



Associated Commercial  
Mortgage, Inc.

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**CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FINANCING STATEMENT**

**MORTGAGOR:** POPLAR CREEK, L.L.C., an Illinois limited liability company,  
400 Northwest Corporate Center, 2500 Higgins Road, Hoffman Estates, Illinois 60195.

**LENDER:** ASSOCIATED COMMERCIAL MORTGAGE, INC., a Wisconsin corporation,  
1200 North Mayfair Road, Suite 120, Milwaukee, Wisconsin.

THE WITHIN MORTGAGE SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON THE LAND MORTGAGED HEREIN AND CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF SECTION 9-313(1)(c) OF THE ILLINOIS UNIFORM COMMERCIAL CODE. THIS INSTRUMENT IS EFFECTIVE AND SHALL REMAIN EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES ON THE REAL ESTATE HEREIN DESCRIBED AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF COOK COUNTY, ILLINOIS. THE MAILING ADDRESS OF THE LENDER AND THE ADDRESS OF THE MORTGAGOR ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

This document consists of 24 pages.

This instrument prepared by  
(and return after recording to):

Masuda, Funai, Eifert & Mitchell, Ltd.  
One East Wacker Drive, Suite 3200  
Chicago, Illinois 60601  
Attention: Bradley D. Kaplan, Esq.; and  
Laura S. Tallroth, Esq.

Address of Premises:

Higgins Road, East of Barrington Road  
Hoffman Estates, Illinois 60195

Property Tax Index Numbers:

07-07-100-030

**UNOFFICIAL COPY****CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FINANCING STATEMENT**

**THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FINANCING STATEMENT** (the "**Mortgage**"), is made as of the 4<sup>th</sup> day of August, 2000, by and among **POPLAR CREEK, L.L.C.**, an Illinois limited liability company, having an address at 400 Northwest Corporate Center, 2500 Higgins Road, Hoffman Estates, Illinois 60195 (the "**Mortgagor**") and **ASSOCIATED COMMERCIAL MORTGAGE, INC.**, a Wisconsin banking corporation having its principal office and place of business at 1200 North Mayfair Road, Suite 120, Milwaukee, Wisconsin (the "**Lender**"),

**RECITALS:**

**WHEREAS**, the Mortgagor holds title to the real estate legally described in Exhibit A attached hereto (the "**Land**");

**WHEREAS**, pursuant to a Construction Loan Agreement, of even date herewith between the Mortgagor and the Lender (as amended, supplemented or modified from time to time, the "**Loan Agreement**"), the Lender has agreed; subject to the terms and conditions set forth therein, to loan to the Mortgagor up to an aggregate principal amount of \$7,083,000 or so much hereof as may be advanced from time to time under the terms of the Loan Agreement (the "**Construction Loan**") to finance the construction of a 32,880 square foot conference center on the Land (the "**Project**");

**WHEREAS**, after completion of the construction of the Project the Mortgagor desires that the Lender extend permanent financing to the Mortgagor by converting the Construction Loan to a Term Loan (the Construction Loan and the Term Loan, collectively, the "**Loan**");

**WHEREAS**, the Loan shall be evidenced by a certain Mortgage Note of even date herewith made by the Mortgagor and delivered to the Lender, (together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified or extended, the "**Note**"), which Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due on the earlier of demand made by the Lender or the Final Maturity Date (as defined in the Loan Agreement), the Note by this reference thereto being incorporated herein; and

**WHEREAS**, a condition precedent to the Lender's extension of the Loan to the Mortgagor is the execution and delivery by the Mortgagor of this Mortgage.

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

The Mortgagor hereby irrevocably and absolutely does by these presents grants, mortgages, conveys, transfers, assigns, bargains, and sells to the Lender, its successors and assigns, with all powers of sale (if any) and all statutory rights under the laws of the State of Illinois, all of the Mortgagor's present and hereafter acquired estate, right, title and interest in, to and under and hereby represents and warrants to the Lender, and grants to the Lender a security interest in, the Land, together with other property described in the following paragraph (the Land and the property being hereinafter referred to as the "**Premises**") to secure: (i) the payment of the Loan and all interest, late charges, costs and other indebtedness evidenced by or owing under the Note and any of the other Loan Documents (as defined in the Loan Agreement) and by any extensions, modifications, renewals or refinancings thereof collectively, the "**Indebtedness**"; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Mortgagor or any other obligor to or benefitting the Lender which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement of the Lender for any and all sums expended or advanced by the Lender

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 Land, the Premises hereby mortgaged includes:

- (a) All buildings, structures, and improvements now or hereinafter erected upon or located on the Land, together with the Mortgagor's undivided percentage interest in common elements and together with the fixtures and personal property hereinafter described;
- (b) All and singular the easements, rights-of-way, licenses, permits, rights of use or occupancy, privileges, tenements, appendages, hereditaments and appurtenances and other rights and privileges thereunto belonging or in any wise appertaining, whether now or in the future, and all the rents, issues and profits therefrom;
- (c) All right, title and interest, if any, of the Mortgagor, in and to the land lying within any street, alley, avenue, roadway or right-of-way open or proposed or hereafter vacated in front of or adjoining the Land; and all right, title and interest, if any, of the Mortgagor in and to any strips and gores adjoining the Land;
- (d) All interests of the Mortgagor in all leases (the "Leases") now or hereafter on the Premises whether written or oral together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to the Mortgagor to collect the rent under such leases;
- (e) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Land, or any part thereof, or used or usable in connection with any construction on or any present or future operation of the Premises, now owned or hereafter acquired by the Mortgagor, all heating, lighting, refrigerating, ventilating, air-conditioning, air-cooling, fire extinguishing, plumbing, cleaning, communications and power equipment, systems and apparatus; and all elevators, switchboards, motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and also including any of such property stored on the Premises or in warehouses and intended to be used in connection with or incorporated into the Premises; it being understood and agreed that all such machinery equipment, apparatus, goods, systems, fixtures, and property are a part of the Premises and are declared to be a portion of the security for the Indebtedness (whether in single units or centrally controlled, and whether physically attached to said real estate or not), excluding, however, personal property owned by tenants of the Premises (the "Improvements"); and
- (f) Any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Premises as a result of: (1) the exercise of the right of eminent domain; or (2) the alteration of the grade of any street; or (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Premises, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Lender, and of the reasonable counsel fees, costs and disbursements incurred by the Lender in connection with the collection of such award or payment. The Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by the Lender to confirm such assignment to the Lender of any such award or payment.

