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Cook County Recorder 75.50



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**MORTGAGE AND SECURITY AGREEMENT**

Property of Cook County Clerk's Office

RECORDED 2 28 3 2001

This document prepared by:

Jonathan L. Mills  
Sugar, Friedberg & Felsenthal  
30 North LaSalle Street  
Suite 2600  
Chicago, Illinois 60602

When recorded mail to:

Jonathan L. Mills  
Sugar, Friedberg & Felsenthal  
30 North LaSalle Street  
Suite 2600  
Chicago, Illinois 60602

Property Address: 55 East Erie Street, Chicago, Illinois

Legal description:

The Northwest 1/4 (except the South 40 feet thereof) and the Northeast 1/4 of Block 35 in Kinzie's Addition to Chicago in the North Fractional Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

Permanent Index Numbers: 17-10-112-001  
17-10-112-007  
17-10-112-008

**THIS MORTGAGE AND SECURITY AGREEMENT ("this Mortgage") is dated JULY 14, 2000 and is by 55 ERIE INVESTORS LLC , a Delaware limited liability company ("Mortgagor") for the benefit of MIDWEST BANK AND TRUST COMPANY ("Mortgagee").**

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Mortgagor has concurrently herewith executed and delivered to Mortgagee that certain Note dated on the date hereof ("the Note") in the principal amount of \$13,800,000. All of the terms and provisions of the Note are hereby incorporated herein by this reference to the same extent as though fully set forth in this Mortgage. The Note bears interest at a variable rate.

To secure the payment of all principal, interest, and other sums of money and other obligations required to be paid or performed by Mortgagor under the Note (collectively hereinafter referred to as "the Indebtedness Hereby Secured," provided, however, that the dollar amount of the indebtedness secured by this Mortgage shall not exceed double the original principal amount of the Note), and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, Mortgagor covenants and agrees as follows:

1. **Mortgage of Premises**. Mortgagor does by these presents grant, demise, release, alien, pledge, mortgage, convey, and warrant unto Mortgagee and Mortgagee's successors and assigns:
  - A. The land ("the Land") and all of Mortgagor's estate, right, title, and interest therein, legally described on the first page hereof.
  - B. All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements thereon, or in connection with any construction being conducted or which may be conducted thereon, and owned by Mortgagor, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title, and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf ("the Improvements").
  - C. All easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating, or appertaining to the Land and Improvements, or which hereafter shall in any way belong, relate, or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim,

and demand whatsoever, at law as well as in equity, of Mortgagor of, in, and to the same.

- D. All rents, royalties, issues, profits, revenue, income, and other benefits from the Premises to be applied against the Indebtedness Hereby Secured; provided, however, that permission is hereby given to Mortgagor so long as no Event of Default hereunder (as hereinafter defined) has occurred, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable.
- E. All right, title, and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the Premises whether written or oral and all agreements for use of the Premises ("Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease; and all of Mortgagor's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage or deed of trust other than this mortgage (the property and interests described in Paragraphs 1.A, 1.B, 1.C, 1.D, and 1.E being collectively referred to herein as "the Real Estate").
- F. All of Mortgagor's rights further to encumber the Real Estate for debt without the prior written consent of Mortgagee and with such consent only by such encumbrances which, by their actual terms and specifically expressed intent, and except as may expressly be provided to the contrary herein, shall be and at all times remain subject and subordinate to any and all leases and tenancies which are in existence when such encumbrances become effective or which are hereafter created.
- G. The Personal Property as hereinafter defined (the Real Estate, rights and interests described in Paragraph 1.F hereof, and Personal Property being collectively referred to herein as "the Premises").

To have and to hold the Premises and with all the rights and privileges thereunto belonging unto said Mortgagee forever, for the uses herein set forth, free from all rights and benefits under the homestead exemption and valuation laws of any state, which said rights and benefits said Mortgagor does hereby release and waive; provided, however, that if Mortgagor shall pay in full when due the Indebtedness Hereby Secured and shall duly and timely perform and observe all of the terms, provisions, covenants and agreements herein and in the Note and provided to be performed and observed by Mortgagor, then this Mortgage and the estate, right, and interest of Mortgagee in the Premises shall cease and become void and of no effect.

easements necessary to develop the Premises as a condominium building, which easements do not materially adversely affect the value of the Premises.

4. Any action or omission which shall result in the waste or diminution in value of the Premises or any portion thereof or which shall in Mortgagee's judgment impair Mortgagee's security hereunder.

5. Any zoning reclassification with respect to the Premises except to the extent necessary to permit development of the Premises as a condominium building.

#### 4. Liens.

A. Prohibition. Subject to the provisions of Paragraph 13 hereof, Mortgagor shall not create or suffer or permit any mortgage, lien, charge, or encumbrance to attach to or be filed against the Premises, whether the same are junior or senior to the lien hereof, or any mechanic's liens, materialmen's liens, or other claims for lien made by parties claiming to have provided labor or materials with respect to the Premises (which liens are herein defined as "Mechanic's Liens"), excepting only:

1. Liens securing the Indebtedness Hereby Secured.
2. The lien of real estate taxes and assessments not due and payable.
3. Those exceptions to title approved by Mortgagee in its reasonable discretion (hereinafter referred to as "Permitted Exceptions").
4. A lien in favor of Lehman Brothers Holdings, Inc., or its affiliate (the "Subordinate Lender") in connection with Mortgagor's anticipated loan from Subordinated Lender in the amount of approximately \$2,000,000, provided that Subordinated Lender shall first have executed and delivered to Mortgagee a Subordination Agreement in form reasonably satisfactory to Mortgagee.

B. Contest of Mechanic's Liens Claims. Notwithstanding the foregoing prohibition against Mechanic's Liens against the Premises, Mortgagor, or any party obligated to Mortgagor to do so, may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Lien and defer payment and discharge thereof during the pendency of such contest, provided that:

1. Such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Mechanic's Lien.

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2. Within 20 days after Mortgagor has been notified of the filing of such Mechanic's lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Mechanic's Lien or to cause such other party to contest such Mechanic's Lien.

