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STATE OF INDIANA
LAKE COUNTY
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MORRIS W. CARTER
RECORDER

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MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

KNOW ALL PERSONS BY THESE PRESENTS:

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of May 31, 2004 by K2 Industrial Services, Inc., a corporation duly organized and validly existing under the laws of Delaware and having an office at 414 North Orleans, Suite 202, Chicago, IL 60610 (the "Obligor"), in favor of Wells Fargo Foothill, Inc., a California corporation having an office at One Boston Place, Boston, Massachusetts 02108, as administrative agent for the lenders referred to below (in such capacity, together with its successors in such capacity, the "Agent").

NOT OFFICIAL!

This Document is the property of
the Lake County Recorder!

WITNESSETH.

WHEREAS, the Obligor, other borrowers party thereto (such parties, including the Obligor being collectively referred to herein as "Borrowers"), certain lenders (collectively, the "Lenders") and the Agent are parties to an Amended and Restated Loan and Security Agreement dated as of January 8, 2004 (said Amended and Restated Loan and Security Agreement, as modified and supplemented and in effect from time to time, being herein called the "Loan and Security Agreement"; except as otherwise herein expressly provided, all terms defined in the Loan and Security Agreement being used herein as defined therein), which Loan and Security Agreement provides for extensions of credit (by making of loans and issuing letters of credit) to be made by the Lenders to the Borrowers in an aggregate principal or face amount not exceeding \$14,000,000;

WHEREAS, the Obligor may from time to time be obligated to pay to one or more of the Lenders (each, a "Bank Product Provider") in respect of one or more Bank Product Obligations;

WHEREAS, the Obligor may from time to time be obligated to one or more of the Lenders (each, a "Letter of Credit Lender") in respect of one or more letters of credit issued by such Lenders for account of the Obligor as permitted by Section 2.12 of the Loan and Security Agreement (such obligations being herein referred to as the "Reimbursement Obligations");

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WHEREAS, the Obligor may from time to time be obligated to one or more of the Lenders (each, a “**Swing Lender**”) in respect of certain indebtedness of the Obligor as permitted by Section 2.3(d) of the Loan and Security Agreement (such obligations being herein referred to as the “**Swing Loan Obligations**”);

WHEREAS, the Obligor may from time to time be obligated to the Agent in respect of certain Agent Advances as permitted by Section 2.3(e) of the Loan and Security Agreement (such obligations being herein referred to as the “**Agent Advances Obligations**”);

WHEREAS, pursuant to Section 2.15 of the Loan and Security Agreement, the Obligor is jointly and severally liable with the other Borrowers with respect to the Loan Documents (as defined in the Loan and Security Agreement) (such obligations being herein referred to as the “**Guarantee Obligations**”);

WHEREAS, it is a condition to the obligation of the Lenders to extend credit to the Obligor pursuant to the Loan and Security Agreement that the Obligor execute and deliver this Security Instrument;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and FOR THE PURPOSE OF SECURING the following (collectively, the “**Obligations**”):

- (a) the payment of all indebtedness under the Loan and Security Agreement (including the “**Obligations**” as defined in the Loan and Security Agreement), including the initial extensions of credit and any and all reborrowings, future advances and readvances thereunder and modifications, extensions, substitutions, exchanges and renewals of the Loan and Security Agreement (each of which reborrowings, future advances, readvances, modifications, extensions, substitutions, exchanges and renewals shall enjoy the same priority as the initial extensions of credit thereunder),
- (b) the obligations of the Obligor to the Bank Product Providers constituting Bank Product Obligations,
- (c) the obligations of the Obligor to the Letter of Credit Lenders constituting the Reimbursement Obligations,
- (d) the obligations of the Obligor to the Swing Lenders constituting the Swing Loan Obligations,
- (e) the obligations of the Obligor to the Agent constituting the Agent Advances Obligations,
- (f) the obligations of the Obligor to the Lenders constituting Guarantee Obligations,
- (g) the performance and payment of the covenants, agreements and obligations hereinafter contained and all other monies secured hereby, including, without

limitation, any and all sums expended by the Agent pursuant to Section 1.12 of this Security Instrument, together with interest thereon, and

(h) the payment of all other obligations of the Obligor to the Lenders under the Loan and Security Agreement,

the Obligor hereby irrevocably grants, bargains, sells, releases, conveys, warrants, assigns, transfers, mortgages, pledges, sets over and confirms unto the Agent, under and subject to the terms and conditions hereinafter set forth the lands and premises (collectively, the "Properties") more particularly described in Schedule A attached hereto and by this reference incorporated herein;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, that the Obligor now has or may hereafter acquire in (a) the Properties, (b) all easements, rights of way and rights used in connection therewith or as a means of access thereto and (c) all tenements, hereditaments and appurtenances in any manner belonging, relating or appertaining thereto (all of the foregoing interests, estates and other claims being hereinafter collectively called "Easements and Rights of Way"); and

TOGETHER WITH all estate, right, title and interest of the Obligor, now owned or hereafter acquired, in and to any land lying within the right of way of any streets, open or proposed, adjoining the Properties, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection therewith (all of the foregoing estate, right, title and interest being hereinafter called "Adjacent Rights"); and

TOGETHER WITH all estate, right, title and interest of the Obligor, now owned or hereafter acquired, in and to any and all buildings and other improvements now or hereafter located on the Properties and all building materials, building equipment and fixtures of every kind and nature located on the Properties or, attached to, contained in or used in any such buildings and other improvements, and all appurtenances and additions thereto and betterments, substitutions and replacements thereof (all of the foregoing estate, right, title and interest being hereinafter collectively called, "Improvements"); and

TOGETHER WITH all estate, right, title and interest of the Obligor in and to all such tangible property now owned or hereafter acquired by the Obligor (including all machinery, apparatus, equipment, fittings and articles of personal property) and now or hereafter located on or at or attached to the Properties that an interest in such tangible property arises under applicable real estate law, and any and all products and accessions to any such property that may exist at any time (all of the foregoing estate, right, title and interest, and products and accessions, being hereinafter called "Fixtures"); and

TOGETHER WITH all estate, right, title and interest of the Obligor in and to all rights, royalties and profits in connection with all minerals, oil and gas and other hydrocarbon substances on or in the Properties, development rights or credits, air rights, water, water rights (whether riparian, appropriative, or otherwise and whether or not appurtenant) and water stock (all of the foregoing estate, right, title and interest being hereinafter collectively called "Mineral and Related Rights"); and

TOGETHER WITH all reversion or reversions and remainder or remainders of the Properties and Improvements and all estate, right, title and interest of the Obligor in and to any and all present and future leases of space in or of all of any portion of the Properties and Improvements (all of the foregoing present and future leases of space in or of all of any portion of the Properties and Improvements being herein after collectively called "**Leases**"), and all rents, revenues, proceeds, issues, profits, royalties income and other benefits now or hereafter derived from the Properties, the Improvements and the Fixtures, and all right title and interest of the Obligor in and to cash or security deposits thereunder, subject to the right, power and authority hereinafter given to the Obligor to collect and apply the same (all of the foregoing reversions, remainders, leases of space, rents, revenues, proceeds, issues, profits, royalties, income and other benefits being hereinafter collectively called "**Rents**"); and

TOGETHER WITH all estate, right, title and interest and other claim or demand that the Obligor now has or may hereafter acquire with respect to any damage to the Properties, the Improvements or the Fixtures and any and all proceeds of insurance in effect with respect to the Improvements or the Fixtures, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the Properties, the Improvements or the Fixtures, including without limitation any awards resulting from a change of grade of streets or as the result of any other damage to the Properties, the Improvements or the Fixtures for which compensation shall be given by any governmental authority (all of the foregoing estate, right, title and interest and other claims or demand, and any such proceeds or awards, being hereinafter collectively, called "**Damage Rights**"); and