**TO HAVE AND TO HOLD** the Premises with all rights, privileges and appurtenances thereunto belonging, and all rents, issues and profits therefrom, unto the Lender, its successors and assigns, forever, for the uses and purposes herein expressed together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

## THE MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. **Title.** The Mortgagor represents and covenants that: (a) the Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances described on Exhibit B attached hereto (the "**Permitted Exceptions**"); and (b) the Mortgagor has legal power and authority to mortgage and convey the Premises.

2. **Payment of Indebtedness and Performance of Covenants.** The Mortgagor shall: (a) pay promptly when due each and every installment of the principal and interest and any other sums required to be paid (including fees and charges), if any, on the Note at the times and in the manner provided in the Note, this Mortgage or in the other Loan Documents; (b) pay the Indebtedness when due; and (c) punctually perform and observe all of the requirements of the Note, this Mortgage and the Loan Agreement. The Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note, but not otherwise.

3. **Maintenance, Repair, Compliance with Law, Use, etc.** The Mortgagor shall: (a) promptly repair or restore any portion of the Improvements which may become damaged whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any Improvements at any time in the process of erection upon the Premises; (e) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (g) comply with any restrictions of record with respect to the Premises and the use thereof, and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (h) cause the Premises to be managed in a competent and professional manner. Without the prior written consent of the Lender, the Mortgagor shall not cause, suffer or permit any: (i) material alteration of the Premises, the cost of which exceeds \$25,000, except as required by law or except as permitted or required to be made by the terms of any Leases approved by the Lender; (ii) change in the intended use or occupancy of the Premises for which the Improvements were constructed, as provided in the Loan Agreement; (iii) change in the identity of the person or firm responsible for managing the Premises; (iv) zoning reclassification with respect to the Premises; (v) unlawful use of, or nuisance to exist upon, the Premises; or (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in Leases approved by the Lender.

4. **Liens.**

4.1 **Prohibition.** Subject to the provisions of Section 5 hereof, the Mortgagor shall not create or suffer or permit any encumbrance to attach to or be filed against the Premises or any part thereof, excepting only: (i) the lien of real estate taxes and assessments not due; (ii) any liens and encumbrances of Lender; and (iii) any other lien or encumbrance permitted by the terms of the Loan Agreement.

4.2 **Contest of Mechanic's Liens Claims.** Notwithstanding the foregoing prohibition against encumbrances, the Mortgagor 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:

4.2.1 Such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Mechanic's Lien;

4.2.2 Within ten (10) days after the Mortgagor has been notified of the filing of such Mechanic's Lien, the Mortgagor shall have notified the Lender in writing of the Mortgagor's intention to contest such Mechanic's Lien; and

4.2.3 The Mortgagor shall have either obtained a title insurance endorsement over such Mechanic's Liens insuring the Lender against loss by reason of the Mechanic's Liens or the Mortgagor shall have deposited with the Lender at such place as the Lender may appoint from time to time in writing, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money (the "Deposits") which shall be sufficient in the judgment of the Lender to pay in full such Mechanic's Lien and all interest which might become due thereon. The Mortgagor shall increase the Deposits whenever, in the judgment of the Lender, such increase is advisable. The Deposits are to be held without any allowance of interest.

The Lender, at its option, may pay the Deposits, or any part thereof, to the Mechanic's Lien claimant if the Mortgagor: (i) fails to maintain sufficient Deposits; or (ii) fails to act in good faith or with reasonable diligence in contesting the Mechanic's Lien claims. If the Mechanic's Lien contest is resolved in favor of the claimant and the Mortgagor is not in default hereunder, the Lender shall pay the Deposits, or any part thereof, to the claimant upon the Lender's receipt of evidence satisfactory to the Lender of the amount to be paid. The Lender shall pay any remaining Deposits to the Mortgagor, provided the Mortgagor is not in default hereunder.

## 5. Taxes.

5.1 Payment. The Mortgagor shall pay when due, all taxes, assessments and charges of every kind levied or assessed against the Premises 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 the Mortgagor, and the Mortgagor shall furnish to the Lender receipts therefor on or before the date the same are due, and shall discharge any claim or lien relating to taxes upon the Premises, other than matters expressly permitted by the terms of the Loan Agreement.

5.2 Contest. The Mortgagor, in good faith and with reasonable diligence, may contest the validity or amount of any such Taxes, provided that:

5.2.1 Such contest shall prevent the collection of the Taxes so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same;

5.2.2 The Mortgagor has notified the Lender in writing of the intention of the Mortgagor to contest the same before any Tax has been increased by any interest, penalties or costs; and

5.2.3 The Mortgagor has deposited with the Lender, at such place as the Lender may designate from time to time in writing, a sum of money or other security acceptable to the Lender that, when added to the monies or other security, if any, deposited with the Lender pursuant to Section 2 hereof, is sufficient, in the Lender's judgment, to pay in full such contested Tax, including interest and penalties, and shall increase such deposit to cover additional interest and penalties whenever the Lender deems such an increase advisable.