3. Within 60 days after Mortgagor has been notified of the filing of such Mechanic's Lien, Mortgagor either shall have obtained a title insurance endorsement over such Mechanic's Lien insuring Mortgagee against loss or damage by reason of the existence thereof or Mortgagor shall have deposited or caused to be deposited with Mortgagee or with a title insurance company reasonably acceptable to Mortgagee a sum of money or other security reasonably acceptable to Mortgagee (all of such deposits from time to time hereunder collectively referred to as "Lien Deposit") in an amount which is in the reasonable judgment of Mortgagee sufficient to pay in full such Mechanic's Lien and all interest which might become due thereon. The Lien Deposit shall be held without any allowance of interest if held by Mortgagee. If Mortgagor fails to maintain or cause to be maintained a sufficient Lien Deposit, fails to prosecute such contest or cause such contest to be prosecuted with reasonable diligence, or fails to pay or cause to be paid the amount of the Mechanic's Lien plus any interest finally determined to be due upon the conclusion of such contest, then Mortgagee may, at Mortgagor's option, apply the Lien Deposit in payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon. If at any time the Lien Deposit shall be insufficient for the payment in full of such Mechanic's Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee or the title insurer an additional amount which, when added to the Lien Deposit theretofore made, shall be sufficient to make such payment in full. If the contest of the Mechanic's Lien claim is ultimately resolved in favor of the claimant then, provided that no Event of Default hereunder has occurred and is then continuing, Mortgagee shall apply the Lien Deposit in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon, when furnished with evidence satisfactory to Mortgagee of the amount of payment to be made, and any overplus remaining in the control of Mortgagee shall be paid to Mortgagor.

## 5. Taxes and Liens.

A. Payment. Mortgagor shall pay or cause to be paid when due, and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges, and assessments of every kind and nature whatsoever levied or assessed against the Premises or any part thereof or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Mortgagor. Mortgagor shall furnish to Mortgagee receipts therefor without demand or further request on or before the date the same are due. Mortgagor shall discharge any claim or lien relating to Taxes upon the Premises. Nothing in this Paragraph 5.A contained

shall require Mortgagor to pay any income, franchise, or excise tax imposed upon Mortgagee, excepting any such tax which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if Mortgagee derived no income from any source other than its interest hereunder.

B. Contest of Taxes. Mortgagor may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that:

1. Such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Taxes.

2. Mortgagor has notified Mortgagee in writing of Mortgagor's intention to contest such Taxes or to cause the same to be contested, and such contest shall be made and concluded (or such Taxes shall be paid under protest) promptly.

3. Mortgagor either shall have paid such Tax under protest or shall have deposited or caused to be deposited with Mortgagee or with a title insurance company reasonably acceptable to Mortgagee a sum of money or other security reasonably acceptable to Mortgagee (all of such deposits from time to time hereunder collectively referred to as "Tax Deposit") in an amount which is in the reasonable judgment of Mortgagee sufficient to pay in full such Taxes and all interest and penalties which might become due thereon. The Tax Deposit shall be held without any allowance of interest if held by Mortgagee. If Mortgagor fails to maintain or cause to be maintained a sufficient Tax Deposit, fails to prosecute such contest or cause such contest to be prosecuted with reasonable diligence, or fails to pay or cause to be paid the amount of the Taxes plus any interest or penalties finally determined to be due upon the conclusion of such contest, then Mortgagee may, at Mortgagee's option, apply the Tax Deposit in payment of such Taxes or that part thereof then unpaid, together with all interest and penalties thereon. If at any time the Tax Deposit shall be insufficient for the payment in full of such Taxes, together with all interest and penalties thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee or the title insurer an additional amount which, when added to the Tax Deposit theretofore made, shall be sufficient to make such payment in full. If the contest of the Taxes is ultimately resolved adverse to Mortgagor then, provided that no Event of Default hereunder has occurred and is then continuing, Mortgagee shall apply the Tax Deposit in full payment of such Taxes or that part thereof then unpaid, together with all interest and penalties thereon, when furnished with evidence satisfactory to Mortgagee of the amount of payment to be made, and any overplus remaining in the control of Mortgagee shall be paid to Mortgagor.

6. **Change in Tax Laws.** If, at any time, under the laws of the United States of America or of any state or municipality having jurisdiction over Mortgagee, Mortgagor, or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording or existence of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. If any law, statute, rule, regulation, order, or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the Taxes required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of Taxes, so as to affect this Mortgage, the Indebtedness Hereby Secured, or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee therefor on demand, unless Mortgagee determines, in Mortgagee's reasonable judgment, that such payment or reimbursement by Mortgagor is unlawful, in which event the Indebtedness Hereby Secured shall be due and payable within 30 days after written demand by Mortgagee to Mortgagor. Nothing in this Paragraph 6 shall require Mortgagor to pay any income, franchise, or excise tax imposed upon Mortgagee, excepting only such which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by Mortgagor pursuant hereto.

7. **Insurance Coverage.**

A. Mortgagor will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time reasonably require, and in any event will continuously maintain the following described policies of insurance ("the Insurance Policies"):

1. Comprehensive general liability insurance covering the Premises in a liability per occurrence amount of not less than \$1,000,000.00 for bodily injury, property damage, or both.
2. If the Federal Insurance Administration (FIA) or any other governmental agency has designated or shall at any time hereafter designate the Premises to be in a special flood hazard area, first and second layer flood insurance (including surface waters) in form, substance, and amounts satisfactory to Mortgagee.
3. Such other types and amounts of insurance coverage as Mortgagee may reasonably request.

Mortgagee may, at any time and in its sole discretion upon written notice to Mortgagor, procure and substitute for any and all of the policies of insurance required above, such other policies of insurance, in such amounts, and carried in such companies, as it may select, and in such event, those policies of insurance shall be included within the definition of "Insurance Policies" set forth herein.

B. All Insurance Policies shall be in such form and amounts and written by such insurance companies as are reasonably satisfactory to Mortgagee. All Insurance Policies insuring against casualty, rent loss, and business interruption and other appropriate policies shall include long form non-contributing mortgage endorsements in favor of and with loss payable to Mortgagee, as its interest may appear as the holder of this Mortgage, as well as standard waiver of subrogation endorsements. Liability insurance shall be evidenced by a certificate of insurance issued to Mortgagee. Each Insurance Policy shall provide that the coverage shall not be terminated or materially modified without 30 days' advance written notice to Mortgagee and shall provide that no claims shall be paid thereunder without 10 days' advance written notice to Mortgagee. Mortgagor will deliver all Insurance Policies (or certified copies thereof), premiums prepaid, for a minimum term of one year or such lesser term as Mortgagee may agree, to Mortgagee and, in case of Insurance Policies about to expire, Mortgagor will deliver renewal or replacement policies not less than 30 days prior to the date of expiration thereof. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies.