TOGETHER WITH all the estate, right, title, interest and other claim of the Obligor with respect to any parking facilities located other than on the Properties and used or intended to be used in connection with the operation, ownership or use of the Properties, any and all replacements and substitutions for the same, and any other parking rights, easements, covenants and other interests in parking facilities acquired by the Obligor for the use of tenants or occupants of the Improvements (all of the foregoing estate, right, title, interest and other claim being hereinafter collectively called "**Parking Rights**"); and

TOGETHER WITH all estate, right, title and interest of the Obligor in respect of any and all air rights, development rights, zoning rights or other similar rights or interests that benefit or are appurtenant to the Properties or the Improvements (all of the foregoing estate, right, title and interest being hereinafter collectively called "**Air and Development Rights**");

All of the foregoing Easements and Rights of Way, Adjacent Rights, Improvements, Fixtures, Minerals and Related Rights, Leases, Rents, Damage Rights, Parking Rights and Air and Development Rights being sometimes hereinafter referred to collectively as the "**Ancillary Rights and Properties**" and the Properties and Ancillary Rights and Properties being sometimes hereinafter referred to collectively as the "**Mortgage Estate**";

TO HAVE AND TO HOLD the Mortgage Estate with all privileges and appurtenances thereunto belonging, to the Agent and its successors and assigns, forever, upon the terms and conditions and for the uses hereinafter set forth;

PROVIDED ALWAYS, that if the principal of and interest on the extensions of credit under the Loan and Security Agreement and all of the other Obligations shall be paid in full, and the Obligor shall abide by and comply with each and every covenant contained herein and in the Loan and Security Agreement, then this Security Instrument and the estate hereby granted shall cease, terminate and become void.

TO PROTECT THE SECURITY OF THIS SECURITY INSTRUMENT, THE OBLIGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1

Particular Covenants and Agreements of the Obligor

1.01 **Payment of Secured Obligations.** The Obligor shall pay when due the principal of, and the interest on, the indebtedness under the Loan and Security Agreement, charges, fees and all other Obligations as provided in the Loan and Security Agreement, and the principal of, and the interest on, any future advances secured by this Security Instrument.

1.02 **Title, Etc.** The Obligor represents and warrants that it has good and marketable fee simple title in and to the Properties, and the related Ancillary Rights and Properties, in each case subject to no mortgage, deed of trust, lien, pledge, charge, security interest or other encumbrance or adverse claim of any nature, except those listed as exceptions to title in the title policy insuring the lien or estate created by this Security Instrument.

The Obligor represents and warrants that it has the full power and lawful authority to grant, bargain, sell, release, convey, warrant, assign, transfer, mortgage, pledge, set over and confirm unto the Agent the Mortgage Estate as hereinabove provided and warrants that it will forever defend the title to the Mortgage Estate and the validity and priority of the lien or estate hereof against the claims and demands of all persons whomsoever.

1.03 **Further Assurances; Filing; Re Filing; Etc.**

(a) **Further Instruments.** The Obligor shall execute, acknowledge and deliver, from time to time, such further instruments as the Agent may require to accomplish the purposes of this Security Instrument.

(b) **Filing and Refiling.** The Obligor, immediately upon the execution and delivery of this Security Instrument, and thereafter from time to time, shall cause this Security Instrument, any security agreement or mortgage supplemental hereto and each instrument of further assurance to be filed, registered or recorded and refiled, re registered or re 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 perfect the lien or estate of this Security Instrument upon the Mortgage Estate.

(c) **Fees and Expenses.** The Obligor shall pay all filing, registration and recording fees, all refiling, re registration and re recording fees, and all expenses incident to the

execution, filing, recording and acknowledgment of this Security Instrument, any security agreement or mortgage supplemental hereto and any instrument of further assurance, and all Federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing and recording of this Security Instrument or any of the other Loan Documents, any security agreement or mortgage supplemental hereto or any instruments of further assurance.

1.04 **Liens.** Except as otherwise provided in Section 7.2 of the Loan and Security Agreement, but without limiting the obligations of the Obligor under Section 1.07 of this Security Instrument, the Obligor shall not create or suffer to be created any mortgage, deed of trust, lien, security interest, charge or encumbrance upon the Mortgage Estate prior to, on a parity with, or subordinate to the lien of this Security Instrument. The Obligor shall pay and promptly discharge at the Obligor's cost and expense, any such mortgages, deeds of trust, liens, security interests, charges or encumbrances upon the Mortgage Estate or any portion thereof or interest therein.

1.05 **Insurance.** The Obligor shall purchase and maintain in full force and effect policies of insurance in such form and amounts, covering such risks, and issued by such companies, in each case in the manner and to the extent required pursuant to Section 6.8 of Loan and Security Agreement and shall cause each of such policies to name the Agent as loss payee (to the extent covering risk of loss or damage to tangible property) and as an additional named insured as their interests may appear (to the extent covering any other risk) in the manner and to the extent specified in said Section 6.8. The Obligor expressly assumes all risk of loss, including a decrease in the use, enjoyment or value of the Mortgage Estate from any fire or other casualty whatsoever, whether or not insurable or insured against.

1.06 **Casualty and Condemnation Events.**

(a) **Casualty and Condemnation.** Should the Mortgage Estate or any part thereof be taken or damaged by reason of any fire or other casualty (collectively, a "**Casualty**"), or by reason of any public improvement or condemnation proceeding (collectively, a "**Condemnation**") or should the Obligor receive any notice or other information regarding any such proceeding, the Obligor shall give prompt notice thereof to the Agent (the Mortgage Estate so affected being hereinafter referred to as the "**Affected Property**"). The Agent shall, subject to the further terms and conditions of this Security Instrument, be entitled to receive all insurance or other amounts payable as a result of any such Casualty (collectively, the "**Casualty Proceeds**"), and all compensation, awards, damages and other payments or relief arising out of any such condemnation or any part thereof (collectively, "**Condemnation Proceeds**"; and together with the Casualty Proceeds, the "**Proceeds**"), and all such insurance and other amounts, and compensation, awards, damages and other payments or relief, together with all rights and causes of action relating thereto or arising out of any such Casualty or Condemnation, are hereby assigned to the Agent. The Obligor shall execute such further assignments of the Casualty Proceeds and Condemnation Proceeds as the Agent may from time to time require.

(b) **Restoration Account.** Following the occurrence of any Casualty or Condemnation involving the Mortgage Estate or any part thereof resulting in a loss in excess of \$50,000, the Obligor shall give prompt notice thereof to the Agent and shall cause all Casualty or

Condemnation Proceeds, as the case may be, to be paid to the Agent as additional collateral security hereunder subject to the lien of this Security Instrument. Upon receipt by the Agent of any such proceeds (including, without limitation, any Casualty Proceeds payable directly to the Agent as loss payee under the respective policies maintained pursuant to Section 1.05), the Agent shall deposit the same into a cash collateral account (the "**Restoration Account**") in the name and under the control of the Agent. The balance from time to time in the Restoration Account shall constitute part of the Mortgage Estate hereunder and shall not constitute payment of the Obligations until applied as hereinafter provided.

(c) Application of Proceeds. Any monies received as payment for any loss under any insurance policy mentioned above (other than liability insurance policies) or as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid over to the Agent to be applied in accordance with Section 6.8 of the Loan and Security Agreement.