If the Mortgagor fails to: (i) prosecute such contest with reasonable diligence; or (ii) maintain sufficient funds on deposit as hereinabove provided, the Lender, at its option, may apply the monies and liquidate any security deposited with the Lender, in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, the Mortgagor shall forthwith, upon demand, either deposit with the Lender a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if the Lender has applied funds on deposit on account of such Taxes, restore such deposit to an amount satisfactory to the Lender. Provided that the Mortgagor is not then in default hereunder, the Lender, after final disposition of such contest and upon the Mortgagor's written request and the Mortgagor's delivery to the Lender of an official bill for such Taxes, shall apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon.



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6. **Change in Tax Laws.** If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Lender, the Mortgagor or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, the Mortgagor shall pay such tax in the manner required by such law. In the event that 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 the Lender the payment of the whole or any part of the taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Lender in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness, then the Mortgagor, upon demand by the Lender, shall pay such taxes or reimburse the Lender therefor on demand, unless the Lender determines, in the Lender's exclusive judgment, that such payment or reimbursement by the Mortgagor is unlawful; in which event the Indebtedness shall be due within thirty (30) days after written demand by the Lender to the Mortgagor. Nothing in this Section 6 shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Lender, excepting only such which may be levied against the income of the Lender as a complete or partial substitute for taxes required to be paid by the Mortgagor pursuant hereto.

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

7.1 Builder's Risk Insurance on an "all risks" basis for one hundred percent (100%) of the insurable value of all construction work in place or in progress from time to time, insuring the Premises, including materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, "X," "C" and "U" coverage, vandalism and malicious mischief coverage, bearing a replacement cost agreed amount endorsement;

7.2 Employer's Liability Insurance;

7.3 Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the Premises and bearing a replacement cost agreed amount endorsement;

7.4 Comprehensive public liability insurance against death, bodily injury and property damage in an amount not less than \$10,000,000;

7.5 Rental or business interruption insurance in amounts sufficient to pay, for a period of up to one (1) year, all amounts required to be paid by the Mortgagor pursuant to the Note and this Mortgage;

7.6 Steam boiler, machinery and pressurized vessel insurance (if applicable to the Premises);

7.7 If the Federal Insurance Administration (FIA) has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available;

7.8 Professional Liability Insurance covering the Architect and all other architects and engineers identified in the Owner's Sworn Statement;

7.9 Statutory worker's compensation and occupation disease insurance; and

7.10 The types and amounts of coverage as are customarily maintained by owners or operators of like properties.

8. **Insurance Policies.** All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to the Lender. All Insurance Policies shall: (i) include, when available, non-contributing Lender endorsements in favor of and with loss payable to the Lender; (ii) include standard waiver of subrogation endorsements; (iii) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to the Lender; and (iv) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to the Lender. The Mortgagor will deliver all Insurance Policies premium prepaid, to the Lender, and will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by the Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies. Insurance Policies maintained by tenants under the Leases, if in conformity with the requirements of this Mortgage and if approved by the Lender, may be presented to the Lender in satisfaction of the Mortgagor's obligation to provide the insurance coverages provided by those Insurance Policies.

9. **Deposits for Taxes and Insurance Premiums.** In order to assure the payment of Taxes and insurance policy premiums ("Premiums") when due:

9.1 The Mortgagor, if required by the Lender, shall deposit with the Lender on the first business day of each month, an amount equal to 1/12 of the Taxes and Premiums thereof to become due with respect to the Premises between one and thirteen months after the date of such deposit; provided that in the case of the first such deposit, the Mortgagor shall deposit 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 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. The amounts of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon the Lender's estimate of the amount of Taxes and Premiums. The Mortgagor, promptly upon the demand of the Lender, shall make additional Tax and Insurance Deposits as the Lender may require from time to time due to: (i) failure of the Lender to require, or failure of the Mortgagor to make, Tax and Insurance Deposits in previous months; (ii) underestimation of the amounts of Taxes and/or Premiums, due dates and amounts of Taxes and/or Premiums; or (iii) application of the Tax and Insurance Deposits pursuant to Section 9.3 hereof. Additionally, upon the execution hereof, the Mortgagor shall deposit with the Lender, as a Tax and Insurance Deposit, the amount of all Taxes and Premiums to become due and payable prior to the first monthly Tax and Insurance Deposit or within one month thereafter. The Lender shall hold all Tax and Insurance Deposits without any allowance of interest thereon. Notwithstanding any provision hereof to the contrary, the Lender shall not require the Mortgagor to make Tax and Insurance Deposits unless one or more of the following events has occurred: (i) an Event of Default (as defined herein) has occurred hereunder; (ii) the Mortgagor has failed to provide for the payment of Taxes and Premiums in a manner satisfactory to the Lender; or (iii) the Mortgagor has failed to maintain the Insurance Policies in a manner satisfactory to the Lender.

9.2 The Lender, out of the Tax and Insurance Deposits, upon the presentation to the Lender by the Mortgagor of the bills therefor, will pay the Taxes and Premiums or, upon the presentation of received bills therefor, will reimburse the Mortgagor for such payments made by the Mortgagor. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and Premiums when the same shall become due, then the Mortgagor shall pay to the Lender on demand the amount necessary to make up the deficiency.