C. Mortgagor will give Mortgagee prompt notice of any loss or damage to the Premises.

**8. Escrow for Taxes and Insurance Premiums.**

A. In order to more fully assure the payment of Taxes and premiums payable with respect to all Insurance Policies ("Premiums") as and when the same shall become due and payable, Mortgagor shall deposit with Mortgagee funds to pay all Taxes and Premiums when due and payable as hereinafter provided:

1. Subject to Paragraph 8.B below, Mortgagor shall deposit with Mortgagee, on the first business day of each and every month, an amount equal to 1/12th of the Taxes and, subject to Paragraph 8.B below, 1/12th of the Premiums to become due upon the Premises between one and thirteen months after the date of such deposit; provided, however, that in the case of the first such monthly deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to Taxes and Premiums to become due and payable within thirteen months after such first deposit, will provide (without interest) a sufficient fund to pay such Taxes and Premiums one month prior to the date when they are due and payable. The amounts of such deposits (herein generally called "Escrow Deposits") shall be based upon Mortgagee's reasonable estimate as to the amount of Taxes and Premiums. Mortgagor shall promptly upon the demand of Mortgagee make additional Escrow Deposits as Mortgagee may from time to time require due to:



- a. Failure of Mortgagee to require, or failure of Mortgagor to make, Escrow Deposits in previous months.
- b. Underestimation of the amounts of Taxes, Premiums, or both.
- c. The particular due dates and amounts of Taxes, Premiums, or both.
- d. Application of the Escrow Deposits pursuant to Paragraph 8.A.3 hereof.

Additionally, upon the execution hereof, Mortgagor shall deposit with Mortgagee, as an Escrow Deposit, the amount of all Taxes and Premiums to become due and payable prior to the first monthly Escrow Deposit or within one month thereafter. All Escrow Deposits shall be held by Mortgagee without any allowance of interest thereon.

2. Subject to Paragraph 8.B hereof, upon the presentation to Mortgagee by Mortgagor of the bills therefor, Mortgagee will pay the Taxes and Premiums using the Escrow Deposits therefor or will, upon the presentation of receipted bills therefor, reimburse Mortgagor for such payments made by Mortgagor. If the total Escrow Deposits on hand shall not be sufficient to pay all of the Taxes and Premiums when the same shall become due, then Mortgagor shall pay to Mortgagee on demand the amount necessary to make up the deficiency.

3. Upon the occurrence of an Event of Default hereunder Mortgagee may, at its option, without being required so to do, apply any Escrow Deposits on hand to any of the Indebtedness Hereby Secured, in such order and manner as Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, any remaining Escrow Deposits shall be paid to Mortgagor. All Escrow Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and prior to the full payment of the Indebtedness Hereby Secured shall be held by Mortgagee irrevocably to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of Mortgagor.

4. Notwithstanding anything herein contained to the contrary, Mortgagee, or its successors and assigns, shall not be liable for any failure to apply the Escrow Deposits to Taxes and Premiums unless Mortgagor, while no Event of Default hereunder has occurred and is continuing, shall have requested Mortgagee in writing to make application of such Escrow Deposits on hand to the payment of the Taxes or Premiums for the payment of which such Escrow Deposits were made, accompanied by the bills therefor.

5. The provisions of this Mortgage are for the benefit of Mortgagor and Mortgagee alone. No provision of this Mortgage shall be construed as creating in any party other than Mortgagor and Mortgagee any rights in and to the Escrow Deposits or any rights to have the Escrow Deposits applied to payment of Taxes and Premiums. Mortgagee shall have no obligation or duty to any third party to collect Escrow Deposits.

B. Notwithstanding anything contained herein to the contrary, provided that no Event of Default hereunder has occurred and is continuing, and provided that Mortgagor pays all Taxes and Premiums in a timely fashion and promptly provides Mortgagee with proof of payment thereof, no Escrow Deposits will be required pursuant to this Paragraph 8, but on the occurrence of an Event of Default hereunder Mortgagor shall deposit with Mortgagee sufficient funds to pay such Taxes and Premiums when due in accordance with the terms of this Paragraph 8.

**9. Condemnation and Eminent Domain.** Any and all proceeds of awards ("Awards") heretofore or hereafter made or to be made to the owner of the Premises by any governmental or other lawful authority for the taking, pursuant to condemnation or eminent domain proceedings (or settlement in lieu thereof), of all or any part of the Premises (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment therefor), are hereby assigned by Mortgagor to Mortgagee, which Awards Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittance therefor. Any such Awards shall be subject to the reasonable approval of Mortgagor and Mortgagee. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute, and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. If any portion of or interest in the Premises is taken by condemnation or eminent domain, either temporarily or permanently, the entire Indebtedness Hereby Secured shall immediately become due and payable, and after deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including reasonable attorney's fees, Mortgagee shall apply the net proceeds toward repayment of the Indebtedness Hereby Secured.

**10. Prepayment.** Privilege is reserved by Mortgagor to prepay the Indebtedness Hereby Secured without any prepayment premium or penalty.

11. **Mortgagee's Performance of Mortgagor's Obligations.** Upon the occurrence of an Event of Default hereunder, Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee. Mortgagee may, but shall not be required to, rent, operate, and manage the Premises and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises shall be operational and usable. All monies paid, and all expenses paid or incurred in connection therewith, including reasonable attorney's fees and other monies advanced by Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing, and equipping or to rent, operate, and manage the Premises or to pay any such operating costs and expenses thereof or to keep the Premises operational and usable, shall be so much additional Indebtedness Hereby Secured, whether or not the Indebtedness Hereby Secured, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due and payable on demand; and with interest thereon at the Default Rate specified in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default nor shall the provisions of this Paragraph 11 or any exercise by Mortgagee of its rights hereunder prevent any default from constituting an Event of Default hereunder. Mortgagee, in making any payment hereby authorized:

- A. Relating to Taxes, may do so according to any bill, statement, or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.
- B. For the purchase, discharge, compromise, or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.
- C. In connection with the completion of construction, furnishing, or equipping of the Premises or the rental, operation, or management of the Premises or the payment of operating costs and expenses thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate.

Nothing contained herein shall be construed to require Mortgagee to advance or expend monies for any purpose mentioned herein, or for any other purpose.

12. **Security Agreement.**

A. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as "the UCC") with respect to:

1. Any and all Deposits (meaning Tax Deposits, Lien Deposits, Escrow Deposits, or other sums deposited with Mortgagee pursuant to the terms of this Mortgage) or other sums or security at any time on deposit for the benefit of Mortgagee or held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage.

2. Any and all property of Mortgagor of any kind or description, tangible or intangible, now or hereafter delivered, transferred, in transit to, or kept in the possession, control, or custody of Mortgagee, or any agent or bailee of Mortgagee whether expressly as collateral security or for any other purpose, including without limitation all property left with Mortgagee in general or special accounts or for safekeeping or otherwise, and including further cash, certificates of deposit, documents of title, negotiable instruments, or any other property of Mortgagor now or hereafter in the possession, control, or custody of or assigned to Mortgagee.

