or with any parties or any liens imposed in connection with the Project concerning Hazardous Materials or Environmental Laws.

4.3 Covenants on Environmental Matters.

(1) Borrower shall (a) comply strictly and in all respects with applicable Environmental Laws; (b) notify Lender immediately upon Borrower's discovery of any spill, discharge, release or presence of any Hazardous Material (except for cleaning and other products currently used in connection with the routine maintenance or repair of the Project in full compliance with Environmental Laws) at, upon, under, within, contiguous to or otherwise affecting the Project; (c) promptly remove such Hazardous Materials and remediate the Project in full compliance with Environmental Laws and in accordance with the reasonable recommendations and specifications of an independent environmental consultant approved by Lender; and (d) promptly forward to Lender copies of all orders, notices, permits, applications or other communications and reports in connection with any spill, discharge, release or the presence of any Hazardous Material or any other matters relating to the Environmental Laws or any similar laws or regulations, as they may affect the Project or Borrower (except for cleaning and other products currently used in connection with the routine maintenance or repair of the Project in compliance with applicable Environmental Laws).

(2) Borrower shall not cause, shall prohibit any other Person within the control of Borrower from causing, and shall use prudent, commercially reasonable efforts to prohibit other Persons (including tenants) from (1) causing any spill, discharge or release, or the use, storage, generation, manufacture, installation, or disposal, of any Hazardous Materials at, upon, under, within or about the Project or the transportation of any Hazardous Materials to or from the Project (except for cleaning and other products used in connection with routine maintenance or repair of the Project in full compliance with Environmental Laws), (2) installing any underground storage tanks at the Project, or (3) conducting any activity that requires a permit or other authorization under Environmental Laws.

(3) Borrower shall provide to Lender, at Borrower's expense promptly upon the written request of Lender from time to time, a Site Assessment prepared by engineers engaged by Lender and in a manner satisfactory to Lender or, if required by Lender, an update to any existing Site Assessment, to assess the presence or absence of any Hazardous Materials and the potential costs in connection with abatement, cleanup or removal of any Hazardous Materials found on, under, at or within the Project. Borrower shall pay the cost of no more than one such Site Assessment or update in any twelve (12)-month period, unless Lender's request for a Site Assessment is based on information provided under Section 4.3(1), a reasonable suspicion of Hazardous Materials at or near the Project, a breach of representations under Section 4.2, or an Event of Default, in which case any such Site Assessment or update shall be at Borrower's expense.

4.4 Allocation of Risks and Indemnity. Subject to the other provisions of this Section, as between Borrower and Lender, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Material at, upon, within, contiguous to or otherwise affecting the Project, shall lie solely with Borrower. Accordingly, subject to the other provisions of this Section, as Borrower shall bear all risks and costs associated with any loss (including any loss in value attributable to Hazardous Materials), damage or liability therefrom, including all costs of

removal of Hazardous Materials or other remediation required by law or reasonably required by Lender. Borrower shall indemnify, defend and hold Lender harmless from and against all loss, liabilities, damages, claims, costs and expenses (including reasonable costs of defense) arising out of or associated, in any way, with the non-compliance with Environmental Laws, or the existence of Hazardous Materials in, on, or about the Project, or a breach of any representation, warranty or covenant contained in this Article 4, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law; however, Borrower shall not be liable under such indemnification to the extent such loss, liability, damage, claim, cost or expense results solely from (a) Lender's gross negligence or willful misconduct, including actions taken by Lender pursuant to a power of attorney or (b) any act, event, occurrence or omission occurring from and after the date that neither Borrower nor any Affiliate have any interest in the Project. Borrower's obligations under this Section 4.4 shall arise upon the discovery of the presence of any Hazardous Material, whether or not any governmental authority has taken or threatened any action in connection with the presence of any Hazardous Material, and whether or not the existence of any such Hazardous Material or potential liability on account thereof is disclosed in the Site Assessment and shall continue notwithstanding the repayment of the Loan or any transfer or sale of any right, title and interest in the Project (by foreclosure, deed in lieu of foreclosure or otherwise).

4.5 **No Waiver.** Notwithstanding any provision in this Article 4 or elsewhere in the Loan Documents, or any rights or remedies granted by the Loan Documents, Lender does not waive and expressly reserves all rights and benefits, now or hereafter accruing to Lender under the "security interest" or "secured creditor" exception under applicable Environmental Laws, as the same may be amended. No action taken by Lender pursuant to the Loan Documents shall be deemed or construed to be a waiver or relinquishment of any such rights or benefits under the "security interest exception."

ARTICLE 5

LEASING MATTERS

5.1 **Representations and Warranties on Leases.** Trustee represents and Beneficiary represents and warrants to Lender with respect to leases of the Project that: (1) to Borrower's knowledge, the rent roll delivered to Lender is true and correct, and the leases are valid and in full force and effect; (2) the leases (including amendments) are in writing, and there are no oral agreements with respect thereto; (3) the copies of the leases delivered to Lender are true and complete; (4) to Borrower's knowledge, except as set forth on the rent roll, neither the landlord nor any tenant is in default under any of the leases; (5) Borrower has no knowledge of any notice of termination or default with respect to any lease, except as set forth on the rent roll; (6) Borrower has not assigned or pledged any of the leases, the rents or any interests therein except to Lender; (7) except as set forth in the rent roll delivered to Lender, no tenant or other party has an option to purchase all or any portion of the Project; (8) no tenant has the right to terminate its lease prior to expiration of the stated term of such lease; and (9) no tenant has prepaid more than one month's rent in advance (except for bona fide security deposits not in excess of an amount equal to two month's rent).

5.2 **Standard Lease Form; Approval Rights.** All leases and other rental arrangements entered into from and after the date of this Agreement shall in all respects be approved by Lender and shall be on a standard lease form approved by Lender with no material modifications (except as reasonably approved by Lender and if Lender does not approve any lease, Lender shall deliver to Borrower, concurrent with Lender's rejection, Lender's reason(s) for its disapproval). Such lease form shall provide that the tenant shall attorn to Lender, that Lender shall not be liable for defaults occurring prior to its ownership and that any cancellation, surrender, or amendment of such lease (except for minor modifications and amendments entered into in the ordinary course of business, consistent with prudent property management practices, not affecting the economic terms of the lease) without the prior written consent of Lender shall be voidable by Lender. Borrower shall hold, in trust, all tenant security deposits and, to the extent required by applicable law, shall not commingle any such funds with any other funds of Borrower. Within ten (10) days after Lender's request, Borrower shall furnish to Lender a statement of all tenant security deposits, and copies of all leases not previously delivered to Lender, certified by Borrower as being true and correct. Notwithstanding anything contained in the Loan Documents, Lender's approval shall not be required for future leases or lease extensions if the following conditions are satisfied: (1) there exists no Potential Default or Event of Default; (2) the lease is on the standard lease form approved by Lender with no material modifications; (3) the lease does not conflict with any restrictive covenant affecting the Project or any other lease for space in the Project; (4) the leased premises, when combined with all other space in the Project leased to the same tenant or any affiliate thereof, are not greater than 3,000 rentable square feet, and the lease term is at least 60 months (but not more than 120 months); (5) the proposed use of the premises to be demised by such Lease is not a dry cleaner (with on-site cleaning), pornographic shop or other use which is not customarily found in "Class A" shopping centers; (6) the effective rental rate is at least \$11.50 per rentable square foot for the first year of the term (to be increased each year thereafter for the remainder of the term of the lease by at least 3% per annum); and (7) any costs for tenant improvements are no more than \$2.00 per square foot for any lease and any leasing commissions are no more than \$3.00 per square foot for any lease (provided, however, Lender must approve all tenant improvement allowances associated with any renewal of a lease or any new lease with an existing tenant).

5.3 **Covenants.** Borrower (1) shall perform the obligations which Borrower is required to perform under the leases; (2) shall enforce in a commercially reasonable manner the obligations to be performed by the tenants; (3) shall promptly furnish to Lender any notice of default or termination received by Borrower from any tenant, and any notice of default or termination given by Borrower to any tenant; (4) shall not collect any rents for more than thirty (30) days in advance of the time when the same shall become due, except for bona fide security deposits not in excess of an amount equal to two months rent; (5) shall not enter into any ground lease or master lease of any part of the Project; (6) shall not further assign or encumber any lease; (7) shall not, except with Lender's prior written consent, cancel or accept surrender or termination of any lease (except upon the terms set forth in any such lease); and (8) shall not, except with Lender's prior written consent, modify or amend any lease (except for minor modifications and amendments entered into in the ordinary course of business, consistent with prudent property management practices, not affecting the economic terms of the lease), and any action in violation of clauses (5), (6), (7), and (8) of this Section 5.3 shall be void at the election of Lender.

5.4 **Tenant Estoppels.** At Lender's request, Borrower shall use reasonable efforts to obtain and furnish to Lender, written estoppels in form and substance reasonably satisfactory to Lender, executed by tenants under leases in the Project and confirming the term, rent, and other provisions and matters relating to the leases.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES

Trustee represents and Beneficiary represents and warrants to Lender that:

6.1 **Organization and Power.** Borrower and each Borrower Party is duly organized, validly existing and in good standing under the laws of the state of its formation or existence, and is in compliance with legal requirements applicable to doing business in the State. Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Internal Revenue Code.

6.2 **Validity of Loan Documents.** The execution, delivery and performance by Borrower and each Borrower Party of the Loan Documents: (1) are duly authorized and do not require the consent or approval of any other party or governmental authority which has not been obtained; and (2) will not violate any law or result in the imposition of any lien, charge or encumbrance upon the assets of any such party, except as contemplated by the Loan Documents. The Loan Documents constitute the legal, valid and binding obligations of Borrower and each Borrower Party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights and principles of equity.

