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RECORDING REQUESTED BY
AND AFTER RECORDATION,
PLEASE RETURN ORIGINAL TO:

Counts, Potts-Dupre & Difede, Chartered
1125 Fifteenth Street, N.W., Suite 444
Washington, D.C. 20005
Attn: James R. Difede, Esq.

**ACQUISITION AND IMPROVEMENT MORTGAGE,
SECURITY AGREEMENT
AND FIXTURE FILING**

THIS ACQUISITION AND IMPROVEMENT MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made and entered into as of the 17th day of August, 2000, by 20 SOUTH CLARK STREET, LLC, a Delaware limited liability company, whose address is c/o M&J Wilkow Ltd., 180 North Michigan Avenue, Suite 200, Chicago,

Illinois ("Mortgagor"), in favor of NATIONAL ELECTRICAL BENEFIT FUND, having its office at 1125 Fifteenth Street, N.W., Washington, D.C. 20005 ("Mortgagee").

CAPITALIZED TERMS NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS WHEN USED HEREIN AS PROVIDED IN THE LOAN AGREEMENT (AS HEREINAFTER DEFINED).

W I T N E S S E T H :

WHEREAS, Mortgagor is the owner and holder of fee simple title to that certain parcel of real property located in Cook County, Illinois, identified and more fully described on Exhibit "A" attached hereto and made a part hereof (the "Land") which Land is improved by a thirty (30) story commercial office building commonly known as 20 South Clark Street, Chicago, Illinois (the "Building"); and

WHEREAS, Mortgagee, pursuant to that certain Acquisition and Improvement Loan Agreement of even date herewith (as amended, supplemented, restated or otherwise modified from time to time, the "Loan Agreement") has agreed to make a purchase money and improvement loan to Mortgagor up to the maximum cumulative principal amount of Thirty-Three Million Fifty Thousand Dollars (\$33,050,000) (the "Loan") for the purpose of the acquisition of the Project and the funding of certain capital improvements and tenant re-leasing costs; and

WHEREAS, in order to evidence the Loan, Mortgagor has delivered to Mortgagee, among other things, that certain Promissory Note bearing even date herewith (as amended, supplemented, endorsed, restated or otherwise modified from time to time, the "Note"), made by Mortgagor in the face amount of **THIRTY-THREE MILLION FIFTY THOUSAND DOLLARS (\$33,050,000)** payable to the order of Mortgagee; and

WHEREAS, Mortgagor and Mortgagee desire to secure by the conveyance of the "Mortgaged Property" (as hereinafter defined) the full and punctual payment of the "Obligations" (as hereinafter defined), and the full and punctual performance and observance by Mortgagor of all

of the covenants, agreements, terms, conditions and provisions on the part of Mortgagor to be performed or observed under (i) the Note; (ii) this Mortgage; (iii) the Loan Agreement; (iv) that certain Disbursement Agreement dated as of the date hereof between Mortgagor and Mortgagee; (v) that certain Environmental Indemnification Agreement dated as of the date hereof executed by Mortgagor in favor of the Mortgagee; (vi) that certain Assignment of Leases, Rents and Profits dated as of the date hereof from Mortgagor to Mortgagee; (vii) those certain U.C.C. Financing Statements dated as of the date hereof, by Mortgagor, as debtor, to Mortgagee, as secured party, to be filed in the office of the secretary of state of the State of Illinois; (viii) those certain U.C.C. Financing Statements dated as of even date herewith, by Mortgagor, as debtor, to Mortgagee, as secured party, to be filed in the Office of the Recorder of Deeds of Cook County, Illinois; and (ix) any and all other documents, instruments and certifications now or at any time hereafter evidencing, securing or relating to the Obligations (all of the foregoing, as each such document, agreement or instrument may be amended, supplemented, restated or otherwise modified from time to time, together with this Mortgage, being collectively referred to herein as the "Loan Documents").

NOW, THEREFORE, IN CONSIDERATION of the premises and mutual covenants contained herein and in order to induce the Mortgagee to make the Loan and in order to secure the prompt payment and performance of Mortgagor's obligations under the Loan Documents, including, without limitation, (a) the prompt payment of all sums of money secured hereby, which sums shall include, but not be limited to (i) all sums of principal and interest and any other moneys due or to become due from Mortgagor and payable to Mortgagee under the Note; (ii) all other moneys due or to become due from Mortgagor and payable to Mortgagee under any of the other Loan Documents, including, without limitation, moneys now or hereafter advanced or expended by Mortgagee (expressly including all moneys advanced or expended by any assignee or endorsee of Mortgagee) as provided for herein or in any other Loan Document or by applicable law; (iii) all sums and obligations referenced in Section 51, and (iv) all costs, expenses, charges, liabilities, commissions and attorneys' fees now or hereafter chargeable to Mortgagor, or incurred or disbursed by Mortgagee on behalf of Mortgagor, as provided for herein, in any other Loan Document or by applicable law; and (b) the prompt performance, observance and compliance by Mortgagor of and with all of the terms, covenants, conditions, stipulations, and agreements contained herein or in any

of the other Loan Documents (all such indebtedness, obligations and liabilities secured hereby being hereinafter referred to as the "Obligations"), and in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for and in consideration of One Dollar (\$1.00) in hand paid, receipt whereof is hereby acknowledged, Mortgagor, its successors and assigns, intending to be legally bound, does by these presents grant, transfer, assign, bargain, mortgage, warrant, hypothecate, pledge, set over and convey to Mortgagee, all of Mortgagor's right, title and interest in and to the Land.

TOGETHER with all the right, title and interest of Mortgagor, including any after-acquired right, title, interest or reversion, including any right of use or occupancy, of, in and to (a) the bed of any way, street, road, avenue or alley, opened or proposed, in front of, adjoining or abutting upon the Land to the center line thereof, and (b) all and singular the rights, alleys, ways, tenements, hereditaments, easements, appurtenances, gores of land, passages, waters, water rights and powers, water courses, water stock, riparian rights, sewer rights, air rights, development rights, mineral rights, gas, oil, minerals, liberties, advantages, rights, accessions and privileges now or hereafter appertaining to the Land or any part thereof, including, but not limited to, any homestead or other claim at law or in equity, the reversion or reversions, remainder or remainders thereof, and also all the estate, property, claim, right, title or interest now owned or hereafter acquired by Mortgagor in or to the Land or any part of the Land and all other rights and privileges thereunto belonging or appertaining, together with all extensions, additions, improvements, betterment, renewals, substitutions and replacements of any of the foregoing (all of which being collectively referred to herein as the "Property Rights").

TOGETHER with all right, title and interest of Mortgagor in and to the Building and all other buildings, structures, tenements and improvements of whatever nature whatsoever, now or hereafter erected on the Land, including, but not limited to, the entirety of the Project, and related improvements and amenities, sewer and water taps and utility connections related thereto (all of which are hereinafter referred to collectively as the "Improvements"; together with the Land, the "Premises").

TOGETHER with all fixtures and appurtenances of every nature whatsoever now or hereafter located in, on or attached to, and used or usable or intended to be used in connection with, or with the operation of, the Premises, including, but not limited to (a) all apparatus, machinery and equipment of Mortgagor; and (b) all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or of any of the foregoing (the "Fixtures");

IT IS MUTUALLY AGREED, intended and declared, that the Improvements and all of the Property Rights and Fixtures owned by Mortgagor shall, so far as permitted by law, be deemed to form a part and parcel of the Land and for the purpose of this Mortgage to be real estate and covered by this Mortgage (and shall be referred to collectively herein as the "Real Property"). It is also agreed that if any of the property herein described is of a nature such that a security interest therein can be perfected under the Illinois Uniform Commercial Code (the "Code"), a security interest is hereby granted to Mortgagee in such property and this instrument shall constitute a security agreement, fixture filing and financing statement, and Mortgagor agrees to execute, deliver and file or refile any financing statement, continuation statement, or other instruments Mortgagee may reasonably require from time to time to perfect or renew such security interest under the Code. To the extent permitted by law, (i) all of the Fixtures are or are to become fixtures on the Land; and (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture-filing" within the meaning of Sections 9-313 and 9-402 of the Code. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein, by the Loan Agreement or by general law, or, as to that part of the security in which a security interest may be perfected under the Code, by the specific statutory consequences now or hereafter enacted and specified in the Code, all at Mortgagee's sole election.

TOGETHER with all of Mortgagor's right, title and interest in and to (a) all tangible personal property, furniture and equipment in all of its forms, wherever located, now or hereafter owned or existing, all fixtures and all parts thereof and all accessions thereto owned by the Mortgagor and used in connection with the ownership, management or operation of the Real Property (any and all such equipment, fixtures, parts and accessions being the "Equipment") including, without limitation, furniture, furnishings, wall coverings, office equipment, computer

hardware and software, cleaning and engineering equipment and vehicles; (b) all inventory in all of its forms, wherever located, now or hereafter owned or existing including, without limitation, (i) all raw materials and work in process therefor, finished goods thereof, and materials used or consumed in the manufacture or production thereof, (ii) goods in which Mortgagor has an interest in mass or a joint or other interest or right of any kind (including, without limitation, goods in which Mortgagor has an interest or right as consignee), and (iii) goods which are returned to or repossessed by Mortgagor), and all accessions thereto and products thereof and documents therefor (any and all such inventory, accessions, products and documents being the "Inventory"); (c) all accounts, contract rights, chattel paper, instruments, deposit accounts, general intangibles and other obligations of any kind, now or hereafter owned or existing, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services, and all rights now or hereafter existing in and to all security agreements, leases, and other contracts securing or otherwise relating to any such accounts, contract rights, chattel paper, instruments, deposit accounts, general intangibles or obligations (any and all such accounts, contract rights, chattel paper, instruments, deposit accounts, general intangibles and obligations being the "Receivables", and any and all such leases, security agreements and other contracts (as each of which may be amended or otherwise modified from time to time) being the "Related Contracts"); (d) all rights of Mortgagor to receive moneys due and to become due under or pursuant to the Related Contracts, (e) all rights of Mortgagor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Related Contracts or the Mortgaged Property, (f) claims of Mortgagor for damages arising out of or for breach of or default under any of the Related Contracts, (g) the right of Mortgagor to terminate the Related Contracts, to perform thereunder (nothing herein being deemed to compel or obligate Mortgagee to so perform) and to compel performance and otherwise exercise all remedies thereunder (the Equipment, Inventory, Receivables and Related Contracts being hereinafter collectively referred to as the "Personal Property"); and (h) all proceeds of any and all of the foregoing Personal Property (including, without limitation, proceeds which constitute property of the types described in clauses (a) - (g) of this paragraph) and, to the extent not otherwise included, all (i) payments under insurance (whether or not the Mortgagee is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Personal Property, and (ii) cash.

TOGETHER with all leases, subleases and subtenancies, occupancy agreements and concessions affecting the Real Property (collectively, the "Project Leases"), and all rents, royalties, income and profits arising from the Real Property or the Project Leases;

TOGETHER with all general intangibles related to the maintenance, operation, ownership, use or development of the Real Property, including, without limitation, all Related Contracts, all names under or by which the Real Property may at any time be owned or operated, and all rights to carry on business under any such names or variants thereof, together with all goodwill in any way relating to the Real Property;

TOGETHER with any and all judgments, awards of damages (including but not limited to severance and consequential damages), payments, proceeds, settlements or other compensation heretofore or hereafter made, including interest thereon, and the right, subject to the terms of the Loan Documents, to receive the same as a result of, in connection with, or in lieu of (a) any taking of the Mortgaged Property or any part thereof under the power of condemnation or eminent domain, either temporarily or permanently, voluntarily or involuntarily, (b) any change or alteration of the grade of any street and (c) any other injury or damage to, or decrease in value of, the Mortgaged Property or any part thereof (all the foregoing being sometimes herein referred to collectively as the "Condemnation Awards", or singularly as a "Condemnation Award"), to the extent of the Obligations which shall be secured by this Mortgage as of the date of receipt of any such Condemnation Award by Mortgagee, and of the attorneys' fees, costs and disbursements, if any, incurred by Mortgagee in connection with the collection of any such Condemnation Award.