If the Obligor elects to so restore and repair the Affected Property, any amounts (and any earnings thereon) held in the Restoration Account shall, subject to the rights of the lessors under the Leases, be applied by the Agent to the restoration and repair of the Affected Property and advanced to the Obligor in periodic installments upon compliance by the Obligor with such reasonable conditions to disbursement as may be imposed by the Agent, including, but not limited to, reasonable retention amounts and receipt of lien releases.

Anything in this Section 1.06 to the contrary notwithstanding, the Agent shall have no obligation to release any amounts held in the Restoration Account to the Obligor for restoration or repair of the Affected Property if a Default (as defined in Section 4.01 of this Security Instrument), or any event that with lapse of time or with notice and lapse of time would become a Default, has occurred and is continuing. If a Default, or any event that with lapse of time or with notice and lapse of time would become a Default, has occurred and is continuing, the Agent may, in its sole discretion, subject to the rights of the lessors under the Leases, apply any Casualty or Condemnation Proceeds either: (A) to the payment of the Obligations as provided in paragraph (a) of Section 4.03 of this Security Instrument or (B) to the restoration or repair of the Affected Property; provided, however, that if the Agent requires such proceeds to be applied to the restoration or repair of the Affected Property, the Agent will advance to the Obligor in accordance with the foregoing provisions of this Section 1.06(c), the Casualty and Condemnation Proceeds, less such amounts that may have been expended by the Agent to effectuate any cure of such Default. All Casualty or Condemnation Proceeds remaining after the payment for restoration and repair of the Affected Property pursuant to this Section 1.06(c) may, at the option of the Agent, subject to the rights of the lessors under the Leases, be applied to the prepayment of the loans or other indebtedness constituting the Obligations hereunder in the manner and to the extent specified in Section 6.8 of the Loan and Security Agreement.

(d) Compromise, Adjustment or Settlement. The Agent shall, subject to the rights of the lessors under the Leases, be entitled at its option to participate in any compromise, adjustment or settlement in connection with any claims for loss, damage or destruction under any policy or policies of insurance, in excess of \$100,000, and the Obligor shall within five Business Days after request therefor reimburse the Agent for all out of pocket expenses (including reasonable attorneys' fees and disbursements) incurred by the Agent in connection with such

participation. The Obligor shall not make any compromise, adjustment or settlement in connection with any such claim without the approval of the Agent.

(e) Foreclosure, Etc. In the event of foreclosure of the lien of this Security Instrument or other transfer of title or assignment of the Mortgage Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of the Obligor in and to all policies of casualty insurance covering all or any part of the Mortgage Estate shall inure to the benefit of and pass to the successors in interest to the Obligor or the purchaser or grantee of the Mortgage Estate or any part thereof.

1.07 Impositions.

(a) Payment of Impositions. Except to the extent otherwise permitted under Section 6.7 of the Loan and Security Agreement, the Obligor shall pay or cause to be paid, before any fine, penalty, interest or cost attaches thereto, all taxes, assessments, water and sewer rates, utility charges and all other governmental or nongovernmental charges or levies now or hereafter assessed or levied against any part of the Mortgage Estate (including, without limitation, nongovernmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Mortgage Estate) or upon the lien or estate of the Agent therein (collectively, "**Impositions**"), as well as all claims for labor, materials or supplies that, if unpaid, might by law become a prior lien thereon, and within ten (10) days after request by the Agent will exhibit receipts showing payment of any of the foregoing; provided, however, that if by law any such Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), the Obligor may pay the same in installments (together with accrued interest on the unpaid balance thereof) as the same respectively become due, before any fine, penalty or cost attaches thereto.

(b) Right to Contest Impositions. To the extent not inconsistent with the provisions of the Loan and Security Agreement governing a Permitted Protest (as defined therein), the Obligor at its expense may, after prior notice to the Agent, contest by appropriate legal, administrative or other proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien therefor or any claims of mechanics, materialmen, suppliers or vendors or lien thereof, and may withhold payment of the same pending such proceedings if permitted by law, so long as (i) in the case of any Impositions or lien therefor or any claims of mechanics, materialmen, suppliers or vendors or lien thereof, such proceedings shall suspend the collection thereof from the Mortgage Estate, (ii) neither the Mortgage Estate nor any part thereof or interest therein will be sold, forfeited or lost if the Obligor pays the amount or satisfies the condition being contested, and the Obligor would have the opportunity to do so, in the event of the Obligor's failure to prevail in the contest, (iii) neither the Agent nor any of the Lenders would, by virtue of such permitted contest, be exposed to any risk of any civil liability for which the Obligor has not furnished additional security as provided in clause (iv) below, or to any risk of criminal liability, and neither the Mortgage Estate nor any interest therein would be subject to the imposition of any lien for which the Obligor has not furnished additional security as provided in clause (iv) below, as a result of the failure to comply with such law or of such proceeding and (iv) the Obligor shall have furnished to the Agent additional security in respect of the claim being contested or the loss or

damage that may result from the Obligor's failure to prevail in such contest in such amount as may be reasonably requested by the Agent.

1.08 Maintenance of the Improvements and Fixtures. The Obligor shall not permit the Improvements or Fixtures to be removed or demolished (provided, however, that, subject to the provisions of Section 6.6 of the Loan and Security Agreement, the Obligor may remove or alter such Improvements and Fixtures that become obsolete in the usual conduct of the Obligor's business and the removal or alteration of which do not materially detract from the operation of the Obligor's business); shall maintain the Mortgage Estate in good repair, working order and condition, except for reasonable wear and use; and shall restore and repair the Improvements and Fixtures or any part thereof now or hereafter affected by any Casualty or Condemnation.

1.09 Compliance With Laws.

(a) Representation. The Obligor represents and warrants that, except as otherwise previously disclosed in writing to the Agent (and except for the matters described in paragraph (b) of this Section 1.09, as to which the provisions of said paragraph (b) shall apply), to the best of Obligor's knowledge, the Obligor and its operations at the Properties currently comply in all material respects with all laws, ordinances, orders, rules and regulations of all Federal, state, and local governments and of the appropriate departments, commissions, boards and offices thereof, and the orders, rules and regulations of the American Insurance Association or any other body now exercising similar functions, that are applicable to the Mortgage Estate.

(b) Compliance with Environmental Laws. The Obligor hereby confirms he representations and warranties set forth in Section 5.14 of the Loan and Security Agreement (relating to compliance by the Obligor with applicable Environmental Laws) insofar as such representations and warranties apply to the Mortgage Estate.

(c) Notification of Notices and Orders. The Obligor shall notify the Agent promptly of any notice or order that the Obligor receives from any agency or instrumentality of the Federal, or any state or local, government with respect to the Obligor's compliance with any laws or regulations referred to in this Section 1.09 and promptly take any and all actions necessary to bring its operations at the Properties into substantial compliance with such laws or regulations (and shall comply in all material respects with the requirements of such laws or regulations that at any time are applicable to its operations at the Properties) all to the extent required under the applicable provisions of the Loan and Security Agreement; provided, that to the extent not inconsistent with the provisions of the Loan and Security Agreement governing a Permitted Protest, the Obligor at its expense may, after prior notice to the Agent, contest by appropriate legal, administrative or other proceedings conducted in good faith and with due diligence, the validity or application, in whole or in part, of any such laws or regulations so long as (i) neither the Mortgage Estate nor any part thereof or any interest therein, will be sold, forfeited or lost if the Obligor pays the amount or satisfies the condition being contested, and the Obligor would have the opportunity to do so, in the event of the Obligor's failure to prevail in the contest, (ii) neither the Agent nor any of the Lenders would, by virtue of such permitted contest, be exposed to any risk of any civil liability for which the Obligor has not furnished additional security as provided in clause (iii) below, or to any risk of criminal liability, and

neither the Mortgage Estate nor any interest therein would be subject to the imposition of any lien for which the Obligor has not furnished additional security as provided in clause (iii) below as a result of the failure to comply with such law or of such proceeding and (iii) the Obligor shall have furnished to the Agent additional security in respect of the claim being contested or the loss or damage that may result from the Obligor's failure to prevail in such contest in such amount as may be reasonably requested by the Agent.