6.3 **Liabilities; Litigation.**

(1) The financial statements delivered by Borrower and each Borrower Party are true and correct with no significant change since the date of preparation. Except as disclosed in such financial statements, there are no material liabilities (fixed or contingent) affecting the Project, Borrower or any Borrower Party. Except as disclosed in such financial statements, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal bankruptcy or insolvency law) pending or, to the knowledge of Borrower, threatened, against the Project, Borrower or any Borrower Party which if adversely determined could have a material adverse effect on such party, the Project or the Loan.

(2) Neither Borrower nor any Borrower Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and neither Borrower nor any Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

6.4 **Taxes and Assessments.** The Project is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to Borrower's best knowledge, proposed, special or other assessments for

public improvements or otherwise affecting the Project, nor are there any contemplated improvements to the Project that may result in such special or other assessments.

6.5 **Other Agreements; Defaults.** Neither Borrower nor any Borrower Party is a party to any agreement or instrument or subject to any court order, injunction, permit, or restriction which might adversely affect the Project or the business, operations, or condition (financial or otherwise) of Borrower or any Borrower Party. Neither Borrower nor any Borrower Party is in violation of any agreement which violation would have an adverse effect on the Project, Borrower, or any Borrower Party or Borrower's or any Borrower Party's business, properties, or assets, operations or condition, financial or otherwise.

6.6 **Compliance with Law.**

(1) Borrower and each Borrower Party have all requisite licenses, permits, franchises, qualifications, certificates of occupancy or other governmental authorizations to own, lease and operate the Project and carry on its business, and the Project is in compliance with all applicable legal requirements and is free of structural defects, and all building systems contained therein are in good working order, subject to ordinary wear and tear. The Project does not constitute, in whole or in part, a legally non-conforming-use under applicable legal requirements;

(2) No condemnation has been commenced or, to Borrower's knowledge, is contemplated with respect to all or any portion of the Project or for the relocation of roadways providing access to the Project, and

(3) The Project has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary or convenient to the full use and enjoyment of the Project are located in the public right-of-way abutting the Project, and all such utilities are connected so as to serve the Project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefitting the Project. All roads necessary for the full utilization of the Project for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities.

6.7 **Location of Borrower.** Beneficiary's principal place of business and chief executive offices are located at the address stated in Section 11.1.

6.8 **ERISA.** Beneficiary has not established any pension plan for employees which would cause Borrower to be subject to the Employee Retirement Income Security Act of 1974, as amended.

6.9 **Margin Stock.** No part of proceeds of the Loan will be used for purchasing or acquiring any "margin stock" within the meaning of Regulations G, T, U or X of the Board of Governors of the Federal Reserve System.

6.10 **Tax Filings.** Borrower and each Borrower Party have filed (or have obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made

adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower and each Borrower Party, respectively.

6.11 **Solvency.** Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured, Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debts as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

6.12 **Full and Accurate Disclosure.** No statement of fact made by or on behalf of Borrower or any Borrower Party in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed to Lender which materially adversely affects, nor as far as Borrower can foresee, might materially adversely affect, the Project or the business, operations or condition (financial or otherwise) of Borrower or any Borrower Party.

6.13 **Single Purpose Entity.** Trustee is and has at all times since its formation been a Single Purpose Entity.

ARTICLE 7

FINANCIAL REPORTING

7.1 Financial Statements.

(1) **Monthly Reports.** Within thirty (30) days after the end of each calendar month, Borrower shall furnish to Lender a current (as of the calendar month just ended) balance sheet, a detailed operating statement (showing monthly activity and year-to-date) stating Operating Revenues, Operating Expenses, operating income and Net Cash Flow for the calendar month just ended, a general ledger, an updated rent roll, and, as requested by Lender, a written statement setting forth any variance from the annual budget, copies of bank statements and bank reconciliations and other documentation supporting the information disclosed in the most recent financial statements.

(2) **Quarterly Reports.** Within forty-five (45) days after the end of each calendar quarter, Borrower shall furnish to Lender a detailed operating statement (showing quarterly activity and year-to-date) stating Operating Revenues, Operating Expenses, operating income and Net Cash Flow for the calendar quarter just ended.

(3) **Annual Reports.** Within one hundred twenty (120) days after the end of each fiscal year of Borrower's operation of the Project, Borrower shall furnish to Lender a current (as of the end of such fiscal year) balance sheet, a detailed operating statement stating Operating Revenues, Operating Expenses, operating income and Net Cash Flow for each of Borrower and the Project, and, if required by Lender, prepared on a review basis and certified by an independent public accountant satisfactory to Lender (and Philip Rootberg & Co. and Altschuler Melvoin & Glasser is hereby approved by Lender).

(4) **Certification; Supporting Documentation.** Each such financial statement shall be in scope and detail satisfactory to Lender and certified by the chief financial representative of Borrower.

7.2 **Accounting Principles.** All financial statements shall be prepared in accordance with sound accounting principles applicable to commercial real estate, consistently applied from year to year. If the financial statements are prepared on an accrual basis, such statements shall be accompanied by a reconciliation to cash basis accounting principles.

7.3 **Other Information.** Borrower shall deliver to Lender such reasonable additional information regarding Borrower, its subsidiaries, its business, any Borrower Party, and the Project within 30 days after Lender's request therefor.

7.4 **Annual Budget.** At least forty-five (45) days prior to the commencement of each fiscal year, Borrower will provide to Lender its proposed annual operating and capital improvements budget for such fiscal year for review and approval by Lender, which approval shall not be unreasonably withheld or delayed.

7.5 **Audits.** Lender shall have the right to choose and appoint a certified public accountant to perform financial audits as it deems necessary, at Borrower's expense, as an Operating Expense. Borrower shall permit Lender to examine such records, books and papers of Borrower which reflect upon its financial condition and the income and expense relative to the Project. Lender agrees that unless there is an Event of Default or a Potential Default it shall audit the Project no more often than twice each 12 month period.

ARTICLE 8

COVENANTS

Borrower covenants and agrees with Lender as follows:

8.1 **Due on Sale and Encumbrance; Transfers of Interests.** Without the prior written consent of Lender except in compliance with the terms of the Loan Documents,

(1) neither Borrower nor any other Person having an ownership or beneficial interest in Borrower shall (a) directly or indirectly sell, transfer, convey, mortgage, pledge, or assign any interest in the Project or any part thereof (including any partnership or beneficial

interest or any other ownership interest in Borrower); (b) further encumber, alienate, grant a Lien or grant any other interest in the Project or any part thereof (including any partnership or other ownership interest in Borrower), whether voluntarily or involuntarily; or (c) enter into any easement or other agreement granting rights in or restricting the use or development of the Project;

(2) no new general partner, member, or limited partner having the ability to control the affairs of Beneficiary shall be admitted to or created in Beneficiary (nor shall any existing general partner or member or controlling limited partner withdraw from Beneficiary), and no change in Beneficiary's organizational documents relating to control over Beneficiary and/or the Project shall be effected; and

(3) no transfer shall be permitted which would cause Marc Wilkow or Clifton Wilkow to no longer control Borrower, the Project and the corporate general partner of Borrower, if any. As used in this Section, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Project, such partnership and/or entity whether through the ownership of voting interests or by contract or otherwise.

As used in this Section 8.1, "transfer" shall include the sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of (a) the Project, (b) any general partnership interest or membership interest in any general partner in Beneficiary that is a partnership or a limited liability company, and (c) any voting stock in any general partner in Beneficiary that is a corporation; "transfer" shall not include (i) the leasing of individual units within the Project so long as Beneficiary complies with the provisions of the Loan Documents relating to such leasing activity; or (ii) the transfers of limited partner interests in Beneficiary or in Beneficiary's limited partners so long as the provisions of Sections 8.1(2) and 8.1(3) are satisfied; or (iii) the transfers of a partner's interest in Beneficiary to (a) such partner's spouse, parents or lineal descendants or (b) a trust established for the benefit of a partner or a partner's respective spouse or lineal descendant.

8.2 Taxes; Charges. Borrower shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any real estate taxes and assessments, franchise taxes and charges, and other governmental charges that may become a Lien upon the Project or become payable during the term of the Loan, and will promptly furnish Lender with evidence of such payment; however, Borrower's compliance with Section 3.4 of this Agreement relating to impounds for taxes and assessments shall, with respect to payment of such taxes and assessments, be deemed compliance with this Section 8.2. Borrower shall not suffer or permit the joint assessment of the Project with any other real property constituting a separate tax lot or with any other real or personal property. Borrower shall pay when due all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in a Lien on the Project; however, Borrower may contest the validity of such claims and demands ("Contested Lien") so long as (a) Borrower notifies Lender that it intends to contest such claim or demand, (b) Borrower provides Lender with an indemnity, bond or other security reasonably satisfactory to Lender (including an endorsement to Lender's title insurance policy insuring against such claim or demand) assuring the discharge of Borrower's obligations for such claims and demands, including interest and penalties, and (c) Borrower is diligently contesting the same by appropriate legal proceedings in good faith and at

its own expense. Notwithstanding the aforesaid, Borrower shall pay such Contested Lien together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Borrower, or (ii) forthwith upon demand by Lender if, in the opinion of Lender, and notwithstanding any such contest, the Project shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Borrower shall fail so to do, Lender may, but shall not be required to, pay all such Contested Liens and interest and penalties thereon and such other sums as may be necessary in the judgment of the Lender to obtain the release and discharge of such liens; and any amount expended by Lender in so doing shall be so much additional indebtedness secured by the Loan Documents bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Lender may in such case use and apply for the purpose monies deposited as provided in Subsection 8.2(b) above and may demand payment upon any bond or other title indemnity furnished as aforesaid.

8.3 **Control; Management.** There shall be no change in the day-to-day control and management of Borrower or Borrower's general partner without the prior written consent of Lender. Borrower shall not terminate, replace or appoint any manager or terminate or amend the management agreement for the Project without Lender's prior written approval. Any change in control of the manager shall be cause for Lender to re-approve such manager and management agreement. Each manager shall hold and maintain all necessary licenses, certifications and permits required by law. Borrower shall fully perform all of its covenants, agreements and obligations under the management agreement.

