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Cook County Recorder 75.00

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MORTGAGE

THIS MORTGAGE is made as of the 30th day of June, 2000, by **1515 N. WELLS LIMITED PARTNERSHIP**, an Illinois limited partnership ("Borrower"), to and for the benefit of **COMMUNITY BANK OAK PARK RIVER FOREST**, (referred to herein as "Agent" or "Community"), as agent for the Lenders (as defined below):

RECITALS:

A. Community and LaSalle Bank National Association, a national banking association ("LaSalle") (jointly, the "Lenders") have agreed to make certain loans or otherwise extend credit to Borrower in the aggregate principal amount of \$8,894,900 (jointly, the "Loan") pursuant to the terms and conditions of that certain Loan Agreement of even date herewith (the "Loan Agreement") among Borrower, Agent and the Lenders. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Loan Agreement.

B. The Loan shall be evidenced by three certain notes of even date herewith (collectively, the "Notes") each made by Borrower, one of which shall be payable to the order of Community in the principal amount of \$950,000, one of which shall be payable to the order of LaSalle in the principal amount of \$7,265,000, and the third shall be a demand note payable to the order of LaSalle in the principal amount of \$679,900 evidencing any drawings made under the Letter of Credit, as the same may be hereafter amended or otherwise modified from time to time.

This instrument was prepared by and, after recording, return to:
Schwartz, Cooper, Greenberger & Krauss
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
Attn: Michael D. Rothstein, Esq.

Permanent Real Estate Tax Index Nos.:
17-04-204-018-0000; 17-04-204-048-1001
17-04-204-048-1002; 17-04-204-048-1003
17-04-204-048-1004
Common Address:
1515 N. Wells
Chicago, Illinois

BOX 333-CTI

C. A condition precedent to Lenders' extension of the Loan to Borrower is the execution and delivery by Borrower of this Mortgage.

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

Borrower hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Agent (for the benefit of the Lenders and their respective successors and assigns), the real estate legally described on Exhibit A attached hereto (the "Real Estate"), including all rights, interests and privileges appertaining to land beneath the surface and all air rights to space above the surface, together with the other property described in the following paragraph (the Real Estate and such other property being hereinafter referred to as the "Premises") to secure: (i) the payment of the Loan and all interest, late charges and other indebtedness evidenced by or owing under the Notes or any of the other Loan Documents and by any extensions, modifications, renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower or any other obligor to or benefitting the Agent or the Lenders which are evidenced or secured by or otherwise provided in the Notes, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement of the Agent or the Lenders for any and all sums expended or advanced by them pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein.

In addition to the Real Estate, the Premises hereby mortgaged includes all buildings, structures and improvements now or hereafter constructed or erected upon or located on or under the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, and all rents, issues, royalties, income, revenue, proceeds (including without limitation, sales proceeds), profits, security deposits and all accounts relating to the Premises and all other benefits thereof, and any after-acquired title, franchise or license and the reversions or remainders thereof, for so long and during all such times as Borrower may be entitled thereto (which are pledged primarily and on a parity with said Real Estate and not secondarily), and all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and other personal property of every kind and nature whatsoever, and all proceeds thereof, now or hereafter located thereon or therein and which is owned by Borrower, and all rights and interests of Borrower as the "Declarant" and/or "Developer", as defined in section 605/2 of the Illinois Condominium Property Act, S.H.A. 765 ILCS 605/1 et seq. (the "Act"), under the Condominium Documents and any and all other documents and instruments prepared in connection with, required to be filed or otherwise filed by Borrower in order to convert the Premises into and operate the Premises as a condominium pursuant to the

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17-04-204-048-1004
Common Address:
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Chicago, Illinois

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Act. All of the land, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Mortgage deemed to be conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed also to be a Security Agreement under the Uniform Commercial Code of the State of Illinois (the "Code") for purposes of granting a security interest in such property, which Borrower hereby grants to the Agent (for the benefit of the Lenders), as secured parties (as defined in the Code).

