

"Payment Date" means the first day of each month, commencing with the first such date after the issuance of the Lessor's Note and continuing until the Lessor's Note has been paid in full.

"Permitted Encumbrances" means (i) rights reserved to or vested in any municipality or public or governmental authority by the terms of any right, power, franchise, grant, license, permit or provision of law affecting the Property, to terminate such right, power, franchise, grant, license or permit, *provided* that the exercise of such right would not materially impair the use of the Property or materially and adversely affect the value thereof; (ii) any Liens thereon for taxes, assessments, fees, water, sewer or other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other governmental charges and any Liens of mechanics, materialmen and laborers for work or services performed or materials furnished in connection with the Property, which are not due and payable or which are not delinquent to the extent that penalties for nonpayment may be assessed or which, or the amount of validity of which, are being contested as permitted by paragraph 8 hereof or, with respect to Liens of mechanics, materialmen or laborers, have been due for less than 31 days; (iii) easements, rights-of-way, servitudes, restrictions and other minor defects, encumbrances, and irregularities in the title to the Property which do not materially impair the use of the Property or materially and adversely affect the value thereof; (iv) rights reserved to or vested in any municipality or public or governmental authority to control or regulate the Property or to use the Property in any manner, which rights do not materially impair the use of the Property or materially and adversely affect the value thereof; and (v) and to the extent that any thereof affect title to the Property, this Mortgage (and any rights Granted as provided herein), the Indenture, the Lease, the Assignment, the Assignment of Leases, any Permitted Sublease, and any exceptions to title set forth in the Mortgage Title Policy.

"Permitted Sublease" has the meaning set forth in the Lease.

"person" means any individual, partnership, corporation, trust, unincorporated association, syndicate, joint venture or organization, a government or any department or agency thereof, or any other entity.

"Proceeding" means any suit in equity, action at law or other legal, administrative or equitable proceeding.

"Property" means the property described in Granting Clause First.

"Purchase Money Mortgage" has the meaning set forth in the Note Purchase Agreements.

"Trustees" means Shawmut Banks of Boston, N. A. and W. B. Wadland, as Trustees under the Collateral Trust Indenture, Assignment and Security Agreement, dated as of November 1, 1976.

"Tuffy" means Tuffy Service Centers, Inc., a Michigan corporation, together with any corporation succeeding thereto by merger, consolidation or acquisition of all or substantially all of its assets.

"Tuffy Leases" has the meaning set forth in the Note Purchase Agreements.

28. **Miscellaneous.** The provisions of this Mortgage may not be changed orally, but may be changed only by an instrument signed by Lessor and the Company. So long as this Mortgage is assigned pursuant to the Indenture, no requirement of this Mortgage may be waived at any time except by an instrument signed by the Trustees. No waiver shall be deemed a waiver of any subsequent breach or Default. All rights and remedies herein specified are intended to be cumulative and not in substitution for any right or remedy otherwise available. This Mortgage and all of the covenants and obligations hereof shall (subject to the provisions of paragraph 10(b)) be binding upon, inure to the benefit of and be enforceable by the respective successors and assigns of Lessor and the Company to the same extent as if such successors and assigns were originally named herein as the respective parties hereto. This Mortgage shall in all respects be governed by, and construed and enforced in accordance with, the laws (including the conflict of laws rules) of the jurisdiction of the situs of the Property, including all matters of construction, validity and performance. This Agreement will be simultaneously executed in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes, and all of which shall constitute but one and the same instrument. It is hereby expressly acknowledged that this Mortgage is subordinate to the Tuffy Leases.