8.4 **Operation; Maintenance; Inspection.** Borrower shall observe and comply with all legal requirements applicable to the ownership, use and operation of the Project. Provided the insurance proceeds or condemnation award are to be made available to Borrower pursuant to Article 3 hereof, Borrower shall maintain the Project in good condition and promptly repair any damage or casualty. Borrower shall permit Lender and its agents, representatives and employees, upon reasonable prior notice to Borrower, to inspect the Project and conduct such environmental and engineering studies as Lender may require, provided such inspections and studies do not materially interfere with the use and operation of the Project or business operations of tenants at the Project.

8.5 **Taxes on Security.** Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender. If there shall be enacted any law (1) deducting the Loan from the value of the Project for the purpose of taxation, (2) affecting any Lien on the Project, or (3) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Lender, on demand, all taxes, costs and charges for which Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Lender may declare all amounts owing under the Loan Documents to be immediately due and payable.

8.6 **Legal Existence; Name, Etc.** Trustee shall preserve and keep in full force and effect its existence as a Single Purpose Entity, entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits applicable to the ownership, use and operation of the Project. Neither Beneficiary nor any general partner of Beneficiary shall

wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into, or convey, sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets, or acquire all or substantially all of the assets of the business of any Person, or permit any subsidiary or Affiliate of Beneficiary to do so. Beneficiary and each general partner in Beneficiary shall conduct business only in its own name and shall not change its name, identity, or organizational structure unless Beneficiary (a) shall have obtained the prior written consent of Lender to such change, and (b) shall have taken all actions necessary or reasonably requested by Lender to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents. Beneficiary (and each general partner in Beneficiary, if any) shall maintain its separateness as an entity, including maintaining separate books, records, and accounts and observing corporate and partnership formalities independent of any other entity, shall pay its obligations with its own funds and shall not commingle funds or assets with those of any other entity. Beneficiary shall not change the location of its chief executive office or principal place of business without giving Lender prior written notice.

8.7 **Affiliate Transactions.** Without the prior written consent of Lender, Borrower shall not engage in any transaction affecting the Project with an Affiliate of Borrower. Lender hereby consents to and approves of M&J Wilkow, Ltd. as the manager of and leasing agent for the Project.

8.8 **Limitation on Other Debt.** Trustee (and Beneficiary and each general partner in Beneficiary, if any) shall not, without the prior written consent of Lender, incur any Debt other than the Loan and customary trade payables which are payable, and shall be paid, within thirty (30) days of when incurred.

8.9 **Further Assurances.** Borrower shall promptly (1) cure any defects in the execution and delivery of the Loan Documents, and (2) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Lender may reasonably request to further evidence and more fully describe the collateral for the Loan, to correct any omissions in the Loan Documents, to perfect, protect or preserve any liens created under any of the Loan Documents, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith.

8.10 **Estoppel Certificates.**

(a) Borrower, within ten (10) days after request, shall furnish to Lender a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defenses exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as Lender reasonably may request.

(b) Lender, within ten (10) days after request, shall furnish to Borrower a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan and the date to which interest has been paid.

8.11 **Notice of Certain Events.** Borrower shall promptly notify Lender of (1) any Potential Default of which Borrower has knowledge or Event of Default, together with a detailed statement

of the steps being taken to cure such Potential Default of which Borrower has knowledge or Event of Default; (2) any notice of default received by Borrower under other obligations relating to the Project or otherwise material to Borrower's business; and (3) any threatened or pending legal, judicial or regulatory proceedings, including any dispute between Borrower and any governmental authority, affecting Borrower or the Project.

8.12 **Indemnification.** Borrower shall indemnify, defend and hold Lender harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including the reasonable fees and actual expenses of Lender's counsel, in connection with (1) any inspection, review or testing of or with respect to the Project, (2) any investigative, administrative, mediation, arbitration, or judicial proceeding, whether or not Lender is designated a party thereto, commenced or threatened at any time (including after the repayment of the Loan) in any way related to the execution, delivery or performance of any Loan Document or to the Project, (3) any proceeding instituted by any Person claiming a Lien, and (4) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the Loan, the Project, or any of the transactions contemplated in the Loan Documents, including those arising from the joint, concurrent, or comparative negligence of Lender, except to the extent any of the foregoing is caused by Lender's gross negligence or willful misconduct.

ARTICLE 9

EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default under the Loan:

9.1 **Payments.** Borrower's failure to pay any regularly scheduled installment of principal, interest or other amount due under the Loan Documents within five (5) days after the date when due, or Borrower's failure to pay the Loan at the Maturity Date, whether by acceleration or otherwise.

9.2 **Insurance.** Borrower's failure to maintain insurance as required under Section 3.1 of this Agreement.

9.3 **Sale, Encumbrance, Etc.** The sale, transfer, conveyance, pledge, mortgage or assignment of any part or all of the Project, or any interest therein, or of any interest in Borrower in violation of Section 8.1 of this Agreement.

9.4 **Covenants.** Borrower's failure to perform or observe any of the agreements and covenants contained in this Agreement or in any of the other Loan Documents (other than payments under Section 9.1, insurance requirements under Section 9.2, and transfers and encumbrances under Section 9.3), and the continuance of such failure for thirty (30) days after notice by Lender to Borrower; however, subject to any shorter period for curing any failure by Borrower as specified in any of the other Loan Documents, Borrower shall have an additional sixty (60) days to cure such failure if (1) such failure does not involve the failure to make payments on a monetary obligation; (2) such failure cannot reasonably be cured within thirty (30) days; (3) Borrower is diligently undertaking to cure such default, and (4) Borrower has provided Lender with security reasonably

satisfactory to Lender against any interruption of payment or impairment of collateral as a result of such continuing failure. The notice and cure provisions of this Section 9.4 do not apply to the Events of Default described in Section 9.5, Section 9.6, Section 9.7 and Section 9.8.

9.5 **Representations and Warranties.** Any representation or warranty made in any Loan Document proves to be untrue in any material respect when made or deemed made.

9.6 **Other Encumbrances.** Any default under any document or instrument beyond any notice and applicable cure period, other than the Loan Documents, evidencing or creating a Lien on the Project or any part thereof.

9.7 **Involuntary Bankruptcy or Other Proceeding.** Commencement of an involuntary case or other proceeding against Trustee, Beneficiary, any Borrower Party or any other Person having an ownership or security interest in the Project (other than a limited partner of a limited partner of Beneficiary) (each, a "**Bankruptcy Party**") which seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of 90 days; or an order for relief against a Bankruptcy Party shall be entered in any such case under the Federal Bankruptcy Code.

9.8 **Voluntary Petitions, etc.** Commencement by a Bankruptcy Party of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Bankruptcy Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party, or the admission by a Bankruptcy Party in writing of its inability, to pay its debts generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing.

ARTICLE 10

REMEDIES

10.1 **Remedies — Insolvency Events.** Upon the occurrence of any Event of Default described in Section 9.7 or 9.8, the obligations of Lender to advance amounts hereunder shall immediately terminate, and all amounts due under the Loan Documents immediately shall become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Borrower; however, if the Bankruptcy Party under Section 9.7 or 9.8 is other than Borrower, then all amounts due under the Loan Documents shall become immediately due and payable at Lender's election, in Lender's sole discretion.

10.2 **Remedies — Other Events.** Except as set forth in Section 10.1 above, while any Event of Default exists, Lender may (1) by written notice to Borrower, declare the entire Loan to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrower, (2) terminate the obligation, if any, of Lender to advance amounts hereunder, and (3) exercise all rights and remedies therefor under the Loan Documents and at law or in equity.

10.3 **Lender's Right to Perform the Obligations.** If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without additional notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Lender may have because of such Event of Default, Lender may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter upon the Project for such purpose and to take all such action thereon and with respect to the Project as it may deem necessary or appropriate. If Lender shall elect to pay any sum due with reference to the Project, Lender may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Additionally, if any Hazardous Materials affect or threaten to affect the Project, Lender may (but shall not be obligated to) give such notices and take such actions as it deems necessary or advisable in order to abate the discharge of any Hazardous Materials or remove the Hazardous Materials. Borrower shall indemnify, defend and hold Lender harmless from and against any and all losses, liabilities, claims damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind whatsoever, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this Section 10.3, except as a result of Lender's gross negligence or willful misconduct. All sums paid by Lender pursuant to this Section 10.3, and all other sums expended by Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loan, shall be secured by the Loan Documents and shall be paid by Borrower to Lender upon demand.

ARTICLE 11

MISCELLANEOUS

11.1 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 11.1). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth below.

If to Borrower: M&J Wilkow, Ltd.
180 North Michigan Avenue, Suite 200
Chicago, Illinois 60601
Attention: Marc Wilkow
Telecopy: (312) 726-0468

If to Lender: General Electric Capital Corporation
209 West Jackson, Suite 200
Chicago, Illinois 60601
Attention: Region Manager,
Portfolio Management Operations
Telecopy: (312) 781-7826

Any communication so addressed and mailed shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first Business Day after deposit with an overnight air courier service with instructions to deliver on the next Business Day, or (3) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee (except as otherwise provided in the Mortgage), and any communication so delivered in person shall be deemed to be given when received for by, or actually received by Lender or Borrower, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified above, and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 11.1. Either party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

11.2 **Amendments and Waivers.** No amendment or waiver of any provision of the Loan Documents shall be effective unless in writing and signed by the party against whom enforcement is sought.

11.3 **Limitation on Interest.** It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrower and Lender with respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Lender or charged by Lender for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law (including the laws of the State and the laws of the United States of America), then, notwithstanding anything to the contrary in the Loan Documents: (1) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Note by the holder thereof (or, if the Note has been paid in full, refunded to Borrower); and (2) if maturity is accelerated by reason of an election by Lender, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by

applicable law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Note (or, if the Note has been paid in full, refunded to Borrower). The terms and provisions of this Section 11.3 shall control and supersede every other provision of the Loan Documents. The Loan Documents are contracts made under and shall be construed in accordance with and governed by the laws of the State, except that if at any time the laws of the United States of America permit Lender to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which Lender may contract for, take, reserve, charge or receive under the Loan Documents.