TOGETHER with any and all payments, proceeds, settlements or other compensation heretofore or hereafter made, including any interest thereon, and the right to collect and receive the same, subject to the provisions of the Loan Documents, from any and all insurance policies covering the Mortgaged Property or any portion thereof.

TOGETHER with all of Mortgagor's estate, interest, right, title, other claim or demand, which Mortgagor now has or may hereafter acquire against anyone with respect to any damage to

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all or any part of the Mortgaged Property, or a diminution in the value thereof, including, without limitation, damage arising from any defect in or with respect to the design or construction of all or any part of the Mortgaged Property and damage resulting therefrom;

TOGETHER with all deposits or other security or advance payments if any including rental payments made by or on behalf of Mortgagor with respect to (i) insurance policies relating to the Mortgaged Property, (ii) utility service for all or any part thereof, (iii) cleaning, maintenance, repair or similar services for the Mortgaged Property, (iv) refuse removal or sewer service for the Mortgaged Property, (v) rental of equipment if any used in the operation by or on behalf of Mortgagor of the Mortgaged Property; and (vi) parking or similar services or rights afforded to all or any part of the Mortgaged Property;

TOGETHER with any and all other estate, right, title or interest in real property or fixtures (including property exchanged therefor, or in substitution or replacement thereof), of every kind and nature, which may from time to time be subjected to the lien hereof by Mortgagor through a supplement to this Mortgage, or otherwise, or which may come into the possession of or be subject to the control of Mortgagee pursuant to this Mortgage, it being the intention and agreement of Mortgagor that any estate, right, title or interest in real property or fixtures hereafter acquired or constructed by Mortgagor and required or intended to be subject to the lien and security interest of this Mortgage shall forthwith upon acquisition or construction thereof by Mortgagor and without any act or deed by Mortgagor be subject to the lien and security interest of this Mortgage as if such property now were owned by Mortgagor and were specifically described in this Mortgage and conveyed or encumbered hereby or pursuant hereto, and Mortgagee is hereby authorized to receive any and all such property as and for additional security hereunder.

Unless specifically designated otherwise, the Land, the Improvements, the Fixtures, the Inventory, the Equipment, the Receivables, the Related Contracts, Condemnation Awards, Project Leases and all other items and property described in the preceding paragraphs hereof, whether now owned or hereafter acquired or existing, together with all alterations, additions, accessions and

improvements thereto, substitutions therefor and renewals and replacements thereof, shall be referred to herein collectively as the "Mortgaged Property".

PROVIDED HOWEVER, that if Mortgagor shall pay or cause to be paid to Mortgagee the Obligations in full as and when due at the times and in the manner stated in the Note and in this Mortgage and the other Loan Documents at any time before the sale hereinafter provided for, and shall well and truly perform, comply with, and observe each and all of Mortgagor's other obligations under the Loan Documents then these presents and the estate granted hereby shall cease, terminate and become void, and Mortgagee shall, at the expense of Mortgagor and upon the request of Mortgagor, release and discharge the lien and security interest of this Mortgage of record, and this Mortgage shall thereupon terminate (except to the extent that certain provisions may survive such termination as stated herein).

AGREEMENTS

WITNESSETH, that Mortgagor hereby represents, warrants, covenants and agrees as follows:

1. **Representations and Warranties.** Mortgagor hereby represents and warrants to Mortgagee that all of the following representations and warranties are true and correct in all material respects on and as of the date herein above first written and shall continue to be true and correct so long as this Mortgage constitutes a lien on the Mortgaged Property, except for any representation and warranty made with respect to a particular date which shall be true and correct with respect to such date, and except to the extent otherwise disclosed by Mortgagor to Mortgagee in writing, provided that Mortgagee determines in its sole but good faith discretion that the facts set forth in such disclosures could not reasonably be expected to materially and adversely affect the Loan or any of Mortgagee's security therefor and are otherwise acceptable to Mortgagee.

(a) Mortgagor is a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to do business in Illinois as a foreign limited liability company. Mortgagor has the full power and good and lawful right and authority to

mortgage, warrant, grant and convey its interest in the Mortgaged Property to Mortgagee as herein provided, and has the authority to own its properties, to carry on its business as now conducted, and to perform its obligations hereunder and under the other Loan Documents.

(b) As of the date hereof, the members of Mortgagor are M&J/Clark Street LLC, an Illinois limited liability company (the "Wilkow Member") and the National Electric Benefit Fund (collectively, the "Members"). At all times hereafter the members of Mortgagor will consist of only the aforementioned members or such other Person(s) and entities as are permitted under the other Loan Documents and the Operating Agreement.

(c) As of the date of this Mortgage, M&J Manager, Inc., an Illinois corporation, is the non-member manager (the "Manager") of Mortgagor.

(d) Mortgagor has the authority and legal right to execute, deliver and perform the obligations under this Mortgage and the Loan Documents, to borrow under the Loan Documents and to grant the liens and security interests contemplated hereby and thereby, and all necessary limited liability company action has been taken by Mortgagor to authorize the borrowings on the terms and conditions thereof and hereof and the execution, delivery and performance of the Loan Documents to which Mortgagor is a party.

(e) Mortgagor does hereby fully and forever warrant and shall defend title to the Mortgaged Property and the first priority of the lien created by this Mortgage and shall defend the same against the claims and demands of all Persons whomsoever and shall maintain and preserve such priority as long as any part of the Obligations remains outstanding and shall make such further assurance to perfect title to the Mortgaged Property in Mortgagor as may be requisite, subject only to those matters contained on Exhibit "B" (the "Permitted Exceptions").

(f) The lien of this Mortgage is a valid first lien on the Mortgaged Property, subject only to the Permitted Exceptions, securing a debt equal to the sum of the outstanding principal amount of the Note, interest payable thereunder and all other amounts payable hereunder and under the other Loan Documents.

(g) Each of the Loan Documents to which Mortgagor is a party (including, without limitation, this Mortgage) is a valid and binding agreement of Mortgagor, enforceable against Mortgagor in accordance with its respective terms (other than as enforceability may be affected by bankruptcy, insolvency and other laws affecting creditors' rights generally); as of the

date hereof, there are no claims, defenses (personal or otherwise) or offsets to the validity or enforceability of any of the Loan Documents; to the Mortgagor's Actual Knowledge, no Loan Document contravenes any provision of Mortgagor's organizational documents or any judgment, order, decree, writ or injunction, or any provision of any applicable law or regulation; there is no pending, or to the Actual Knowledge of Mortgagor, threatened suit or action against Mortgagor which, if adversely decided, would prevent the consummation of the transactions contemplated hereby; the execution of the Loan Documents and the transactions contemplated thereby, will not conflict with or result in a breach of any terms or provisions of, or constitute a default under, or cause an acceleration of, any note, mortgage, deed of trust, loan agreement or other document, instrument, or agreement to which Mortgagor or the Mortgaged Property is bound.

2. **Payment and Performance of Obligations.** Mortgagor shall punctually pay to Mortgagee the principal of and interest on the Note according to the terms thereof, together with all other Obligations secured hereby, as and when the same shall become due and payable, and shall punctually keep and perform each and all other of Mortgagor's obligations hereunder and under the other Loan Documents.

3. **Further Assurances.** At any time, and from time to time, upon request by Mortgagee, Mortgagor, at the sole expense of Mortgagor, shall make, execute, deliver and record or cause to be made, executed, delivered and recorded, any and all further instruments, certificates and other documents as may, in the reasonable opinion of Mortgagee, be necessary or desirable in order to effectuate, complete, perfect or continue and preserve the obligations of Mortgagor under the other Loan Documents and the lien and priority of this Mortgage, and all modifications, extensions and other amendments of the same. Upon any failure by Mortgagor to do so within fifteen (15) days after a written request by Mortgagee in accordance with the provisions of Section 31, Mortgagee may make, execute, deliver and file or record any and all such instruments, certificates and other documents for and in the name of Mortgagor, and at the sole expense of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as the agent and attorney-in-fact of Mortgagor to do so, this appointment being coupled with an interest. Mortgagee may, at its option, advance the expenses incurred in making, executing and recording any and all such

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instruments, certificates and documents, and such sums advanced, with interest at a rate per annum equal to the Default Rate from the date of such expenditure until paid, shall become due and payable by Mortgagor to Mortgagee upon notice and demand therefor and shall be added to the Obligations secured by this Mortgage.

4. Repairs and Maintenance. Mortgagor shall not permit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, and shall complete promptly and in good and workmanlike manner as detailed in the Loan Agreement any improvement on the Mortgaged Property which may for any reason be constructed. Mortgagor shall at all times maintain the Mortgaged Property in good and tenantable condition, shall not intentionally do or permit any act whatsoever whereby any of the Mortgaged Property shall become materially less valuable, and shall, subject to provisions of Section 8(b), promptly repair, restore, replace or rebuild all or any part of the Mortgaged Property necessary to maintain the same in a condition appropriate for its use, ordinary wear and tear excepted. Other than in the ordinary course of business (a) no part of the Improvements shall be removed or demolished or substantially altered once erected without the prior written consent (or deemed approval, to the extent expressly provided for in the Loan Documents) of Mortgagee, and (b) other than in the ordinary course of business, and subject to the rights of tenants, no Equipment shall be removed without suitable replacements of at least equal value being reasonably promptly made or installed on the Mortgaged Property.

Notwithstanding clause (a) of the immediately foregoing sentence, Mortgagor, at its sole cost and expense and upon prior written notice to Mortgagee, shall make any and all alterations to the Mortgaged Property or any Improvements located thereon as may be necessary to comply with this Mortgage, or to comply with Requirements of Law. Mortgagor may make other alterations with the prior written consent or deemed approval (to the extent expressly provided for in the Loan Documents) of Mortgagee. Mortgagee's consent to other alterations shall not be withheld so long as the work shall be completed pursuant to the standards set forth in the Loan Agreement.

5. Defense of Title; Priority and Enforceability. This Mortgage is and shall continue to remain a valid and enforceable first lien on the Mortgaged Property enforceable against the Mortgaged Property, Mortgagor and all third parties in securing the payment of the Obligations at

all times, subject only to Permitted Exceptions. If to Mortgagor's Actual Knowledge the lien or the validity, enforceability or priority of this Mortgage, or of title or any of the rights of Mortgagor or Mortgagee in or to the Mortgaged Property, shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against Mortgagor or Mortgagee with respect thereto that materially adversely affects the use or value of the Mortgaged Property, Mortgagor will promptly notify Mortgagee thereof and, at Mortgagor's sole cost and expense, will diligently endeavor to cure any such defect which may develop or be claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of litigation and, subject to Mortgagee's approval, the compromise, release or discharge of any and all adverse claims. If in Mortgagee's judgment, Mortgagor is not proceeding diligently as aforesaid, Mortgagee (whether or not named as a party to such actions or proceedings) is hereby authorized and empowered (but shall not be obligated) to take such additional steps as it may deem reasonably necessary or proper for the defense of any such action or proceeding or the protection of the validity, enforceability or priority of this Mortgage against actions or proceedings that materially adversely affect the use or value of the Mortgaged Property or of such title or rights, including but not limited to the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, the discharge of any tax or cloud on title, and the removal of such prior liens or security interests. Mortgagor shall, on demand, reimburse Mortgagee for all reasonable expenses (including attorneys' fees and disbursements) actually incurred by either of them in connection with the foregoing matters, and the party incurring such expenses shall be subrogated to all rights of the Persons receiving such payment. All such costs and expenses of Mortgagee, until reimbursed by Mortgagor, shall be part of the Obligations and shall be deemed to be secured by this Mortgage.

