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THCI COMPANY LLC  
Mortgagor

to

SALOMON BROTHERS REALTY CORP.  
Mortgagee

Inst # 2001-17416

05/03/2001-17416  
09:18 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
027 CJ1 1018.55

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SUBORDINATE MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING

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Dated as of: March 30, 2001

THIS INSTRUMENT PREPARED BY AND  
RECORD AND RETURN TO:

Latham & Watkins  
885 Third Avenue  
New York, New York 10022  
Attention: Brian Krisberg, Esq.

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THIS SUBORDINATE MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as the same may from time to time be extended, renewed, supplemented or modified, the "Mortgage"), made as of the 30th day of March, 2001, by THCI Company LLC, a Delaware limited liability company ("Mortgagor"), having its principal place of business c/o Straus Capital Group, Inc., 411 Hackensack Avenue, 7th Floor, Hackensack, N.J. 07601 to SALOMON BROTHERS REALTY CORP., a New York corporation ("Mortgagee"), having its principal place of business at 388 Greenwich Street, 11th Floor, New York, New York 10013.

W I T N E S S E T H:

In consideration of the sum of Ten Dollars, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants herein contained, Mortgagor and Mortgagee hereby agree that this Mortgage shall secure all sums, obligations, liabilities and indebtedness of the Mortgagor due or to become due under the Guaranty, dated as of the date hereof, entered into by Mortgagor and THCI of Massachusetts LLC, Kentfield THCI Holding Company LLC and THCI Holding Company LLC (and together with Mortgagor the "Borrowers") for the benefit of Mortgagee (the "Guaranty"), which Guaranty was executed and delivered in connection with an indebtedness of up to THIRTY FOUR MILLION EIGHT HUNDRED TEN THOUSAND FIVE HUNDRED THIRTY FOUR AND NO/DOLLARS (\$34,810,534) as may be outstanding from time to time, in lawful money of the United States of America, to be paid with interest according to a certain Loan Agreement, dated the date hereof, by and among Tranche 1 Borrowers (as defined in the Guaranty), as borrower, Mortgagee, as agent and initial lender and LaSalle Bank National Association, as collateral agent (as the same may be extended, renewed, supplemented or modified, the "Loan Agreement"; capitalized terms used herein and not defined having the meanings ascribed thereto in the Loan Agreement), as evidenced by that certain Promissory Note, executed and delivered by Tranche 1 Borrowers pursuant to the Loan Agreement (as the same may be extended, renewed, supplemented, exchanged, substituted, replaced or modified, collectively, the "Note"; the Loan Agreement, the Note, this Mortgage, the Guaranty, the other Collateral Security Instruments and any other documents executed and delivered in connection with the Loan, collectively, the "Loan Documents"), as security for the payment and performance of all of Mortgagor's obligations hereunder and under the Loan Documents and the Guaranty (collectively, the "Obligations"), Mortgagor has mortgaged, transferred, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated and by these presents does hereby mortgage, transfer, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Mortgagee WITH MORTGAGE COVENANTS, the real property described in Exhibit A attached hereto (the "Land") and the buildings, structures and improvements of every nature whatsoever now or hereafter located thereon (including, but not limited to, all gas and electric fixtures, radiators, heaters, docks and docking facilities, engines and machinery, boilers, ranges, elevators and motors, plumbing, heating and air conditioning fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to the Land or said buildings, structures or improvements now owned, or hereafter acquired by Mortgagor) (the "Improvements");

This Mortgage is given to secure the Obligations; provided, however, that notwithstanding anything to the contrary contained herein: (i) the maximum amount of the principal obligations secured by this Mortgage (the "Principal Indebtedness") shall not exceed \$619,628 (the "Maximum Principal Amount") at any one time outstanding; (ii) the security afforded by this Mortgage for the Indebtedness shall not be reduced by any payments or other sums applied to the reduction of the Indebtedness so long as the total amount of outstanding Principal Indebtedness exceeds the Maximum Principal Amount and thereafter shall be reduced only to the extent that any such payments and other sums are actually applied



by Mortgagee, in accordance with the Loan Agreement, to reduce the outstanding Principal Indebtedness to an amount less than the Maximum Principal Amount; and (iii) the limitation contained in this paragraph shall only pertain to the Principal Indebtedness and shall not be construed as limiting the amount of interest, fees, expenses, indemnified amounts and other Indebtedness secured hereby that are not Principal Indebtedness, it being the intention of the parties to this Mortgage that this Mortgage shall secure any Principal Indebtedness remaining unpaid at the time of foreclosure up to the Maximum Principal Amount, plus interest thereon, all costs of collection and all other amounts (except Principal Indebtedness in excess of the Maximum Principal Amount) included in the Obligations.