TO HAVE AND TO HOLD the Premises unto the Agent, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

- 1. Title.** Borrower represents, warrants and covenants that (a) Borrower is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances permitted in writing by the Agent (the "Permitted Exceptions"); and (b) Borrower has legal power and authority to mortgage and convey the Premises.
- 2. Maintenance; Repair and Restoration of Improvements; Payment of Prior Liens.** Borrower shall: (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Borrower shall have the right to contest by appropriate proceedings the validity or amount of any such lien if and only if Borrower shall, within fifteen days after the filing thereof, (i) place a bond with the Agent in an amount, form, content and issued by a surety reasonably acceptable to the Lenders for the payment of any such lien or (ii) cause the title company which has issued the loan policy of title insurance to each Lender insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to the Lenders; (d) complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) make no material alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of the Lenders; (g) not

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suffer or permit any change in the general nature of the occupancy of the Premises without the prior written consent of the Lenders; (h) not initiate or acquiesce in any zoning reclassification without the prior written consent of the Lenders; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms of the Notes and the other Loan Documents; and (j) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Notes and in the other Loan Documents on the part of Borrower to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Notes, together with all interest thereon and all other amounts payable to the Agent and/or the Lenders thereunder, and all other sums at any time secured by this Mortgage.

3. Payment of Taxes and Assessments. Borrower shall pay all general taxes, special taxes, special assessments, condominium assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due and before any penalty or interest is assessed, and, at the request of either Lender, shall furnish to such Lender duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Borrower shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Borrower shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Borrower shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to the Lenders, insuring over any exception created by such protest.

4. Tax Deposits. Upon an Event of Default and upon request of Lender, Borrower shall deposit with the Agent on the first day of each month until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of 105% of the annual taxes and assessments (general and special) on the Premises, as reasonably determined by the Lenders. If requested by either Lender, Borrower shall also deposit with the Agent an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full such installment of annual taxes and assessments, as estimated by the Lenders. Such deposits are to be held by Agent without any allowance of interest and are to be used for the payment of taxes and assessments on the Premises next due and payable when they become due. The Lenders may, at their option, pay such taxes and assessments when the same become due and payable (upon submission of appropriate bills therefor from Borrower) or shall release sufficient funds to Borrower for the payment thereof. If the funds so deposited are insufficient to pay any such taxes or assessments for any year (or installments thereof, as applicable) when the same shall become due and payable, Borrower shall, within ten days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes and assessments in full. If the funds so deposited exceed the amount required to pay such taxes and assessments for any year,

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the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of the Agent.

5. Agent's Interest In and Use of Deposits. Upon the occurrence of an Event of Default, the Agent may, at its option, apply any monies at the time on deposit pursuant to Paragraph 4 hereof toward any of the indebtedness secured hereby in such order and manner as the Lenders may elect. When such indebtedness has been fully paid, any remaining deposits shall be returned to Borrower. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall not be subject to the direction or control of Borrower. The Lenders shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Borrower, prior to the occurrence of an Event of Default, shall have requested the Agent in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such taxes, assessments and insurance premiums. Neither Lender shall be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

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6. Insurance.

(a) Borrower shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by the Lenders, including without limitation: (i) builder's risk and all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation protection endorsements; (ii) if there are tenants under leases at the Premises, rent and rental value or business loss insurance for the same perils described in clause (i) above payable at the rate per month and for the period specified from time to time by the Lenders; (iii) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to the Lenders, if and so long as the Premises shall contain a boiler and/or sprinkler system, respectively; (iv) if the Premises are located in a flood hazard area, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (v) such other insurance as the Lenders may from time to time require. Borrower also shall at all times maintain comprehensive public liability, property damage and workmen's compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as the Lenders may require. Borrower shall be the named insured under such policies and the Lenders shall each be identified as an additional insured parties. All policies of insurance to be furnished hereunder shall be in forms, with companies, in amounts and with deductibles reasonably satisfactory to the Lenders, with mortgagee clauses attached to all policies in favor of and in form satisfactory to the Lenders, including a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty days prior written notice to each Lender and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against the Lenders. Borrower shall deliver all policies, including additional and renewal policies, to the Agent, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty days prior to their respective dates of expiration. Upon request of either Lender after the occurrence of an Event of Default, Borrower shall deposit with the Agent on the first day of each month until the indebtedness secured by this Mortgage is fully paid, a sum equal to one twelfth (1/12th) of the annual premiums for the insurance required hereby, as reasonably determined by the Lenders.