3. Any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" within the meaning of the UCC (all of which property is herein collectively referred to as "the Personal Property") and all replacements of the Personal Property, substitutions therefor, additions thereto, and proceeds thereof (the property described in Paragraphs 12.A.1, 12.A.2, and 12.A.3 hereof hereinafter collectively referred to as "the Collateral").

B. A security interest in and to the Collateral is hereby granted to Mortgagee, and the Collateral and all of Mortgagor's right, title, and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness Hereby Secured. All of the terms, provisions, conditions, and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

1. Mortgagor (such party being the Debtor as that term is used in the UCC) is and shall be the true and lawful owner of the Collateral, subject to no liens, charges, or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee, liens expressly permitted hereunder, and the Permitted Exceptions.

2. The Collateral is and shall be used by Mortgagor solely for business purposes.

3. The Collateral shall be kept at the Real Estate or at Mortgagor's office in Chicago, Illinois and, except for Obsolete Collateral (as hereinafter defined), shall not be removed therefrom without the consent of Mortgagee

(being the Secured Party as that term is used in the UCC). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

4. Except as provided in Paragraph 12.B.1 hereof, no UCC financing statement is on file in any public office. Mortgagor shall at its own cost and expense, upon demand, furnish to Mortgagee such further information and shall execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and shall do all such acts and things as Mortgagee may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no other liens or encumbrances, other than liens or encumbrances described in Paragraph 12.B.1 hereof. Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable.

5. Upon occurrence of an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the UCC including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the UCC); and Mortgagee shall be entitled to hold, maintain, preserve, and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the UCC. Mortgagee may:

- a. Render the Collateral unusable without removal.
- b. Dispose of the Collateral on the Premises.
- c. Require Mortgagor to make the Collateral available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties.

Mortgagee will give Mortgagor at least 20 days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least 20 days before the time of the sale or disposition. Mortgagee may buy at any public sale and, if the Collateral is of a type customarily sold in a recognized

market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Premises, the Premises including the Collateral to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling, or the like, and the reasonable attorney's fees and reasonable legal expenses incurred by Mortgagee, shall be applied against the Indebtedness Hereby Secured in such order or manner as Mortgagee shall select. Mortgagee shall account to Mortgagor for any surplus realized on such disposition.

6. The terms and provisions contained in this Paragraph 12 shall, unless the context otherwise requires, have the meanings and be construed as provided in the UCC.

7. This Mortgage is intended to be a financing statement within the purview of the UCC with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinafter set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the County where the Premises is located. Mortgagor is the record owner of the Premises.

**13. Restrictions on Transfer.**

A. Except as provided in Paragraphs 13.B and 13.C, a conveyance, sale (installment or otherwise), assignment, transfer, lease, hypothecation, lien, pledge, mortgage, security interest, or other encumbrance or alienation of the Premises or any part thereof or any of Mortgagor's right, title, or interest therein which occurs or is granted, accomplished, attempted, or effectuated shall constitute a "Prohibited Transfer" without regard to whether any such conveyance, sale (installment or otherwise), assignment, transfer, lease, hypothecation, lien, pledge, mortgage, security interest, encumbrance, or alienation is effected directly, indirectly, voluntarily, or involuntarily, by Mortgagor, by another, by operation of law, or otherwise. Without limiting the generality of the foregoing, Mortgagor covenants and agrees that, except for agreements listed in Schedule 13 attached hereto, until payment in full of the Indebtedness Hereby Secured Mortgagor will not, without Mortgagee's prior written consent (which Mortgagee may not unreasonably withhold) enter into any (i) lease of, (ii) agreement to enter into a lease of, (iii) agreement with a broker to sell or lease, or (iv) agreement with a property manager to manage, all or any portion of the Premises.

B. The following shall not be Prohibited Transfers for purposes of this Paragraph 13:

1. Liens or encumbrances securing the Indebtedness Hereby Secured.
2. The lien of Taxes and assessments not yet due and payable.
3. Any lien expressly permitted under this Mortgage.

C. The provisions of Paragraph 13.A and 13.B to the contrary notwithstanding, Mortgagee agrees to consent to a transfer of title to all of the Premises subject to the following terms and conditions:

1. The right granted by this Paragraph 13.C shall be exercised only once.
2. The transferee shall be a partnership, corporation, limited liability company, or other entity controlled, directly or indirectly, by Louis R. Silverman or Matthew Walsh. Mortgagor shall deliver to Mortgagee with its request to such transfer such information as Mortgagee may reasonably request to determine the ownership structure of the transferee.
3. Simultaneous with and as a condition of such transfer, the transferee shall deliver to Mortgagee an assumption agreement and an opinion of counsel, both in form and content as determined by Mortgagee.
4. The transfer shall not relieve or release Mortgagor, as mortgagor of this Mortgage or as maker of the Note or as assignor of the Assignment, of and from its obligations under this Mortgage, the Note, or the Assignment. The transfer shall not relieve or release any guarantor of the obligations of Mortgagor to pay and perform the Note, this Mortgage, or the Assignment, of their guaranty of payment and performance.
5. Mortgagor shall pay all costs and expenses incurred by Mortgagee to evaluate Mortgagor's request for transfer and to prepare the documents hereinabove described.

**14. Events of Default.**

A. The occurrence of any one or more of the following events is an Event of Default hereunder:

1. The occurrence of an Event of Default under the Note.
2. The occurrence of an Event of Default under the Assignment beyond any applicable cure period, all of the terms and provisions of which

Assignment are incorporated herein by this reference to the same extent as though fully set forth in this Mortgage.

3. The occurrence of a default under any guaranty of payment of the Note given to Mortgagee.

4. Mortgagor fails to make, within ten (10) days after the date when due, any payment required under this Mortgage.

5. Mortgagor fails to give Mortgagee timely notice of any event of which Mortgagor is required to give Mortgagee notice hereunder.

6. The occurrence of a Prohibited Transfer.

7. Mortgagor commits an act of bankruptcy including, but not limited to, the following:

a. Mortgagor files a voluntary petition in bankruptcy or for arrangement, reorganization, or other relief under any chapter of the federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect or files an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay Mortgagor's debts as they mature.

b. Mortgagor fails to pay Mortgagor's debts generally as they mature.

c. Within 45 days after the filing against Mortgagor of any involuntary proceeding under the federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect such proceedings shall not have been dismissed.

d. All or a substantial part of the assets of Mortgagor are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant, or levy is vacated within 45 days.

e. Mortgagor shall be adjudicated a bankrupt or shall have an order for relief entered in respect of such party by any bankruptcy court.

f. Mortgagor makes an assignment for the benefit of creditors or admits in writing Mortgagor's inability to pay Mortgagor's debts generally as they become due or consents to the appointment of a custodian, receiver, or trustee or liquidator of all or the major part of Mortgagor's property or the Premises.