11.4 **Invalid Provisions.** If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

11.5 **Reimbursement of Expenses.** Borrower shall pay all reasonable expenses incurred by Lender in connection with the Loan, including fees and expenses of Lender's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of Loan Documents. Borrower shall pay all reasonable expenses of Lender in connection with the administration of the Loan, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. Borrower shall, upon request, promptly reimburse Lender for all amounts expended, advanced or incurred by Lender to collect the Note, or to enforce the rights of Lender under this Agreement or any other Loan Document, or to defend or assert the rights and claims of Lender under the Loan Documents or with respect to the Project (by litigation or other proceedings), which amounts will include all court costs, reasonable attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be incurred by Lender in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to Lender, all of which shall constitute part of the Loan and shall be secured by the Loan Documents.

11.6 **Approvals; Third Parties; Conditions.** All approval rights retained or exercised by Lender with respect to leases, contracts, plans, studies and other matters are solely to facilitate Lender's credit underwriting, and shall not be deemed or construed as a determination that Lender has passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person. This Agreement is for the sole and exclusive use of Lender and Borrower and may not be enforced, nor relied upon, by any Person other than Lender and Borrower. All conditions of the obligations of Lender hereunder, including the obligation to make advances, are imposed solely

and exclusively for the benefit of Lender, its successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Lender at any time in Lender's sole discretion.

11.7 **Lender Not in Control; No Partnership.** None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Lender the right or power to exercise control over the affairs or management of Borrower, the power of Lender being limited to the rights to exercise the remedies referred to in the Loan Documents. The relationship between Borrower and Lender is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Lender and Borrower or to create an equity in the Project in Lender. Lender neither undertakes nor assumes any responsibility or duty to Borrower or to any other person with respect to the Project or the Loan, except as expressly provided in the Loan Documents; and notwithstanding any other provision of the Loan Documents: (1) Lender is not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Borrower or its stockholders, members, or partners and Lender does not intend to ever assume such status; (2) Lender shall in no event be liable for any Debts, expenses or losses incurred or sustained by Borrower; and (3) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or its stockholders, members, or partners. Lender and Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Lender and Borrower, or to create an equity in the Project in Lender, or any sharing of liabilities, losses, costs or expenses.

11.8 **Time of the Essence.** Time is of the essence with respect to this Agreement.

11.9 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Lender and Borrower and the respective successors and assigns of Lender and Borrower, provided that neither Borrower nor any other Borrower Party shall, without the prior written consent of Lender, assign any rights, duties or obligations hereunder.

11.10 **Renewal, Extension or Rearrangement.** All provisions of the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loan. For portfolio management purposes, Lender may elect to divide the Loan into two or more separate loans evidenced by separate promissory notes so long as the payment and other obligations of Borrower are not effectively increased or otherwise modified. Borrower agrees to cooperate with Lender and to execute such documents as Lender reasonably may request to effect such division of the Loan.

11.11 **Waivers.** No course of dealing on the part of Lender, its officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any right, power or privilege of Lender under any of the Loan Documents, shall operate as a waiver thereof.

11.12 **Cumulative Rights.** Rights and remedies of Lender under the Loan Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

11.13 **Singular and Plural.** Words used in this Agreement and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

11.14 **Phrases.** When used in this Agreement and the other Loan Documents, the phrase "including" shall mean "including, but not limited to," the phrase "satisfactory to Lender" shall mean "in form and substance satisfactory to Lender in all respects," the phrase "with Lender's consent" or "with Lender's approval" shall mean such consent or approval at Lender's discretion, and the phrase "acceptable to Lender" shall mean "acceptable to Lender at Lender's sole discretion."

11.15 **Exhibits and Schedules.** The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

11.16 **Titles of Articles, Sections and Subsections.** All titles or headings to articles, sections, subsections or other divisions of this Agreement and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

11.17 **Promotional Material.** Borrower authorizes Lender to issue press releases, advertisements and other promotional materials in connection with Lender's own promotional and marketing activities, and describing the Loan in general terms or in detail and Lender's participation in the Loan. All references to Lender contained in any press release, advertisement or promotional material issued by Borrower shall be approved in writing by Lender in advance of issuance.

11.18 **Survival.** All of the representations, warranties, covenants, and indemnities hereunder (including environmental matters under Article 4), and under the indemnification provisions of the other Loan Documents shall survive the repayment in full of the Loan and the release of the liens evidencing or securing the Loan, and shall survive the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the Project to any party, whether or not an Affiliate of Borrower.

11.19 **Waiver of Jury Trial.** To the maximum extent permitted by law, Borrower and Lender hereby knowingly, voluntarily and intentionally waive the right to a trial by jury in respect of any litigation based hereon, arising out of, under or in connection with this Agreement or any other Loan Document, or any course of conduct, course of dealing, statement (whether verbal or written) or action of either party or any exercise by any party of their respective rights under the Loan Documents or in any way relating to the Loan or the Project (including, without limitation, any action to rescind or cancel this Agreement, and any claim or defense asserting that this Agreement was

fraudulently induced or is otherwise void or voidable). This waiver is a material inducement for Lender to enter this Agreement.

11.20 **Waiver of Punitive or Consequential Damages**. Neither Lender nor Borrower shall be responsible or liable to the other or to any other Person for any punitive, exemplary or consequential damages which may be alleged as a result of the Loan or the transaction contemplated hereby, including any breach or other default by any party hereto.

11.21 **Governing Law**. The Loan Documents are being executed and delivered, and are intended to be performed, in the State and the laws of the State and of the United States of America shall govern the rights and duties of the parties hereto and the validity, construction, enforcement and interpretation of the Loan Documents, except to the extent otherwise specified in any of the Loan Documents.

11.22 **Entire Agreement**. This Agreement and the other Loan Documents embody the entire agreement and understanding between Lender and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

11.23 **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

ARTICLE 12

LIMITATIONS ON LIABILITY

12.1 **Limitation on Liability**. Except as provided below in this Section 12.1, neither Borrower nor any general partner of Borrower, shall be personally liable for amounts due under or in connection with the Loan Documents or for any deficiency judgment Lender may obtain related thereto or in connection with any other actions Lender may take relative to the Loan Documents. Borrower (but not any general partner of Borrower) shall be personally liable to Lender for any deficiency, loss or damage suffered by Lender because of: (1) Borrower's commission of a criminal act as determined by a court having jurisdiction over Borrower, (2) the failure to comply with provisions of the Loan Documents prohibiting the sale, transfer or encumbrance of the Project, any other collateral, or any direct or indirect ownership interest in Borrower; (3) the misapplication by Borrower or any Borrower Party in violation of the provisions of the Loan Documents of any funds derived from the Project and actually received by Borrower or any Borrower Party or any employee or agent of Borrower or Borrower Party, including security deposits, insurance proceeds and condemnation awards; (4) the fraud or material misrepresentation by Borrower or any Borrower Party made in or in connection with the Loan Documents or the Loan; (5) Borrower's collection of rents more than one month in advance or entering into or modifying leases in violation of the provisions of the Loan Documents, or receipt of monies by Borrower or any Borrower Party in connection with the modification of any leases, in violation of this Agreement or any of the other

Loan Documents; (6) Borrower's failure in contravention of the terms of the Loan Documents to apply proceeds of rents or any other payments in respect of the leases and other income of the Project or any other collateral to the costs of maintenance and operation of the Project and to the payment of taxes, lien claims, insurance premiums, Debt Service and other amounts due under the Loan Documents; (7) Borrower's willful interference with Lender's exercise of rights under the Assignment of Rents and Leases; (8) Borrower's failure to timely renew any letter of credit issued in connection with the Loan; (9) Borrower's failure to maintain insurance as required by this Agreement or to pay any taxes or assessments affecting the Project unless the Operating Revenues of the Project are insufficient to pay such insurance and such taxes when due; (10) damage or destruction to the Project caused by the willful or negligent acts or omissions of Borrower, its agents, employees, or contractors; (11) Borrower's obligations with respect to environmental matters under Article 4; (12) Borrower's failure to pay for any loss, liability or expense (including attorneys' fees) incurred by Lender arising out of any claim or allegation made by Borrower or an Affiliate, that this Agreement or the transactions contemplated by the Loan Documents establish a joint venture, partnership or other similar arrangement between Borrower and Lender; or (13) any brokerage commission or finder's fees claimed through Borrower, Borrower Party, or any agent or employee of Borrower or Borrower Party in connection with the transactions contemplated by the Loan Documents. None of the foregoing limitations on the personal liability of Borrower shall modify, diminish or discharge the personal liability of (i) any Guarantor or (ii) any Joinder Party. Nothing herein shall be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to Lender under the Loan Documents or to require that all collateral shall continue to secure the amounts due under the Loan Documents.

12.2 Limitation on Liability of Lender's Officers, Employees, etc. Any obligation or liability whatsoever of Lender which may arise at any time under this Agreement or any other Loan Document shall be satisfied, if at all, out of the Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Lender's shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

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EXECUTED as of the date first written above.

LENDER:

GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation

By: _____
Name: _____
Its: _____

BORROWER:

FIRST WILKOW VENTURE, an Illinois limited partnership

By: _____
Name: Marc R. Wilkow
Its: General Partner

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as trustee aforesaid

ATTEST:

By: _____
Name: _____
Its: _____

JOINDER

By executing this Joinder (the "**Joinder**"), the undersigned ("**Joinder Parties**") jointly, severally and unconditionally (i) ratify and confirm all of their duties, obligations and liabilities under that certain Hazardous Substance Indemnity Agreement dated September 28, 1992 (the "Indemnity Agreement") given by the Joinder Parties to Lender (ii) agree that the Indemnity Agreement is in full force and effect, (iii) waive and release any defenses to the enforcement by Lender of the Indemnity Agreement.