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

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

(b) all "equipment" as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "Uniform Commercial Code"), now or hereafter owned by Mortgagor or in which Mortgagor has or shall acquire an interest, now or hereafter located on, attached to or contained in or used or usable in connection with the Mortgaged Property, and including all building materials, construction materials, personal property constituting furniture, fittings, appliances, apparatus, leasehold improvements, machinery, devices, interior improvements, appurtenances, equipment, plant, furnishings, fixtures, computers, electronic data processing equipment, telecommunications equipment and other fixed assets now owned or hereafter acquired by Mortgagor which are used in the operation of the business conducted at the Mortgaged Property; and all proceeds thereof, as well as all additions to, substitutions for, replacements of or accessions to any of the items recited as aforesaid and all attachments, components, parts (including spare parts) and accessories, whether installed thereon or affixed thereto, and wherever located, now or hereafter owned by Mortgagor and used or intended to be used in connection with, or with the operation of, the Land or the Improvements, or in connection with any construction being conducted or which may be conducted thereon, all regardless of whether the same are located on the Mortgaged Property or are located elsewhere (including without limitation, in warehouses or other storage facilities or in the possession of or on the premises of a bailee, vendor or manufacturer) for purposes of manufacture, storage, fabrication or transportation and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to, and proceeds of, any of the foregoing (collectively, the "Equipment");

(c) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Land and the Improvements, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the

exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Land and the Improvements;

(d) all leases, subleases, lettings, occupancy agreements, tenancies and licenses by Mortgagor as landlord of the Mortgaged Property or any part thereof now or hereafter entered into, and all amendments, extensions, renewals and guarantees thereof, and all security therefor (collectively, the "Leases") and all income, rents, rent equivalents, issues, profits, revenues (including all oil and gas or other mineral royalties and bonuses), deposits and other benefits from the Land and the Improvements (including, without limitation, all receivables, and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the Mortgaged Property or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space or other space, halls, stores, and offices, and deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance)) (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Obligations;

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

(f) subject to the applicable terms, if any, of the Loan Agreement the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

(g) all "accounts" (as defined in the Uniform Commercial Code) now owned or hereafter acquired by Mortgagor, and arising out of or in connection with, the operation of the Mortgaged Property (including, without limitation, the Collection Account and the Reserve Account), and all other accounts, if any, described in the Management Agreement and all present and future accounts receivable, inventory accounts, contract rights, chattel paper, notes, acceptances, insurance policies, Instruments (hereafter defined), Documents (hereafter defined), or other rights to payment and all forms of obligations owing at any time to Mortgagor thereunder, whether now existing or hereafter created or otherwise acquired by Mortgagor, and all proceeds thereof and all liens, security interests, guaranties, remedies, privileges and other rights pertaining thereto, and all rights and remedies of any kind forming the subject matter of any of the foregoing (including, without limitation, (i) all income, Rents, issues, profits, revenues, deposits and other benefits from the Mortgaged Property, (ii) all receivables and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the Mortgaged Property or other commercial space located at the Mortgaged Property or acquired from others (including, without limiting the generality of the foregoing, from rental of space, halls, stores, and offices, and deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales of merchandise, service charges, vending machine sales and proceeds, if any, from business interruption or



other loss of income insurance), (iii) all sums of money, and all instruments, documents and securities held in any accounts in connection therewith, or any demand, time, savings or other account maintained with any bank or certificate of deposit issued by any bank with the proceeds of such account and (iv) all of the records and books of account now or hereafter maintained by or on behalf of Mortgagor in connection with the operation of the Mortgaged Property) (collectively, the "Accounts");

(h) all "proceeds" (as defined in the Uniform Commercial Code) thereof and, in any event, shall include, without limitation, all proceeds, products, offspring, rents, profits or receipts, in whatever form, arising from the Mortgaged Property (including, without limitation, (i) cash, instruments and other property received, receivable or otherwise distributed in respect of or in exchange for any or all of the Mortgaged Property, (ii) the collection, sale, lease, sublease, concession, exchange, assignment, licensing or other disposition of, or realization upon, any item or portion of the Mortgaged Property (including, without limitation, all claims of Mortgagor against third parties for loss of, damage to, destruction of, or for proceeds payable under, or unearned premiums with respect to, policies of insurance in respect of, any the Mortgaged Property now existing or hereafter arising), (iii) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Mortgagor from time to time with respect to any of the Mortgaged Property, (iv) any and all payments (in any form whatsoever) made or due and payable to Mortgagor from time to time in connection with the requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Mortgaged Property by any Governmental Authority (or any person acting under color of Governmental Authority) and (v) any and all other amounts from time to time paid or payable under or in connection with any of the Mortgaged Property) (collectively, the "Proceeds");