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g. Any order appointing a custodian, receiver, trustee, or liquidator of Mortgagor or all or a major part of Mortgagor's property or the Premises is not vacated within 45 days following the entry thereof.

h. Final judgment or judgments for the payment of money aggregating in excess of \$100,000 is or are outstanding against Mortgagor and any of such judgments has been outstanding for more than 60 days without being discharged in full or stayed.

8. Any material statement or information furnished by Mortgagor to Mortgagee pursuant hereto shall contain any material misstatements, or shall omit any material fact required to make such statement or information not misleading.

9. Mortgagor fails to perform or observe any other act, agreement, obligation, duty, or condition which Mortgagor is required to perform or observe hereunder, which failure continues for 30 days after Mortgagee gives Mortgagor written notice thereof (or such lesser time if the act which Mortgagor is required to perform is of an exigent or emergency nature) or, if by its nature such act, agreement, obligation, duty, or condition cannot be fully and completely performed or observed within said 30 day period, Mortgagor fails to commence to perform or observe such act, agreement, obligation, duty, or condition within said 30 day period and to pursue the same diligently and in good faith thereafter.

B. Upon occurrence of an Event of Default hereunder, Mortgagee is hereby authorized and empowered, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Mortgagee hereunder, to declare, without further notice, all Indebtedness Hereby Secured to be immediately due and payable with interest thereon at the Default Rate (as defined in the Note), whether or not such Event of Default hereunder be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to do any one or more of the following, concurrently or in any order Mortgagor may elect:

1. Foreclose this Mortgage.
2. Exercise any right, power, or remedy provided by this Mortgage.
3. Exercise any right, power, or remedy provided by the Note.
4. Exercise any right, power, or remedy provided by law or in equity.

## 15. Foreclosure.

A. In any suit or proceeding or sale to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness Hereby Secured in the decree of sale,

all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's 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 assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions 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 protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate (as provided in the Note) until paid.

B. Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and Mortgagee or any employee or agent of Mortgagee may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues, and profits of the Premises during the pendency of such foreclosure suit and during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of:

1. The Indebtedness Hereby Secured or the indebtedness secured by a 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 the foreclosure sale.

2. The deficiency in case of a sale and deficiency.

C. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority:

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1. First, on account of all costs and expenses incident to the foreclosure proceedings.
2. Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided.
3. Third, to interest remaining unpaid under the Note.
4. Fourth, to the principal remaining unpaid under the Note.
5. Lastly, to Mortgagor and Mortgagor's successors or assigns as their rights may appear.

D. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court shall direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty Insurance Policy to be canceled and a new loss payable clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all Insurance Policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the Insurance Policies without credit or allowance to Mortgagor for prepaid premiums thereon.

**16. Waiver of Right of Redemption and Other Rights.** To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption, or extension law or any so-called "moratorium law" now or at any time hereafter in force, nor claim, take, or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment, or order of any court of competent jurisdiction; or before or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property to be sold or so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other

enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement, whether exercisable or existing before or after sale under any order or decree of foreclosure of this Mortgage, on Mortgagor's own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through, or under Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption and reinstatement of Mortgagor and of all other persons are and shall be deemed to be waived to the full extent permitted by law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay, or impede the exercise of any right, power, or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power, and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

**17. Right of Possession.** When the Indebtedness Hereby Secured shall become due, whether by acceleration or otherwise, or in any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Premises or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Premises relating thereto, and may, on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

- A. Hold, operate, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its reasonable discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor.
- B. Make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Mortgagee, to insure and reinsure the Property and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

- C. Apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness Hereby Secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises.

**18. Rights Cumulative.** Each right, power, and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereafter provided by 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 to Mortgagee. 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 Mortgagee 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 default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, power, or remedy granted to Mortgagee by this Mortgage is not required to be given.

**19. Successors and Assigns.**

A. This Mortgage and each and every covenant, agreement, and other provision hereof shall be binding upon Mortgagor and Mortgagor's successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of Mortgagee and Mortgagee's successors and assigns. Wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder or holders from time to time of the Note, whether so expressed or not; and each such holder from time to time of the Note shall have and enjoy all of the rights, privileges, powers, options, and benefits afforded hereby and hereunder and may enforce all and every of the terms and provisions hereof as fully and to the same extent and with the same effect as if such holder of the Note from time to time was herein by name specifically granted such rights, privileges, powers, options, and benefits and was herein by name designated Mortgagee.

B. All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. If the ownership of Premises or any portion thereof becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with Mortgagor without in any way releasing or discharging Mortgagor from its obligations hereunder. Mortgagor will give immediate

written notice to Mortgagee of any conveyance, transfer, or change of ownership of the Premises, but nothing in this Paragraph shall vary or negate the provisions of Paragraph 13 hereof.

**20. Effect of Extensions and Amendments.** If the payment of the Indebtedness Hereby Secured, or any part thereof, shall be extended pursuant to the terms of the Note or otherwise or if said terms shall be varied, or if any part of the security therefor shall be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation, or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect, the right of recourse against all such persons being expressly reserved by Mortgagee notwithstanding any such extension, variation, or release. Any person, firm, or corporation taking a junior mortgage or other lien upon the Premises or any part thereof or any interest therein (it being understood and agreed that no such junior lien shall be created except as permitted under the terms of this Mortgage) shall take the said lien subject to the rights of Mortgagee to amend, modify, extend, or release the Note or this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

**21. Execution of Separate Security Agreements, Financing Statements, Etc.: Estoppel Letter.** Mortgagor will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements, and assurances as Mortgagee shall reasonably require for the better assuring, conveying, mortgaging, assigning, and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired. Without limitation of the foregoing, Mortgagor will assign to Mortgagee, upon request, as further security for the indebtedness secured hereby, its interests in all agreements, contracts, licenses, and permits affecting the Premises, such assignments to be made by instruments satisfactory to Mortgagee; provided, however, that no such assignment shall be construed as a consent by Mortgagee to any agreement, contract, license, or permit or to impose upon Mortgagee any obligations with respect thereto. From time to time, Mortgagor will furnish within 15 days after Mortgagee's request therefor a written and duly acknowledged statement of the amount due under the Note and under this Mortgage and whether any alleged offsets or defenses exist against the Indebtedness Hereby Secured.