1. **Waivers.** To the fullest extent permitted by applicable law, each Joinder Party waives all rights and defenses of sureties, guarantors, accommodation parties and/or co-makers and agrees that its obligations under this Joinder shall be primary, absolute and unconditional, and that its obligations under this Joinder shall be unaffected by any of such rights or defenses, including:

(a) the unenforceability of any Loan Document against Borrower and/or any Guarantor or other Joinder Party;

(b) any release or other action or inaction taken by Lender (subject to the provisions of Section 4.4 (a)) with respect to the collateral, the Loan, Borrower, any Guarantor and/or other Joinder Party, whether or not the same may impair or destroy any subrogation rights of any Joinder Party, or constitute a legal or equitable discharge of any surety or indemnitor;

(c) the existence of any collateral or other security for the Loan, and any requirement that Lender pursue any of such collateral or other security, or pursue any remedies it may have against Borrower, any Guarantor and/or any other Joinder Party;

(d) any requirement that Lender provide notice to or obtain a Joinder Party's consent to any modification, increase, extension or other amendment of the Loan, including the guaranteed obligations;

(e) any right of subrogation (until payment in full of the Loan, including the guaranteed obligations, and the expiration of any applicable preference period and statute of limitations for fraudulent conveyance claims);

(f) any defense based on any statute of limitations;

(g) any payment by Borrower to Lender if such payment is held to be a preference or fraudulent conveyance under bankruptcy laws or Lender is otherwise required to refund such payment to Borrower or any other party; and

(h) any voluntary or involuntary bankruptcy, receivership, insolvency, reorganization or similar proceeding affecting Borrower or any of its assets.

2. **Agreements.** Each Joinder Party further represents, warrants and agrees that:

(a) The obligations under this Joinder are enforceable against each such party and are not subject to any defenses, offsets or counterclaims;

(b) The provisions of this Joinder are solely for the benefit of Lender and its successors and assigns;

(c) Lender shall have the right to (i) renew, modify, extend or accelerate the Loan, (ii) pursue some or all of its remedies against Borrower, any Guarantor or any Joinder Party, (iii) add, release or substitute any collateral for the Loan or party obligated thereunder, and (iv) release Borrower, any Guarantor or any Joinder Party from liability, all without notice to or consent of any Joinder Party (or other Joinder Party) and without affecting the obligations of any Joinder Party (or other Joinder Party) hereunder;

(d) Each Joinder Party covenants and agrees to furnish to Lender, within one hundred twenty (120) days after the end of each fiscal year of such Joinder Party, a current (as of the end of such fiscal year) balance sheet of such Joinder Party, in scope and detail satisfactory to Lender, certified by the chief financial representative of such Joinder Party and, if required by Lender, prepared on a review basis and certified by an independent public accountant satisfactory to Lender; and

(e) To the maximum extent permitted by law, each Joinder Party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury in respect of any litigation based hereon. This waiver is a material inducement to Lender to enter into this Agreement.

This Joinder shall be governed by the laws of the State of Illinois.

Executed as of July 15, 1999.

JOINDER PARTIES.

M&J WILKOW, LTD., an Illinois corporation

By: _____
Name: _____
Its: _____

WATERFALL PLAZA HOLDINGS, INC., an Illinois corporation

By: _____
Name: _____
Its: _____

[SIGNATURES CONTINUED FROM PRECEDING PAGE]

MJW INVESTMENT, LTD., a Delaware corporation

By: _____
Name: _____
Its: _____

M&J WILKOW MANAGEMENT CORPORATION, an Illinois corporation

By: _____
Name: _____
Its: _____

M&J WILKOW, LTD., an Illinois corporation

By: _____
Name: _____
Its: _____

M&J WILKOW BROKERAGE SERVICES CORPORATION, an Illinois corporation

By: _____
Name: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT

PARCEL 1:

THAT PART OF THE WEST ½ OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST ½ OF THE SOUTHWEST 1/4, AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE, AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET, LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2 (EXCEPT THE SOUTH 158.0 FEET THEREOF) ALL IN ORLAND TOWNSHIP, COOK COUNTY, ILLINOIS.

ALSO

PARCEL 2:

THE WEST 170.0 FEET OF THE SOUTH 158.0 FEET OF THAT PART OF THE WEST ½ OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST ½ OF THE SOUTHWEST 1/4 AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE, AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET, AND LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2, ALL IN ORLAND TOWNSHIP, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCELS 1 AND 2 MADE BY AND BETWEEN FORD CITY BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 29, 1980 AND KNOWN AS TRUST NUMBER 3376 AND EAST SIDE BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 14, 1979 AND KNOWN AS TRUST NUMBER 1217 CREATED BY THAT CERTAIN EASEMENT AGREEMENT DATED MARCH 15, 1984 AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, COOK COUNTY, ILLINOIS, AS DOCUMENT NO. 27062950 OVER THE FOLLOWING DESCRIBED PROPERTY:

THE EAST 33.00 FEET OF THE WEST 203.00 FEET OF THE SOUTH 158.0 FEET OF THAT PART OF THE WEST ½ OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST ½ OF THE SOUTHWEST 1/4 AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE, AND LYING NORTH OF AND ABUTTING THE NORTH LINE

OF 159TH STREET, AND LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2; ALL IN ORLAND TOWNSHIP, IN COOK COUNTY, ILLINOIS

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 FOR THE INSTALLATION AND MAINTENANCE OF A SIGN PYLON CREATED BY THAT CERTAIN EASEMENT AGREEMENT DATED MARCH 15, 1984 AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, COOK COUNTY, ILLINOIS, AS DOCUMENT NO. 27062950 MADE BY AND BETWEEN FORD CITY BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 29, 1980 AND KNOWN AS TRUST NUMBER 3376 AND EAST SIDE BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 14, 1979 AND KNOWN AS TRUST NUMBER 1217 OVER THE FOLLOWING DESCRIBED PROPERTY:

THE EAST 10.00 FEET OF THE WEST 213.00 FEET OF THE SOUTH 24 FEET OF THAT PART OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST ½ OF THE SOUTHWEST ¼ AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE, AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET, AND LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2, ALL IN ORLAND TOWNSHIP, IN COOK COUNTY, ILLINOIS

PARCEL 5:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 FOR PUBLIC UTILITIES CREATED BY THAT CERTAIN EASEMENT AGREEMENT DATED MARCH 15, 1984 AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, COOK COUNTY, ILLINOIS, AS DOCUMENT NO. 27062950 MADE BY AND BETWEEN FORD CITY BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 29, 1980 AND KNOWN AS TRUST NUMBER 3376 AND EAST SIDE BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 14, 1979 AND KNOWN AS TRUST NUMBER 1217 OVER THE FOLLOWING DESCRIBED PROPERTY:

THOSE PORTIONS OF 2 PUBLIC UTILITY EASEMENTS (10 FEET WIDE) AS CREATED BY A DOCUMENT ENTITLED "PLAT OF EASEMENT" RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS ON AUGUST 4, 1981 AS DOCUMENT 25957953 AND AS SHOWN ON THE PLAT ATTACHED THERETO FALLING WITHIN THE BOUNDARY OF THE FOLLOWING DESCRIBED PARCEL OF LAND: THAT PART OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF AND ABUTTING A LINE 170 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST HALF OF THE SOUTHWEST

1/4 LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET AND LYING SOUTH OF A LINE 158 FEET NORTH OF AND PARALLEL WITH THE AFORESAID NORTH LINE OF 159TH STREET, ALL IN ORLAND TOWNSHIP, SAID EASEMENTS BEING THROUGH THE SOUTH 10 FEET AND THE SOUTH 10 FEET OF THE NORTH 14 FEET OF SAID PARCEL, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY CERTAIN EASEMENT AGREEMENT DATED JUNE 18, 1992 AND RECORDED SEPTEMBER 14, 1992 AS DOCUMENT 92680636 MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1987 AND KNOWN AS TRUST NUMBER 10427-04 ("WATERFALL OWNER") AND FIRST COLONIAL BANK NORTHWEST AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 17, 1988 KNOWN AS TRUST NUMBER 916 ("OUTLOT OWNER") FOR A PASSENGER VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS, AND PASSENGER VEHICULAR PARKING, OVER, UPON, THROUGH AND ACROSS THE SOUTH 158.0 FEET OF THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST 1/2 OF THE SOUTHWEST 1/4 AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET, AND LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2 (EXCEPT THE WEST 170.0 FEET THEREOF) ALL IN ORLAND TOWNSHIP, IN COOK COUNTY, ILLINOIS.

THE SOUTH 158.0 FEET OF THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF AND ABUTTING THE EAST LINE OF THE WEST 30 ACRES OF SAID WEST 1/2 OF THE SOUTHWEST 1/4 AND LYING WEST OF AND ABUTTING THE WESTERLY LINE OF ORLAND BROOK DRIVE AND LYING NORTH OF AND ABUTTING THE NORTH LINE OF 159TH STREET AND LYING SOUTH OF AND ABUTTING THE SOUTH LINE OF ORLAND BROOK UNIT 2 (EXCEPT THE WEST 170.0 FEET THEREOF) ALL IN ORLAND TOWNSHIP, COOK COUNTY, ILLINOIS

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EXHIBIT B

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SCHEDULE 2.1

ADVANCE CONDITIONS

- Part A - Initial Advance
- Part B - General Conditions
- Part C - Improvements Advances
- Part D - Leasing Commission Advances

PART A. CONDITIONS TO INITIAL ADVANCE.