(i) all agreements to which Mortgagor is a party or which are assigned to Mortgagor in the Management Agreement and which are executed in connection with the construction, operation and management of the Improvements located on the Mortgaged Property (including, without limitation, the Management Agreement and any agreements for the sale, lease or exchange of goods or other property and/or the performance of services by it, in each case whether now in existence or hereafter arising or acquired) as any such agreements have been or may be from time to time amended, supplemented or otherwise modified (collectively, "Contracts");

(j) all "documents" as defined in the Uniform Commercial Code or other receipts covering, evidencing or representing goods now owned or hereafter acquired by Mortgagor (collectively, "Documents");

(k) all trademark licenses, trademarks, rights in intellectual property, trade names, service marks and copyrights relating to the Mortgaged Property or the license to use intellectual property such as computer software owned or licensed by Mortgagor or other proprietary business information relating to Mortgagor's policies, procedures, manuals and trade secrets (collectively, "Trademarks");

(l) all "general intangibles" as defined in the Uniform Commercial Code, now owned or hereafter acquired by Mortgagor (including, without limitation, (i) all obligations or indebtedness owing to Mortgagor from whatever source arising (other than Accounts, Rents, Instruments, Inventory, Contracts, Documents, Trademarks and Permits), (ii) all unearned premiums accrued or to accrue under all insurance policies for the Mortgaged Property obtained by Mortgagor, all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims (including, without limitation, proceeds of insurance, condemnation awards, and all rights of Mortgagor to refunds of real estate taxes and assessments), (iii) all royalties and license fees, (iv) all

trademark licenses, trademarks, rights in intellectual property, goodwill, trade names, service marks, trade secrets, copyrights, permits and licenses, together with the registrations therefor and the goodwill appurtenant thereto, (v) all rights or claims in respect of refunds for taxes paid and (vi) all rights in respect of any pension plan or similar arrangement maintained for employees of Mortgagor) (collectively, "General Intangibles");

(m) all (i) "instruments" as defined in the Uniform Commercial Code, "chattel paper" as defined in the Uniform Commercial Code, or letters of credit, evidencing, representing, arising from or existing in respect of, relating to, securing or otherwise supporting the payment of, any of the Collateral (including, without limitation, promissory notes, drafts, bills of exchange and trade acceptances) and chattel paper obtained by Mortgagor in connection with the Mortgaged Property (including, without limitation, all ledger sheets, computer records and printouts, databases, programs, books of account and files of Mortgagor relating thereto) and (ii) notes or other obligations of indebtedness owing to Mortgagor from whatever source arising, in each case now owned or hereafter acquired by Mortgagor (collectively, "Instruments");

(n) all "inventory" as defined in the Uniform Commercial Code, whether now or hereafter existing or acquired, and which arises out of or is used in connection with, directly or indirectly, the ownership and operation of the Mortgaged Property, all Documents representing the same and all Proceeds and products of the same (including, without limitation, all goods, merchandise, raw materials, work in process and other personal property, wherever located, now or hereafter owned or held by Mortgagor for manufacture, processing, the providing of services or sale, use or consumption in the operation of the Mortgaged Property (including, without limitation, fuel, supplies and similar items and all substances commingled therewith or added thereto) and rights and claims of Mortgagor against anyone who may store or acquire the same for the account of Mortgagor, or from whom Mortgagor may purchase the same) (collectively, "Inventory"); and

(o) to the extent they are assignable, all licenses, permits, variances and certificates used in connection with the ownership, operation, use or occupancy of the Mortgaged Property (including, without limitation, business licenses, state health department licenses, food service licenses, liquor licenses, licenses to conduct business and all such other permits, licenses and rights, obtained from any Governmental Authority or private Person concerning ownership, operation, use or occupancy of the Mortgaged Property) (collectively, "Permits").

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

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall pay to Mortgagee the Obligations then, this Mortgage shall be deemed satisfied whereupon these presents and the estate hereby granted shall cease, terminate and be void;

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

1. Payment of Obligations and Incorporation of Covenants, Conditions and Agreements. Mortgagor will pay the Obligations at the time and in the manner provided in the Loan Documents and in this Mortgage and in the Guaranty. All the covenants, conditions and agreements of Mortgagor contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein including, without limitation, the provisions contained



in the Loan Agreement regarding insurance, casualty, condemnation, leasing and maintenance of the Mortgaged Property.