(d) Right to Cure Non-Compliance with Environmental Laws. The Agent, at its election and in its sole discretion may, without obligation to do so, and upon notice to the Obligor (except in an emergency), cure any failure on the part of the Obligor to comply with any laws or regulations referred to in this Section 1.09, and without limitation, may take any of the following actions:

(i) arrange for the prevention of any Release or threat of Release of Hazardous Materials at any of the Properties, and pay any costs associated with such prevention;

(ii) arrange for the removal or remediation of Hazardous Materials that may be Released or result from a Release at any of the Properties, and pay any costs associated with such removal and/or remediation;

(iii) pay, on behalf of the Obligor, any costs, fines or penalties imposed on the Obligor by the Federal, or any state or local, government or any representative thereof in connection with such Release or threat of Release of Hazardous Materials; or

(iv) make any other payment or perform any other act that will prevent a lien in favor of any governmental agency from attaching to any of the Properties or the Mortgage Estate.

Any partial exercise by the Agent of the remedies hereinafter set forth, or any partial undertaking on the part of the Agent to cure the Obligor's failure to comply with such laws or regulations, shall not obligate the Agent to complete the actions taken or require the Agent to expend further sums to cure the Obligor's noncompliance; nor shall the exercise of any such remedies operate to place upon the Agent any responsibility for the operation, control, care, management or repair of any of the Properties or make the Agent the "operator" of any of the Properties within the meaning of any Environmental Laws. Any amount paid or costs incurred by the Agent as a result of the exercise by the Agent of any of the rights hereinabove set forth, together with interest thereon at the default rate set forth in Section 2.6(c) of the Loan and Security Agreement (the "Post-Default Rate"), shall be immediately due and payable by the Obligor to the Agent upon demand, and until paid shall be added to and become a part of the Obligations secured hereby; and the Agent, by making any such payment or incurring any such costs, shall be subrogated to any rights of the Obligor to seek reimbursement from any third parties, including, without limitation, a predecessor in interest to the Obligor's title who may be a "responsible party" or otherwise liable under any Environmental Law in connection with any such Release or threat of Release of Hazardous Materials.

As used herein, “**Release**” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including, without limitation the movement of Hazardous Materials through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

(e) **Environmental Survey and Risk Assessment.** If after the occurrence and during the continuance of any Default the Agent desires that an environmental survey and risk assessment with respect to any of the Properties be prepared, the Obligor agrees to supply such a survey and risk assessment by an independent engineering firm selected by the Obligor and satisfactory to the Agent, in form and detail satisfactory to the Agent (including test borings of the ground and chemical analyses of air, water and waste discharges), estimating current liabilities and assessing potential sources of future liabilities of the Obligor or any other owner or operator of the Properties under applicable Environmental Laws.

(f) **Indemnity.** Without limiting the provisions of Section 11.3 of the Loan and Security Agreement, the Obligor shall indemnify and hold the Agent and the Lenders harmless from and against any and all losses, liabilities, claims, damages or expenses (including any lien filed against the Properties or any part of the Mortgage Estate in favor of any governmental entity, but excluding any loss, liability, claim, damage or expense incurred by reason of the gross negligence or willful misconduct of the person to be indemnified) arising under any Environmental Law as a result of the past, present or future operations of the Obligor (or any predecessor in interest to the Obligor), or the past, present or future condition of any of the Properties, or any Release or threatened Release of any Hazardous Materials from any of the Properties, excluding any such Release or threatened Release that shall occur during any period when the Agent or any of the Lenders shall be in possession of any of the Properties following the exercise by the Agent of any of its rights and remedies hereunder, but including any such Release or threatened Release occurring during such period that is a continuation of conditions previously in existence, or of practices employed by the Obligor, at any of the Properties.

1.10 **Limitations of Use.** The Obligor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of any of the Properties and the Improvements or any part thereof without the prior written consent of the Agent. The Obligor shall comply with the provisions of all leases, licenses, agreements and private covenants, conditions and restrictions that at any time are applicable to the Mortgage Estate.

1.11 **Inspection of the Properties.** The Obligor shall keep adequate records and books of account in accordance with generally accepted accounting principles consistently applied and shall permit the Agent and its authorized representatives to enter and inspect the Properties, to examine the records and books of account of the Obligor with respect thereto and make copies or extracts thereof, all at such reasonable times as may be requested by the Agent.

1.12 **Actions to Protect Mortgage Estate.** If the Obligor shall fail to (a) perform and observe any of the terms, covenants or conditions required to be performed or observed by it under any of the Leases, (b) effect the insurance required by Section 1.06 of this Security Instrument, (c) make the payments required by Section 1.07 of this Security Instrument or (d) perform or observe any of its other covenants or agreements hereunder, the Agent may,

without obligation to do so, and upon notice to the Obligor (except in an emergency) effect or pay the same. To the maximum extent permitted by law, all sums, including reasonable attorneys' fees and disbursements, so expended or expended to sustain the lien or estate of this Security Instrument or its priority, or to protect or enforce any of the rights hereunder, or to recover any of the Obligations, shall be a lien on the Mortgage Estate, shall be deemed to be added to the Obligations secured hereby, and shall be paid by the Obligor within 10 days after demand therefor, together with interest thereon at the Post-Default Rate.

1.13 Insurance and Condemnation Proceeds.

(a) Restoration Account. Any Casualty or Condemnation Proceeds, shall, as provided in Section 1.06 of this Security Instrument, be held by the Agent in the Restoration Account and any interest or other amounts, if any, actually earned on the balance held by the Agent in the Restoration Account shall be credited to the Restoration Account, for the benefit of the Obligor. So long as no Default shall have occurred and be continuing, at the written request of the Obligor, any monies held in the Restoration Account shall be invested or reinvested in such Permitted Investments (as defined in paragraph (b) of this Section 1.13) as the Obligor shall from time to time specify. Such Permitted Investments shall be held by the Agent pursuant to this Section 1.13; but, upon request of the Obligor, the Agent shall sell all or any designated part of the same and the proceeds of such sale shall be held by the Agent in the Restoration Account subject to the provisions hereof in the same manner as the cash used by it to purchase the Permitted Investments so sold. The Obligor agrees to pay the Agent, on demand, amounts equal to any loss resulting from any investment or reinvestment pursuant to this Section 1.13 (and any such payments made by the Obligor shall be deposited by the Agent into the Restoration Account), it being understood that the Agent shall not be liable or responsible for any such loss.

Notwithstanding anything herein or at law or in equity to the contrary, none of the Casualty Proceeds or Condemnation Proceeds paid to the Agent as herein provided, and none of the other amounts from time to time held in the Restoration Account, shall be deemed trust funds, and the Agent shall be entitled to advance amounts from time to time held in the Restoration Account to the Obligor, or to apply the same to the prepayment of the loans or other indebtedness constituting the Obligations hereunder, as provided in Section 1.06(c) of this Security Instrument.