9.3 Upon an Event of Default under this Mortgage, the Lender, at its option, may apply any Tax and Insurance Deposits on hand to the Indebtedness, in such order and manner as the Lender may elect. When the Indebtedness has been fully paid, any remaining Tax and Insurance Deposits shall be paid to the Mortgagor. All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness, and shall be held by the Lender irrevocably to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor.

9.4 Notwithstanding anything herein contained to the contrary, the Lender shall not be liable for any failure to apply the Tax and Insurance Deposits unless the Mortgagor, while no Event of Default exists hereunder,

shall have: (i) requested the Lender in writing to make application of such Deposits to the payment of the Taxes or Premiums; and (ii) presented the Lender with bills for such Taxes or Premiums.

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

10. **Condemnation and Eminent Domain.** All awards (the "Awards") made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, are hereby assigned by the Mortgagor to the Lender. The Lender may collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. The Mortgagor shall immediately notify the Lender of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Premises and shall deliver to the Lender copies of all papers served in connection with any such proceedings. The Mortgagor shall make, execute and deliver to the Lender, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by the Lender for the purpose of assigning the Awards to the Lender.

11. **Condemnation and Insurance Proceeds.** In Lender's sole discretion, condemnation and insurance proceeds will be either applied to the outstanding principal balance of the Indebtedness or used to repair any damage to the Premises. Notwithstanding the foregoing, if the cost of repairing the damage to the Premises is less than 50% of the cost of replacement of all of the Premises, or if less than one-third of the leasable area of the improvements on the Premises is condemned or taken by eminent domain, Lender agrees to make the insurance proceeds or condemnation award available to the restoration or repair of the improvements on the Premises, provided:

(a) The improvements can be rebuilt to be substantially similar to those originally financed and can, with the restoration and repair, continue to be operated for the purpose utilized prior to such damage or taking;

(b) No Event of Default, as defined below, exists or would exist upon the giving of notice or the passage of time or both;

(c) The appraised value of the Premises after such restoration or repair will not have been reduced from its appraised value as of the date of this Mortgage; and

(d) Tenants under leases of the Premises are acceptable to Lender and provide for sufficient gross annual fixed rental income to cover all annual operating expenses of the Premises, including payment of all principal and interest under the Note, and such tenants are obligated to occupy the Premises without any abatement or adjustment of rental payments (other than temporary abatements during the period of restoration and repair).

Any restoration or repair will be done under the supervision of an architect reasonably acceptable to Lender and pursuant to specifications reasonably approved by Lender. Insurance proceeds and condemnation awards used to repair or restore the Premises will be held by Lender for such purposes and will from time to time be disbursed to defray the costs of such restoration or repair under such safeguards and controls as Lender reasonably requires to assure completion in accordance with the approved plans and specifications and free of liens or claims. Borrower will, upon demand, deposit with Lender any sums necessary to make up any deficiency between the actual costs of the work and the amount of proceeds and will provide such lien waivers and completion bonds as Lender reasonably requires.

12. **Reserved.**

13. **Assignment of Rents, Leases and Profits.** To further secure the Indebtedness, the Mortgagor hereby assigns unto the Lender all of the rents, leases and income now or hereafter due under any Leases agreed to by the Mortgagor or the agents of the Mortgagor or which may be made or agreed to by the Lender under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, rents and income thereunder to the Lender. The Mortgagor hereby irrevocably appoints the Lender its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of the Lender) with or without taking possession of the Premises as provided in Section 19 hereof, to lease any portion of the Premises to any party upon such terms as the Lender shall determine, and to collect all rents due under each of the Leases, with the same rights and powers and



subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession pursuant to the provisions of Section 19 hereof. The Mortgagor represents that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by the Mortgagor. The Mortgagor waives any rights of set-off against any person in possession of any portion of the Premises. The Mortgagor agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting the Lender a mortgagee in possession in the absence of the taking of actual possession of the Premises by the Lender pursuant to Section 19 hereof. The Mortgagor expressly waives all liability of the Lender in the exercise of the powers herein granted the Lender. The Mortgagor shall assign to the Lender all future leases upon any part of the Premises and shall execute and deliver, at the request of the Lender, all such further assurances and assignments in the Premises as the Lender shall require from time to time. Although the assignment contained in this Section is a present assignment, the Lender shall not exercise any of the rights or powers conferred upon it by this Section until an Event of Default shall exist under this Mortgage. Within thirty (30) days of the Lender's written demand, the Mortgagor will furnish the Lender with executed copies of each of the Leases and with estoppel letters from each tenant in a form satisfactory to the Lender. If the Lender requires that the Mortgagor execute and record a separate collateral assignment of rents or separate assignments of any of the Leases to the Lender, the terms of those assignments shall control in the event of a conflict with the terms of this Mortgage.

14. **Observance of Lease Assignment.** The Mortgagor agrees that if any lessee under any of the Leases shall fail to pay its rent on a timely basis or to fulfill any material provision in said Lease or if the Mortgagor shall terminate or modify any material provision of the Leases without the Lender's prior written consent.

15. **Security Agreement.** The Mortgagor and the Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to: (i) all sums at any time on deposit for the benefit of the Lender or held by the Lender (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of the Mortgage or the Loan Agreement; and (ii) with respect to any personal property, other than personal property owned by tenants of the Premises, 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 Section 9-313 of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Lender, and the Collateral and all of the Mortgagor's right, title and interest therein are hereby assigned to the Lender, all to secure payment of the Indebtedness. All of the provisions 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 Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

15.1 The Mortgagor (being the Debtor as that term is used in the Code) is and will 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 the Lender and no other party, and liens and encumbrances, if any, expressly permitted by the Loan Agreement.