2. Warranty of Title. Mortgagor warrants that Mortgagor has good, marketable and insurable fee simple title to the Land and Improvements except for those exceptions shown on Schedule B to the Title Insurance Policy insuring the lien of this Mortgage and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to encumber, mortgage, transfer, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Land and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown on Schedule B to the Title Insurance Policy insuring the lien of this Mortgage and that this Mortgage is and will remain a valid and enforceable first lien on and security interest in the Mortgaged Property, subject only to the Permitted Encumbrances. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Payment of Taxes, etc. Subject to the provisions of Section 25 hereof and the applicable provisions of the Loan Agreement, Mortgagor shall pay or cause to be paid all Impositions (including, without limitation, all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof and all ground rents, maintenance charges, other governmental impositions and other charges (including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land), now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof) (the "Other Charges"), as the same become due and payable. Subject to the terms of the Loan Agreement, Mortgagor shall deliver to Mortgagee upon Mortgagee's request, evidence reasonably satisfactory to Mortgagee that the Impositions and Other Charges have been so paid or are not then delinquent no later than thirty (30) days following the date on which the Impositions and/or Other Charges would otherwise be delinquent if not paid. Subject to Section 25 hereof, Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever (other than Permitted Encumbrances) which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for or cause to be paid all utility services provided to the Mortgaged Property.

4. Leases and Rents. Reference is made to the Loan Agreement and the Assignment of Rents and Leases for Mortgagor's obligations, license, rights and benefits regarding Leases and Rents.

5. Maintenance of Mortgaged Property. Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair in accordance with the standards set forth in Article 5 of the Loan Agreement.

6. Transfer or Encumbrance of the Mortgaged Property.

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Obligations. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor

default in the repayment of the Obligations, Mortgagee can recover the Obligations by a sale of the Mortgaged Property. Mortgagor shall not, except as and to the extent set forth in the Loan Agreement, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit the Mortgaged Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Section 6 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; and (iii) a transfer of a direct or indirect ownership interest or voting right in the Borrower that would cause a Transfer to occur.

(c) Subject to the provisions of the Loan Agreement, Mortgagee may predicate its decision to grant or withhold consent required under the Loan Agreement on Mortgagee's satisfaction, in its sole and absolute discretion, with all relevant factors (including, without limitation, the creditworthiness of the proposed transferee and such proposed transferee's management experience), and, in the case of any transfer of title to the Mortgaged Property, upon the execution of an assumption agreement in form and substance reasonably acceptable to Mortgagee and the payment of all out of pocket costs and expenses incurred by Mortgagee in connection with the assumption (including, without limitation, reasonable attorneys' fees). Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Mortgagee's consent. Except as provided in the Loan Agreement, this provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

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

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

7. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Obligations from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the



payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to require that the Loan be prepaid in an amount equal to the Release Price for the Mortgaged Property so affected without the payment of any prepayment penalty (including the Refinancing Fee), in the event such Mortgaged Property shall be released from this Mortgage.

8. No Credits on Account of the Obligations. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Impositions or Other Charges assessed against the Mortgaged Property, or any part thereof.

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

10. Controlling Agreement. It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this section shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Obligations, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Obligations (or, if the Note and all other Obligations have been or would thereby be paid in full, refunded to Mortgagor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Obligations shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Obligations until payment in full so that the rate or amount of interest on account of the Obligations does not exceed the maximum rate of interest permitted by law from time to time in effect and applicable to the Obligations for so long as the Obligations are outstanding.

11. Books and Records. Mortgagor will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Mortgaged Property and will furnish, or cause to be furnished, to Mortgagee such information with respect to the operation of the Mortgaged Property as Mortgagee from time to time reasonably may request, all in accordance with the provisions of the Loan Agreement.

12. Performance of Other Agreements. Mortgagor shall observe and perform in all material respects the terms to be observed or performed by Mortgagor under any agreement or recorded instrument affecting or pertaining to the Mortgaged Property, the failure to perform would have a Material Adverse Effect.



13. Further Acts, etc. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and, Mortgagor hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising the rights provided for in this Section 13 exercisable only after the occurrence and continuance of an Event of Default.

14. Recording of Mortgage, etc. Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all reasonable expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance (other than income or franchise taxes imposed on Mortgagee), except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee and its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage other than any income or franchise taxes imposed on Mortgagee provided the same is not levied in lieu of any such tax for the recordation hereof.

15. Reporting Requirements. Mortgagor agrees to give prompt notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor.

16. Events of Default. The term "Event of Default" as used herein shall mean the occurrence or happening, at any time and from time to time, of an Event of Default under the Loan Agreement as a result of which Mortgagee may, pursuant to the Guaranty and the Loan Agreement, exercise its rights and remedies against Mortgagor and/or the Mortgaged Property. Mortgagor acknowledges and agrees that this Mortgage shall be cross-collateralized and cross-defaulted with any and all other mortgages, assignments of leases and rents, security agreements and fixture filings executed to secure the Guaranty.