The initial advance of the Loan shall be subject to Lender's receipt, review, approval and/or confirmation of the following, at Borrower's cost and expense, each in form and content satisfactory to Lender in its sole discretion:

1. The Loan Documents, executed by Borrower and, as applicable, each Borrower Party.
2. An ALTA (or equivalent) mortgagee policy of title insurance in the maximum amount of the Loan, with reinsurance and endorsements as Lender may require, containing no exceptions to title (printed or otherwise) which are unacceptable to Lender, and insuring that the Mortgage is a first-priority Lien on the Project and related collateral.
3. All documents evidencing the formation, organization, valid existence, good standing, and due authorization of and for Borrower and each Borrower Party for the execution, delivery, and performance of the Loan Documents by Borrower and each Borrower Party.
4. Legal opinions issued by counsel for Borrower and each Borrower Party, opining as to the due organization, valid existence and good standing of Borrower and each Borrower Party, and the due authorization, execution, delivery, enforceability and validity of the Loan Documents with respect to, Borrower and each Borrower Party; that the Loan, as reflected in the Loan Documents, is not usurious; and as to such other matters as Lender and Lender's counsel reasonably may specify.
5. Current Uniform Commercial Code searches for Borrower, Borrower's partners and members, and the immediately preceding owner of the Project.
6. Evidence of insurance as required by this Agreement, and conforming in all respects to the requirements of Lender.
7. A copy of the management agreement for the Project, certified by Borrower as being true, correct and complete.

8. Borrower's deposit with Lender of the amount required by Lender to impound for taxes and assessments under Article 3 and to fund any other required escrows or reserves.

9. Evidence that the Project and the operation thereof comply with all legal requirements, including that all requisite certificates of occupancy, building permits, and other licenses, certificates, approvals or consents required of any governmental authority have been issued without variance or condition and that there is no litigation, action, citation, injunctive proceedings, or like matter pending or threatened with respect to the validity of such matters. At Lender's request, Borrower shall furnish Lender with a zoning endorsement to Lender's title insurance policy, zoning letters from applicable municipal agencies, and utility letters from applicable service providers.

10. No change shall have occurred in the financial condition of Borrower or any Borrower Party or in the Net Operating Income of the Project, or in the financial condition of any major or anchor tenant, which would have, in Lender's judgment, a material adverse effect on the Project or on Borrower's or any Borrower Party's ability to repay the Loan or otherwise perform its obligations under the Loan Documents.

11. No condemnation or adverse zoning or usage change proceeding shall have occurred or shall have been threatened against the Project; the Project shall not have suffered any significant damage by fire or other casualty which has not been repaired; no law, regulation, ordinance, moratorium, injunctive proceeding, restriction, litigation, action, citation or similar proceeding or matter shall have been enacted, adopted, or threatened by any governmental authority, which would have, in Lender's judgment, a material adverse effect on Borrower, any Borrower Party or the Project.

12. Borrower's equity in the amount of \$200,000 has been paid to Lender in connection with the repayment of the original loan.

13. All fees and commissions payable to real estate brokers, mortgage brokers, or any other brokers or agents in connection with the Loan or the acquisition of the Project have been paid, such evidence to be accompanied by any waivers or indemnifications deemed necessary by Lender.

14. Payment of Lender's reasonable costs and expenses in underwriting, documenting, and closing the transaction, including reasonable fees and expenses of Lender's inspecting engineers, consultants, and outside counsel.

15. The Letter of Credit, if any, required under Article 2.

16. Such other documents or items as Lender or its counsel reasonably may require.

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17. The representations and warranties contained in this Loan Agreement and in all other Loan Documents are true and correct in all material respects.

18. No Potential Default or Event of Default shall have occurred or exist.

PART B. GENERAL CONDITIONS

Each advance of the Loan, if any, following the initial advance shall be subject to Lender's receipt, review, approval and/or confirmation of the following, each in form and content satisfactory to Lender in its sole discretion:

1. There shall exist no Potential Default or Event of Default (currently and after giving effect to the requested advance).

2. The representations and warranties contained in this Loan Agreement and in all other Loan Documents are true and correct in all material respects.

3. Such advance shall be secured by the Loan Documents, subject only to those exceptions to title approved by Lender at the time of Loan closing, as evidenced by title insurance endorsements satisfactory to Lender.

4. Borrower shall have paid Lender's costs and expenses in connection with such advance (including title charges, and costs and expenses of Lender's inspecting engineer and attorneys).

5. No change shall have occurred in the financial condition of Borrower or any Borrower Party, or in the Net Operating Income of the Project, or in the financial condition of any major or anchor tenant, which would have, in Lender's judgment, a material adverse effect on the Loan, the Project, or Borrower's or any Borrower Party's ability to perform its obligations under the Loan Documents.

6. No condemnation or adverse, as determined by Lender, zoning or usage change proceeding shall have occurred or shall have been threatened against the Project; the Project shall not have suffered any damage by fire or other casualty which has not been repaired or is not being restored in accordance with this Agreement; no law, regulation, ordinance, moratorium, injunctive proceeding, restriction, litigation, action, citation or similar proceeding or matter shall have been enacted, adopted, or threatened by any governmental authority, which would have, in Lender's judgment, a material adverse effect on the Project or Borrower's or any Borrower Party's ability to perform its obligations under the Loan Documents.

7. Borrower shall immediately deposit all proceeds of the Loan advanced by Lender in a separate and exclusive account to be used solely for

the purposes specified in this Agreement and in Borrower's advance request and, upon Lender's request, shall promptly furnish Lender with evidence thereof.

8. At the option of Lender (i) each advance request shall be submitted to Lender at least ten (10) Business Days prior to the date of the requested advance; and (ii) all advances shall be made at the title company, the Chicago, Illinois office of Lender or at such other place as Lender may designate unless Lender exercises its option to make an advance directly to the Person to whom payment is due.

PART C. IMPROVEMENTS ADVANCES

Additional advances shall be made to finance capital improvements and tenant improvements on the following terms and conditions:

1. Each request for such an advance shall specify the amount requested, shall be on forms satisfactory to Lender, and shall be accompanied by appropriate invoices, bills paid affidavits, lien waivers, title updates, endorsements to the title insurance, and other documents as may be required by Lender. Such advances may be made, at Lender's election, either: (a) in reimbursement for expenses paid by Borrower, or (b) for payment of expenses incurred and invoiced but not yet paid by Borrower, or (c) with respect to tenant improvements, by funding allowances for tenant improvements undertaken to be constructed by tenants and completed in accordance with leases. Lender, at its option and without further direction from Borrower, may disburse any improvements advance to the Person to whom payment is due or through an escrow satisfactory to Lender. Borrower hereby irrevocably directs and authorizes Lender to so advance the proceeds of the Loan. All sums so advanced shall constitute advances of the Loan and shall be secured by the Loan Documents. Any improvements advance for such purpose shall be part of the Loan and shall be secured by the Loan Documents. Lender may, at Borrower's expense, conduct an audit, inspection, or review of the Project to confirm the amount of the requested improvements advance.

2. Borrower shall have submitted and Lender shall have approved (a) the improvements to be constructed, (b) the plans and specifications for such improvements, which plans and specifications may not be changed in any material respects without Lender's prior written consent, and (c) if requested by Lender, each contract or subcontract for an amount in excess of \$5,000 for the performance of labor or the furnishing of materials for such improvements, which consent shall not be unreasonably withheld or delayed.

3. Borrower shall have submitted and Lender shall have approved the time schedule for completing the capital improvements or the tenant improvements. After Lender's approval of a detailed budget, such budget may not be changed without Lender's prior written consent (which consent shall not be unreasonably withheld or delayed). If the estimated cost of such improvements exceeds the unadvanced portion of the amount allocated for such improvements in the approved budget, then Borrower shall provide such security as Lender may require to assure the lien-free completion of improvements before the scheduled completion date.

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4. All improvements constructed by Borrower prior to the date an improvements advance is requested shall be completed to the satisfaction of Lender and Lender's engineer and in accordance with the plans and budget for such improvements, as approved by Lender, and all legal requirements.

5. Borrower shall not use any portion of any improvements advance for payment of any other cost except as specifically set forth in a request for advance approved by Lender in writing.

6. Each improvements advance, except for a final improvements advance, shall be in the amount of actual costs incurred less ten percent (10%) of such costs as retainage to be advanced as part of a final improvements advance; provided, however, retainage shall not be required for contracts in the amount of \$5,000 or less.

7. No funds will be advanced for materials stored at the Project unless Borrower furnishes Lender satisfactory evidence that such materials are properly stored and secured at the Project.

8. Advances for tenant improvements shall be made on the following additional conditions:

(a) Borrower shall have submitted and Lender shall have approved (1) the lease for which the tenant improvements are to be constructed, and (2) a schedule of the tenant improvements setting forth (i) each item of tenant improvements which Borrower or the applicable tenant intends to undertake; (ii) the estimated cost of each such item, and (iii) the time schedule for completing the tenant improvements.

(b) All tenant improvements constructed by Borrower prior to the date a tenant improvements advance is requested shall be completed to the satisfaction of Lender in accordance with the plans therefor approved by the tenant under the applicable lease.

(c) As a condition to the funding of the final tenant improvements advance for any space in the Project:

(1) the tenant under the lease is in occupancy, has accepted the leased premises and is paying rent under the lease or is in a

free rent period, if such period has been previously approved by Lender, without offset, credit or defense, as evidenced by a tenant estoppel certificate or a lease confirmation agreement executed by such tenant, addressed to Lender, in form satisfactory to Lender;

(2) the brokers to whom such commissions are payable have acknowledged payment in full of all commissions due with respect to the lease in question and have released Lender, Borrower, the Project and the lease from all commissions due with respect to such lease; and

(3) Borrower shall have furnished Lender with (i) a true and correct copy of the final and unconditional certificate of occupancy for the space under said lease, issued without restriction by the appropriate governmental authority having jurisdiction over the Project; and (ii) final original lien waivers executed by each contractor, subcontractor and materialmen supplying labor or materials for the tenant improvements.

PART D. LEASING COMMISSION ADVANCES

Additional advances shall be made to pay leasing commissions in accordance with written leasing commission agreements approved in writing by Lender; however, Lender shall not be obligated to make any leasing commission advance for any portion of any leasing commission until the executed lease, as approved by Lender, is delivered to Lender, at which time Lender shall make a leasing commission advance of not more than one-half (½) of the leasing commission. The remaining portion of any leasing commission shall be advanced only when (i) the tenant under the lease is in occupancy, has accepted the leased premises and is paying rent under the lease, without offset, credit or defense, or is in a free rent period, if such period has been previously approved by Lender, as evidenced by a tenant estoppel certificate executed by such tenant, addressed to Lender, in form satisfactory to Lender, and (ii) the brokers to whom such commissions are payable have acknowledged payment in full of all commissions due with respect to the lease and have released Lender, Borrower, the Project and the lease from all commissions due with respect to such lease.