(b) Permitted Investments. For purposes hereof, "Permitted Investments" means: (i) direct obligations of the United States of America, or of any agency thereof, or obligations guaranteed as to principal and interest by the United States of America or any agency thereof, in either case maturing not more than 90 days from the date of acquisition thereof; (ii) certificates of deposit issued by any bank or trust company organized under the laws of the United States of America or any State thereof and having capital, surplus and undivided profits of at least \$500,000,000, maturing not more than 90 days from the date of acquisition thereof; and (iii) commercial paper rated A 1 or better or P 1 by Standard & Poor's Ratings Services, a Division of The McGraw Hill Companies, Inc., or Moody's Investors Services, Inc., respectively, maturing not more than 90 days from the date of acquisition thereof.

1.14 **Leases.**

(a) **Leases Generally.** The Obligor, without the prior written consent of the Agent, shall not (i) cancel or terminate, or agree to cancel or terminate, any Leases; or (ii) execute any new Lease or Leases unless, in each case, such new lease(s) provides for rent and additional rent equal to or greater than the aggregate net rent and additional rent payable under the immediately preceding lease(s) of such space and for terms and conditions not materially less onerous than such previously existing lease; in the event a new or modified lease covers an area previously subject to more than one lease or a portion of a leased area the foregoing determinations shall be made on a proportionate basis; or (iii) modify any existing Lease to shorten the term thereof, decrease the amount of net rental or other sums due and payable thereunder or make materially less onerous the terms and conditions thereof except in connection with the execution of a new lease which complies with (ii) above; or (iv) execute any Lease of all or a substantial portion of any of the Properties except for actual occupancy by the lessee thereunder.

(b) **Performance by Obligor.** The Obligor will perform promptly all covenants, conditions and agreements contained in all Leases in all material respects and will take all reasonable steps to compel performance by each lessee under its lease.

(c) **Agent Not Bound.** The Agent shall not be bound by any payment of rent or additional rent for more than one (1) month in advance or by any amendment or modification of any Lease for any portion of the Properties.

(d) **Security Deposits.** All lease security deposits if any, pertaining to Leases shall be deposited with the Agent and maintained throughout the term of this Security Instrument in an account with the Agent.

(e) **Requests for Information.** The Obligor shall furnish to the Agent, within ten (10) days after a request by the Agent, a written statement setting forth the names of all lessees of any portion of the Properties, the space occupied and the rental payable thereunder together with, if requested by the Agent, copies of such leases.

(f) **Subordination of Leases.** Agent, at its option, is authorized to foreclose this Security Instrument subject to the rights of any tenants of the Properties. The failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be asserted by the Obligor to be a defense to any proceedings instituted by Agent to collect the sums secured hereby or to collect any deficiency remaining unpaid after a foreclosure sale of the Properties. Unless otherwise agreed by Agent in writing, all Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Security Instrument. All such Leases shall contain a provision to the effect that the tenant recognizes the right of Agent to effect such subordination of this Security Instrument and consents thereto.

1.15 **Notice Regarding Special Flood Hazards.** The Obligor hereby acknowledges that it realizes that the Properties described on Schedule B attached hereto are in zones identified by the Director of the Federal Emergency Management Agency as special flood

hazard zones described in 12 C.F.R. § 22.2 and that it has received, prior to the making of the Advances and the incurrence of any other indebtedness constituting part of the Obligations secured by this Security Instrument, the notice regarding Federal disaster relief assistance referred to in the Appendix to 12 C.F.R. Part 22.

ARTICLE 2

Assignment of Leases, Rents, Issues and Profits

2.01 **Assignment of Leases, Rents, Issues and Profits.** The Obligor hereby assigns and transfers to the Agent, FOR THE PURPOSE OF SECURING the Obligations, all Leases and all Rents, and hereby gives to and confers upon the Agent the right, power and authority to collect the same. The Obligor irrevocably appoints the Agent its true and lawful attorney in fact, at its option at any time and from time to time following the occurrence and during the continuance of Default, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of the Obligor or otherwise, for Rents and apply the same to the Obligations as provided in paragraph (a) of Section 4.03 of this Security Instrument; provided, however, that the Obligor shall have the right to collect Rents at any time prior to the occurrence of Default (but not more than one month in advance, except in the case of security deposits).

2.02 **Collection Upon Default.** To the extent permitted by law, upon the occurrence of any Default, the Agent may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations or the solvency of the Obligor, enter upon and take possession of the Properties, the Improvements and the Fixtures or any part thereof, in its own name, sue for or otherwise collect Rents including those past due and unpaid, and, apply the same, less costs and expenses of operation and collection, including attorneys' fees and disbursements, to the payment of the Obligations as provided in paragraph (a) of Section 4.03 of this Security Instrument, and in such order as the Agent may determine. The collection of Rents or the entering upon and taking possession of the Properties, the Improvements or the Fixtures or any part thereof, or the application thereof as aforesaid, shall not cure or waive any Default or notice thereof or invalidate any act done in response to such Default or pursuant to notice thereof.

ARTICLE 3

Security Agreement

3.01 **Creation of Security Interest.** The Obligor hereby grants to the Agent a security interest in the Mortgage Estate for the purpose of securing the Obligations. The Agent shall have, in addition to all rights and remedies provided herein and in the other Loan Documents, all the rights and remedies of a secured party under the Uniform Commercial Code of the state in which the Mortgage Estate is located.

3.02 **Warranties, Representations and Covenants.** The Obligor hereby warrants, represents and covenants that: (a) the Fixtures will be kept on or at the related Properties and the Obligor will not remove any Fixtures from the related Properties, except such portions or items of the Fixtures that are consumed or worn out in ordinary usage, all of which shall be promptly replaced by the Obligor, except as otherwise expressly provided in Section 1.08, (b) all covenants and obligations of the Obligor contained herein relating to the Mortgage Estate shall be deemed to apply to the Fixtures whether or not expressly referred to herein and (c) this Security Instrument constitutes a security agreement and "fixture filing" as those terms are used in the applicable Uniform Commercial Code. Information relative to the security interest created hereby may be obtained by application to the Agent (secured party) at the mailing address of the Security Instrument set forth on Page 1 hereof. The mailing address of the Obligor is set forth on Page 1 hereof. The organization identification number of the Obligor is 3640878.

3.03 **Financing Statements.** The Obligor hereby irrevocably authorizes the Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgage Estate without the signature of the Obligor where permitted by law. The Obligor agrees to furnish the Agent, promptly upon request, with any information that is required by the Agent in order to complete such financing or continuation statements. The Obligor also ratifies its authorization for the Agent to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. The Obligor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of the Agent and agrees that it will not do so without the prior written consent of the Agent.

ARTICLE 4

Defaults; Remedies

4.01 **Defaults.** If any Event of Default under the Loan and Security Agreement (herein, a "Default") shall occur and be continuing, then, as more particularly provided in the Loan and Security Agreement, the principal of and accrued interest on the extensions of credit and all the other Obligations under the Loan and Security Agreement may be declared, or may become due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which have been waived by the Obligor pursuant to the Loan and Security Agreement.