17. Late Payment Charge. If any portion of the Obligations is not paid within ten (10) days after the date on which it is due (other than the Maturity Date), Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the

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

18. Right to Cure Defaults. Upon the occurrence of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Obligations, shall be secured by this Mortgage and shall be due and payable to Mortgagee upon demand therefor.

19. Remedies.

(a) Upon the occurrence of any Event of Default and subject to the applicable terms, if any, of the Loan Agreement, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, by Mortgagee itself or otherwise, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, subject to the provisions of Section 46, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(i) declare the entire principal amount of the Obligations with interest accrued thereon to be immediately due and payable;

(ii) institute a proceeding or proceedings, judicial or nonjudicial, by advertisement or otherwise, for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner in accordance with the laws of the jurisdiction in which such Mortgaged Property is located. To this end, Mortgagor hereby grants Mortgagee a power of sale to foreclose this Mortgage and agree that Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, after giving notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale, together with a description of the Mortgaged Property, by publication in a newspaper published in the county or counties wherein the Mortgaged Property or any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's main or front courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchaser money. At any foreclosure sale, any part or all of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the



application of any doctrine of marshaling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Obligations shall have been paid in full or performed.

(iii) with or without entry, to the extent permitted, and pursuant to the procedures provided by, applicable law, institute proceedings for the foreclosure of this Mortgage for the Obligations then due and payable subject to the continuing lien of this Mortgage, in accordance with the laws of the jurisdiction in which such Mortgaged Property is located, for the balance of the Obligations not then due;

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

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

(vi) subject to Section 46 hereof, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, to the extent permitted by applicable law, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Mortgagor or of any person, firm or other entity liable for the payment of the Obligations;

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



(ix) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Mortgagor and require Mortgagor to vacate and surrender possession to Mortgagee of the Mortgaged Property or to such receiver and, in default thereof, evict Mortgagor by summary proceedings or otherwise; or

(x) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code including the right to establish a lock box for all Rents and other receivables of Mortgagor relating to the Mortgaged Property.

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

(b) The proceeds of any sale made under or by virtue of this Section 19, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this section or otherwise, shall be applied by Mortgagee in accordance with the provisions of the Loan Agreement.

(c) Upon any sale made under or by virtue of this Section 19, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

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

(e) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Section 19 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(f) Mortgagee may resort to any remedies and the security given by this Mortgage or the other Loan Documents or the Guaranty in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by this Mortgage or the other Loan Documents or the Guaranty. The failure of Mortgagee to exercise any right, remedy or option provided in this Mortgage or the other Loan Documents or the Guaranty shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by this Mortgage or the other Loan Documents or the Guaranty. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Obligations or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or,

subject to the provisions of Section 46, the liability of Mortgagor to pay the Obligations. No waiver by Mortgagee shall be effective, unless it is in writing and then only to the extent specifically stated.

(g) The interests and rights of Mortgagee under this Mortgage or the other Loan Documents or the Guaranty shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Obligations, (ii) any surrender, compromise, release (except for a release of the Mortgaged Property as contemplated by the Loan Agreement subject to and otherwise in accordance with such Agreement), renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Obligations.

20. Right of Access. Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property as provided in Section 5.1(e) and 5.1(k) of the Loan Agreement.

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

22. Security Agreement. This Mortgage is both a real property mortgage/deed of trust and a security agreement within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Obligations, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph the "Collateral"). Mortgagor hereby agrees with Mortgagee to 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 herein granted. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code. All or part of the Mortgaged Property is or is to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur which shall remain uncured, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, (including, without limitation, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral). Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand therefor any and all expenses (including, without limitation, reasonable legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral). Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions of the Loan Agreement at



least ten (10) Business Days prior to such action or such notice as is otherwise required by law or the Loan Agreement, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Obligations in such priority and proportions as required by the Loan Agreement. In the event of any change in name, identity or structure of Mortgagor, Mortgagor shall notify Mortgagee thereof and, promptly after request, shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all out of pocket expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem reasonably necessary, and shall pay all out of pocket expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations or decrease Mortgagor's rights under this Mortgage or the other Loan Documents or the Guaranty or materially adversely affect its rights with respect thereto. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financial or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

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

24. Waiver of Setoff. Except as may be permitted under the Loan Agreement, all amounts due under this Mortgage, the Note and the other Loan Documents and the Guaranty shall be payable without setoff, counterclaim or any deduction whatsoever.