(b) Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless each of the Lenders is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to the Lenders and such separate insurance is otherwise acceptable to the Lenders.

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(c) In the event of loss, Borrower shall give immediate notice thereof to the Lenders, who shall have the sole and absolute right to make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Agent (rather than to Borrower and the Lenders jointly). The Lenders shall have the right, at their option and in their sole discretion, to apply any insurance proceeds so received after the payment of all of Lenders' expenses, either (i) on account of the unpaid principal balance of the Notes, irrespective of whether such principal balances are then due and payable, whereupon the Lenders may declare the whole of the balance of indebtedness hereby secured to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in Paragraph 22 hereof. If insurance proceeds are delivered to Borrower by the Agent as hereinafter provided, Borrower shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event the Lenders permit the application of such insurance proceeds to the cost of restoration and repair of the Premises, any surplus which may remain out of said insurance proceeds after payment of such costs shall be applied on account of the unpaid principal balances of the Notes, irrespective of whether such principal balances are then due and payable. In the event of foreclosure of this Mortgage, all right, title and interest of Borrower in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. At the request of either Lender, from time to time, Borrower shall furnish the Agent, without cost to the Agent or the Lenders, evidence of the replacement value of the Premises.

7. **Condemnation.** If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this Mortgage, is hereby assigned to the Agent (for the benefit of the Lenders), who is empowered to collect and receive the same and to give proper receipts therefor in the name of Borrower and the same shall be paid forthwith to the Agent. Such award or monies shall be applied on account of the unpaid principal balances of the Notes, irrespective of whether such principal balances are then due and payable and, at any time from and after the taking the Lenders may declare the whole of the balance of the indebtedness hereby secured to be due and payable.

8. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Borrower, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Notes or any of the other Loan Documents, Borrower covenants and agrees to pay such tax in the manner required by any such law. Borrower further covenants to reimburse the Lenders for any sums which they may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Borrower shall not be required to pay any income or franchise taxes of any Lender.

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9. **Lease and Rights Assignment.** Borrower also acknowledges that, concurrently herewith, Borrower is delivering to the Agent, as additional security for the repayment of the Loan, an Assignment of Plans, Specifications, Licenses, Permits and Other Rights and an Assignment of Rents and Leases (collectively, the "Assignment") pursuant to which Borrower has assigned to the Agent (for benefit of Lenders), among other things, interests in any current and all future condominium unit sales contracts and proceeds from the sale of such units and leases of the Premises and the rents and income from the Premises. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Borrower agrees to abide by all of the provisions of the Assignment.

10. **Effect of Extensions of Time.** If the payment of the indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness is released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Borrower, shall be held to assent to such extension, variation or release, and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by the Agent, notwithstanding such extension, variation or release.

11. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (i) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (ii) the imposition upon the Agent or the Lenders of the payment of the whole or any part of the taxes or assessments, charges or liens herein required to be paid by Borrower, or (iii) a change in the method of taxation of mortgages or debts secured by mortgages or the Lenders' interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holder thereof, then Borrower, upon demand by either Lender, shall pay such taxes or assessments, or reimburse the Agent therefor; provided, however, that Borrower shall not be deemed to be required to pay any income or franchise taxes of the Lenders. Notwithstanding the foregoing, if in the opinion of counsel for the Lenders it may be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the Lenders may declare all of the indebtedness secured hereby to be immediately due and payable.

12. **Agent's or Lenders' Performance of Defaulted Acts and Expenses Incurred by Agent or Lenders.** If an Event of Default has occurred and is continuing, the Lenders may, but need not (i) make any payment or perform any act herein required of Borrower in any form and manner deemed expedient by the Lenders, (ii) make full or partial payments of principal or interest on prior encumbrances, if any, (iii) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, (iv) redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or (v) cure any default of Borrower in any lease of or condominium unit sale contract affecting the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by the Lenders in regard to any tax