15.2 The Collateral is to be used by the Mortgagor solely for business purposes.

15.3 The Collateral will be kept at the Land and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of the Lender (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Land but will not be affixed to any other real estate.

15.4 The only persons having any interest in the Premises are the Mortgagor, the Lender and holders of interests, if any, expressly permitted by the Loan Agreement.

15.5 No Financing Statement (other than Financing Statements showing the Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted by the Loan Agreement) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and the Mortgagor, at its own cost and expense, upon demand, will furnish to the Lender such further information and will execute and deliver to the Lender such financing statements and other documents in form satisfactory to the Lender and will do all such acts as Lender at any time or from time to time may request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefitting the Lender and no other party and liens and encumbrances (if any) expressly permitted by the Loan Agreement; and the 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 the Lender to be desirable.

15.6 Upon an Event of Default hereunder, the Lender shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as the Mortgagor can give authority therefor, with or without judicial process, may 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 Code); and the Lender 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 the Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the Code. The Lender may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. The Lender may require the Mortgagor to assemble the Collateral and make it available to the Lender for its possession at a place to be designated by the Lender which is reasonably convenient to both parties. The Lender will give the Mortgagor at least twenty (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 the Mortgagor hereinafter set forth at least twenty (20) days before the time of the sale or disposition. The Lender may buy at any public sale. The Lender may buy at private sale 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. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If the Lender so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by the Lender shall be applied against the Indebtedness in such order or manner as the Lender shall select. The Lender will account to the Mortgagor for any surplus realized on such disposition.

15.7 The terms and provisions contained in this Section 15, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

15.8 This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of the Mortgagor (Debtor) and the Lender (Secured Party) are hereinabove set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the County or Counties where the Premises are located. The Mortgagor is the record owner of the Premises.

15.9 To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between the Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of the Mortgagor, as lessor thereunder.

16. **Restrictions on Transfer.** The Mortgagor, without the prior written consent of the Lender, shall not effect, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

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16.1 The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

16.2 All or any portion of the beneficial interest or power of direction in or to the trust under which the Mortgagor is acting, if the Mortgagor is a trustee;

16.3 Any shares of capital stock of a corporate mortgagor, a corporation which is a beneficiary of a trustee mortgagor, a corporation which is a general partner in a partnership mortgagor, a corporation which is a member in a limited liability company mortgagor, a corporation which is a general partner in a partnership beneficiary of a trustee mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subsection (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System);

16.4 All or any part of the partnership, membership, or joint venture interest, as the case may be, of a partnership mortgagor, a limited liability company mortgagor or a partnership beneficiary of a trustee mortgagor if the Mortgagor or such beneficiary is a partnership or a joint venture;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; *provided, however*, that the foregoing provisions of this Section 16 shall not apply: (i) to liens securing the Indebtedness; (ii) to the lien of current taxes and assessments not in default; or (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficiary interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives. Notwithstanding the foregoing, the Mortgagor may sell all or a portion of the 3.5 acres of excess land designated for hotel development (the "Excess Parcel"), *provided*, that the greater of: (i) 75% of the gross proceeds from such sale or (ii) \$800,000 shall be paid to the Lender to reduce the principal amount of the Indebtedness.

17. **Event of Default.** If one or more of the following events (each an "Event of Default") shall occur:

17.1 If an Event of Default (as such term is defined under the Loan Agreement or under the Note) occurs or the Mortgagor, after the expiration of any applicable grace periods, shall fail to make payments of amounts owed under the Note or this Mortgage when due;

17.2 If any other default (other than those specified in Section 17.1), after the expiration of any applicable grace periods, shall exist under any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness;

17.3 The occurrence of a Prohibited Transfer;

17.4 If default shall continue for fifteen (15) days after notice thereof by the Lender to the Mortgagor in the punctual performance or observance of any other agreement or condition herein contained;

17.5 If (and for the purpose of this subsection 17.5 only, the term "Mortgagor" shall mean not only Mortgagor, but also any beneficiary of a trustee mortgagor, any general partner in a partnership mortgagor or in a partnership which is a beneficiary of a trustee mortgagor, any member in a limited liability company mortgagor, any owner of more than ten percent (10%) of the stock in a corporate mortgagor or a corporation which is the beneficiary

of a trustee mortgagor and each person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness or any of the covenants or agreements contained herein):

17.5.1 The Mortgagor shall file a voluntary petition in bankruptcy or for relief under the Federal Bankruptcy Act or any similar state or federal law;

17.5.2 The Mortgagor shall file a pleading in any proceeding admitting insolvency;

17.5.3 Within thirty (30) days after the filing against the Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar state or federal law, such proceedings shall not have been vacated;

17.5.4 A substantial part of the Mortgagor's assets 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 thirty (30) days;

17.5.5 The Mortgagor shall make an assignment for the benefit of creditors or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises; or

17.5.6 Any order appointing a receiver, trustee or liquidator of the Mortgagor or all or a major part of the Mortgagor's property or the Premises is not vacated within thirty (30) days following the entry thereof;

then, with respect to the occurrence of an Event of Default set forth in Section 17.5, the principal amount of the Loan remaining unpaid, together with accrued interest thereon and all other amounts payable hereunder, shall be immediately and automatically due and payable, and, with respect to the occurrence of any other Event of Default set forth in this Section 17, the Lender, at its option and without affecting the lien hereby created or the priority of said lien or any other right of the Lender hereunder, may declare, without further notice, all Indebtedness immediately due with interest thereon at the Default Rate, whether or not such Event of Default is remedied thereafter by the Mortgagor, and, upon such occurrence or declaration, the Lender may immediately proceed to foreclose this Mortgage and to exercise any right provided by this Mortgage, the Note, any other Loan Document or otherwise.