6. Payment of Taxes.

(a) Mortgagor shall pay or cause to be paid, not later than the date the same becomes due and payable and before any penalty or interest attaches for non-payment, all general and special real estate taxes, payments in lieu of real estate taxes, assessments, water charges, sewer charges and other utility charges and fees, and all other taxes, charges and assessments of every kind and nature whatsoever, unforeseen as well as foreseen, which shall be assessed, levied, confirmed,

imposed or become a lien upon or against the Mortgaged Property or any portion thereof (hereinafter collectively "Taxes"), whether or not assessed against Mortgagor, if applicable to the Mortgaged Property or any interest therein, or the Obligations, or any obligation or agreement secured hereby; and Mortgagor shall, upon written request, furnish to Mortgagee, duplicate receipts evidencing payment of Taxes; provided, however, that, upon prior written notice to Mortgagee, Mortgagor shall retain the right to withhold such payment and contest any such Taxes so long as any such withholding and contest would not create, in the sole but reasonable opinion of Mortgagee, an imminent danger of the Mortgaged Property, or any part thereof, being forfeited or lost.

(b) To assure the payment of all Taxes which are assessed or payable with reference to the Mortgaged Property, Mortgagee may, at its sole option, require Mortgagor to deposit in one or more interest-bearing escrow accounts (with interest accruing for the benefit of Mortgagor) under Mortgagee's control at one or more insured commercial banks or savings and loan associations on a monthly basis a sum equal to one-twelfth (1/12th) of the annual Taxes assessed against the Mortgaged Property (which sum shall be reasonably estimated by Mortgagee based upon the current or immediately prior year's Tax invoice); and whenever Mortgagee determines the sums accumulated under the provisions of this Section 6 to be insufficient to meet the obligation for which they were deposited, Mortgagor shall pay, on written demand of Mortgagee, any amount required to cover the deficiency therein. Mortgagee agrees to use any funds deposited in such escrow account for payment of such expenses when due. Mortgagee may from time to time at its option designate a different escrow account.

(c) Without limiting any of the provisions of the Loan Agreement or any of the other Loan Documents, Mortgagor agrees that, in the event that the United States or any department, agency or bureau thereof or the State of Illinois or any of its subdivisions having jurisdiction shall at any time require documentary stamps to be affixed to this Mortgage or shall levy, assess, or charge any tax, assessment or imposition upon this Mortgage or the credit or indebtedness secured hereby or the interest of Mortgagee in the Real Property or upon Mortgagee by reason of or as holder of any of the foregoing, then Mortgagor shall pay for such documentary stamps in the required amount and deliver them to Mortgagee or pay (or reimburse Mortgagee for) such taxes, assessments or impositions and, unless all such documentary stamps, taxes, assessments and impositions are paid or reimbursed by Mortgagor when and as they become due and payable, all

sums hereby secured shall become immediately due and payable, at the option of Mortgagee, notwithstanding anything contained herein or in any law heretofore or hereafter enacted. Mortgagor agrees to exhibit to Mortgagee, at least annually and at any time upon request, official receipts showing payment of all taxes, assessments and charges which Mortgagor is required or elects to pay hereunder. Mortgagor agrees to indemnify Mortgagee against liability on account of such documentary stamps, taxes, assessments or impositions, whether such liability arises before or after payment of the Obligations and regardless of whether this Mortgage shall have been released or reconveyed.

7. **Use of Mortgaged Property.** Mortgagor agrees that it shall not permit the public to use the Mortgaged Property in any manner that might tend, in Mortgagee's reasonable judgment, to materially, adversely affect Mortgagor's title to such property or any portion thereof, or to make possible any claim or claims of easement by prescription or of implied dedication to public use, if any such impairment or claim could have a material adverse effect on the value of the Mortgaged Property.

8. **Insurance.**

(a) **Policies.** Mortgagor shall maintain in full force and effect, at Mortgagor's sole cost and expense, the insurance required to be maintained by it pursuant to the provisions of Section 8.10 of the Loan Agreement. The insurance policies must be approved by Mortgagee in its sole discretion as to amount, form, deductibles and insurer, must cover all risks Mortgagee requires and must be with A or A+ rated companies that have a financial size of X or better as shown in a current Best's Key Rating Guide (or comparable guide book acceptable to Mortgagee if Best's should become unavailable). The hazard, fire and extended coverage insurance policies must contain a standard mortgagee or lender clause making all losses payable to Mortgagee, must contain cancellation provisions requiring not less than thirty (30) days' written notice to Mortgagee as a condition precedent to any cancellation thereof, must be in the amount of the full replacement value of the Improvements, and must contain a "Replacement Cost Endorsement". The hazard, fire and extended coverage insurance policies and a copy of all other insurance policies, together with receipts for the payment of premiums, are to be delivered to and held by Mortgagee. All renewal

and replacement policies (or certificates or binders evidencing same) must be delivered to Mortgagee at least thirty (30) days before expiration of the old policies. Approval of any insurance by Mortgagee will not be a representation of the solvency or other condition of any insurer or the sufficiency of any amount of insurance.

(i) All policies of insurance required to be maintained by Mortgagor hereunder shall contain a waiver of subrogation against Mortgagee, shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor or Mortgagee that might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Mortgagor.

(ii) Notwithstanding anything to the contrary herein, in the event Mortgagor fails to provide, maintain, keep in full force and effect or deliver and furnish to Mortgagee the policies of insurance required hereunder, in addition to all other remedies available under this Mortgage or the other Loan Documents, Mortgagee, in its sole and absolute discretion and without obligation with respect thereto, may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor shall pay all premiums thereon (and interest thereon at the Default Rate from the date of expenditure by Mortgagee until the date of payment by Mortgagor) promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums together with interest thereon shall be secured by this Mortgage.

(iii) Notwithstanding anything to the contrary herein, in the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Mortgagor in and to all policies of insurance required herein or the proceeds thereof shall inure to the benefit of and pass to the successor-in-interest to Mortgagor or the purchaser or grantee of the Mortgaged Property.

(iv) Except as may be required by the Loan Agreement or by Mortgagor's Operating Agreement, Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder, unless Mortgagee is included thereon under a standard, non-contributory mortgagee clause acceptable to Mortgagee.

Mortgagor shall immediately notify Mortgagee when any such separate insurance is taken out and shall promptly deliver to Mortgagee a certificate of the original policy or policies of such insurance.

(v) Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of Mortgagee, Mortgagor agrees to furnish evidence of replacement costs, without cost to Mortgagee, such as that regularly and ordinarily made by the insurance companies to determine the then replacement cost of the Premises.

(b) **Damage or Destruction.** Mortgagee shall collect and receive the proceeds from any insurance policy or policies on the Mortgaged Property aggregating more than Five Hundred Thousand Dollars (\$500,000) and, after deducting from such insurance proceeds any expenses incurred by Mortgagee in the collection or handling thereof, such funds shall be applied to reduce the outstanding principal balance of the Note or otherwise to reduce the Obligations; provided, however, that in the event (i) Mortgagor is obligated under the terms of any lease or leases, the terms of which have been approved by Mortgagee pursuant to the Loan Agreement, this Mortgage, and the other Loan Documents, to repair or rebuild any damage to the Mortgaged Property, Mortgagee shall disburse such proceeds as hereinafter provided, or (ii) Mortgagor elects to repair any damage to the Mortgaged Property, Mortgagee shall disburse such proceeds if the conditions hereinafter provided for are satisfied.

Mortgagee shall disburse such proceeds (less any expenses incurred by Mortgagee referred to above) for the purpose of repairing or rebuilding the Mortgaged Property upon submission to Mortgagee of evidence reasonably satisfactory to Mortgagee that Mortgagor will provide sufficient funds to meet any shortfall between the cost of such repairing and rebuilding of the Mortgaged Property and the amount of such insurance proceeds (less any expenses incurred by Mortgagee referred to above), and provided that the following shall occur prior to the date Mortgagee disburses said proceeds to or on behalf of Mortgagor:

(i) Mortgagee approves the plans and specifications for the repairing or rebuilding of the damaged Mortgaged Property, the contract for such repairing or rebuilding, and the contractor who will perform such repairing or rebuilding;

(ii) In the event the contract price of such repairing or rebuilding exceeds the amount of such proceeds, Mortgagor shall make provisions reasonably satisfactory to Mortgagee for the payment of such excess;

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(iii) Prior to any disbursement, Mortgagor shall deliver to Mortgagee (A) an endorsement to Mortgagee's title insurance policy affirmatively insuring against any recorded or unrecorded mechanics' or materialmen's liens against the Mortgaged Property, and (B) a written certificate of Mortgagor certifying to Mortgagee that the contractor is entitled to such disbursement under the terms of the contract and that all Persons furnishing labor or materials for such work have been paid or released conditioned only upon payment from the disbursement for work completed to date;

(iv) All such repairing or rebuilding shall be of at least substantially the same quality as the portion of the Mortgaged Property being repaired or rebuilt, unless otherwise agreed to by Mortgagee; and

(v) Any Event of Default that exists hereunder or under any of the Loan Documents has been cured and is no longer continuing and existing.

If the foregoing conditions are satisfied, Mortgagee shall be obligated to disburse such insurance proceeds to Mortgagor.

All proceeds of insurance payable with respect to damage or destruction of the Mortgaged Property aggregating less than Five Hundred Thousand Dollars (\$500,000) shall be paid to Mortgagor provided that Mortgagor holds such funds in trust for the benefit of Mortgagee and disburses such proceeds to third parties exclusively for repairing or rebuilding the Mortgaged Property and any excess remaining after payment for such repairing or rebuilding shall be paid to Mortgagee to be applied to reduce the outstanding principal balance of the Note or otherwise to reduce the Obligations, and provided further that the requirements set forth in clauses (1) through (5), inclusive shall be satisfied.

Mortgagee shall under no circumstances be held responsible for any failure to collect any insurance proceeds due under the terms of any policy, unless such failure is due to the gross negligence or willful misconduct of the Mortgagee.

(c) **Application of Proceeds After Foreclosure.** If prior to the receipt by Mortgagee of any such insurance proceeds, the Mortgaged Property shall have been sold upon foreclosure of this Mortgage or shall have been transferred by deed in lieu of foreclosure of this Mortgage or otherwise, Mortgagee shall have the right to receive the same to the extent of any

deficiency found to be due upon such sale, legal interest thereon together with reasonable attorneys' fees and disbursements incurred by Mortgagee in connection with the collection thereof.