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referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to the Lenders, upon demand, and with interest thereon at the Default Rate then in effect. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by the Lenders in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of the Agent's or the Lenders' rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Notes, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Notes, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to the Lenders, upon demand, and with interest thereon at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Borrower to the Lenders, and shall be additional indebtedness evidenced by the Notes and secured by this Mortgage. Neither the Agent's nor the Lenders' failure to act shall ever be considered as a waiver of any right accruing to the Agent or the Lenders on account of any Event of Default. Should any amount paid out or advanced by the Lenders hereunder, or pursuant to any agreement executed by Borrower in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then the such Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Lenders' Reliance on Tax Bills and Claims for Liens. The Lenders, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

14. Event of Default; Acceleration. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage: (a) the occurrence of an Event of Default under the Loan Agreement; (b) any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 27 of this Mortgage and (c) a default under the mortgage in favor of Laura A. O'Neill. If an Event of Default occurs, Agent may, at the direction of Lenders, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to Borrower, with interest thereon from the date of such Event of Default at the Default Rate.

15. Foreclosure; Expense of Litigation.

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(a) Upon the occurrence of an Event of Default, the Lenders shall have the right to foreclose the lien hereof to satisfy the obligations secured hereby (or any part thereof) and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. It is further agreed that if an Event of Default occurs, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, the Lenders shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness. It is further agreed that such sale pursuant to a partial foreclosure shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale in connection therewith, the Lenders may elect at any time prior to a foreclosure sale pursuant to such decree to discontinue such partial foreclosure and to accelerate the entire secured indebtedness by reason of any uncured Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness. In the event of a foreclosure sale, Agent is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as the Lenders may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of either of the Lenders for attorneys' fees, appraisers' fees, environmental audits, property inspections, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as either of the Lenders may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Borrower's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by either of the Lenders in any litigation or proceeding affecting this Mortgage, the Notes, or the Premises, including probate and bankruptcy proceedings, or in preparations for the

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commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon at the Default Rate and shall be secured by this Mortgage.

16. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure (or partial foreclosure) sale of the Premises shall be distributed and applied in the following order of priority with respect to the Loan: first, to all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 15 above; second, to all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Notes, with interest thereon as provided herein or in the other Loan Documents; third, to all principal and interest remaining unpaid on the Notes; and fourth, any surplus to Borrower, its successors or assigns, as their rights may appear or to any other party legally entitled thereto. Any proceeds received by either of the Lenders shall be applied to each of the Lender's respective loans as specified in the Agency Agreement.

17. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed shall, upon petition by Agent, appoint a receiver for the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and either of the Lenders hereunder or any other holder of either of the Notes may be appointed as such receiver. In addition to the rights described in Section 18(b) below, such receiver shall have power to collect the sales proceeds, rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Borrower, but for the intervention of such receiver, would be entitled to collect such sales proceeds, rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

18. Lenders' Rights of Possession in Case of Default; Continuation of Sales After Default.

(a) At any time after an Event of Default has occurred, Borrower shall, upon demand of the Agent, surrender to one or both of the Lenders (as they shall determine)

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possession of the Premises. The Lenders, in their discretion, may, with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, including without limitation, all Condominium Documents, plans, specifications, contracts, agreements and documents relating to the Project development or performance of the Work, and may exclude Borrower and its employees, agents or servants therefrom, and the Lenders may then hold, operate, manage, develop and control the Premises, either personally or by its agents, and, in connection therewith but not in limitation thereof, exercise any or all of its rights and remedies set forth in the Loan Documents. The Lenders shall have full power to use such measures, legal or equitable, as in their discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Lenders shall have full power to:

- (i) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same;
- (ii) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (iii) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (iv) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as the Lenders deems are necessary;
- (v) insure and reinsure the Premises and all risks incidental to the Lenders' possession, operation and management thereof; and
- (vi) receive all of such avails, rents, issues and profits.

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(b) If, following the submission of the Premises to the provisions of the Act, either Lender shall be placed in possession of the Premises or a receiver for the Premises shall be appointed by a court, then, in addition to all of the other powers and duties of such as mortgagee-in-possession or such receiver under the provisions of IMFL (as hereinafter defined), such Lender as mortgagee-in-possession or such receiver shall have full power and authority to continue marketing the Unit Interests, and to enter into sales contracts with respect to the sale thereof on the following terms and conditions:

(i) The sales prices for the Unit Interests shall be determined by such Lender at such time in its reasonable discretion, and

(ii) The proceeds of all such sales shall be applied in the manner set forth in Section 15-1704(d) of IMFL (or any replacement or successor Section thereof).