18. **Foreclosure.** When the Indebtedness shall become due, whether by acceleration or otherwise, the Lender shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 (1992), et seq. (the "Act") and to exercise any other remedies of the Lender provided in the Note, this Mortgage or the Loan Agreement, or which the Lender may have at law, in equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Lender for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, 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 the Lender 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, and any other expenses and expenditures which may be paid or incurred by or on behalf of the Lender and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Section, 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 fees of any attorney employed by the Lender 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 and shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate until paid.



19. **Right of Possession.** When the Indebtedness shall become due, whether by acceleration or otherwise, or if the Lender has a right to institute foreclosure proceedings, the Mortgagor, forthwith upon demand of the Lender, shall surrender to the Lender, and the Lender shall be entitled to be placed in possession of the Premises as provided in the Act, and the Lender, in its discretion and pursuant to court order, 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 the Mortgagor or the then owner of the Premises relating thereto, and may exclude the Mortgagor, such owner, and any agents and servants thereof wholly therefrom and on behalf of the Mortgagor or such owner, or in its own name as the Lender and under the powers herein granted may:

19.1 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 the Lender may deem 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 the Mortgagor;

19.2 Cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle the Mortgagor to cancel the same;

19.3 Elect to disaffirm any Lease or sublease of all or any part of the Premises made subsequent to this Mortgage without the Lender's prior written consent;

19.4 Extend or modify any then existing Leases and make new Leases of all or any part of the Premises, which extensions, modifications and new 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 loan evidenced by the Note and the issuance of a deed to a purchaser 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 the Mortgagor, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

19.5 Make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments and improvements in connection with the Premises as may seem judicious to the Lender, to insure and reinsure the Premises and all risks incidental to the Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom; and

19.6 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 in such order and manner as the Lender shall select.

Without limiting the generality of the foregoing, the Lender shall have all power, authority and duties as provided in the Act. Nothing contained herein shall be construed as constituting the Lender a mortgagee in possession in the absence of the actual taking of possession of the Premises.

20. **Receiver.** 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, upon petition of the Lender and at the Lender's sole option, a receiver of the Premises pursuant to the Act. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether or not the same shall then be occupied as a homestead; and the Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to make leases to be binding upon all parties, including the Mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure, all as provided in the Act. In addition, such receiver shall also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms



to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date 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 provisions to be contained therein, shall be binding upon the Mortgagor and all the persons whose interest in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether or not there is a redemption, as well as during any further times when the 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, from time to time, may authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Indebtedness 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; or (b) the deficiency in case of a sale and deficiency.

21. **Foreclosure Sale.** Except to the extent otherwise required by the Act, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, all items which under the terms hereof constitute Indebtedness additional to the principal and interest evidenced by the Note in such order as the Lender shall elect with interest thereon as herein provided; and second, all principal and interest remaining unpaid on the Note in such order as the Lender shall elect; and lastly, any surplus to the Mortgagor and its successors and assigns, as their rights may appear.

22. **Insurance During Foreclosure.** 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, as aforesaid, 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 may direct. The foreclosure 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 creditors. The foreclosure decree may further provide that in the case of one or more redemptions under said decree, each 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, the Lender, without the consent of the Mortgagor, may assign any Insurance Policies to the purchaser at the sale, or take such other steps as the Lender may deem advisable to protect the interest of such purchaser.

23. **Waiver of Right of Redemption and Other Rights.** To the full extent permitted by law, the Mortgagor agrees that it will not at any time or in any manner whatsoever 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 take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the property 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, the Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, the Mortgagor hereby expressly waives any and all rights of redemption under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under the 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 of the Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, the Mortgagor agrees that, by invoking or utilizing any applicable law or laws or otherwise, hinder, it will not delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to the

Lender, but will 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, the 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. The Mortgagor acknowledges that the Premises do not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

24. **Lender's Performance of Mortgagor's Obligations.** In case of an Event of Default, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during any period of redemption, the Lender may, but shall not be required to, make any payment or perform any act herein required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any manner deemed expedient to the Lender. The Lender may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs, including management fees, of every kind in connection therewith, so that the Premises shall be useable for their intended purposes. All such monies paid and expenses incurred, including attorneys' fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due with interest thereon at the Default Rate. Inaction of the Lender shall never be considered as a waiver of any right accruing to it on account of any Event of Default nor shall the provisions of this Section or any exercise by the Lender of its rights hereunder prevent any default from constituting an Event of Default. The Lender, 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; or (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 thereof, may do so in such amounts and to such persons as the Lender may deem appropriate. Nothing contained herein shall be construed to require the Lender to advance monies for any purpose.

25. **Rights Cumulative.** Each right herein conferred upon the Lender is cumulative and in addition to every other right provided by law or in equity, and the Lender may exercise each such right in any manner deemed expedient to the Lender. The Lender's exercise or failure to exercise any right shall not be deemed a waiver of that right or any other right or a waiver of any default. Except as otherwise specifically required herein, the Lender is not required to give notice of its exercise of any right given to it by this Mortgage.

26. **Successors and Assigns.**

26.1 **Holder of the Note.** This Mortgage and each provision hereof shall be binding upon the Mortgagor and its 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 the Lender and its successors and assigns. Wherever the Lender is referred to herein such reference shall be deemed to include the holder from time to time of the Note; and each such holder of the Note shall have all of the rights afforded hereby, and may enforce the provisions hereof, as fully as if the Lender had designated such holder of the Note herein by name.