**22. Hazardous Materials Representations, Warranties, and Indemnifications.**

A. Mortgagor hereby covenants with and warrants and represents to Mortgagee that neither Mortgagor nor, to the best knowledge of Mortgagor, any other person has ever caused or permitted any "Hazardous Material" (as hereinafter defined) to be placed, held, located, or disposed of on, under or at the Premises or any part

thereof or into the atmosphere or any watercourse, body of water or wetlands, or any other real property adjacent to or in the vicinity of the Premises, and neither the Premises nor any part thereof, has ever been used (whether by Mortgagor or, to the best knowledge of Mortgagor, by any other person) as a site for treatment, storage, or disposal (whether permanent or temporary) of any Hazardous Material.

B. Mortgagor hereby indemnifies Mortgagee and agrees to hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses, and claims of any and every kind whatsoever (including, without limitation, court costs and attorneys' fees) which at any time or from time to time may be paid, incurred, or suffered by, or asserted against, Mortgagee for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Premises into and upon any land, the atmosphere, or any watercourse, body of water or wetland, of any Hazardous Material as hereinafter defined (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses, or claims asserted or arising under the Hazardous Materials Statutes as hereinafter defined); and the provisions of and undertakings and indemnification set out in this sentence shall survive the satisfaction and release of this Mortgage and the payment and satisfaction of the Indebtedness Hereby Secured and shall continue to be the personal liability, obligation, and indemnification of Mortgagor binding upon Mortgagor forever. The provisions of the preceding sentence shall govern and control over any inconsistent provision of the Note and this Mortgage including, without limitation, any non-recourse provision contained herein or any of the foregoing agreements (provided that nothing contained herein shall be construed as creating any personal liability on the part of a land trustee holding title to the Premises). As used herein, "Hazardous Material" means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect (collectively, "Hazardous Materials Statutes"), or any other hazardous, toxic, or dangerous waste, substance, or material.

**23. Subrogation.** If any part of the Indebtedness Hereby Secured is used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

**24. Option to Subordinate.** At the option of Mortgagee 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 award in condemnation), to any and all

Leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, by the Recorder of Deeds of the County in which the Premises is situated, of a unilateral declaration to that effect.

## **25. Representations, Warranties, and Indemnifications.**

A. Mortgagor hereby represents, warrants, covenants, and agrees that the proceeds of the Note will be used for business purposes and that the principal obligation secured hereby constitutes a "business loan" within the meaning of 815 ILCS 205/4(1)(c), and is a non-usurious business loan under the laws of the State of Illinois.

B. Mortgagor hereby represents and warrants that this Mortgage has been duly executed by or on behalf of Mortgagor, that the person executing this Mortgage on behalf of Mortgagor has all requisite power and authority to do so, and that this Mortgage is valid, binding on, and enforceable against Mortgagor according to its terms, except to the extent that the same may be modified by bankruptcy or insolvency laws or other laws affecting the rights of creditors generally.

C. Mortgagor hereby represents and warrants that no portion of the Premises is leased or subject to any agreement for lease and that Mortgagor has not entered into any agreement with a broker or property manager to lease or manage any part or all of the Premises other than those leases and agreements listed in Schedule 13 attached hereto.

D. Mortgagor indemnifies Mortgagee against and agrees to hold Mortgagee harmless from any and all manner of suits, actions, claims, causes, and causes of action, judgments, fines, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, executions, claims, and demands whatsoever, in law or in equity, including without limiting the generality of the foregoing attorney's fees which Mortgagee may suffer or to which Mortgagee may be exposed as a result of the falsity or inaccuracy of any representation or warranty made or the breach or non-performance of any covenant or undertaking to be performed by Mortgagor in this Mortgage.

**26. Right of Access and Inspection.** Mortgagee and its representatives and agents shall have the right to inspect the Premises and all books, records, and documents relating thereto at all reasonable times, and access thereto shall be permitted for that purpose. Mortgagor shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises and, within 10 days after demand therefor by Mortgagee, permit Mortgagee or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time on request at Mortgagor's offices or at such other location as may be mutually agreed upon. Mortgagee shall be entitled to its reasonable expenses incident to the inspection of the Premises. Mortgagee, in its reasonable discretion, will determine the necessity for and the number of inspections required and Mortgagee



shall determine, at its reasonable discretion, each inspector used incident to an inspection.

**27. Notices.** Any notice, demand, or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing and shall be delivered personally, or by United States Mail (registered or certified, return receipt requested), or by telefax with a copy sent by United States Mail. A notice is given when received (as evidenced by courier delivery slip, by return receipt, or by telefax confirmation). Notices shall be addressed to a party at its address set forth below or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith. Notices to Mortgagor shall be addressed to:

55 Erie Investors LLC  
c/o Walsh Group, Ltd.  
929 W. Adams Street  
Chicago, IL 60607  
Attn: Matthew Walsh  
Telefax: (312) 563-5429

with a copy to Mortgagor's attorney.

John Huff  
Mayer, Browne & Platt  
190 S. LaSalle Street  
Suite 3100  
Chicago, IL 60603  
Telefax: (312) 706-8711

and a copy to: Lawrence H. Brenman  
Much Shelist Freed Denenberg  
Ament & Rubenstein  
200 North LaSalle Street  
Suite 2100  
Chicago, IL 60601  
Telefax: (312) 621-1750

Notices to Mortgagee shall be addressed to:

Midwest Bank and Trust Company  
Attn: Sheldon Bernstein  
501 West North Avenue  
Melrose Park, Illinois 60160  
Telefax: (708) 865-7013

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with a copy to Mortgagee's attorney:

Jonathan L. Mills  
Sugar, Friedberg & Felsenthal  
30 North LaSalle Street  
Suite 2600  
Chicago, Illinois 60602  
Telefax: (312) 372-7951

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## **28. Interpretation and Enforcement; Time of Essence; Relationship of Parties; Joint and Several Undertaking.**

A. This Mortgage shall be construed and enforced according to the laws of the State of Illinois. The captions and headings are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine, and neuter shall be freely interchangeable.

B. Time is of the essence of the Note and this Mortgage.

C. Nothing contained herein or in the Note shall be deemed to create a joint venture or partnership relationship between Mortgagor and Mortgagee; it being understood that solely the relationships of lender and borrower and mortgagor and mortgagee, as the case may be, shall be created in connection herewith. Anything contained herein to the contrary notwithstanding, it is expressly understood and agreed that Mortgagee's inspection and approval of the documentation pertaining to this Mortgage and any inspection of the Premises made by Mortgagee shall be solely for Mortgagee's benefit, and Mortgagee shall have no liability to Mortgagor or any other person or entity by reason thereof.