25. Contest of Certain Claims. Notwithstanding the provisions of Section 2 and Section 7, Mortgagor shall not be in default for failure to pay or discharge Impositions, Other Charges or mechanic's or materialman's liens asserted against the Mortgaged Property or for failure to comply with any Legal Requirement if, and so long as, (a) Mortgagor shall have notified Mortgagee of same within thirty (30) Business Days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings or cause the same to be contested by appropriate legal requirements which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) unless funds are otherwise reserved or Mortgagee reasonably expects the lien to be removed or bonded or the amount to be paid within 60 days and prior to any enforcement in respect thereof, Mortgagor shall furnish to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety reasonably satisfactory to Mortgagee, in the amount of the Impositions, Other Charges, or mechanic's or materialman's lien claim or penalties or fines relating to the failure to comply with any Legal Requirement, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Mortgagor shall timely upon final determination thereof pay the amount of any such Impositions, Other Charges, claim, fine or penalty so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the



Impositions, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such Impositions, Other Charges or claim notwithstanding such contest, if in the reasonable opinion of Mortgagee, the Mortgaged Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, canceled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the reasonable judgment of Mortgagee, the entitlement of such claimant is established.

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

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

28. Hazardous Substances. Mortgagor and the Mortgaged Property shall comply with all provisions of the Loan Documents relating to Environmental Laws, Environmental Claims and Hazardous Substances.

29. Handicapped Access.

(a) Mortgagor agrees that the Mortgaged Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto (including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities) (collectively, the "Access Laws"); provided, however, in the case where a tenant of the Mortgaged Property is required to ensure that the Mortgaged Property complies with all applicable Access Laws and such tenant is in bankruptcy, Mortgagor shall cause such tenant to the extent required pursuant to such tenant's Lease and as may be permitted by the applicable bankruptcy court to perform all work necessary to ensure that the Mortgaged Property complies with all applicable Access Laws.

(b) Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Mortgaged Property, Mortgagor shall not alter the Mortgaged Property in any manner which would materially increase Mortgagor's responsibilities for compliance with the applicable Access Laws except to the extent obligated to do so under an existing lease without the prior written approval of Mortgagee which approval shall not unreasonably be withheld provided that Mortgagor can demonstrate the availability of funding sources adequate to comply with

such requirements. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt from Mortgagor of a certificate of Access Law compliance from an architect, engineer, or other person reasonably acceptable to Mortgagee or other reasonably satisfactory evidence of compliance. Provided Mortgagor has delivered to Mortgagee the certificate described in, or otherwise complied with the provisions of, the foregoing sentence, approval by Mortgagee of tenant improvements as part of the approval of a new Lease shall also constitute approval of Mortgagor's compliance with Access Laws applicable to such improvements.

(c) Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violations of any Access Laws received from governmental authorities or involving a threat of litigation and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

(d) Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of any failure of the Mortgaged Property to comply with any Access Laws.

30. Notice. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by facsimile transmission, addressed if to Mortgagee at its address set forth on the first page hereof, Attention: Harry Kramer with a copy to Latham & Watkins, 885 Third Avenue, New York, New York 10022, Attention: Brian Krisberg, Esq., and if to Mortgagee at its address set forth on the first page hereof with copies to the following:

(i) Angelo, Gordon & Co.  
245 Park Avenue  
New York, New York 10167  
Attention: Matthew Khoury

and

(ii) The Baupost Group  
44 Brathe Street  
Boston, MA 02138  
Attention: Sam Plimpton  
Venkat Venkatraman

and

(iii) Greenberg Traurig, LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Joseph Kishel, Esq.

and



(iv) Ropes & Gray  
1 International Place  
Boston, MA 02110  
Attention: Walter McCabe, Esq.

and

(v) Duval & Stachenfeld, LLP  
300 East 42nd Street, 3rd Floor  
New York, New York 10017  
Attention: Bruce Stachenfeld, Esq.  
Craig Brown, Esq.

or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 30. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or three Business Days after mailing; or in the case of expedited prepaid delivery and facsimile transmission, on the Business Day after the same was sent. A party receiving a notice which does not comply with the technical requirements for notice under this Section 30 may elect to waive any deficiencies and treat the notice as having been properly given.

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

32. Remedies of Mortgagor. In the event that a claim or adjudication is made that Mortgagee or its agents have unreasonably delayed acting in any case where by law or under this Mortgage or the other Loan Documents or the Guaranty, Mortgagee or such agent, as the case may be, has an obligation to act promptly, Mortgagor agrees that neither Mortgagee nor its agents shall be liable for any monetary damages, and Mortgagor's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment.