9. **Condemnation Awards.** Mortgagee is authorized and empowered, at its option, to collect and receive any and all of the right, title and interest of Mortgagor in and to Condemnation Awards made to any owner of the Mortgaged Property during the term hereof and, in the event of a total condemnation, to apply the balance of such Condemnation Awards, after deducting therefrom any reasonable expenses incurred by Mortgagee in the collection or handling thereof, to reduce the outstanding principal balance of the Note or otherwise reduce the Obligations. In the event of a partial condemnation, Mortgagee shall apply the balance of such Condemnation Awards, after deducting therefrom any expenses incurred by Mortgagee in the collection or handling thereof, first, in whole or in part, to such repairing or rebuilding of the portion of the Mortgaged Property not condemned as may be necessary as a result of such partial condemnation; provided, however, that to the extent that Mortgagor receives any proceeds with respect to Condemnation Awards in excess of Five Hundred Thousand Dollars (\$500,000) such proceeds shall be immediately delivered to the Mortgagee to be disbursed to or on behalf of Mortgagor for funds expended should Mortgagor elect to repair, rebuild or restore the Mortgaged Property; provided however that Mortgagee shall be under no obligation to disburse such funds unless and until Mortgagor provides evidence satisfactory to Mortgagee that Mortgagor will provide sufficient funds to meet any shortfall between the cost of such repairing, rebuilding or restoring of the Mortgaged Property and the balance of such Condemnation Awards, and provided, further, that such repairing, rebuilding or restoring shall comply with the requirements set forth in Sections 8(b)(1) through 8(b)(5), inclusive; and if such requirements are met Mortgagee shall be obligated to disburse such funds to Mortgagor; and second, the balance, if any, of such Condemnation Awards shall be applied to reduce the outstanding principal balance of the Note or otherwise to reduce the Obligations. Notwithstanding the foregoing, in the event that Mortgagor is obligated under the terms of any lease or leases approved by Mortgagee pursuant to the Loan Agreement, this Mortgage, and the other Loan Documents to repair or rebuild any portion of the Mortgaged Property not so condemned, then Mortgagor shall deposit such Condemnation Awards with the Mortgagee which shall disburse such proceeds for such

repairing or rebuilding of such portion of the Mortgaged Property subject to the conditions set forth in the preceding sentence.

All Condemnation Award proceeds payable with respect to the Mortgaged Property aggregating less than Five Hundred Thousand Dollars (\$500,000) shall be paid to Mortgagor provided that Mortgagor holds such funds in trust for the benefit of Mortgagee and disburses such proceeds to third parties exclusively for repairing, rebuilding or restoring the Mortgaged Property and any excess remaining after payment for such repairing or rebuilding shall be paid to Mortgagee to be applied to reduce the outstanding principal balance of the Note or otherwise to reduce the Obligations, and provided, further, that such repairing, rebuilding or restoring shall comply with the requirements set forth in Sections 8(b)(1) through 8(b)(5), inclusive. Mortgagee shall under no circumstances be held responsible for any failure to collect any Condemnation Awards (less any expenses incurred by Mortgagee), unless such failure is due to the gross negligence or willful misconduct of Mortgagee. Mortgagor hereby agrees that the foregoing powers and authorities are irrevocable and coupled with an interest. Nothing in this Section 9 shall in any way affect the security of this Mortgage or the liability of Mortgagor for payment of the entire balance of the Obligations hereby secured.

10. Defense of Actions. Mortgagor shall defend, at Mortgagor's expense, any action, proceeding or claim which affects the Mortgaged Property or any part thereof or which is directly related to any interest of Mortgagee in such Mortgaged Property or in the Obligations (except as may arise from the gross negligence or willful misconduct of Mortgagee or their respective breach of any of their respective obligations hereunder), and Mortgagor shall indemnify and hold Mortgagee harmless from and against all losses, damages, costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, court costs and consultants' fees and expenses which Mortgagee may incur in connection therewith, and all such amounts shall be added to the Obligations and shall become immediately due and payable on notice and demand. All sums payable by Mortgagor to Mortgagee pursuant to this Section 10 which are not paid within ten (10) days after written demand therefor by Mortgagee (which demand shall be accompanied by documentation evidencing such losses, damages, costs and expenses), shall thereafter bear interest

at the Default Rate from the date of such notice or demand until paid in full by Mortgagor, and shall be a part of the Obligations secured by this Mortgage.

11. Expenses; Attorneys' Fees. If Mortgagee shall incur or expend any sums (including without limitation reasonable attorneys' and paralegals' fees and expenses at the investigative, pre-trial, trial and appellate levels), whether or not in connection with any action or proceeding, to sustain or protect (as to third parties) the lien and/or security interest of this Mortgage or its priority, or for any title examination or title insurance policy relating to the title to the Mortgaged Property or any part thereof, or for any other purpose set forth in this Mortgage or in any of the other Loan Documents, all such sums shall become immediately due and payable upon written notice and demand (unless such action results from the gross negligence or willful misconduct of Mortgagee or their respective breach of any of their respective obligations hereunder). All sums payable by Mortgagor to Mortgagee pursuant to this Section 11 which are not paid within ten (10) days after written demand therefor by Mortgagee (which demand shall be accompanied by documentation evidencing such expenses) shall thereafter bear interest at the Default Rate from the date of such written notice or demand until paid in full by Mortgagor, and shall be a part of the Obligations secured by this Mortgage.

In the event of a judicial or administrative proceeding or action by Mortgagee, Mortgagor with respect to the interpretation or enforcement of this Mortgage, including without limitation an action by Mortgagee to protect or enforce any of their rights hereunder, or to recover any of the Obligations hereby secured, the prevailing party shall be entitled to recover costs and expenses, including without limitation reasonable attorneys' and paralegals' fees and expenses, whether at the investigative, pretrial, trial or appellate level, including bankruptcy proceedings.

Attorneys' fees and costs incurred in enforcing any judgment or in connection with any appeal shall be recoverable separately from and in addition to any other amount included in such judgment. This Section is intended to be severable from the other provisions of this Mortgage, and the prevailing party's rights under this Section shall not merge into any judgment and any judgment shall survive until all such fees and costs have been paid.

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12. **Mortgagee's Right to Cure.** If any Event of Default occurs whereby Mortgagor fails to make payment of any liens or encumbrances, any Taxes, or fails to procure and maintain insurance, or fails properly to repair, maintain and preserve the Mortgaged Property, in each case within the time periods provided herein or in the Loan Agreement, as applicable, Mortgagee may, at its election, without demand (but with reasonably prompt notice to Mortgagor) pay and discharge such liens or encumbrances, pay such Taxes plus any interest and penalties thereon, procure such insurance and pay the premium therefor, and make such repairs and maintain and preserve the Mortgaged Property, and all reasonable expenditures therefor, with interest thereon at the Default Rate from the date of such expenditure until paid, shall become due and payable by Mortgagor to Mortgagee, as applicable, upon written demand made therefor and shall be added to the Obligations, shall be secured by this Mortgage and shall be otherwise recoverable as a debt, all without prejudice to the right of Mortgagee to declare the entire Obligations immediately due and payable by reason of the occurrence of any Event of Default or breach of any covenant contained herein.

13. **Mortgagee's Right to Inspect.** Subject to the rights of Tenants in possession of the Mortgaged Property, Mortgagee, for the protection of its interest in the Mortgaged Property, is hereby authorized and empowered upon reasonable prior notice to Mortgagor, to enter in and upon the Mortgaged Property at any and all reasonable times for the purpose of inspecting and ascertaining the condition thereof. Mortgagee and any receiver shall also have the right of inspecting the Mortgaged Property for violations of any covenants pursuant to the Environmental Indemnification Agreement and the other Loan Documents, and enforcing Mortgagor's obligations thereunder.

14. **Zoning and Private Covenants.** Mortgagor shall not, without the prior written approval of Mortgagee, initiate, join in, or consent to any zoning, subdivision, planning or similar ordinance or classification, any private restrictive covenant or any other public or private restriction limiting or redefining the existing uses and planned development for the Mortgaged Property, or any part thereof. If, under applicable zoning, subdivision and similar ordinances and classifications, the use of all or any part of the Mortgaged Property is or becomes a nonconforming use, Mortgagor will

not cause or permit such use to be discontinued or abandoned without the prior written consent of Mortgagee.

15. **Uniform Commercial Code**. This Mortgage constitutes a security agreement under the Code with respect to the Equipment and all other assets of Mortgagor related to the Land and the Improvements, and accordingly, Mortgagor grants to Mortgagee a security interest in Mortgagor's interest in the Equipment, Inventory, Receivables, Related Contracts, Personal Property, Project Leases, general intangibles and Condemnation Awards (collectively the "Secured Property") as security for payment and performance of the Obligations. The following provisions of this Section 15 shall not limit the generality or applicability of any other provision of this Mortgage, but shall be in addition thereto:

(a) Mortgagor (being deemed the Debtor as that term is used in the Code) covenants to provide to Mortgagee upon its request a complete and accurate inventory of all Secured Property to be located in, on or about the Land and the Improvements and Mortgagor represents and warrants that Mortgagor will then be and will continue to be the true and lawful owner of such Secured Property, all of which shall have been paid for in full or will be paid in full upon Mortgagor's receipt of the Advance which includes the funds used for payment for such Secured Property, subject to no liens, charges, conditional sales contracts, chattel mortgages, security agreements, or financing statements, other than Permitted Liens.

(b) The Secured Property is to be used by Mortgagor solely for business purposes, being installed upon the Land and the Improvements, for Mortgagor's own use or as the equipment and furnishings made available by Mortgagor as owner of the Mortgaged Property.

(c) Other than in the ordinary course of business, once installed, the Secured Property shall not be removed from the Land and the Improvements, without the prior written consent of Mortgagee (Mortgagee being the "secured party" as that term is used in the Code) unless such Secured Property is promptly replaced in kind by Secured Property of equal or superior value.

(d) No financing statement covering any of the Secured Property or any proceeds thereof is on file in any public office except either pursuant hereto or as approved by the Mortgagee in writing pursuant to the Loan Agreement, and Mortgagor shall, at its own cost and expense, upon demand, furnish to Mortgagee such further information as Mortgagee may from time to time

request, and shall execute and deliver to Mortgagee such financing statements (the "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 reasonably request or as may be necessary or appropriate to acquire and maintain a perfected security interest in the Secured Property of Mortgagor as security for the Obligations, subject to no liens or encumbrances, and Mortgagor shall pay the cost of filing or recording such Financing Statements or other documents, and this instrument, in all public offices wherever and whenever filing or recording is deemed by Mortgagee to be necessary.

(e) Upon the occurrence of any Event of Default and at any time during the continuance of such Event of Default, Mortgagee at its option may declare the Obligations immediately due and payable, all as more fully set forth in Section 21, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including (to the extent not expressly prohibited pursuant to applicable law where such prohibition cannot be waived by Mortgagor), without limitation, the right to take immediate and exclusive possession of the Secured Property, 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 or without violation of any provisions of any provisions of the Project Leases) upon any place in which the Secured Property, or any part thereof, may be situated and remove the same therefrom (provided, that if the Secured Property is affixed to real estate, such removal shall be subject to the provisions of the Code), and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Secured Property for sale until disposed of, or may propose to retain the Secured Property subject to Mortgagor's right of redemption in satisfaction of the Obligations, as provided in the Code. Mortgagee may require Mortgagor to assemble the Secured Property and make it available to Mortgagee for its possession at the Mortgaged Property. Mortgagee shall give Mortgagor at least fifteen (15) days' written notice of the time and place of any public sale of the Secured Property or of the time after which any private sale or any other intended disposition thereof is made. Such notice shall be given pursuant to Section 31. Mortgagor acknowledges that fifteen (15) days' written notice is reasonable advance notice prior to the public sale of the Secured Property. Mortgagee may buy at any public sale, and if the Secured Property 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. The net proceeds realized upon any such disposition, after deduction for the reasonable expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and expenses, court costs and consultants' fees and expenses incurred by Mortgagee, shall be applied in satisfaction of the Obligations. Mortgagee shall account to Mortgagor for any surplus realized on such disposition.

(f) Mortgagor and Mortgagee agree that the filing of any Financing Statements in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing this Mortgage and hereby stated intention of the parties hereto, that everything owned by Mortgagor and used in connection with the production of income from, or the operation or maintenance of, the Mortgaged Property and/or adopted for use therein is, and at all times and for all purposes and in all proceedings both legal and equitable shall be regarded as, part of the Land and the Improvements to the greatest extent permitted by law, irrespective of whether (i) any such item is physically attached to the Land and the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with this Mortgage or (iii) any such item is referred to or reflected in any Financing Statements as filed. Similarly, the mention in any Financing Statements of (A) the rights in or the proceeds of any fire and/or hazard insurance policy, (B) any award in eminent domain or condemnation proceedings for a taking or for loss of value, or (C) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to any lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee's interest granted hereby or by any other recorded document, but such mention in the Financing Statements is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to clauses (A), (B) and (C) hereof that notice of Mortgagee's priority of interest, to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivisions or entity thereof, must be filed in the Code records.