26.2 **Covenants Run with Land; Successor Owners.** 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 other than the Mortgagor, the Lender, without notice to the Mortgagor, may deal with such person with reference to this Mortgage and the Indebtedness in the same manner as with the Mortgagor without in any way releasing the Mortgagor from its obligations hereunder. The Mortgagor will give immediate written notice to the Lender of any conveyance, transfer or change of ownership of the Premises, but nothing in this Section shall vary the provisions of Section 17 hereof.

27. **Effect of Extensions and Amendments.** If the payment of the Indebtedness, or any part thereof, is extended or varied, or if any part of the security or guarantees therefor is 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 the Lender, 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, shall take the said lien subject to the rights of the Lender to amend, modify, extend or release the Note, this Mortgage or any other document or instrument evidencing, securing or guarantying the Indebtedness, in each 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.

28. **Construction Loan.** The Mortgagor has executed and delivered to the Lender the Loan Agreement of even date herewith relating to the construction of certain improvements upon the Premises and the disbursement of all or part of the Indebtedness for the purpose of financing a portion of the costs thereof. The Loan Agreement is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length. This Mortgage secures all funds previously advanced, or which are advanced by the Lender at the request of the Mortgagor after this Mortgage is filed of record, pursuant to the Loan Agreement (which advances shall constitute part of the Indebtedness, whether more or less than the principal amount stated in the Note) and the punctual performance, observance and payment by the Mortgagor of all of the requirements of the Loan Agreement and the Note to be performed, observed or paid by the Mortgagor. The making of such advances in the maximum amount of \$7,083,000 is obligatory on the part of the Mortgagor, subject to the terms and conditions provided for in the Loan Agreement. In the event of express and direct contradiction between any of the provisions of the Loan Agreement and any of the provisions contained herein, then the provisions contained in the Loan Agreement shall control. Any warranties, representations and agreements made in the Loan Agreement by the Mortgagor shall survive the execution and recording of this Mortgage and shall not merge herein.

29. **Environmental Matters.** The Mortgagor represents that it is currently in compliance with, and covenants and agrees that, it will manage and operate the Premises and will cause each tenant to occupy its demised portion of the Premises in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). The Mortgagor further covenants and agrees that it shall not install or permit to be installed in the Premises asbestos or any substance containing asbestos and deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. The Mortgagor shall remove from the Premises and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between the Mortgagor, the Lender and/or any third party with respect to hazardous or toxic materials. The Mortgagor shall send to the Lender within five (5) days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. The Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to the Lender (at the Mortgagor's sole cost), and hold the Lender harmless against any claim, response or other costs, damages, liability or demand (including, without limitation, reasonable attorneys' fees and costs incurred by the Lender) arising out of any claimed violation by the Mortgagor of any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements. The foregoing indemnity shall survive repayment of the Indebtedness.

30. **Additional Future Advances.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Indebtedness, in addition to the advances described in Section 28 hereof, the payment of all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by the Lender in connection with the Indebtedness, all in accordance with the Note, this Mortgage and the Loan Agreement; provided, however, that in no event shall the total amount of the Indebtedness, including loan proceeds disbursed plus any additional charges, exceed two hundred percent (200%) of the face amount of the Note. The Mortgagor acknowledges that the Lender has bound itself to make advances pursuant to the Loan Agreement and that all such future advances shall be a lien from the time this Mortgage is recorded, as provided in the Act.

31. **Execution of Separate Security Agreements and Financing Statements; Estoppel Letter.** The Mortgagor will do, execute, acknowledge and deliver all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Lender shall require for the better assuring, conveying, mortgaging, assigning and confirming unto the Lender all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired. Without limitation of the foregoing, the Mortgagor will assign to the Lender, upon request, as further security for the Indebtedness, its interests in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments satisfactory to the Lender, but no such assignment shall be construed as a consent by the Lender to any agreement, contract, license or permit or to impose upon the Lender any obligations with respect thereto. From time to time, the Mortgagor will furnish within five (5) days after the Lender's request 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.
32. **Subrogation.** If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Premises or any part thereof, then the Lender shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.
33. **Option to Subordinate.** At the sole and exclusive option of the Lender, 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 the Lender and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.
34. **Governing Law.** The place of negotiation, execution and delivery of this Mortgage and the location of the Premises being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act 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 the Act. If any provision of this Mortgage shall grant to the Lender any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in the Lender under the Act in the absence of said provision, the Lender shall be vested with the rights granted in the Act to the full extent permitted by law.
35. **Business Loan.** The proceeds of the Note will be used for the purposes specified in 815 ILCS 205/4 (1992), and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.
36. **Inspection of Premises and Records.** The Mortgagor shall keep full and correct books and records showing in detail the income and expenses of the Premises. The Lender and its agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times.
37. **Reserved.**
38. **No Joint Ventures.** The Mortgagor acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall the Lender be deemed to be a partner or joint venturer with the Mortgagor. The Lender shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.
39. **Time of the Essence.** Time is of the essence of the Note, this Mortgage, and any other document or instrument evidencing or securing the Indebtedness.
40. **Captions and Pronouns.** The captions and headings of the various sections of this Mortgage 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.

41. **Severability.** If all or any portion of any provision of this Mortgage or the other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

42. **Notices.** Any notice 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 deemed given: (i) when personally delivered; (ii) upon receipt, if sent by a nationally recognized overnight courier addressed to a party at its address set forth in the Loan Agreement; or (iii) on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth in the Loan Agreement, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, notice of the exercise of any right, power or option granted to the Lender by this Mortgage is not required to be given.