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

34. Non-Waiver. The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's Obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Obligations or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of this Mortgage or the other Loan Documents. Mortgagee may



resort for the payment of the Obligations to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

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

36. Successors and Assigns. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Mortgaged Property and to the provisions of the Loan Agreement with respect to assignments of the Loan by Mortgagee, if any, this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

37. Severability. If any term, covenant or condition of this Mortgage or the Loan Documents or the Guaranty is held to be invalid, illegal or unenforceable in any respect, this Mortgage and any such other Loan Document or the Guaranty shall be construed without such provision.

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

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

40. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein and the words "attorneys' fees" shall include any and all reasonable attorneys' fees, paralegal and law clerk fees (including, without limitation, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder). Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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

42. Assignments. Consistent with and subject to the applicable provisions of the Loan Agreement, Mortgagee shall have the right to assign or transfer its rights under this Mortgage. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

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

44. GOVERNING LAW. THE LOAN AGREEMENT AND THE NOTE PROVIDE THAT THEY ARE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THIS MORTGAGE SHALL ALSO BE CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. NOTWITHSTANDING THE PARTIES' CHOICE OF NEW YORK LAW, HOWEVER, (I) THE TERMS AND PROVISIONS OF THIS MORTGAGE PERTAINING TO THE PRIORITY, ENFORCEMENT OR REALIZATION BY MORTGAGEE OF ITS RESPECTIVE RIGHTS AND REMEDIES UNDER THIS MORTGAGE WITH RESPECT TO THE MORTGAGED PROPERTY SHALL BE GOVERNED AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAW OF THE STATE IN WHICH THE LAND IS LOCATED (THE "STATE") WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF THE STATE; (II) MORTGAGOR AGREES THAT TO THE EXTENT DEFICIENCY JUDGMENTS ARE AVAILABLE UNDER THE LAWS OF THE STATE AFTER A FORECLOSURE (JUDICIAL OR NONJUDICIAL) OF THE MORTGAGED PROPERTY, OR ANY PORTION THEREOF, OR ANY OTHER REALIZATION THEREON BY MORTGAGEE, MORTGAGEE SHALL HAVE THE RIGHT TO SEEK SUCH A DEFICIENCY JUDGMENT AGAINST MORTGAGOR IN THE STATE (SUBJECT TO THE TERMS AND PROVISIONS OF SECTION 8.24 OF THE LOAN AGREEMENT); AND (III) MORTGAGOR AGREES THAT IF MORTGAGEE OBTAINS A DEFICIENCY JUDGMENT IN ANOTHER STATE, THEN MORTGAGEE SHALL HAVE THE RIGHT TO ENFORCE SUCH JUDGMENT IN THE STATE TO THE EXTENT PERMITTED UNDER THE LAWS OF THE STATE, AS WELL AS IN OTHER STATES (SUBJECT TO THE TERMS AND PROVISIONS OF SECTION 8.24 OF THE LOAN AGREEMENT).

45. SUBMISSION TO JURISDICTION. MORTGAGOR HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND OF ANY NEW YORK STATE COURT SITTING IN NEW YORK CITY FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS MORTGAGE, ANY OF THE OTHER LOAN DOCUMENTS TO WHICH IT IS A PARTY OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. MORTGAGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM



THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

46. Non-Recourse. The provisions of this Mortgage are, notwithstanding anything to the contrary herein, subject to the provisions of Section 8.24 of the Loan Agreement which are incorporated herein by reference as if herein set forth in full.

47. Second Lien Status. Anything contained in this Mortgage to the contrary notwithstanding, Mortgagor and Mortgagee acknowledge and agree that so long as the Mortgage, Security Agreement and Assignment of Leases, made by Mortgagor to Mortgagee and intended to be recorded prior to the recordation hereof encumbering the Mortgaged Property, together with all amendments, modifications, and supplements thereto (the "Senior Mortgage") has not been terminated or released of record, this Mortgage shall be subject and subordinate to the lien and the terms and provisions of the Senior Mortgage.

48. Subordination to the Senior Mortgage. Notwithstanding anything to the contrary contained in this Mortgage, all of the terms, covenants and provisions of this Mortgage shall be subject and subordinate to the terms and provisions of the Senior Mortgage and the rights of the holder thereunder. In the event of any conflict or inconsistency between the terms and provisions of this Mortgage and the Senior Mortgage, the terms and provisions of the Senior Mortgage shall govern.