4.02 **Default Remedies.**

(a) **Remedies Generally.** If a Default shall have occurred and be continuing, this Security Instrument may, to the maximum extent permitted by law, be enforced, and the Agent may exercise any right, power or remedy permitted to it hereunder or under the Loan and

Security Agreement or by law, and, without limiting the generality of the foregoing, the Agent may, personally or by its agents, to the maximum extent permitted by law:

(i) enter into and take possession of the Mortgage Estate or any part thereof, exclude the Obligor and all persons claiming under the Obligor whose claims are junior to this Security Instrument, wholly or partly therefrom, and use, operate, manage and control the same either in the name of the Obligor or otherwise as the Agent shall deem best, and upon such entry, from time to time at the expense of the Obligor and the Mortgage Estate, make all such repairs, replacements, alterations, additions or improvements to the Mortgage Estate or any part thereof as the Agent may deem proper and, whether or not the Agent has so entered and taken possession of the Mortgage Estate or any part thereof, collect and receive all Rents and apply the same to the payment of all expenses that the Agent may be authorized to make under this Security Instrument, the remainder to be applied to the payment of the Obligations until the same shall have been repaid in full; if the Agent demands or attempts to take possession of the Mortgage Estate or any portion thereof in the exercise of any rights hereunder, the Obligor shall promptly turn over and deliver complete possession thereof to the Agent; and

(ii) personally or by agents, with or without entry, if the Agent shall deem it advisable:

(x) sell the Mortgage Estate at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner as may be required by law, or, in the absence of any such requirement, as the Agent may deem appropriate, and from time to time adjourn any such sale by announcement at the time and place specified for such sale or for such adjourned sale without further notice, except such as may be required by law;

(y) proceed to protect and enforce its rights under this Security Instrument, by suit for specific performance of any covenant contained herein or in the Loan and Security Agreement or in aid of the execution of any power granted herein or in the Loan and Security Agreement, or for the foreclosure of this Security Instrument (as a mortgage or otherwise) and the sale of the Mortgage Estate under the judgment or decree of a court of competent jurisdiction, or for the enforcement of any other right as the Agent shall deem most effectual for such purpose, provided, that in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgage Estate, this Security Instrument shall continue as a lien on, and security interest in, the remaining portion of the Mortgage Estate; or

(z) exercise any or all of the remedies available to a secured party under the applicable Uniform Commercial Code, including, without limitation:

(1) either personally or by means of a court appointed receiver, take possession of all or any of the Fixtures and exclude therefrom the Obligor and all persons claiming under the Obligor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all

rights and powers of the Obligor in respect of the Fixtures or any part thereof; if the Agent demands or attempts to take possession of the Fixtures in the exercise of any rights hereunder, the Obligor shall promptly turn over and deliver complete possession thereof to the Agent;

(2) without notice to or demand upon the Obligor, make such payments and do such acts as the Agent may deem necessary to protect its security interest in the Fixtures, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority paying all expenses incurred in connection therewith;

(3) require the Obligor to assemble the Fixtures or any portion thereof, at a place designated by the Agent and reasonably convenient to both parties, and promptly to deliver the Fixtures to the Agent, or an agent or representative designated by it; the Agent, and its agents and representatives, shall have the right to enter upon the premises and property of the Obligor to exercise the Agent's rights hereunder; and

(4) sell, lease or otherwise dispose of the Fixtures, with or without having the Fixtures at the place of sale, and upon such terms and in such manner as the Agent may determine (and the Agent or any Lender may be a purchaser at any such sale).

(b) Appointment of Receiver. If Default shall have occurred and be continuing, the Agent, to the maximum extent permitted by law, shall be entitled, as a matter of right, to the appointment of a receiver of the Mortgage Estate, without notice or demand, and without regard to the adequacy of the security for the Obligations or the solvency of the Obligor. The Obligor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of the Agent in case of entry and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgage Estate, unless such receivership is sooner terminated.

(c) Rents. If Default shall have occurred and be continuing, the Obligor shall, to the maximum extent permitted by law, pay monthly in advance to the Agent, or to any receiver appointed at the request of the Agent to collect Rents, the fair and reasonable rental value for the use and occupancy of the Properties, the Improvements and the Fixtures or of such part thereof as may be in the possession of the Obligor. Upon default in the payment thereof, the Obligor shall vacate and surrender possession of the Properties, the Improvements and the Fixtures to the Agent or such receiver, and upon a failure so to do may be evicted by summary proceedings.

(d) Sale. In any sale under any provision of this Security Instrument or pursuant to any judgment or decree of court, the Mortgage Estate, to the maximum extent permitted by law, may be sold in one or more parcels or as an entirety and in such order as the

Agent may elect, without regard to the right of the Obligor or any person claiming under the Obligor to the marshalling of assets. The purchaser at any such sale shall take title to the Mortgage Estate or the part thereof so sold free and discharged of the estate of the Obligor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Agent or any Lender, may purchase at any such sale. Upon the completion of any such sale by virtue of this Section 4.02 the Agent shall execute and deliver to the purchaser an appropriate instrument that shall effectively transfer all of the Obligor's estate, right, title, interest, property, claim and demand in and to the Mortgage Estate or portion thereof so sold, but without any covenant or warranty, express or implied. The Agent is hereby irrevocably appointed the attorney in fact of the Obligor in its name and stead to make all appropriate transfers and deliveries of the Mortgage Estate or any portions thereof so sold and, for that purpose, the Agent may execute all appropriate instruments of transfer, and may substitute one or more persons with like power, the Obligor hereby ratifying and confirming all that said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Obligor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to the Agent or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Agent, for such purpose, and as may be designated in such request. Any sale or sales made under or by virtue of this Security Instrument, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of the Obligor in, to and under the Mortgage Estate, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against the Obligor and against any and all persons claiming or who may claim the same, or any part thereof, by, through or under the Obligor. The powers and agency herein granted are coupled with an interest and are irrevocable.

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NOT OFFICIAL!
- (e) Possession of Loan Instruments Not Necessary. All rights of action under the Loan and Security Agreement and this Security Instrument may be enforced by the Agent without the possession of the Loan Documents and without the production thereof at any trial or other proceeding relative thereto.

4.03 Application of Proceeds.

(a) Application of Proceeds Generally. The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Security Instrument, or of any monies held by the Agent hereunder shall, to the maximum extent permitted by law, be applied:

- (i) first to the payment of all costs and expenses of such sale, including the Agent's attorneys' fees and disbursements;
- (ii) then to the payment of all charges, expenses and advances incurred or made by the Agent in order to protect the lien and estate of this Security Instrument or the security afforded hereby;
- (iii) then to the payment in full of the Obligations in the manner contemplated by the Loan and Security Agreement;

and after payment in full of all Obligations any surplus remaining shall be paid to the Obligor or to whomsoever may be lawfully entitled to receive the same.

(b) Liability for Deficiencies. No sale or other disposition of all or any part of the Mortgage Estate pursuant to Section 4.02 of this Security Instrument shall be deemed to relieve the Obligor of its obligations under the Loan and Security Agreement or this Security Instrument except to the extent the proceeds thereof are applied to the payment of such obligations. If the proceeds of sale, collection or other realization of or upon the Mortgage Estate are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, the Obligor shall remain liable for any deficiency.

4.04 **Right to Sue.** The Agent shall have the right from time to time to sue for any sums required to be paid by the Obligor under the terms of this Security Instrument as the same become due, without regard to whether or not the Obligations shall be, or have become, due and without prejudice to the right of the Agent thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Default existing at the time such earlier action was commenced.

4.05 **Powers of the Agent.** The Agent may at any time or from time to time renew or extend this Security Instrument or (with the agreement of the Obligor in writing) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release any portion of the Mortgage Estate or any other security, and grant such extensions and indulgences in relation to the Obligations, or release any person liable therefor as the Agent may determine without the consent of any junior lienor or encumbrancer, without any obligation to give notice of any kind thereto, without in any manner affecting the priority of the lien and estate of this Security Instrument or in any part of the Mortgage Estate, and without affecting the liability of any other person liable for any of the Obligations.