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

16. **Leases Affecting the Mortgaged Property.**

(a) The terms and provisions of all leases for space in the Mortgaged Property, and all renewals and modifications of leases, shall be subject to Mortgagee's approval as provided in the Loan Agreement.

(b) Mortgagor agrees to perform faithfully all of its obligations under all present and future leases or other agreements relative to the occupancy of the Real Property, and to refrain from any action or inaction which would result in termination of any such leases or agreements or in any diminution of the value of the leases or agreements or of the rents or revenues due thereunder without Beneficiary's written consent or deemed approval (to the extent any such deemed approval is provided for in the Loan Documents). All future lessees under any lease of the Real Property, or any part thereof, made after the date of recording of this Mortgage shall, at Mortgagee's option and without any further documentation, attorn to Mortgagee, as lessor if for any reason Mortgagee becomes lessor thereunder, and, upon demand, pay rent to Mortgagee and Mortgagee shall not be responsible under such lease for matters arising prior to Mortgagee becoming lessor thereunder.

17. **Indemnification.** Mortgagor shall not use or permit the use of any part of the Mortgaged Property for an illegal purpose. Mortgagor agrees to hold harmless, indemnify and defend Mortgagee and the Mortgaged Property from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including reasonable attorneys' and paralegals' fees, court costs and disbursements) (collectively "Claims"), whether direct, contingent or consequential and however arising, which may be imposed on, incurred or paid by or asserted against Mortgagee or the Mortgaged Property by reason or on account of, or in connection with (i) the construction, renovation, maintenance, reconstruction or alteration of the Mortgaged Property, (ii) the condition of the Mortgaged Property, (iii) any negligence or misconduct of Mortgagor, or any of its respective agents, contractors, subcontractors, servants, employees, licensees or invitees, (iv) any accident, injury, death or damage to any person or property occurring in, on or about the Mortgaged Property or any street, drive, sidewalk, curb or passageway adjacent thereto, or (v) any other transaction arising out of or in any way connected with the Mortgaged Property, excluding from the foregoing indemnification any Claims arising out of

affirmative (e.g., not a failure to act), willful acts of misconduct of Mortgagee. The foregoing indemnities shall be in addition to and not in derogation of Mortgagor's indemnities set forth in the Environmental Indemnification Agreement or otherwise.

18. Transfers of the Mortgaged Property or Beneficial Interests in Mortgagor: Assumption. Mortgagor acknowledges (a) that the financial stability and managerial and operational ability of the Mortgagor is a substantial and material consideration to Mortgagee in its agreement to enter into the transaction evidenced by this Mortgage and the Note, and (b) the Transfer or further encumbrance of the Mortgaged Property, or a change in the Person operating or managing the Mortgaged Property could significantly and materially alter, impair and reduce Mortgagee's security for the indebtedness secured hereby. In order, therefore, to induce Mortgagee to accept the Note, Mortgagor shall not directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, Transfer the Mortgaged Property, or any portion thereof, or permit a Transfer to occur with respect to the limited liability company interests of Mortgagor other than as permitted by the Loan Agreement or the Operating Agreement (each, a "Permitted Transfer"). Other than Permitted Transfers, Mortgagee may grant or deny consent to any other Transfer in its sole discretion. Any Transfer shall be subject to this Mortgage and any such transferee shall be deemed to have assumed and agreed to be bound by all Obligations hereunder and under the Note and in all other agreements affecting the Mortgaged Property, or any portion thereof, executed by Mortgagor to Mortgagee whether or not further securing the indebtedness hereby secured. Such assumption shall not, however, release Mortgagor, any maker of the Note, or any other guarantor of the Note or other Person from any personal liability thereunder or related thereto without the prior written consent of Mortgagee. If Mortgagor, or any successor in interest of Mortgagor, shall Transfer the Mortgaged Property or any portion thereof, or any interest therein, or permit a Transfer to occur with respect to the limited liability company interests of Mortgagor in contravention of the terms of the Loan Agreement or Grantor's Operating Agreement, or otherwise without first obtaining the written consent of Mortgagee as required by the Loan Agreement or the reconveyance of the Mortgaged Property or portion thereof from the lien of this Mortgage, all indebtedness secured by this Mortgage, shall, at the option of Mortgagee and without notice or demand, become immediately due and payable. Consent to one such Transfer shall not be deemed to be a waiver of

the right to require consent to future or successive transactions. Mortgagor will provide to Mortgagee an exact duplicate copy of any contract providing for a Transfer of any interest in the Mortgaged Property or in Mortgagor, or of the ownership interests in the Members, any Mortgage or similar instrument creating a lien or encumbrance on the Mortgaged Property immediately upon the execution of any such contract, Mortgage or other instrument. Nothing in this Section 18 shall be construed to limit Mortgagor's ability to lease space in the Project on the terms and conditions set forth in the Loan Agreement and the Operating Agreement.

19. Assignment of Rents and Leases. Mortgagor hereby presently and absolutely grants, transfers and assigns to Mortgagee, during the continuance of this Mortgage, all of Mortgagor's right, title and interest in and to all the Project Leases and rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent, for security or as earnest money or as down payment for the purchase of all or any part of the Real Property) (the "Rents"). So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have a license to collect the Rents as they become due and payable. Upon the occurrence and during the continuance of an Event of Default, Mortgagor's license to collect the Rents shall cease and Mortgagee shall have the right, without taking possession of the Mortgaged Property, to collect all Rents, including those past due and unpaid. Failure or discontinuance of Mortgagee at any time, or from time to time, to collect the Rents shall not in any manner affect the subsequent enforcement by Mortgagee of the right, power and authority to collect the same. Nothing contained herein, nor the exercise of the right by Mortgagee to collect the Rents, shall be, or be construed to be, an affirmation by Mortgagee of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien of this Mortgage to, any such tenancy, lease or option. Notwithstanding the foregoing, no action taken by the Mortgagee to collect any rents, additional rents, royalties, income or profits will make the Mortgagee a mortgagee-in-possession of the Mortgaged Property unless the Mortgagee personally or by authorized agent enters into actual possession of the Mortgaged Property. Possession by a court appointed receiver will not be considered possession by Mortgagee. Other than in connection with the Mortgagee's gross negligence or wilful misconduct after its express assumption of the Mortgagor's obligations under a Lease subsequent to an Event of Default, Mortgagor hereby agrees

to indemnify Mortgagee against, and to hold Mortgagee harmless from, any and all liability arising from any of said leases or from this assignment. This assignment shall not place responsibility for the control, care, management or repair of said Premises upon Mortgagee, or make Mortgagee responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Any expenditures made by Mortgagee to cure any default by Mortgagor under any term of any lease (and interest thereon at the highest rate of interest permitted to be charged hereunder from the date incurred by Mortgagee until the date of payment by Mortgagor) will be paid by Mortgagor promptly upon demand by Mortgagee and will be deemed to be a part of the Obligations secured by this Mortgage. The receipt by Mortgagee of any rents, additional rents, royalties, income or profits pursuant hereto after the institution of foreclosure proceedings hereunder shall not cure such default nor affect such proceedings or any sale pursuant hereto. All rents, additional rents, royalties, income or profits collected by Mortgagee or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the Obligations secured by this Mortgage including, without limitation, any amounts due under the Environmental Indemnification Agreement, in whatever order Mortgagee directs in its sole discretion and without regard to the adequacy of its security. The rights and remedies of Mortgagee under this Section 19 shall be in addition to, and shall not be deemed to derogate from, the rights and remedies of Mortgagee under the Assignment of Leases.

20. Events of Default. The whole of the unpaid principal balance of the Note remaining unpaid, together with accrued interest and any other amounts secured by this Mortgage, including, without limitation, sums due under the Environmental Indemnification Agreement, shall become immediately due and payable, at the option of Mortgagee, and shall be recoverable by Mortgagee forthwith or at any time or times thereafter without stay of execution or other process, if any one or more of the events in this Section 20 shall occur (hereinbefore and hereinafter "Events of Default"), it being understood that a waiver by the Mortgagee with respect to an Event of Default on one occasion shall not be construed as a bar to any right or remedy which the Mortgagee would otherwise have with respect to an Event of Default on any future occasion:

(a) Any payment of principal, interest or any other sum required to be paid by Mortgagor under the Loan Documents shall not be paid on the date such payment is due, and such failure is not cured within any applicable notice, grace or cure period;

(b) If any "Event of Default" (as defined in any other Loan Document) shall have occurred and be continuing under any other Loan Document;

(c) Mortgagor shall, at any time, fail to maintain or cause to be maintained in full force and effect any insurance required hereunder or by the terms of the other Loan Documents to be maintained by Mortgagor and such failure shall continue for a period in excess of twenty (20) days following written notice from Mortgagee;

(d) Any lien or claim of lien by a contractor, subcontractor, mechanic, laborer, materialman, craftsman or the like is recorded against the Mortgaged Property or any part of Mortgagor's interest therein which is superior to the right and lien of this Mortgage and the same is not released of record or affirmatively insured against in the manner and within a time period satisfactory to Mortgagee, unless such lien is subject to reasonable dispute and Mortgagor commences an action within sixty (60) days of the placing thereon to resolve such dispute and remove such lien and diligently and continuously prosecutes such action to completion;

(e) Subject to Section 6, any tax shall not be paid prior to the attachment of a penalty or interest in connection with such non-payment;

(f) Mortgagor and the Members shall fail to keep in effect their existence and rights in the respective state of their formation or their right to own property and transact business in the State of Illinois;

(g) Any or all of the representations and warranties of Mortgagor set forth in Section 1 of this Mortgage shall prove to be or to have been materially misleading when made or shall omit to state a material fact necessary in order to make the statements therein not materially misleading in Mortgagee's reasonable judgment and is not cured within ten (10) days after notice thereof shall have been given by Mortgagee; provided, however, that if in Mortgagee's good faith judgment the nature of the representation, warranty or statement is such that it is curable by Mortgagor, but cannot be cured within such ten (10) day period, then an Event of Default shall not be deemed to have occurred hereunder so long as (i) Mortgagor has commenced to cure such representation, warranty or statement within such ten (10) day period and has notified Mortgagee

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of such commencement within such ten (10) days, (ii) Mortgagor thereafter uses diligent efforts to cure the same in Mortgagee's judgment, and (iii) sufficient progress is being made in curing such default in Mortgagee's judgment, provided that no such default shall in any event remain uncured for more than ninety (90) days or such longer period as Mortgagee in its sole discretion may provide; and provided further, that no such extension of the ten (10) day grace period shall be available to Mortgagor if, in Mortgagee's sole but good faith judgment, the default referred to herein is a result of Mortgagor's willful non-compliance with the terms and conditions hereof or of the other Loan Documents or is otherwise the result of bad faith or willful misconduct on the part of Mortgagor;

(b) Mortgagor shall fail to perform or observe, or cause to be performed or observed, any one or more of the terms, covenants, conditions or obligations not specifically referred to in Sections 20(a) through 20(g), on the part of Mortgagor to be performed or observed under this Mortgage, and such non-monetary default is not cured within thirty (30) days after written notice to Mortgagor from Mortgagee, unless such non-monetary default is not reasonably susceptible of being cured within thirty (30) days, in which event an Event of Default shall not be deemed to have occurred hereunder so long as (i) Mortgagor has commenced to cure such failure within such fifteen (15) day period and has notified Mortgagee of such commencement within such thirty (30) days, (ii) Mortgagor thereafter prosecutes such cure diligently to completion, and (ii) sufficient progress is being made in curing such default in Mortgagee's judgment, provided that no such default shall in any event remain uncured for more than sixty (60) days or such longer period as Mortgagee may provide in its sole discretion, provided further, that no such extension of the thirty (30) day grace period shall be available to Mortgagor if, in Mortgagee's sole judgment, (x) the default referred to in this Section 20(h) is a result of Mortgagor's or a Member's willful non-compliance with the terms and conditions hereof or of the other Loan Documents or is otherwise the result of bad faith or willful misconduct on the part of Mortgagor or a Member thereof, or (y) Mortgagee shall have determined that such default could reasonably be expected to materially and adversely affect the Loan or Mortgagee's security therefor.