49. Facility Lease Provision. Notwithstanding anything to the contrary contained in this Mortgage, pursuant to that certain facility lease described on Exhibit B attached hereto (the "Facility Lease") relating to the property described therein (the "Leased Property"), the lessee thereunder ("Lessee") shall have the right to prepay any amounts due hereunder without regard to whether such prepayment would be subject to a prepayment penalty. This Mortgage is subject to the rights of Lessee under the Facility Lease, including the rights, if any, of Lessee to acquire the Leased Property pursuant to the provisions of the Facility Lease; provided, however, that Lessee's right of option to purchase the Leased Property shall not be applicable upon a foreclosure sale or transfer in lieu thereof; provided, further, that any such purchaser or transferee (a) shall take title subject to Lessee's rights to acquire the Leased Property pursuant to Article 32 of the Facility Lease, (b) shall agree to give Lessee the same notice, if any, given to Lessor of any default or acceleration of any obligation pursuant to this Mortgage or any sale in foreclosure in accordance with the terms and provisions of this Mortgage, and (c) shall agree to permit Lessee to appear by its representative and to bid at any sale in foreclosure made with respect to this Mortgage.

[Signature Page to Follow]

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


MORTGAGOR:

**THCI COMPANY LLC**, a Delaware limited liability company,  
(f/k/a New Meditrust Company LLC)

By: **THCI Holding Company LLC**, a Delaware limited liability company  
Its Managing Member

By: **Care Realty, L.L.C.**, a Delaware limited liability company  
Its Managing Member


By: **Care Ventures, Inc.**, a Delaware corporation  
Its Asset Manager

By:   
Warren D. Cole  
COO and Executive Vice President



STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF NEW YORK                )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Warren D. Cole, whose name as of COO and Executive Vice President of Care Ventures, Inc., a Delaware corporation, as Asset Manager of Care Realty, L.L.C. , a Delaware limited liability company, as Managing Member of TCHI Holding Company LLC, a Delaware limited liability company, as Managing Member of of TCHI Company LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacities as aforesaid, for and as the act of said company. Given under my hand and official seal this 30<sup>th</sup> day of March , 2001.

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

[Notarial Seal] My Commission Expires: \_\_\_\_\_

LOIS M. LAZZARINO  
Notary Public, State of New York  
No. 01LA4756058  
Qualified in New York County  
Commission Expires 01/31/20 03

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Commence at the Southeast corner of the West 1/2 of the Southeast 1/4 of the Northwest 1/4 of Section 35, Township 20 South, Range 3 West; thence run North along the East line of said West 1/2 of the Southeast 1/4 of the Northwest 1/4 of said Section 35 for a distance of 342.79 feet to the point of beginning; from the point of beginning thus obtained, continue North along last described course for a distance of 821.63 feet; thence turn an angle to the left of 94°03'50" and run in a Southwesterly direction for a distance of 593.37 feet; thence turn an angle to the left of 90°42'10" and run in a Southeasterly direction along the East right of way line of Shelby County Highway No. 95 for a distance of 484.46 feet to the point of beginning of a curve to the right, said curve having a central angle of 2°08' and a radius of 7679.28 feet; thence run along the arc of said curve and the East right of way line of Shelby County Highway No. 95 for a distance of 285.93 feet; thence turn an angle to the left of 86°08' from the tangent of last described course and run in an Easterly direction for a distance of 533.30 feet to the point of beginning. Being situated in Shelby County, Alabama.



Property Number 38  
Alabaster, AL

EXHIBIT B

Facility Lease and Security Agreement dated August 13, 1987 by and between Meditrust of Alabama, Inc. and Briarcliff Nursing Home, Inc. regarding the premises known as Briarcliff Nursing Home, Alabaster, Alabama, as amended by that certain First Amendment of Lease dated December 30, 1987 by and between Meditrust of Alabama, Inc. and Briarcliff Nursing Home, Inc., a Second Amendment of Lease Agreement (undated) by and between Meditrust of Alabama, Inc. and Briarcliff Nursing Home, Inc., a Third Amendment of Facility Lease and Security Agreement dated as of October 29, 1992 and that certain Lease Modification Agreement made as of April 30, 1993 by and among Meditrust, Meditrust of Missouri, Inc., Meditrust of Alabama, Inc., Treemont of Dallas Limited, Meditrust of Michigan, Inc., Meditrust at Alpine, Inc., Meditrust of Ohio, Inc. and Meditrust at Mountainview, Inc., as lessor, and Integrated Health Services of Somerset Valley, Inc., Integrated Health Services of Cliff Manor, Inc., Briarcliff Nursing Home, Inc., Cambridge Group, Inc., Integrated Health Services of Riverbend, Inc., Alpine Manor, Inc., Elm Creek of IHS, Inc., Spring Creek of IHS, Inc., Carriage-By-The Lake of IHS, Inc., Firelands of IHS, Inc. and Integrated Health Group., as lessees, among others.

Inst # 2001-17416

05/03/2001-17416  
09:18 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE

027 CJ1 1018.55

04/05/01 20:17