(c) Furthermore, without limiting the generality of the foregoing, such Lender shall have full power to:

(i) cancel or terminate any sales contract for any cause or on any ground which would entitle Borrower to cancel the same; and

(ii) extend or modify any then existing sales contract, which extensions or modifications may provide for terms to expire, or for options or rights to purchase to extend beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such contracts, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser.

(d) Borrower shall cooperate fully with Lenders in effectuating all sales of Unit Interests in accordance with the provisions of this Section, including, without limitation, executing all documents necessary to convey title thereto.

19 Application of Income Received by the Lenders. The Lenders or Agent, in the exercise of the rights and powers hereinabove conferred upon them, shall have full power to use and apply the avails, sales proceeds, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as the Lenders may determine:

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(a) to the payment of the operating expenses of the Premises, including cost of management, marketing, sale and leasing thereof (which shall include compensation to the Lenders and their agent or agents for management and marketing activities, and lease and sales commissions and other compensation and expenses of seeking and procuring tenants and purchasers and entering into leases and sales contracts), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any indebtedness secured hereby, including any deficiency which may result from any foreclosure sale.

20 Rights Cumulative. Each right, power and remedy herein conferred upon the Lenders is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Lenders, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Lenders in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

21 Lender's Right of Inspection. The Lenders and their representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times, and access thereto shall be permitted for that purpose.

22 Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or the destruction of, all or a portion of the Premises, whether by fire or other casualty, or the taking of any portion of the Premises under eminent domain or condemnation: (i) Borrower shall obtain from Lenders their approval, which approval may be withheld or given at Lenders' sole discretion (except as provided below), of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, provided that Lenders will not unreasonably withhold their approval of any plans and specifications which are substantially similar to any plan and specifications theretofore approved by Lenders; (ii) Borrower shall submit to Lenders for Lenders' review and approval all of the other items described in Article 5 of the Loan Agreement, to the extent reasonably requested by such Lender; and, (iii) there shall have been delivered to Agent a waiver of subrogation from any insurer with respect to Borrower or the then owner or other insured under the policy of insurance in question.

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(b) Insurance or condemnation proceeds held by Lenders for the restoration or repair of the Premises shall be disbursed from time to time by such subject to and in accordance with the same conditions, as set forth in the Loan Agreement for the disbursement of Loan Advances (including, but not limited to, the conditions set forth in Article 5 of the Loan Agreement).

(c) In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balance of the Loan irrespective of whether such balance is then due and payable.

(d) In the event Borrower commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions to the payment or application of insurance or condemnation proceeds set forth herein, then such failure shall constitute an Event of Default.

23 Release Upon Payment and Discharge of Borrower's Obligations; Partial Release. The Agent shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all indebtedness and other obligations secured hereby, including payment of all reasonable expenses incurred by the Agent in connection with the execution of such release. Provided that all of the conditions described in the Loan Agreement have been satisfied in form and substance acceptable to Lenders and no Event of Default then exists, Agent will issue partial releases of the lien of this Mortgage in accordance with and subject to the terms and conditions set forth in Article 12 of the Loan Agreement.

24 Notices. Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) sent by overnight express courier, addressed in each case as follows:

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To Agent or Lenders: Community Bank Oak Park River Forest
1001 Lake Street
Oak Park, IL 60301
Attn: Mr. Walter Healey

LaSalle Bank National Association
135 S. LaSalle
Chicago, IL 60603
Attn: Mr. Bruce Duncan

With copy to: Schwartz, Cooper, Greenberger & Krauss, Chtd.
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
Attn: David Berzon, Esq.