4.06 **Remedies Cumulative.**

(a) Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Agent is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Security Instrument, or under applicable law, whether now or hereafter existing; the failure of the Agent to insist at any time upon the strict observance or performance of any of the provisions of this Security Instrument or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(b) Other Security. The Agent shall be entitled to enforce payment and performance of any of the obligations of the Obligor and to exercise all rights and powers under this Security Instrument or under the Loan and Security Agreement or any laws now or hereafter in force, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise; neither the acceptance of this Security Instrument nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the

Agent's right to realize upon or enforce any other security now or hereafter held by the Agent, it being stipulated that the Agent shall be entitled to enforce this Security Instrument and any other security now or hereafter held by the Agent in such order and manner as the Agent, in its sole discretion, may determine; every power or remedy given by the Loan and Security Agreement or this Security Instrument or to which the Agent is otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Agent, and the Agent may pursue inconsistent remedies.

4.07 Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption.

To the maximum extent permitted by law, the Obligor shall not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Security Instrument; nor claim, take or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Mortgage Estate or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 4.02 of this Security Instrument; and the Obligor, to the extent that it lawfully may, hereby waives all benefit or advantage of any such law or laws. The Obligor for itself and all who may claim under it, hereby waives, to the maximum extent permitted by applicable law, any and all rights and equities of redemption from sale under the power of sale created hereunder or from sale under any order or decree of foreclosure of this Security Instrument and (if Default shall have occurred) all notice or notices of seizure, and all right to have the Mortgage Estate marshalled upon any foreclosure hereof. The Agent shall not be obligated to pursue or exhaust its rights or remedies as against any other part of the Mortgage Estate and the Obligor hereby waives any right or claim of right to have the Agent proceed in any particular order.

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ARTICLE 5

Miscellaneous

5.01 Release by Agent. Upon the termination of the Commitments under and as defined in the Loan and Security Agreement and the payment in full of the Obligations, the Agent shall release the lien of this Security Instrument, or upon the request of the Obligor, and at the Obligor's expense, assign this Security Instrument without recourse to the Obligor's designee, or to the person or persons legally entitled thereto, by an instrument duly acknowledged in form for recording.

5.02 Notices. All notices, demands, consents, requests or other communications (collectively, "notices") that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in the Loan and Security Agreement.

5.03 Amendments; Waivers; Etc. This Security Instrument cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, signed by the Obligor and the Agent.

5.04 **Successors and Assigns.** This Security Instrument applies to, inures to the benefit of and binds the Obligor and the Agent and their respective successors and assigns and shall run with the Properties.

5.05 **Captions.** The captions or headings at the beginning of Articles, Sections and paragraphs hereof are for convenience of reference and are not a part of this Security Instrument.

5.06 **Severability.** If any term or provision of this Security Instrument or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Security Instrument, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Security Instrument shall be valid and enforceable to the maximum extent permitted by law. If any portion of the Obligations shall for any reason not be secured by a valid and enforceable lien upon any part of the Mortgage Estate, then any payments made in respect of the Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Security Instrument (except to the extent otherwise required by applicable law) be deemed to be made (i) first, in respect of the portion of the Obligations not secured by the lien of this Security Instrument, (ii) second, in respect of the portion of the Obligations secured by the lien of this Security Instrument, but which lien is on less than all of the Mortgage Estate, and (iii) last, to the portion of the Obligations secured by the lien of this Security Instrument, and which lien is on all of the Mortgage Estate.

5.07 **Governing Law.** Except as otherwise expressly provided in the Loan and Security Agreement, in all respects, including all matters of construction, validity and performance, this Security Instrument and the obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to contracts made and performed in that State, and any applicable laws of the United States of America; except with respect to the creation, perfection and enforcement of liens, which shall be governed by and construed and enforced in accordance with the law of the state in which the Properties are located.

ARTICLE 6

State Specific Revisions

6.01 In the event of any inconsistency between the terms and conditions of this Article 6 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 6 shall control and be binding.

6.02 The last installment or final payment upon maturity of the indebtedness secured by this Security Instrument becomes due and payable not later than the fourth anniversary of the Closing Date (as defined in the Loan and Security Agreement).

6.03 Each of the Obligations is payable without relief from valuation and appraisal laws, and the Obligor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for any valuation or appraisal before sale of any portion of the Mortgage Estate.

6.04 Where any provision of this Security Instrument is inconsistent with any provision of Indiana law regulating the creation or enforcement of a lien or security interest in real or personal property including, but not by way of limitation, IC 32-29-7 and IC 32-30-10, the provisions of Indiana law shall take precedence over the provisions of this Security Instrument that cannot be construed in a manner consistent with Indiana law. Any provisions in this Security Instrument to the contrary notwithstanding, to the extent the laws of the State of Indiana limit (i) the availability of the exercise of any of the remedies set forth herein, including without limitation the right of Agent to exercise self-help in connection with the enforcement of the terms of this Security Instrument, or (ii) the enforcement of waivers and indemnities made by the Obligor, such remedies, waivers or indemnities shall be exercisable or enforceable if, and to the extent, permitted by the laws in force at the time of the exercise of such remedies or the enforcement of such waivers or indemnities without regard to the enforceability of such remedies, waivers or indemnities at the time of the execution and delivery of this Security Instrument.

6.05 Obligor hereby represents that the Mortgage Estate: (a) is not "property" as defined in the Indiana Code Sec. 13-11-2-174, (b) is not, and has not been used, as a landfill or dump, (c) contains no underground storage tanks or hazardous waste or materials, and (d) that no disclosure statement under Indiana Code Sec. 13-25-3-1, et. seq. (Indiana Responsible Property Transfer Law) is required for this transaction.

6.06 This Security Instrument shall secure all of the Obligations including all future advances of every kind and whenever occurring pursuant to the Loan Instruments, whether made as an obligation or made at the option of any Lender, including but not limited to advances made after a reduction to a zero or other balance, or made otherwise; provided, however, that the maximum amount of the Obligations secured by this Security Instrument outstanding at any time, including future advances, shall not exceed \$17,500,000, such maximum amount being stated herein pursuant to and in accordance with IC 32-29-1-10. This Security Instrument shall further secure all modifications, extensions, and renewals of any Obligation secured by this Security Instrument. Pursuant to IC 32-29-1-10, the lien of this Security Instrument with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time to time shall have the same priority to which this Security Instrument otherwise would be entitled as of the date this Security Instrument is executed and recorded without regard to the fact that any such future advance, modification, extension or renewal may occur after this Security Instrument is executed.

6.07 Anything contained in this Security Instrument to the contrary notwithstanding, no waiver made by the Obligor in this Security Instrument or in any of the other terms and provisions of the Loan Instruments shall be deemed to constitute a waiver by the Obligor of the time limitations on issuance of process under a judgment or decree of foreclosure set out in IC 32-29-7-5 or a release by the Agent or any judgment holder of the Obligations of the right to seek a deficiency judgment against the Obligor, or any other person or entity who

may be personally liable for the Obligations, which right to seek a deficiency judgment is hereby reserved, preserved, and retained by the Agent on behalf of the Lenders, their successors and assigns.

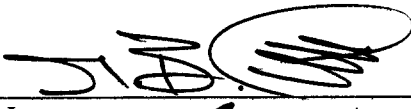
6.08 If, after the date of this Security Instrument, the Obligor acquires property located on and used in connection with the Properties and that by the terms of this Security Instrument is required or intended to be encumbered by this Security Instrument, such property shall become subject to the lien and security interest of this Security Instrument immediately upon its acquisition by Obligor and without any further mortgage, conveyance, assignment or transfer. Nevertheless, upon the Agent's request at any time, the Obligor will execute, acknowledge, and deliver any additional instruments and assurances of title and will do or cause to be done anything further that is reasonably necessary for carrying out the intent of this Security Instrument.

[Signature page follows.]



IN WITNESS WHEREOF, this Security Instrument has been duly executed by the Obligor as of the day and year first above written.

K2 INDUSTRIAL SERVICES, INC.