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SCHEDULE 2.2

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SCHEDULE 2.3(4)

DISCOUNTED YIELD MAINTENANCE

As used herein, "Yield Maintenance Amount" means the sum of the Present Value (as defined below) on the date of prepayment of each Monthly Interest Shortfall (as defined below) for the remaining term of the Loan discounted at the monthly Replacement Treasury Yield (as defined below).

The Monthly Interest Shortfall is calculated for each monthly payment date as follows:

(i) The positive difference, if any, of the Senior Note Contract Rate less the Replacement Treasury Yield, plus the Break Contract Fee (as defined below) of 20 basis points;

(ii) Divided by 12;

(iii) Multiplied by the outstanding principal balance of the Senior Note on the date of prepayment

The Present Value is then determined by discounting each Monthly Interest Shortfall at the Replacement Treasury Yield divided by 12.

FOR EXAMPLE: If a loan with a Contract Rate of 9% were prepaid with 24 months remaining in the fixed rate term, at a time when the two year Replacement Treasury Yield was 5%, and the outstanding loan balance was \$10,000,000.00 then:

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Contract Rate		.0900
Less the Replacement Treasury Yield	—	.0500
	=	.0400
Plus the Break Contract Fee	+	.0020
Equals the rate difference	=	.0420
Divided by 12	÷	12
Equals the monthly rate difference	=	.0035
Times the principal balance	×	\$10,000,000
Equals the Monthly Interest Shortfall	=	\$35,000.00

The Present Value of each Monthly Interest Shortfall (\$35,000) discounted at the monthly Replacement Treasury Yield (5% divided by 12 or .4167%) equals \$797,786.

The Break Contract Fee shall be 20 basis points at all times.

As used herein the term "**Replacement Treasury Yield**" shall mean the rate of interest equal to the yield to maturity of the most recently issued U.S. Treasury Security as quoted in the Wall Street Journal on the prepayment date. If the remaining term is less than one year, the Replacement Treasury Yield will equal the yield for 1-Year Treasury's. If the remaining term is 1-Year, 2-Year, etc., then the Replacement Treasury Yield will equal the yield for the Treasury's with a maturity equaling the remaining term. If the remaining term is longer than one year but does not equal one of the maturities being quoted, then the Replacement Treasury Yield will equal the yield for Treasury's with a maturity closest to but not exceeding the remaining term. If the Wall Street Journal (i) quotes more than one such rate, the highest of such quotes shall apply, or (ii) ceases to publish such quotes, the U.S. Treasury security shall be determined from such financial reporting service or source as Lender shall determine.

SCHEDULE 2.3(8)

PARTICIPATION

1. **Definitions.** The following terms shall have the meanings assigned in this Schedule 2.3(8):

"Economic Value" means the fair market value of the Project as determined by agreement between Borrower and Lender, or failing agreement, by an appraisal as set forth below. Lender and Borrower shall seek to determine the fair market value of the Project for a period of fifteen (15) Business Days after notice by Lender or Borrower requesting a determination of value. If Borrower and Lender are unable to agree on the fair market value within said fifteen (15) Business Days, such value may be determined, at the request of Lender or Borrower, by three independent appraisers who shall be members of the American Institute of Real Estate Appraisers or the National Association of Realtors, one appointed by Lender, one appointed by Borrower (such appraisers to be appointed within ten (10) days after a request by either Lender or Borrower), and a third appraiser who shall be selected by the appointed appraisers within ten (10) Business Days after the appointment of the second appraiser. If either Lender or Borrower shall fail to timely appoint an appraiser, the appointed appraiser shall select the second appraiser within ten (10) days after such failure by Lender or Borrower to appoint an appraiser. If the two appraisers so determined shall be unable to agree on the selection of a third appraiser, then either appraiser, on behalf of both, may request such appointment by the presiding judge of any United States District Court in the district where the Project is located. The Project's "Economic Value" shall be the average of the valuations of the Project as determined by such appraisers; however, if any appraiser's valuation deviates more than ten percent (10%) from the average of the other two appraisers' valuations, then Lender and Borrower shall again seek to determine the fair market value of the Project by mutual agreement for a period of fifteen (15) Business Days based on the existing appraisals, and if Lender and Borrower are unable to agree on the fair market value of the Project within said fifteen (15) Business Days, then at the request of Lender or Borrower, the Economic Value may be determined by three (3) new independent appraisers in accordance with the foregoing appraisal procedures. The averaged appraisal shall be submitted to Lender and Borrower within thirty (30) days after any panel of three (3) appraisers is constituted. Lender shall pay one-half of the cost of each appraisal, unless there exists an Event of Default or a Potential Default, in which event Borrower shall pay the entire cost of the appraisals. The appraisers shall be instructed to assume that the Project is well managed with no deferred maintenance and that actual rents and occupancy levels are not above market.

"Net Economic Value" means the sum of the Economic Value, and any reserves or impounds funded out of Operating Revenues, less the sum of the Senior Note Principal Sum (or any refinancing of the Senior Note Principal Sum) and normal and customary costs which would be incurred in selling the Project (with brokerage commissions not to exceed 3% of the sales price).

"Net Refinancing Proceeds" means the sum of the proceeds of any refinancing of the Loan, and any reserves or impounds funded out of Operating Revenues, less the sum of the Senior Note Principal Sum, and normal and customary costs incurred in such refinancing.

"**Net Sale Proceeds**" means the sum of the proceeds of any sale of the Project, and any reserves or impounds funded out of Operating Revenues plus the value, as determined by Lender, of any management, services or other agreement retained by Borrower or any Affiliate of Borrower as reasonably approved by Lender in excess of market rates, less the sum of the Senior Note Principal Sum or any other financing on the Project which has been approved by Lender and which is secured by Liens on the Project (exclusive of the Junior Note), and normal and customary costs of selling the Project (with brokerage commissions not to exceed 3% of the sales price) and subject to customary prorations and adjustments.

"**Third Party Sale**" means a sale or other transaction (1) in which the consideration of the Project is all cash, does not include the transfer or conveyance to Borrower of any interest in real property, and does not involve the sale, transfer or other disposition by Borrower of any other property, (2) in which the purchaser is a third party which is not an Affiliate of Borrower or a party with whom Borrower has a material contractual relationship, (3) in which neither Borrower nor any Affiliate is retaining or receiving any residual interest in the Project, any interest in the purchaser or any contract with the purchaser other than for management or other services (except as approved by Lender), and (4) which is an arm's length bona fide sale. Third Party Sale shall include any transfer as a result of the exercise of the power of eminent domain, any transfer in avoidance of the power of eminent domain, or any casualty which results in the payment of any award, insurance proceeds or other amount in excess of the principal amount of the Loan; however, Lender's participation interest hereunder shall continue and shall not be terminated with respect to (a) any portion of the Project which is not condemned or transferred in lieu of condemnation or (b) the Project in its condition following such casualty

2. **Participation Payments.** As additional interest and additional consideration for the Loan, Borrower shall pay to Lender (or retain for itself as indicated) the following amounts:

(1) **Sale.** On any Third Party Sale the Net Sale Proceeds shall be applied in the following order:

(A) First, (i) to Lender in an amount equal to the lesser of (a) 50% of the Net Sale Proceeds and (b) the Junior Note Unpaid Base Interest and (ii) to Borrower in an amount equal to the lesser of (a) 50% of the Net Sale Proceeds and (b) Borrower's Unpaid Equity Return;

(B) Second, (i) to Lender in an amount equal to the lesser of (a) 50% of the Net Sale Proceeds remaining after the application in subsection (A) above and (b) the outstanding principal balance of the Junior Note and (ii) to Borrower in amount equal to the lesser of (a) 50% of the Net Sale Proceeds remaining after the application in subsection (A) above and (b) Borrower's Equity;

(C) Third, any Net Sale Proceeds remaining after the application in subsections (A) and (B) above shall be retained by Borrower in an amount equal to Borrower's Unpaid Letter of Credit Return;

(D) Fourth, any Net Sale Proceeds remaining after the application in subsections (A), (B) and (C) above shall be retained by Borrower in an amount equal to the Letter of Credit Proceeds; and

(E) Fifth, any Net Sale Proceeds remaining after the application in subsections (A), (B), (C) and (D) above shall be split equally between Lender and Borrower (and the amount received by Lender in this subsection (E) shall be referred to as "Participation Interest").

(2) **Maturity; Other Dispositions.** On the Maturity Date, or in the event of a sale or other disposition of the Project other than a Third Party Sale (including ground leases, exchanges or refinancings in which Lender does not elect to retain an interest in future Net Sale Proceeds or future Net Economic Value), the Net Economic Value shall be applied in the following order:

(A) First, (i) to Lender in an amount equal to the lesser of (a) 50% of the Net Economic Value and (b) the Junior Note Unpaid Base Interest and (ii) to Borrower in an amount equal to the lesser of (a) 50% of the Net Economic Value and (b) Borrower's Unpaid Equity Return;

(B) Second, (i) to Lender in an amount equal to the lesser of (a) 50% of the Net Economic Value remaining after the application in subsection (A) above and (b) the outstanding principal balance of the Junior Note and (ii) to Borrower in amount equal to the lesser of (a) 50% of the Net Economic Value remaining after the application in subsection (A) above and (b) Borrower's Equity;

(C) Third, any Net Economic Value remaining after the application in subsections (A) and (B) above shall be retained by Borrower in an amount equal to Borrower's Unpaid Letter of Credit Return;

(D) Fourth, any Net Economic Value remaining after the application in subsections (A), (B) and (C) above shall be retained by Borrower in an amount equal to the Letter of Credit Proceeds; and

(E) Fifth, any Net Economic Value remaining after the application in subsections (A), (B), (C) and (D) above shall be split equally between Lender and Borrower (and the amount received by Lender in this subsection (E) shall be referred to as "Participation Interest").