To Borrower: 1515 N. Wells Limited Partnership
1640 W. Hubbard
Chicago, Illinois 60622
Attn: Mark Sutherland

With copy to: Rosenblum & Vandenberg
200 West Madison Street, Suite 1950
Chicago, Illinois 60608
Attn: Ronald Rosenblum

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

25 Waiver of Defenses. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Notes.

26 Waiver of Rights. Borrower hereby covenants and agrees that Borrower shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Borrower, for itself and all who may claim through or under it, waives any claims based on allegations that the Agent or the Lenders have failed to act in a commercially reasonable manner (except as otherwise expressly provided in this

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Mortgage or the other Loan Documents) and any and all rights to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

27 Transfer of Premises and Other Interests; Further Encumbrance.

(a) Except as otherwise expressly provided in the Loan Agreement or herein, neither all nor any portion of (i) the Premises or (ii) any stock in Borrower's general partner or (iii) any partnership in Borrower shall be sold, conveyed, assigned, encumbered or otherwise transferred (nor shall any agreement be entered into to sell, convey, assign, encumber or otherwise transfer same) without, in each instance, the prior written consent of the Lenders, which consent may be given or withheld in the Lenders' sole and absolute discretion, and may be conditioned in any manner that the Lenders desire, including, without limitation, increases in the rate of interest charged on the Loan and payment of assumption fees. Any violation or attempted violation of the provisions of this Paragraph 27 shall be an Event of Default for purposes of all of the Loan Documents.

(b) Any consent by the Lenders, or any waiver by the Lenders of an Event of Default under this Paragraph 27 shall not constitute a consent to or waiver of any right, remedy or power of the Lenders upon a continuing or subsequent Event of Default under this Paragraph 27. Borrower acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 27 shall be void and of no force or effect. Borrower agrees that if any provision of this Paragraph 27 is deemed a restraint on alienation, that such restraint is a reasonable one.

28 Expenses Relating to Notes and Mortgage.

(a) Borrower will pay all reasonable expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Notes, this Mortgage or any of the other Loan Documents, including without limitation, the Lenders' reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Notes, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Borrower shall not be required to pay any income or franchise taxes of the Lenders), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Notes and this Mortgage. Borrower recognizes that, during the term of this Mortgage, the Lenders:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of

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any kind, to which the Lenders shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, the Lenders' taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Borrower or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Notes or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Borrower or any of its agents, employees or attorneys pertaining to the Lenders' approval of actions taken or proposed to be taken by Borrower which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this Paragraph 28 shall be so much additional indebtedness secured hereby, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Borrower forthwith upon demand.

29 Financial Statements. To the best of Borrower's knowledge, Borrower hereby represents and warrants that the financial statements for Borrower and the Premises previously submitted to the Lenders are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Borrower or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of Borrower or the Premises from the dates of said financial statements until the date hereof.

30 Statement of Indebtedness. Borrower, within seven days after being so requested by either Lender, shall furnish a duly acknowledged written statement setting forth the

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amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

31 Further Instruments. Upon request of either Lender, Borrower shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

32 Additional Indebtedness Secured. All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of each of the Notes and interest thereon; this Mortgage secures any and all other amounts which may become due under the Notes or any other document or instrument evidencing, securing or otherwise affecting the indebtedness secured hereby, including, without limitation, any and all amounts expended by the Lenders to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

33 Indemnity. Borrower hereby covenants and agrees that no liability shall be asserted or enforced against the Lenders in the exercise of the rights and powers granted to them in this Mortgage, and Borrower hereby expressly waives and releases any such liability. Borrower shall indemnify and save the Lenders harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) (collectively, the "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against the Lenders at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which the Lenders may or do become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to the Lenders in accordance with the terms of this Mortgage; provided, however, that Borrower shall not be obligated to indemnify or hold the Lenders harmless from and against any Claims directly arising from the gross negligence or willful misconduct of the Lenders. All costs provided for herein and paid for by the Lenders shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

34 Waiver of Rights of Redemption and Reinstatement. Borrower hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption provided in the Illinois Mortgage Foreclosure Law.

35 Subordination of Property Manager's Lien. Any property management agreement for the Premises entered into hereafter with a property manager shall contain a "no

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lien” provision whereby the property manager waives and releases any and all mechanics’ lien rights that the property manager or anyone claiming by, through or under the property manager may have and shall provide that the Lenders may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Agent’s request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a “no lien” provision, Borrower shall cause the property manager under such agreement to enter into a subordination of the management agreement with the Agent (on behalf of Lenders), in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

36 Fixture Filing. Borrower and the Agent agree that this Mortgage shall constitute a financing statement and fixture filing under the Code with respect to all “fixtures” (as defined in the Code) attached to or otherwise forming a part of the Premises and that a security interest in and to such fixtures is hereby granted to the Agent (on behalf of the Lender). For purposes of the foregoing, the Agent is the secured party and Borrower is the debtor and the collateral covered by this financing statement shall be all items of property contained within the definition of the “Premises” which is or becomes a fixture on the Real Estate or any other real estate contained within the definition of the Premises.