By: 
Name: *G.B. Curran*
Title: *TREASURER*



STATE OF Illinois)
) SS:
COUNTY OF Cook)

Before me, a Notary Public in and for said County and State, personally appeared Gerald B. Curran, known to me to be a Treasurer of K2 Industrial Services, Inc., a Delaware corporation, and acknowledged the execution of the foregoing MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING for and on behalf of said K2 Industrial Services, Inc., a Delaware corporation.

Witness my hand and Notarial Seal, this 1 day of June, 2004.

My Commission Expires:
5-20-07

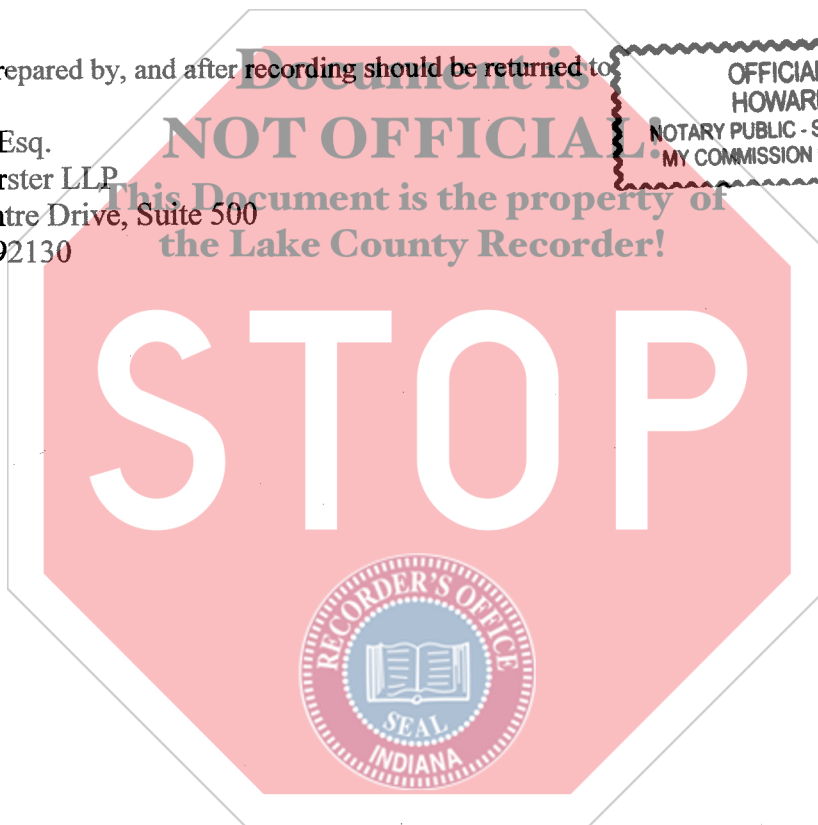
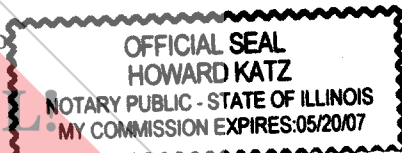
Howard Katz
Notary Public - Signature

My County of Residence:
Cook

Howard Katz
Notary Public - Printed

This instrument prepared by, and after recording should be returned to

Mee Jung Park, Esq.
Morrison & Foerster LLP
3811 Valley Centre Drive, Suite 500
San Diego, CA 92130



SCHEDULE A

DESCRIPTION OF FEE PROPERTIES

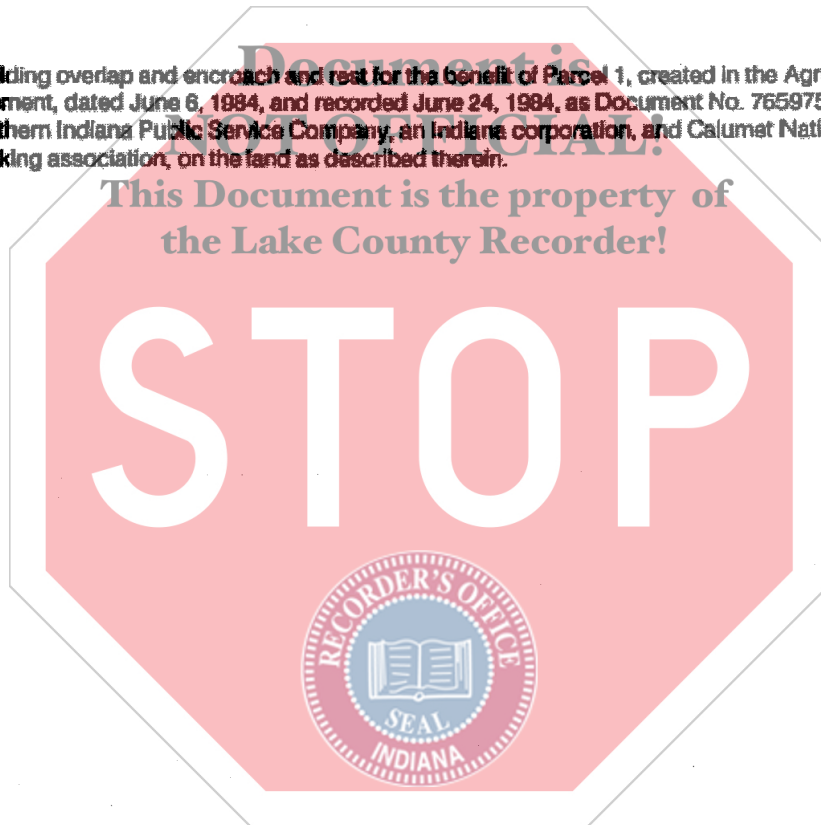
Parcel 1:

Part of Lots 1, 2, 3 and 40, and that part of the vacated alley lying between said lots in Latham's Addition to the City of Hammond, as per plat thereof, recorded in Plat Book 1 page 44, more particularly described as follows: Commencing at a point on the West line of said original Lot 1 at a point 9 feet Northerly of the Southwest corner of said Lot 1, said point found to be 204.05 feet Southwesterly of the South line of Fayette Street as occupied on March 19, 1963; thence Southeasterly on a line that is parallel to and 9 feet Northeasterly of the North line of the lot identified as the George M. Eder lot in the legal survey recorded in Surveyor's Book 4, page 92, in the Surveyor's Office, Lake county, Indiana, a distance of 193.2 feet more or less to the West line of an existing and occupied 14 foot wide alley, this said 193.2 foot line is also the North line of said 9 foot wide strip of land described in Deed Record 591 page 291; thence Northerly on the Westerly line of said 14 foot wide alley, which is a line parallel to and 14 feet Westerly of the Easterly line of said Lot 40, a distance of 120.43 feet; thence Northwesterly along a straight line a distance of 193.2 feet more or less to a point on the West line

of said Lot 1 which point is 82.69 feet Southwesterly of the South line of Fayette Street as occupied on March 19, 1963 and 130.36 feet Northeasterly from the Southwest corner of said Lot 1, thence Southwesterly on the Westerly line of said Lot 1, a distance of 121.36 feet to the place of beginning, EXCEPTING therefrom the Southwesterly 56.02 feet thereof, in Lake County, Indiana.

Parcel 2:

Right to have the building overlap and encroach and rest for the benefit of Parcel 1, created in the Agreement Permitting Encroachment, dated June 6, 1984, and recorded June 24, 1984, as Document No. 765975, made by and between Northern Indiana Public Service Company, an Indiana corporation, and Calumet National Bank, a national banking association, on the land as described therein.



SCHEDULE B

**DESCRIPTION OF
PROPERTIES IN FLOOD ZONE**

None.