(3) **Refinancing.** On any refinancing of the Loan before the Maturity Date, Lender may elect, either (a) to be paid pursuant to Section 2(3)(A) below or (b) to retain its interest in future Net Cash Flow, future Net Sale Proceeds and future Net Economic Value until sale of the Project or the Maturity Date (whichever occurs earlier), in which event 2(3)(B) below shall apply.

(A) If Lender elects not to retain its interest in future Net Cash Flow, future Net Sale Proceeds and future Net Economic Value until sale of the Project or the Maturity Date (whichever occurs earlier), then the Net Economic Value shall be applied in the following order:

(1) First, (i) to Lender in an amount equal to the lesser of (a) 50% of the Net Economic Value and (b) the Junior Note Unpaid Base Interest and (ii) to Borrower in an amount equal to the lesser of (a) 50% of the Net Economic Value and (b) Borrower's Unpaid Equity Return;

(2) Second, (i) to Lender in an amount equal to the lesser of (a) 50% of the Net Economic Value remaining after the application in subsection (1) above and (b) the outstanding principal balance of the Junior Note and (ii) to Borrower in an amount equal to the lesser of (a) 50% of the Net Economic Value remaining after the application in subsection (1) above and (b) Borrower's Equity;

(3) Third, any Net Economic Value remaining after the application in subsections (1) and (2) above shall be retained by Borrower in an amount equal to Borrower's Unpaid Letter of Credit Return;

(4) Fourth, any Net Economic Value remaining after the application in subsections (1), (2) and (3) above shall be retained by Borrower in the amount equal to the Letter of Credit Proceeds; and

(5) Fifth, any Net Economic Value remaining after the application in subsections (1), (2), (3) and (4) above shall be split equally between Lender and Borrower (and the amount received by Lender in this subsection (5) shall be referred to as "Participation Interest").

(B) If Lender elects to retain its interest in future Net Cash Flow, future Net Sale Proceeds and future Net Economic Value until sale of the Project or the Maturity Date (whichever occurs earlier), then the Net Refinancing Proceeds shall be applied in the following order:

(1) First, (i) to Lender in an amount equal to the lesser of (a) 50% of the Net Refinancing Proceeds and (b) the Junior Note Unpaid Base Interest and (ii) to Borrower in an amount equal to the lesser of (a) 50% of the Net Refinancing Proceeds and (b) Borrower's Unpaid Equity Return;

(2) Second, to Lender in the amount of the outstanding principal balance of the Junior Note;

(3) Third, any Net Refinancing Proceeds remaining after the application in subsections (1) and (2) above shall be retained by Borrower in an amount equal to Borrower's Unpaid Letter of Credit; and

(4) Fourth, any Net Refinancing Proceeds remaining after the application in subsections (1), (2) and (3) above shall be split equally between Lender and Borrower (and the amount received by Lender in this subsection (4) shall be referred to as "Participation Interest").

If Lender elects to retain its interest in future Net Cash Flow, future Net Sale Proceeds and future Net Economic Value until sale of the Project or the Maturity Date (whichever occurs earlier), such interests shall be secured by a subordinate deed of trust or mortgage satisfactory to Lender and encumbering the Project.

3. **Right of First Offer.** Borrower hereby grants, conveys and transfers to Lender a right of first offer with respect to any sale of the Project by Borrower. If Borrower desires to sell the Project, Borrower must offer the Project for sale to Lender at Borrower's stated sales price of the Project, net of Lender's interest in Net Sale Proceeds and Lender shall have thirty (30) days after Lender's receipt of such offer to accept or decline such offer. If Lender accepts such offer to purchase, Lender shall purchase the Project, if at all, within ninety (90) days after Lender's acceptance of the offer to purchase. If Lender declines the offer, the Borrower may sell the Project within one hundred eighty (180) days thereafter in a Third Party Sale at a price no less than 95% of the stated sales price used to compute the offer to Lender. After said one hundred eighty (180) days, Borrower must re-offer the Project to Lender. This right of first offer shall continue until Lender has purchased the Project or has received payment of its entire interest in Net Sale Proceeds or Net Economic Value.

4. **Not a Joint Venture.** The provisions herein and in the Loan Documents giving Lender interests in Net Sale Proceeds, Net Economic Value, Net Refinancing Proceeds and Net Cash Flow, in addition to the right to receive repayment of all other amounts owing under the Loan Documents, is additional consideration for the Loan, and such provisions shall not be deemed to create a joint venture or partnership arrangement between Lender and Borrower, it being Borrower's intention that the transaction shall not be deemed to be an agreement by Lender to share in any losses incurred by Borrower or to be responsible for any liabilities of Borrower to third parties.

SCHEDULE 2.4(1)

LETTER OF CREDIT

As a condition to the initial advance of the Loan, Borrower shall deliver to Lender an unconditional, irrevocable letter of credit in the amount of \$80,000, issued by a national banking association satisfactory to Lender, in form and substance satisfactory to Lender, and having an expiration date not earlier than one year following its issuance date (as such letter of credit, may be renewed, extended, or replaced, the "Letter of Credit"). Borrower agrees that no less than thirty (30) days prior to the expiration date of the Letter of Credit and each renewal or extension thereof (until the Letter of Credit has been released as provided below), Borrower shall deliver to Lender a renewal or extension of the Letter of Credit for a term of not less than one year, in form, content and issued by a national banking association acceptable to Lender. If requested by Lender, the Letter of Credit (and each renewal or extension thereof), at Borrower's sole cost and expense, shall be accompanied by evidence satisfactory to Lender regarding its due authorization, genuineness, execution and enforceability. The following terms shall apply to the Letter of Credit:

(a) Lender shall be entitled to draw upon the Letter of Credit when any Event of Default exists (including, Borrower's failure to deliver a renewal or extension of the Letter of Credit as required above). Lender shall also be entitled to draw on the Letter of Credit and apply such proceeds to the Loan if the credit rating or financial condition of the issuing bank is no longer reasonably acceptable to Lender. Following a draw by Lender on the Letter of Credit solely because of the deterioration of the creditworthiness of the issuing bank, Lender will readvance such proceeds to Borrower provided (1) Borrower delivers to Lender a replacement Letter of Credit within sixty (60) days of Lender's draw, (2) there exists no Event of Default or Potential Default, (3) Lender receives documentation satisfactory to Lender to provide security for such readvance, including any title insurance endorsement necessary to insure the validity and priority of such security, and (4) Borrower pays all of Lender's fees and expenses in connection with such readvance. No draw by Lender on the Letter of Credit shall cure or be deemed to cure any Event of Default or limit in any respect any of Lender's remedies under the Loan Documents, it being understood that Lender's rights and remedies hereunder shall be cumulative and Lender shall have no obligations to apply the proceeds of any draw to missed installment or other amounts then due and unpaid under the Loan. Borrower shall replace or restore the Letter of Credit immediately following any full or partial draw thereon by Lender (except if such draw is to cover a Shortfall under subsection (e) hereof).

(b) Proceeds of any draw upon the Letter of Credit (after reimbursement of any costs and expenses, including attorneys' fees and reimbursements, incurred by Lender in connection with such draw) may be applied by Lender to the payment of the amounts owing under the Loan Documents, in such manner as Lender determines.

(c) No delay or omission of Lender in exercising any right to draw on the Letter of Credit shall impair any such right, or shall be construed as a waiver of, or acquiescence in, any Event of Default.

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(d) Provided no Event of Default or Potential Default exists, Lender shall, upon request, release its rights in the Letter of Credit and surrender the Letter of Credit to the issuing bank after the payment in full of all sums due, and performance of all obligations, under the Loan Documents.

(e) Notwithstanding anything in this Agreement to the contrary, to the extent that there are insufficient funds in the Project Reserve to pay for the Project Expenditures that have been approved by Lender (the amount of such insufficiency shall be referred to herein as the "**Shortfall**") then, so long as there is no Event of Default or Potential Default, Borrower shall have the right to direct Lender to draw upon the Letter of Credit up to the amount of the Shortfall and the Shortfall shall be advanced to pay for such Project Expenditures in accordance with the conditions for improvement advances and leasing commission advances under Schedule 2.1.

SCHEDULE 2.4(2)PROJECT RESERVE

On the 15th day of each month throughout the term of the Loan, Borrower shall deposit into a reserve with Lender (the "**Project Reserve**") an amount equal to the lesser of (a) an amount by which \$30,000 exceeds the then current balance of the Project Reserve, and (b) the Reserve Income. The Project Reserve will be held by Lender without interest and may be commingled with Lender's own funds. The Project Reserve may be advanced by Lender to Borrower for (i) capital improvements and capital repairs to the Project, as approved by Lender, (ii) leasing commissions and costs of constructing tenant improvements as required by leases of the Project which have been approved by Lender and (iii) Debt Service due under the Loan to the extent that Operating Revenues are insufficient (such improvements, repairs, commissions and Debt Service are collectively referred to as "**Project Expenditures**"). Borrower grants to Lender a security interest in all funds on deposit in the Project Reserve. While an Event of Default or a Potential Default exists, Lender shall not be obligated to advance to Borrower any portion of the Project Reserve, and while an Event of Default exists, Lender shall be entitled, without notice to Borrower, to apply any funds in the Project Reserve to satisfy Borrower's obligations under the Loan Documents. Borrower and Lender shall meet annually on a date selected by Lender to establish monthly, quarterly, and annual budgets for Project Expenditures for the Project for the succeeding calendar year (the "**Project Budget**"). The Project Budget shall be based on the previous year's experience and an assessment of anticipated future needs, and shall be subject in all respects to Lender's approval. The Project Reserve shall be advanced in accordance with the conditions for improvements advances and leasing commission advances under Schedule 2.1.

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SCHEDULE 2.4(3)

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