43. **Jurisdiction and Venue.** The Mortgagor hereby agrees that all actions or proceedings initiated by the Mortgagor 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 the Lender initiates such action, any court in which the Lender shall initiate such action and which has jurisdiction. The Mortgagor hereby expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced by the 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 their process or papers may be made by registered or certified mail addressed to the Mortgagor at the address to which notices are to be sent pursuant to the Loan Agreement. The Mortgagor waives any claim that Cook County, Illinois or the Northern District of Illinois is an inconvenient forum or an improper forum based on lack of venue. Should the Mortgagor, after being so served, fail to appear to answer to any summons, complaint, process or papers so served within the number of days prescribed by law after the mailing thereof, the Mortgagor shall be deemed in default and an order and/or judgement may be entered in favor of the Lender against the Mortgagor as demanded or prayed for in such summons, complaint, process or papers. The exclusive choice of forum for the Mortgagor set forth in this Section shall not be deemed to preclude the enforcement, by the Lender, of any judgement obtained in any other forum or the taking, by the Lender, of any action to enforce the same in any other appropriate jurisdiction, and the Mortgagor hereby waives the right, if any, to collaterally attack any such judgement or action.

44. **Satisfaction of Mortgage.** Upon full payment of all the Indebtedness, performance and observance of all covenants, liabilities and obligations of the Mortgagor under the Loan Documents and reimbursement of the Lender for any and all sums expended or advanced by Lender under the Note, this Mortgage or the other Loan Documents, at the time and in the manner provided in the Loan Documents, this conveyance or lien shall be null and void and, upon demand therefor following such payment a release of mortgage or reconveyance of the Premises shall be provided by the Lender to the Mortgagor.

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# UNOFFICIAL COPY

45. WAIVER OF RIGHT TO JURY TRIAL. THE MORTGAGOR AND THE LENDER, BY ITS ACCEPTANCE HEREOF, ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS MORTGAGE, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES. ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE MORTGAGOR AND THE LENDER, BY ITS ACCEPTANCE OF THIS MORTGAGE, HEREBY KNOWINGLY AND VOLUNTARILY MUTUALLY: (A) WAIVE THE RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION, CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD-PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS MORTGAGE, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN, OR ANY RENEWAL, EXTENSION OR MODIFICATION THEREOF, OR ANY CONDUCT OF ANY PARTY RELATING THERETO; AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

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

THE MORTGAGOR:

POPLAR CREEK, LLC

By:   
Name: Douglas C. Affenberg  
Title: Member

Attest: \_\_\_\_\_  
Name:  
Title:

Accepted by the Lender:

ASSOCIATED COMMERCIAL  
MORTGAGE, INC.  
a Wisconsin corporation

By: \_\_\_\_\_  
Name:  
Title:

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
                                  )  
COUNTY OF COOK )

I, JOYCE SULLIVAN, a Notary Public in and for said County, in the State aforesaid, do hereby certify that DOUGLAS ALTENBERGER, the MEMBER of POPLAR CREEK, LLC, as Mortgagor, and \_\_\_\_\_, the \_\_\_\_\_ thereof, who are personally known to me to be the same persons whose name are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Mortgagor, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 25 day of July, 2000.



Joyce M Sullivan  
NOTARY PUBLIC  
(SEAL)

Property of Cook County Clerk's Office

45. WAIVER OF RIGHT TO JURY TRIAL. THE MORTGAGOR AND THE LENDER, BY ITS ACCEPTANCE HEREOF, ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS MORTGAGE, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES. ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE MORTGAGOR AND THE LENDER, BY ITS ACCEPTANCE OF THIS MORTGAGE, HEREBY KNOWINGLY AND VOLUNTARILY MUTUALLY: (A) WAIVE THE RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION, CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD-PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS MORTGAGE, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN, OR ANY RENEWAL, EXTENSION OR MODIFICATION THEREOF, OR ANY CONDUCT OF ANY PARTY RELATING THERETO; AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

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

THE MORTGAGOR:

POPLAR CREEK, LLC

By: \_\_\_\_\_

Name:

Title:

Attest: \_\_\_\_\_

Name:

Title:

Accepted by the Lender:

ASSOCIATED COMMERCIAL MORTGAGE, INC.

a Wisconsin corporation

By: Michael R. Finn

Name: Michael R. Finn

Title: President

# UNOFFICIAL COPY

STATE OF ~~ILLINOIS~~ WISCONSIN )  
 )  
COUNTY OF )  
MILWAUKEE )

I, Linda M. Groll, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Michael R. Finn, the President of ASSOCIATED COMMERCIAL MORTGAGE, INC., a Wisconsin corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said banking corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 25th day of July, 2000.



NOTARY PUBLIC

My commission expires January 19, 2003  
(SEAL)



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## EXHIBIT A

### MORTGAGED PREMISES

LOT 6 IN RESTAURANT MALL BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 04016244, IN COOK COUNTY, ILLINOIS.

PIN: 07-07-100-030

ADDRESS: Higgins Road, East of Barrington Road  
Hoffman Estates, Illinois 60195

Property of Cook County Clerk's Office



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00628019

## EXHIBIT B

### LIST OF PERMITTED TITLE EXCEPTIONS

1. Exception Nos. 5, 7, 8, 9, 10, 11, 12 and 16, inclusive, contained on Schedule B of Guaranty National Title Company Commitment No. 00-0744, dated August 3, 2000.

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