37 Compliance with Environmental Laws. In addition to all other provisions of this Mortgage, Borrower, at its cost and expense, shall comply with all laws, and all rules and regulations of any governmental authority (“Agency”) having jurisdiction, concerning environmental matters, including, but not limited to, any discharge (whether before or after the date of this Mortgage) into the air, waterways, sewers, soil or ground water or any substance or “pollutant”. The Lenders and their agents and representatives shall have access to the Premises and to the books and records of Borrower and any occupant of the Premises claiming by, through or under Borrower for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Premises or made or produced thereon. Borrower and all occupants of the Premises claiming under Borrower shall provide to the Agent copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to any Agency or as such are received from any Agency. The Lenders and their agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Premises including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Premises by Borrower or an occupant claiming by, through or under Borrower or otherwise present on the Premises.

38 Compliance with Illinois Mortgage Foreclosure Law.

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(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (herein called "IMFL") the provisions of IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with IMFL.

(b) If any provision of this Mortgage shall grant to the Agent or either Lender (including rights as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 17 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Agent or either Lender or in such receiver under IMFL in the absence of said provision, Agent, the Lenders and such receiver shall be vested with the powers, rights and remedies granted in IMFL to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Lenders which are of the type referred to in Section 5/15-1510 or 5/15-1512 of IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 12, 15 or 28 of this Mortgage, shall be added to the indebtedness secured by this Mortgage and/or by the judgment of foreclosure.

39 Miscellaneous.

(a) **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Borrower and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Agent, the Lenders, their successors and assigns and any holder or holders, from time to time, of the Notes.

(b) **Invalidity of Provisions; Governing Law.** In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Borrower and the Lenders shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

(c) **Municipal and Zoning Requirements.** Borrower shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Borrower hereby assigns to Lenders any

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and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Borrower shall not by act or omission alter (or permit the alteration of) the zoning classification of the Premises in effect as of the date hereof, nor shall Borrower impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Borrower which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) **Rights of Tenants.** Agent shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of the Agent. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) **Option of the Lenders to Subordinate.** At the option of the Lenders, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by the Lenders of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) **Possession.** Nothing herein contained shall be construed as constituting the Agent or either of the Lenders a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Lenders pursuant to this Mortgage.

(g) **Relationship of the Lenders and Agent with Borrower.** Neither Lender shall in any event be construed for any purpose to be a partner, joint venturer, agent or associate of Borrower or of any lessee, operator, concessionaire or licensee of Borrower in the conduct of their respective businesses, and, without limiting the foregoing, neither Lender shall be deemed to be such partner, joint venturer, agent or associate on account of any Lender becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

(h) **Time of the Essence.** Time is of the essence of the payment by Borrower of all amounts due and owing under the Notes and the other Loan Documents and the performance and observance by Borrower of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

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(i) **No Merger.** It being the desire and intention of the parties hereto that the Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should either of the Lenders acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Lenders as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to \$18,000,000.

(k) **JURISDICTION AND VENUE.** BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF A LENDER INITIATES SUCH ACTION, ANY COURT IN WHICH A LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY A LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. BORROWER WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY A LENDER AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY A LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM, OR THE TAKING BY A LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER

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APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(l) **WAIVER OF RIGHT TO JURY TRIAL.** THE LENDERS AND BORROWER ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

(m) **Construction Loan.** The Notes which are secured by this Mortgage evidence debt created by one or more disbursements made by Lenders to Borrower to finance the cost of the construction of certain improvements upon the Real Estate in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-313(1)(c) of the Uniform Commercial Code as adopted in the State of Illinois. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holders of the Notes may at its option declare the indebtedness secured thereby immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional indebtedness secured hereby and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest at the Default Rate. Upon completion of the improvements described in the Loan Agreement free and clear of mechanic's lien claims, and upon compliance with all of the terms, conditions and covenants of the Loan Agreement, the Loan Agreement and the Loan Agreement and the terms of this paragraph shall become null and void and of no further force and effect. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage.