21. Acceleration. Notice is hereby given of a provision in the Note and the Loan Agreement which provides that the entire unpaid balance of the principal of the Note, together with

any interest and other amounts required to be paid to Mortgagee under the Note, the other Loan Documents and this Mortgage, shall, at Mortgagee's option, become due and payable if there occurs any Event of Default under this Mortgage, the Note or any of the other Loan Documents. The foregoing notwithstanding, if an Automatic Acceleration Event shall occur, all amounts owing by Mortgagor to Mortgagee under or in connection with the Note, this Mortgage or the other Loan Documents shall automatically and immediately become due and payable, in each case without notice to the Mortgagor. Upon the occurrence of an Event of Default or an Automatic Acceleration Event, Mortgagee, in addition to the foregoing, may immediately exercise any and all other rights, remedies and recourse available to it at law or in equity or under this or any of the other Loan Documents (including, without limitation, the right to sell the Mortgaged Property or any portion thereof and/or foreclose any and all liens securing the repayment of the amounts payable under the Note and the other Loan Documents).

22. Entry and Operation Possession. Upon the occurrence of any Event of Default, Mortgagee may, to the extent permitted by law, and subject to the rights of tenants at the Mortgaged Property, without the appointment of a receiver, or an application therefor, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of (and as soon as is practicable, Mortgagor shall surrender actual possession of) the Mortgaged Property or any part thereof, without notice to Mortgagor and without bringing any legal action or proceeding, or, if necessary, pursuant to legal proceedings, ejectment or otherwise, and may remove and exclude Mortgagor and their respective agents and employees and all other persons therefrom, and having and holding the same may complete the construction of the Project in accordance with the terms of the Loan Agreement, and Mortgagee may make all necessary or proper repairs, replacements and useful or required alterations, additions, betterment or improvements to preserve the same and receive all earnings, income, profits, revenues, rents (including rents accrued and unpaid) and proceeds accruing with respect thereto or any part thereof, such earnings, income, revenues, profits, rents and proceeds being hereby assigned to Mortgagee as additional security for the payment of the Obligations. In so doing, Mortgagee shall have the right to manage the Mortgaged Property and to carry on the business of Mortgagor and may exercise all of the rights and powers of Mortgagor, either in the name of Mortgagor or otherwise, including, but without limiting the generality of the

foregoing, the right to lease the Mortgaged Property or any part thereof, to cancel, modify, renew or extend any lease or sublease of the Mortgaged Property or any part thereof and to complete the construction and/or renovation of any unfinished improvements thereof. Mortgagee shall be under no liability for or by reason of any such taking of possession, entry, holding, removal, maintaining, operating, making secure or managing hereinbefore provided for, other than any liability resulting from its willful misconduct, and Mortgagor shall indemnify Mortgagee for any loss Mortgagee shall sustain as a result of the performance of any of the foregoing acts. Any amounts so received by Mortgagee shall be applied to the Obligations in such order as Mortgagee, in its sole discretion, shall determine. Mortgagor shall pay on demand to Mortgagee the amount of any deficiency between the amounts so received by Mortgagee and all moneys paid or advanced together with all costs and expenses incurred (including, without limitation, reasonable attorneys' fees and expenses) by Mortgagee in exercising the rights provided in this Section 22, and such deficiency shall bear interest at the Default Rate from the date so paid or advanced by Mortgagee until repaid in full by Mortgagor and shall be a part of the Obligations secured hereby. The entering upon and taking possession of the Mortgaged Property, the collection of the Rents and the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice with respect thereto or invalidate any act done pursuant to such notice. In collecting and receiving the Rents and/or in taking possession of the Mortgaged Property, Mortgagee shall be entitled to exercise all of the rights, remedies and powers of an owner of all or any part thereof, may conduct the business of Mortgagor in its own name or in the name of Mortgagor, may use any and all of Mortgagor's properties and facilities, and may deal with Mortgagor's creditors, debtors, tenants, lessees, agents, employees and other Persons having any relationship whatsoever with Mortgagor, and alter or amend any contracts between them, in any manner Mortgagee may determine. All rights, remedies and powers given to Mortgagee herein may be exercised by Mortgagee, as applicable, either in person, by agent or by a receiver to be appointed by a court. Nothing contained herein shall require Mortgagee to incur any expense or do any act. Any of the actions referred to in this Section 22 may be taken by Mortgagee at such time as Mortgagee is so entitled, without regard to the adequacy of any security for the obligations hereby secured.

23. **Performance by Mortgagee After Defaults.** If an Event of Default shall occur in the payment, performance or observance of any term, representation, warranty, covenant or condition of this Mortgage (after expiration of any cure period or provided by applicable law), Mortgagee may, but without any obligation to do so, to preserve its interest in the Mortgaged Property, and without releasing Mortgagor from any obligation hereunder and without waiving its rights to declare a default as herein provided or impairing any declaration of a default or any of Mortgagee's other rights and remedies hereunder or under applicable law, pay, perform or observe the same or take any action necessary to cause any representation or warranty made hereunder or under any of the other Loan Documents to be true, and all payments made or costs or expenses incurred by Mortgagee in connection therewith (including reasonable attorneys' fees), shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee with interest thereon at the Default Rate. Mortgagee shall be the sole judge of the necessity for any such actions and of the amounts to be paid, provided that Mortgagee's actions shall be based on commercial reasonableness. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any other Person in possession holding under Mortgagor.

24. **Foreclosure.**

(a) Upon the occurrence of any Event of Default, Mortgagee may (i) declare all sums secured hereby to be immediately due and payable (or, with respect to an Automatic Acceleration Event, such sums shall be automatically and immediately due and payable), as provided in the Loan Agreement, (ii) institute proceedings for the complete foreclosure of this Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the Obligations without accelerating the due date of the entire amount of the Obligations by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of the Obligations only, and any sale of the Mortgaged Property under such a foreclosure proceedings shall be subject to, and shall not affect the unmatured part of the Obligations, and this Mortgage shall be and continue as a lien on the Mortgaged Property securing the unmatured Obligations, (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for

the specific performance of any covenant, condition or agreement in this Mortgage or any of the Loan Documents, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect. Upon receipt of notice from Mortgagee, Mortgagor shall pay all Rents thereafter received by Mortgagor from the Mortgaged Property to Mortgagee and to the extent not paid shall hold such amounts as trust funds for the benefit of Mortgagee and such Rents shall be deemed "cash collateral" of Mortgagee under Title 11 of the United States Code. Notwithstanding the above, Mortgagee may take such other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security or any other security herein or provided for in the other Loan Documents, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Obligations, with interest at the applicable rate stipulated in the Note to the date of default, and thereafter at the Default Rate, together with all other sums due by Mortgagor in accordance with the provisions of the Loan Documents, including all sums which may have been loaned by Mortgagee to Mortgagor after the date of this Mortgage and all sums which may have been advanced by Mortgagee, in accordance with the terms of this Mortgage and the other Loan Documents, for taxes, water or sewer rents, charges or claims, payments on prior liens, insurance or repairs to the Mortgaged Property, all costs of suit, reasonable attorneys' and paralegals' fees and other expenses in connection therewith together with all other costs and expenses for which advances can be made pursuant to this Mortgage and the other Loan Documents, all with interest at the Default Rate on any judgment obtained by Mortgagee from and after the date of any foreclosure until actual payment is made of the full amount due Mortgagee. All or any portion of the Mortgaged Property or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to this Mortgage shall be sold in one parcel as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the Laws of the state in which the Mortgaged Property are situated. At any such sale, Mortgagee may bid for and acquire, as purchaser, the Mortgaged Property or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Obligations due the amount of Mortgagee's bid.

(b) Mortgagee, from time to time before foreclosure upon the Mortgaged Property, may rescind any notice of breach or default and of election to foreclose on the Mortgaged

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Property by public announcement at such time and place of sale and by executing and delivering to Mortgagor a written notice of such rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale. The exercise by Mortgagee of such right of rescission shall not constitute a waiver of any Event of Default then existing or subsequently occurring or impair the right of Mortgagee to execute and deliver to Mortgagor, as above provided, other declarations of default and election to foreclose on the Mortgaged Property, nor otherwise affect any provision, covenant or condition of the Loan Documents or any of the rights, obligations or remedies of the parties thereunder or hereunder.

(c) The proceeds of any sale of the Mortgaged Property shall be distributed and applied in the following order of priority: first, to the reduction or discharge of the Obligations in such order and manner as is provided in the Note; second, to pay all of Mortgagor's other obligations under the Loan Documents in such order and manner as Mortgagee may determine; and lastly, to pay the surplus remaining, if any, to Mortgagor or to such other person or persons as may be lawfully entitled to such surplus.

(d) To the extent permitted by law, the purchaser at any foreclosure sale hereunder may disaffirm any easement granted, or rental or lease contract which is made in violation of any provision of this Mortgage, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract.

(e) Upon the making of any foreclosure sale, Mortgagor shall surrender to the purchaser immediate possession and control of the property purchased, and Mortgagor shall be a tenant at the sufferance of such purchaser, removable at its will by unlawful detainer proceedings and/or any other legal proceedings, or, if not expressly prohibited by applicable law where such prohibition cannot be waived by Mortgagor, by force, without any liability on the part of such purchaser for any damages or injuries resulting to any person or property therefrom, except that which is caused by the purchaser's negligence or misconduct.

25. **Receiver.** Upon the occurrence of any Event of Default, Mortgagee, as a matter of right and to the extent permitted by law, without notice to Mortgagor, without (i) regard to the value of the Mortgaged Property or adequacy of the security for the Obligations, (ii) requiring bond, (iii) regard to the solvency or insolvency of any Person (including Mortgagor) liable for payment of all

or any part of the Obligations, and upon application to a court of competent jurisdiction, shall, if it so desires, be entitled to the immediate appointment of a receiver (the inclusion and availability of the remedies provided for in the provisions for the appointment of a receiver and assignment of Rents being an express condition upon which the Loan is being made) for all or any part of the Mortgaged Property, and of the earnings, rents, income, profits, revenues, issues and proceeds thereof and therefrom, whether such receivership be incidental to a proposed sale of the Mortgaged Property or otherwise, and Mortgagor hereby consents to the appointment of such a receiver. Mortgagor shall pay to Mortgagee, upon demand, all reasonable expenses, including, but not limited to, reasonable receiver's fees, reasonable attorneys' fees, costs and agents' compensation, advanced by Mortgagee and incurred pursuant to the provisions contained in this Section 25; and all such expenses shall be (a) a lien against the Mortgaged Property; (b) added to the Obligations secured by this Mortgage; and (c) payable on demand with interest at the Default Rate from and including the date each such advance is made until repaid in full by Mortgagor, which interest shall be a part of the Obligations secured hereby. The receiver may pay, out of such Rents, when collected, costs incurred in the management and operation of the Mortgaged Property, prior and subordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the Mortgaged Property, and may pay all or any part of the Obligations or other sums secured hereby including, without limitation, sums due under the Environmental Indemnification Agreement or any deficiency decree entered in such foreclosure proceedings. Upon the occurrence of an Event of Default and application by Mortgagee to a court of competent jurisdiction, such court in which such suit is filed shall have full power to enter an order placing Mortgagee in possession of the Mortgaged Property with the same power granted to a receiver pursuant to this subparagraph and with all other rights and privileges of a mortgagee-in-possession under applicable law.