D. If this Mortgage is signed by more than one entity, the liability of such Mortgagor shall be joint and several in all respects.

**IN WITNESS WHEREOF**, Mortgagor has caused this Mortgage to be duly signed, sealed, and delivered on or as of the day and year first above written.

**55 ERIE INVESTORS LLC**

By: 

Member of the  
Management Committee

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STATE OF ILLINOIS )  
                          ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Joshua Silverman, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, 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 55 Erie Investors LLC for the uses and purposes set forth.

Given under my hand and notarial seal this 14 day of July, 2000.

*Philip Wong*  
\_\_\_\_\_  
Notary Public



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Schedule 13  
Leases and Brokerage and Management Agreements

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1. Lease to Valet Parking
2. Joint Exclusive Sales Agreement dated 7/14/00 with Urban Search Corp. and Urban Search Corporation of Chicago

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Assignor has concurrently herewith executed and delivered to Assignee a certain Note in the principal amount of \$13,800,000 ("the Note") which is secured by a Mortgage and Security Agreement dated the date hereof ("the Mortgage") which conveys and mortgages the Property to Assignee as mortgagee thereunder.

For the purpose of further securing payment of the indebtedness evidenced by the Note and the payment of all advances and other sums with interest thereon becoming due and payable to Assignee under the provisions hereof or of the Note and the Mortgage, or any sums secured by the Mortgage, and the performance and discharge of each and every obligation, covenant, and agreement of Assignor herein or arising under the Note and the Mortgage, and also in consideration of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. **Assignment.** Assignor does hereby sell, assign, transfer, and set over unto Assignee all right, title, and interest of Assignor in and to all rents, issues, and profits of the Property including but not limited to all right, title, and interest of Assignor in and to all leases now or heretofore in effect and all leases which may be hereafter entered into for all or any portion of the Property (collectively, "the Leases") and any and all extensions and renewals thereof, and including any security deposits or interests therein now or hereafter held by Assignor and the benefit of any guarantees executed in connection with any of the Leases. This Assignment is absolute and is effective immediately; however, until notice is sent by Assignee to Assignor in writing that an event of default has occurred hereunder or under the Note or under the Mortgage ("the Notice"), Assignee shall not exercise any rights granted to it hereunder and Assignor may receive, collect, and enjoy the rents, income, and profits accruing from the Property.

2. **Assignor's Representations and Warranties.** Assignor hereby represents and warrants to Assignee that:

A. It has made no prior assignment or pledge of the rents assigned hereby or of Assignor's interest in any of the Leases.

B. Except as listed in Schedule 2 attached hereto, no Leases presently exist or have been negotiated and other than Assignor, in its capacity as owner of the Property, no person has a right to lease, use, or occupy any part or all of the Property.

3. **Assignor's Covenants.**

A. Assignor covenants that throughout the term of this Assignment Assignor will:

1. With respect to any Lease which Assignee permits Assignor to execute and deliver, fulfill and perform each and every material covenant and

condition of such Lease by the landlord thereunder to be fulfilled or performed and at all times promptly and faithfully abide by, discharge, or perform all of the material covenants, conditions, and agreements contained in such Lease, and enforce, at Assignor's sole cost and expense, the performance and observance of each and every material covenant and condition of such Lease by the tenant thereunder to be performed and observed, and appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with such Lease or the obligations, duties, or liabilities of Assignor, as landlord, and of the tenant thereunder, and pay all costs and expenses of Assignee, including reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear.

2. Transfer and assign to Assignee any and all Leases subsequently entered into, upon the same terms and conditions as are herein contained, and make, execute, and deliver to Assignee upon demand any and all instruments required to effectuate said assignment.

3. Furnish to Assignee, within 10 days after a request by Assignee to do so, a written statement containing the names of all tenants of the Property or any part thereof, the terms of their respective Leases, the spaces occupied, and the rentals payable thereunder.

4. Exercise within 5 days of the demand therefor by Assignee any right to request from the tenants under any of the Leases a certificate with respect to the status thereof.

5. Furnish Assignee promptly with copies of any notices of default which Assignor may at any time forward to any tenant of the Property or any part thereof.

6. Pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the default rate provided in the Note.

B. Assignor covenants that throughout the term of this Assignment Assignor will not, without Assignee's prior written consent:

1. Negotiate, execute or deliver any lease or other agreement to use or occupy any part or all of the Property. Assignee agrees however that it shall not unreasonably withhold its consent to any leases proposed by Assignor.

2. Execute an assignment or pledge of the rents from the Property or any part thereof, or of Assignor's interest in any of the Leases, except to Assignee; provided that Assignor may pledge such rents to Lehman Brothers Holdings, Inc., or any affiliate thereof (the "Subordinate Lender") to secure

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Assignor's anticipated loan from the Subordinate Lender in the amount of approximately \$2,000,000, if, and only if, the Subordinate Lender first executes and delivers to Assignee a Subordination Agreement in form reasonably acceptable to Assignee.

3. With respect to any Lease which Assignee permits Assignor to execute and deliver: modify, extend, or otherwise alter the terms of such Lease or accept prepayment of any installment of rents to become due under such Lease for more than 1 month in advance.

4. **Assignor's Indemnification of Assignee.** This Assignment shall not operate to place responsibility for the control, management, care, and repair of the Property upon Assignee and Assignee shall not undertake to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty, or liability under the Leases, and Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all liability, loss, or damage which Assignee may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertaking on Assignee's part to perform or discharge any of the terms, covenants, or agreements contained in the Leases, except any such claims or demands resulting from the acts or actions of Assignee. Should Assignee incur any such liability, loss, or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse Assignee therefor with interest at the default rate provided in the Note immediately upon demand.

5. **Assignee's Demand on Tenants.**

A. Tenants of the Property are hereby expressly authorized and directed to pay any and all amounts due Assignor pursuant to the Leases directly to Assignee, or such nominee as Assignee may designate, and are expressly relieved of any and all duty, liability, or obligation to Assignor in respect of all payments so made upon receipt of a demand from Assignee therefor.

B. Assignee's demand on any tenant for the payment of rent shall be sufficient warrant to the tenant to make future payment of rents to Assignee without the necessity for further consent by Assignor. Assignor does further hereby specifically authorize and instruct each and every present and future tenant of the whole or any part of the Property to pay all unpaid rental agreed upon in any tenancy, including but not limited to any base rent, percentage rent, property taxes, and operating expenses, to Assignee upon receipt of demand from Assignee to pay the same to Assignee or as Assignee may direct, and Assignor hereby waives any right, claim, or demand it may now or hereafter have against any such tenant by reason of such payment of rental to



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STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

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I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Joshua Silverman, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, 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 55 Erie Investors LLC for the uses and purposes set forth.