40 **O'Neill Mortgage.**

(a) Borrower has previously executed a certain Mortgage in favor of Laura A. O'Neill to secure a settlement in connection with certain litigation (the "O'Neill Mortgage"). The O'Neill Mortgage was recorded in the Office of the Recorder of Deeds of Cook County, Illinois on March 17, 2000 as Document No. 00300412.

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(b) Borrower hereby covenants and agrees that any default, default under the O'Neill Mortgage shall constitute an Event of Default under this Mortgage, and thereafter Lenders, at their option, may declare all of the obligations secured hereby, without notice, to be immediately due and payable, and Lenders may foreclose this Mortgage as in the case of any Event of Default hereunder, without regard to whether the O'Neill Mortgage is then being foreclosed on.

(c) Borrower hereby authorizes Lenders, (but Lenders shall have no obligation) at their option, to perform any covenants, do any acts, or make any payments that are required under the terms of the O'Neill Mortgage that have not been performed by, done by, or paid by Borrower, at the times required under the terms of the O'Neill Mortgage. All expenses incurred and all sums paid by Lenders in connection with the foregoing shall be immediately due and payable upon demand by Lenders, with interest thereon until paid, at the Default Rate and shall be secured by this Mortgage. The exercise of the option by either Lender to perform any of said covenants, do any of said acts, or make any of said payments as aforesaid may be made by Lenders prior to, simultaneously with, or subsequent to the exercise by Lenders of the option herein contained to declare all of the obligations secured hereby, without notice, to be immediately due and payable.

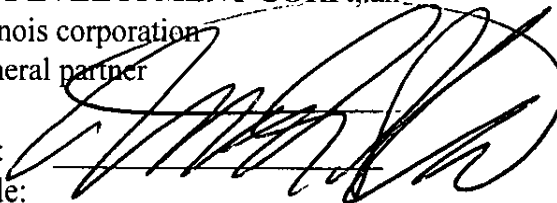
(d) Borrower hereby covenants and agrees to provide Lenders with a copy of all notices given to Borrower with respect to the O'Neill Mortgage upon receipt of any such notice.

(e) Borrower hereby covenants and agrees that Borrower shall not, without the prior written consent of Lenders, enter into any modification, extension, amendment, agreement or arrangement in connection with the O'Neill Mortgage.

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

**1515 N. WELLS LIMITED
PARTNERSHIP**, an Illinois limited
partnership corporation

By: **SP DEVELOPMENT CORP.**, an
Illinois corporation
Its: general partner

By: 
Title: _____

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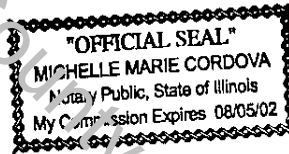
STATE OF IL)
) SS.
COUNTY OF COOK)

I Michelle Cordova a Notary Public in and for said County, in the State aforesaid, do hereby certify that MARK SUTHERLAND, the Pres. of SP Development Corp., which is the general partner of 1515 N. Wells Limited Partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, on behalf of said partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this ___ day of June, 2000.


NOTARY PUBLIC

(SEAL)



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STREET ADDRESS: 1515 NORTH WELLS
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-04-204-018-0000

LEGAL DESCRIPTION:

PARCEL 1:

LOT 5 AND LOT 6 IN HUFMEYER AND OTHERS SUBDIVISION OF LOT 113 IN BRONSON'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

UNITS 1, 2, 3 AND 4 IN 1511 NORTH WELLS CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

LOT 12 IN JOHN P. STARR'S SUBDIVISION OF LOTS 114 TO 116 IN BRONSON'S ADDITION TO CHICAGO, IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; WHICH SURVEY IS ATTACHED AS EXHIBIT 'A' TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT 15481007 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, IN COOK COUNTY, ILLINOIS.

EXHIBIT A

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EXHIBIT A

Legal Description of Premises

[TO BE PROVIDED BY BORROWER]

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