26. Purchase by Mortgagee. Upon any sale made under or by virtue of this Mortgage, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting, in whole or in part, against the Obligations the net sale price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage. Any

credit bid by Mortgagee pursuant to a foreclosure hereunder shall not be deemed to terminate the obligations of the signatory to the Environmental Indemnification Agreement, which shall survive as provided therein.

27. **Deed in Lieu of Foreclosure.** During the continuance of any Event of Default and in lieu of foreclosing pursuant to Section 24, Mortgagee may, in its sole and absolute discretion, accept from Mortgagor a deed in lieu of foreclosure whereby Mortgagor conveys to Mortgagee the entire fee simple interest in the Mortgaged Property. Any acceptance of a deed in lieu of foreclosure by Mortgagee hereunder shall not be deemed to terminate the obligations of the signatory to the Environmental Indemnification Agreement, which shall survive as provided therein unless otherwise expressly agreed to in writing by Mortgagee.

28. **Other Remedies.**

(a) Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not the principal indebtedness or any other sums secured by the Loan Documents shall be due, and without prejudice to the right of Mortgagee thereafter to foreclose the Lien of this Mortgage or bring an action of mortgage foreclosure or any other action, for any Event of Default by Mortgagor existing at the time the earlier action was commenced.

(b) Nothing contained in this Mortgage shall preclude Mortgagee from exercising or enforcing any rights it may now or hereafter have under or pursuant to the law of the State of Illinois, any other applicable venue, or any Loan Document.

29. **Mortgagee in Possession -- Non-Merger.** Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property by Mortgagee pursuant to the provisions hereof or of any judgment or decree of a court of competent jurisdiction and in the absence of an election in writing by Mortgagee to be so considered as a mortgagee in possession. The actual taking of possession of

the Mortgaged Property by Mortgagee shall not create or result in a merger with any other estate of Mortgagee in the Mortgaged Property unless Mortgagee shall so elect in writing.

30. Mortgagee's Remedies against Multiple Parcels. If more than one property, lot or parcel is covered by this Mortgage, and if this Mortgage is foreclosed upon, or judgment is entered upon any Obligations secured hereby, execution may be made upon any one or more of the properties, lots or parcels and not upon the others, or upon all of such properties or parcels, either together or separately, and at different times or at the same time, and execution sales or sales by advertisement may likewise be conducted separately or concurrently, in each case at Mortgagee's election.

31. Notices. Any notice, demand, consent, authorization, request, approval or other communication given or required hereunder shall contain a clear and concise statement of the purpose of such notice, shall reference this Agreement and shall be effective and valid only if in writing, signed by the party giving such notice and delivered in person by a commercial messenger service regularly retaining receipts for such delivery, a reputable overnight express courier or delivery service from whom a receipt is obtained, by facsimile transmission (to be followed immediately by an original sent by one of the other means enumerated herein), or, if mailed, sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Mortgagee:

National Electrical Benefit Fund
1125 Fifteenth Street, N.W., Suite 401
Washington, D.C. 20005
Attention: Edwin D. Hill, Trustee
Facsimile: (202) 496-1561

With mandatory copies to:

NEBF Investments
1125 Fifteenth Street, N.W., Suite 401
Washington, D.C. 20005
Attention: Managing Director of Real Estate
Facsimile: (202) 496-1561

and

Counts, Potts-Dupre & Difede, Chartered
1125 Fifteenth Street, N.W., Suite 444
Washington, D.C. 20005
Attention: James R. Difede, Esq.
Facsimile: (202) 223-3868

If to Mortgagor:

25 South Clark Street, LLC
M&J Wilkow Ltd.
180 North Michigan Avenue
Chicago, IL 60601

With a mandatory copy to:

Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Attn: Matthew R. Bogart, Esq.
Facsimile: (612) 336-3026

All such notices shall be considered given on the date when delivered (refusal of delivery shall constitute delivery), or if mailed, upon the date of receipt of such notice as evidenced by the return receipt with respect to such notice received by the sender thereof, addressed to the parties to be notified at the addresses set forth above or to any other addresses as any party may hereafter specify to the others by like notice.

32. Waiver of Redemption Rights, Defects and Notice. Mortgagor hereby waives and releases, to the fullest extent permitted by law, all errors, defects and imperfections in any proceedings instituted by Mortgagee under the terms of the Note or this Mortgage, as well as all benefit that might accrue to Mortgagor by virtue of any present or future laws exempting all or any portion of the Mortgaged Property, or any other property, real or personal, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale under execution

or providing for any stay of proceedings or execution, exemption from civil process, right of inquisition, or extension of time for payment or requiring the foreclosure and sale of the Mortgaged Property before the attachment of or execution against other property. In addition, Mortgagor shall not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance this Mortgage or of any other Loan Document, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision hereof or any of the other Loan Documents, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof and Mortgagor hereby expressly waives, to the extent that it lawfully may, on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshalled upon any foreclosure hereof. Mortgagor hereby waives any requirements of notice of intent to accelerate the Obligations. In the case of a foreclosure sale, subject to any statutory rights Mortgagor may have, the Mortgaged Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Mortgagee in its sole discretion may elect. Without limiting the foregoing, Mortgagor hereby waives all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every Person who may acquire any interest in or title to the Mortgaged Property subsequent to the date hereof.

33. **Extension of Payments.** Mortgagor agrees that, without affecting the liability of any Person for payment of the Obligations secured hereby or affecting the lien of this Mortgage upon

the Mortgaged Property or any part thereof (other than persons or property explicitly released as a result of the exercise by Mortgagee of its rights and privileges hereunder), Mortgagee may at any time and from time to time, on request of Mortgagor, without notice to any person liable for payment of any Obligations secured hereby, but otherwise subject to the provisions of the Loan Agreement, extend the time, or agree to alter or amend the terms of payment of such Obligations. Mortgagor further agrees that any part of the security herein described may be released with or without consideration without affecting the remainder of the Obligations or the remainder of the security.

34. Amendments and Modifications. No change, amendment, modification or cancellation of this Mortgage, or any part thereof, shall be valid unless in writing and signed by the parties hereto, or their respective successors and permitted assigns; provided, however, that any release of Mortgage discharging this Mortgage need not be signed by Mortgagor.

35. Assignment; Successors and Permitted Assigns.

(a) Except as otherwise permitted in the Loan Documents and this Mortgage, the rights or obligations of Mortgagor under this Mortgage shall not be assigned, pledged or delegated by Mortgagor or assumed by any third-party without Mortgagee's prior written consent which may be given or withheld in its sole and absolute discretion and any such assignment, pledge, delegation or assumption, whether voluntary, involuntary, by operation of law or otherwise, shall be null and void.

(b) The rights of Mortgagee and any holder under this Mortgage shall be freely transferable at any time.

(c) Notwithstanding the foregoing and subject to Sections 18 and 19, this Mortgage shall be binding upon Mortgagor and upon the successors, assigns and vendees of Mortgagor and shall inure to the benefit of Mortgagee and Mortgagee's successors and assigns; all references herein to Mortgagor and Mortgagee shall be deemed to include their respective successors and assigns. Mortgagor's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for Mortgagor.

36. **Invalid Provisions to Affect No Others; Severability.** In the event that any of the covenants, agreements, terms or provisions (or any portion thereof) contained in this Mortgage shall be invalid, illegal or unenforceable in any respect, such provision (or portion thereof) shall be ineffective to the extent of such invalidity, illegality or unenforceability, but the validity of the remaining covenants, agreements, terms or provisions contained herein or in the other Loan Documents shall not be in any way affected, prejudiced or disturbed thereby. In the event that the application of any of the covenants, agreements, terms or provisions of this Mortgage is held to be invalid, illegal or unenforceable, those covenants, agreements, terms and provisions shall not be in any way affected, prejudiced or disturbed when otherwise applied.

37. **Changes.** Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, other than by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

38. **No Waiver.** No failure or delay by Mortgagee to insist upon the strict performance of any term, condition, covenant or agreement of this Mortgage or of any other Loan Document, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, covenant or agreement or of any such breach, or preclude Mortgagee from exercising any such right, power or remedy at any later time or times. Every such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by Mortgagee. By accepting payment after the due date of any amount secured under this Mortgage or payable under any other Loan Document, Mortgagee shall not be deemed to waive the right either to require prompt payment when due of all other amounts secured under this Mortgage or payable under any other Loan Document, or to declare the occurrence of an Event of Default for failure to effect such prompt payment of any such other or subsequent amount. Neither Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations now or hereafter secured by this Mortgage shall be relieved of such obligation by reason

of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property or any part thereof, or by Mortgagee extending the time of payment or modifying the terms of the Note or this Mortgage without first having obtained the consent of Mortgagor or such other person, and in the latter event, Mortgagor and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, Mortgagee may release the obligation of any Person at any time liable for any of the Obligations secured by this Mortgage or any part of the security held for the Obligations and may extend the time of payment or otherwise modify the terms of the Note or this Mortgage without, as to the security or the remainder thereof, in any way impairing or affecting the lien and/or security interest of this Mortgage or the priority of such lien and/or security interest, as security for the payment of the Obligations as it may be so extended or modified, over any subordinate lien. Mortgagee may resort for the payment of the Obligations secured hereby to the Mortgaged Property or to any other security or collateral therefor held by Mortgagee in such order and manner as Mortgagee may elect.

39. **No Partnership.** Notwithstanding anything contained herein to the contrary, neither this Mortgage, the Note nor any of the other Loan Documents, nor the payment of any amounts by Mortgagor to Mortgagee pursuant to the Loan Documents, is intended to create, nor shall be construed as creating a partnership, joint venture or any other relationship between Mortgagor and Mortgagee other than that of debtor and creditor.

40. **Time of the Essence.** Time is of the essence with respect to all obligations of Mortgagor under this Mortgage.

41. **Rights, Remedies, Powers and Privileges Cumulative.** Mortgagee's rights, remedies, powers and privileges under the Note, this Mortgage and each other Loan Document are

cumulative of the rights, remedies, powers and privileges available to Mortgagee under each other Loan Document or at law or in equity, and Mortgagor hereby waives and releases any right to have the Mortgaged Property marshalled in any respect. No act of Mortgagee shall be construed as an election to proceed under any particular provision of the Note, this Mortgage or any other Loan Document to the exclusion of the same or any of the other of them, or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Mortgagee. No delay or omission of Mortgagee to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or waive the provisions hereof, or be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

42. **Third-Party Rights.** No Person shall be a third-party Mortgagee of any provision of the Note, this Mortgage or any other Loan Document.

43. **Applicable Law; Construction.** This Mortgage shall be interpreted so as to be effective and valid under the law of the State of Illinois. It is hereby acknowledged and agreed that this document has been negotiated and prepared by commercially sophisticated parties and their counsel, and as such, the enforcement, construction or interpretation hereof shall not be affected by any canon, custom or rule of law providing for or requiring construction against the party preparing a document. All terms and words used in this Mortgage, regardless of the number and gender in which they are used, shall be deemed and construed to include the singular or plural, or masculine or feminine gender, as the context may require.

44. **Books, Records and Reports of Mortgagor.** Mortgagor shall keep complete and accurate records of its operations and those of the Mortgaged Property and shall permit Mortgagee or its agents to inspect the Mortgaged Property and examine and copy Mortgagor's and the Mortgaged Property's records in accordance with the terms of the Loan Documents.