Given under my hand and notarial seal this 14 day of July, 2000.

*Philip Wong*  
\_\_\_\_\_  
Notary Public

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Cook County Clerk's Office

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Schedule 2

Leases and Parties with the Right to Use/Occupy the Property

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1. Lease to Valet Parking
2. Joint Exclusive Sales Agreement dated 7/14/00 with Urban Search Corp. and Urban Search Corporation of Chicago

Property of Cook County Clerk's Office

Assignee or as Assignee shall direct or compliance with other requirements of Assignee pursuant to this Assignment.

C. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted to Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

6. **Power of Attorney.** Assignor hereby irrevocably appoints Assignee as Assignor's true and lawful attorney with full power of substitution and with full power for Assignee in Assignee's own name and capacity or in the name and capacity of Assignor, from and after the service of the Notice, to demand, collect, receive, and give complete acquittances for any and all rents, income, and profits accruing from the Property, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in Assignee's own name or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, income, and profits.

7. **Events of Default; Remedies.**

A. The occurrence of any one or more of the following shall be an Event of Default hereunder:

1. Assignor fails to make any payment within 10 days after the date when due or to do any other act as herein provided for within 30 days after notice from Assignee.
2. The occurrence of an Event of Default under the Note.
3. The occurrence of an Event of Default under the Mortgage.

B. Upon the occurrence of an Event of Default, Assignee shall have the following remedies:

1. Assignee may make any payment or do any act required of Assignor herein in such manner and to such extent as Assignee may deem reasonably necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant, and agreement of Assignor in the Leases contained, and in exercising any such powers to incur and pay necessary costs and expenses, including reasonable attorneys' fees, all at the expense of Assignor.

2. Assignee may, without regard to the adequacy of the security for the indebtedness hereby secured, either in person, or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage, and operate the Property or any part thereof; and do any acts which Assignee deems proper to protect the security hereof; and either with or without taking possession of the Property, in the name of Assignor or in its own name sue for or otherwise collect and receive such rents, issues, profits, and advances, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, but not limited to, reasonable attorneys' fees, management fees, and brokers' commissions, upon any indebtedness secured hereby, and in such order as Assignee may determine. Assignee reserves, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted, and shall not be accountable for more monies than it actually receives from the Property. The entering upon and taking possession of the Property or the collection of such rents, issues, profits, and advances and the application thereof, as aforesaid, shall not cure or waive any default under the Mortgage or the Note. Assignor agrees that it will facilitate in all reasonable ways Assignee's collection of the rents and will, upon request by Assignee, promptly execute a written notice to each tenant directing the tenant to pay rent to Assignee.

8. **Assignee's Right to Exercise Remedies.** No remedy conferred upon or reserved to Assignee herein or in the Mortgage or the Note or in any other agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy, and all representations herein and in the Note or the Mortgage contained, shall be cumulative and concurrent, and shall be in addition to every other remedy given hereunder and thereunder or now or hereafter existing at law or in equity or by statute. The remedies may be pursued singly, successively, or together against Assignor, the Property, or both, at the sole discretion of Assignee. No delay or omission of Assignee to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein, and every power and remedy given by this Assignment to Assignee may be exercised from time to time as often as may be deemed expedient by Assignee.

9. **Termination.** Upon payment in full of all indebtedness secured hereby and the compliance with all obligations, covenants, and agreements herein and in the Note and the Mortgage, this Assignment shall become and be void and of no effect, but the affidavit of any officer of Assignee showing any part of the indebtedness remaining unpaid or showing non-compliance with any such terms or conditions shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon. The release of the Mortgage shall serve as a release of this Assignment, unless stated to the contrary in such release.

10. **Notices.** Any notice, demand, or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing and shall be delivered personally, or by United States Mail (registered or certified, return receipt requested), or by telefax with a copy sent by United States Mail. A notice is given when received (as evidenced by courier delivery slip, by return receipt, or by telefax confirmation). Notices shall be addressed to a party at its address set forth below or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith. Notices to Assignor shall be addressed to:

55 Erie Investors LLC  
c/o Walsh Group, Ltd.  
929 West Adams Street  
Chicago, IL 60607  
Attn: Matthew Walsh  
Telefax: (312) 363-5429

with a copy to Assignor's attorney:

John Huff  
Mayer, Brown & Platt  
190 South LaSalle Street  
Suite 3100  
Chicago, IL 60603  
Telefax: (312) 706-8711

and a copy to:

Lawrence H. Brenman  
Much Shelist Freed Derenberg  
Ament & Rubenstein  
200 North LaSalle Street  
Suite 2100  
Chicago, IL 60601  
Telefax: (312) 621-1750

Notices to Assignee shall be addressed to:

Midwest Bank and Trust Company  
Attn: Sheldon Bernstein  
501 West North Avenue  
Melrose Park, Illinois 60160  
Telefax: (708) 865-7013

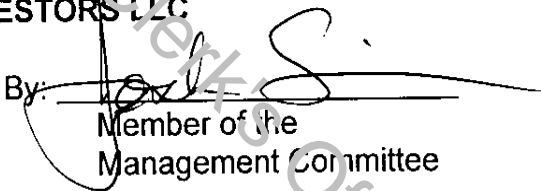
with a copy to Assignee's attorney:

Jonathan L. Mills  
Sugar, Friedberg & Felsenthal  
30 North LaSalle Street  
Suite 2600  
Chicago, Illinois 60602  
Telefax: (312) 372-7951

**11. Interpretation; Modification and Amendment; Partial Invalidity; Binding on Successors and Assigns.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois. The terms "Assignor" and "Assignee" shall be construed to include the representatives, heirs, legatees, successors, and assigns thereof. Paragraph headings and singular or plural, masculine, feminine, or neuter nouns and pronouns are used for convenience only and shall be liberally interpreted. This Assignment may not be modified, amended, discharged, or waived except by an agreement in writing and signed by the party against whom enforcement of any such modification, amendment, discharge, or waiver is sought. The invalidity or unenforceability of any provision hereof shall not affect, modify, or impair the validity and enforceability of all other provisions hereof. The covenants of this Assignment shall bind Assignor and Assignor's representatives, heirs, legatees, successors, and assigns and all present and subsequent encumbrances, tenants, and subtenants of the Property or any part thereof, and shall inure to the benefit of Assignee and Assignee's representatives, heirs, legatees, successors, and assigns.

**IN WITNESS WHEREOF**, Assignor has executed this Assignment on or as of the date first above written.

**55 ERIE INVESTORS LLC**

By:   
Member of the  
Management Committee