45. **Environmental Matters.**

(a) At any time and from time to time after the date hereof, Mortgagee may require that Mortgagor, at Mortgagor's sole cost and expense, cause such tests and procedures as Mortgagee deems appropriate (based on facts which reasonably indicate such tests are necessary) to be conducted by environmental engineers or other duly qualified environmental consultants and professionals in a manner satisfactory to Mortgagee for the purpose of insuring compliance with all Environmental Laws and having the Mortgaged Property certified to Mortgagee as such. If reasonably required by Mortgagee such tests and procedures shall be commenced promptly after written notice from Mortgagee and completed within a reasonable time period. Nothing herein shall be deemed to derogate from the Mortgagee's rights and remedies under the Environmental Indemnification Agreement or any of the other Loan Documents.

(b) Without limitation of Mortgagee's rights and remedies under this Mortgage and/or the other Loan Documents, Mortgagee shall have the right, but not the obligation, upon prior written notice to Mortgagor and subject to the rights of tenants at the Mortgaged Property, to enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable, in its sole but good faith discretion, to clean up, remove, resolve, minimize the impact of or otherwise deal with any environmental problem on the Mortgaged Property upon its receipt of any written notice or threat of litigation or notice from any Governmental Authority asserting the existence of an environmental problem on or pertaining to the Mortgaged Property which, if true, could result in any order, suit or other action against Mortgagor or any part of the Mortgaged Property by any governmental agency or otherwise, which, in the sole but reasonable opinion of Mortgagee, could jeopardize its security under this Mortgage. All costs and expenses incurred by Mortgagee in the exercise of any such rights shall be secured by this Mortgage and shall be payable by Mortgagor upon written demand of Mortgagee, which demand shall be accompanied by documentation evidencing such costs and expenses. Notwithstanding the foregoing, the Mortgagee shall indemnify the Mortgagor to the extent of any cost or expense incurred directly as a result of and only to the extent of the gross negligence or wilful misconduct of the Mortgagee in conducting any such site visit or testing.

46. **No Warranty by Mortgagee.** By accepting or approving anything required to be observed, performed or fulfilled by the Mortgagor or to be given to Mortgagee pursuant to the Note

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or the other Loan Documents, including, without limitation, any certificate, balance sheet, statement of profit and loss or other financial statement, survey, receipt, plans, specification, governmental application, appraisal or insurance policy, the Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

47. **Headings.** The headings are herein used for convenience of reference only and shall not be deemed to vary the content of this Mortgage or the covenants and agreements set forth in the scope of any Section hereof.

48. **Waivers.** TO THE EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, AND, ON THE ADVICE OF THE SEPARATE COUNSEL OF MORTGAGOR, UNCONDITIONALLY WAIVES THE FOLLOWING:

(a) **PERSONAL SERVICE OF ANY AND ALL PROCESS** on the Mortgagor, and consents that all such service of process be made by registered mail directed to Mortgagor at the address set forth in this Mortgage and agrees that such service shall be deemed sufficient upon receipt by Mortgagor; provided that nothing contained herein shall affect the right of Mortgagee to serve legal process in any other manner permitted by law; and

(b) **THE RIGHT TO TRIAL BY JURY** as Mortgagor acknowledges and agrees that any controversy which may arise under this Mortgage or the other Loan Documents or the relationship established hereby would be based upon difficult and complex issues, and, therefore, Mortgagor agrees that any lawsuit arising out of any such controversy will be tried by a court of competent jurisdiction by a judge sitting without a jury.

50. **Jurisdiction and Venue.** Mortgagor hereby agrees that in the event of any action, suit or proceeding arising under this Mortgage, it shall submit to the jurisdiction and venue of the appropriate federal and state courts of the District of Columbia and Cook County, Illinois.

51. **THIS MORTGAGE SECURES FUTURE ADVANCES.** This Mortgage is given to secure not only existing Obligations, but also future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, to the same extent and with the same priority as if such future advances were made on the date of the execution of this Mortgage, and also to secure all other sums or amounts that may be added to the Obligations pursuant to the terms of this Mortgage or the other Loan Documents. The total amount of Obligations that may be so secured may decrease or increase from time to time, but the aggregate unpaid principal balance so secured at one time shall not exceed two (2) times the sum of the face amount of the Note, plus interest thereon, and any disbursements made for the payment of taxes or insurance on the Mortgaged Property, or such other disbursements, advances or deemed advances, expenses, indemnities and Claims as are authorized hereunder or under the other Loan Documents with interest on such disbursements, advances or deemed advances, expenses, indemnities and Claims at the Default Rate. Notwithstanding anything to the contrary herein contained, any sum or amount which may, pursuant to the terms hereof, be added to the Obligations, shall, at the option of Mortgagee, be deemed a "future advance" within the meaning of this Section.

52. **CONSTRUCTION MORTGAGE.** This Mortgage is a "construction mortgage" under the terms of Section 9-313 of the Uniform Commercial Code (810 ILCS 5/9-313).

53. **Fixture Filing.** Pursuant to Section 9-402 of the Uniform Commercial Code, the following information is set forth for the purpose of constituting this Mortgage a financing statement to be filed as a fixture filing:

A. Debtor: 20 South Clark Street, LLC
Address of Debtor: c/o M&J Wilkow Ltd.
180 North Michigan Avenue, Suite 200
Chicago, Illinois 60601
Attention: Marc Wilkow
Telecopy: (312) 658-2467

B. Secured Party: National Electrical Benefit Fund
Address of
Secured Party: 1125 Fifteenth Street, N.W.
Washington, D.C. 20005
Attention: Mr. John M. Grau, Trustee

C. This financing statement covers Fixtures described in the definition "Mortgaged Property."

D. The above goods and property are or are to become fixtures on the real property described in Exhibit "A".

E. The record owner of the Land is Mortgagor.

54. Action, Consents and Approvals. Mortgagor acknowledges and agrees that, except as expressly stated to the contrary in this Mortgage, any consent, approval, determination (including without limitation any determination of whether a document, action or state of facts is satisfactory to Mortgagee), exercise of discretion, rendering of opinion or action required or requested of Mortgagee pursuant to this Mortgage may be granted or withheld by Mortgagee, as the case may be, in its sole and absolute discretion.

55. Subordination of Additional Debt/Security Interests. For purposes of the provisions of this Section 55 set forth below, the following terms shall have the meanings assigned thereto as follows:

"Indebtedness" -- Of a Person, at a particular date, shall mean the sum (without duplication) at such date of (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services or which is evidenced by a note, bond, debenture or similar instrument, (b) all obligations of such Person under capital leases, (c) all obligations (contingent or otherwise) of such Person in respect of letters of credit, acceptances, or similar obligations issued or created for the account of such Person, (d) all contingent obligations of such Person, and (e) all liabilities secured by any Lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof; provided, however, that Indebtedness

shall not be deemed to include (i) accounts payable or accrued expenses not evidenced by a note or similar instrument of such Person, and (ii) installment-type sales contracts and equipment leases entered into in the ordinary course of business.

"Subordinate Creditor" -- shall mean any Person holding any Subordinate Debt and/or Subordinate Security Interests.

"Subordinate Debt" -- shall mean any and all Indebtedness of the Mortgagor to any Person (other than the Mortgagee or any Affiliate thereof), incurred subsequent to the date hereof without the prior written consent of the Mortgagee (other than Permitted Indebtedness (as defined in the Loan Agreement)), including, without limitation, principal, interest, fees, expenses, indemnities, penalties and all other Indebtedness of Mortgagor to such Person.

"Subordinate Debt/Security Documents" -- shall mean any agreements, contracts, documents or understandings whether written or verbal, creating, evidencing or otherwise relating to any Subordinate Debt or Subordinate Security Interests.

"Subordinate Security Interests" -- shall mean any charge, lien, mortgage, Mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, preference, priority or other security agreement, or preferential arrangement of any kind or nature whatsoever having substantially the same effect as any of the foregoing, whether absolute or conditional, voluntary or involuntary, whether created by agreement, assignment, statute, judicial proceedings or otherwise (including, without limitation, any conditional sale or similar title restriction agreement, any financing lease having substantially the same effect of any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or any comparable law of any jurisdiction), in each case placed upon or affecting all or any portion of the Mortgaged Property.

(a) **Subordination of Subordinate Debt Security Documents** The Subordinate Debt/Security Documents, and the Liens created thereunder, including, without limitation, any separate Lien(s) created thereby on personal property and general intangibles and any Lien(s) created thereby on any fee title in and to the Real Estate and the Improvements (or any portion thereof), are and at all times shall be junior, subject and subordinate to this Mortgage and the other Loan Documents and the Liens created thereunder, including, without limitation, any separate Lien(s) created thereby on personal property and general intangibles and any Lien(s) created thereby on any fee title in and to the Real Estate and the Improvements (or any portion thereof), as

well as to all of the terms, covenants and conditions contained therein, as the same may be extended, amended, restated or otherwise modified from time to time and as the Obligations under the Note may be increased from time to time.

(b) **Default under Subordinate Debt/Security Documents.** Promptly following the occurrence of a default or Event of Default under any of the Subordinate Debt/Security Document (as defined in any such document), the applicable Subordinate Creditor shall give written notice thereof to the Mortgagee. With respect to any default or Event of Default occurring under any of the Subordinate Debt/Security Documents (as defined in any such document), the applicable Subordinate Creditor shall not exercise any of its remedies with respect to such default or Event of Default, whether such remedies are provided by the terms of a Subordinate Debt/Security Document, by law or otherwise, prior to the earlier to occur of (i) the date on which all of the Obligations shall have been paid in full (whether before or after the commencement of bankruptcy, insolvency or reorganization proceedings with respect to the Mortgagor), or (ii) the date such Subordinate Creditor shall have received the express written consent of the Mortgagee to the exercise of any such remedy, such consent to be granted or denied in the Mortgagee's sole and absolute discretion.

(c) **Permitted Payments.** Prior to the date that the Obligations shall have been paid in full (and unless the Mortgagee shall otherwise expressly agree in writing in its sole and absolute discretion), no Subordinate Creditor shall take, accelerate, demand, receive or institute any proceeding to enforce (including, without limitation, the making of an application to any court for the appointment of a receiver for the Mortgagor or the commencement of bankruptcy proceedings against the Mortgagor), and Mortgagor will not make, give or permit, directly or indirectly, in any manner, any payment, prepayment or additional security of, or for all or any part of any Subordinate Debt. If a Subordinate Creditor receives any payment in violation of the foregoing provisions, then and in such event, such payment shall be deemed to be the property of, segregated, received and held in trust for the benefit of, and shall be immediately paid over or delivered forthwith to, the Mortgagee (duly endorsed or assigned, if necessary).

(d) **Default under Obligations.** The occurrence of a default or Event of Default hereunder or under any of the other Loan Documents shall impose no duty on Mortgagee to take any action against Mortgagor or to pursue any remedies against Mortgagor hereunder or under any of

the other Loan Documents or otherwise. No Subordinate Creditor shall have the right (any such right being deemed to have been waived) to object to or otherwise hinder, obstruct or interfere with, the exercise or manner of exercising by Mortgagee any of its remedies hereunder or under the other Loan Documents following a default or Event of Default by Mortgagor hereunder or under the other Loan Documents.

(e) **Casualty; Condemnation.** Each Subordinate Creditor shall be deemed to have transferred and assigned to Mortgagee (such assignment and transfer to be effective until payment in full of the Obligations):

(i) all of such Subordinate Creditor's right, title, interest or claim, if any, in and to the proceeds of all policies of insurance covering the Mortgaged Property (or any portion thereof) for application or disposition thereof in accordance with the terms, conditions and provisions of the Loan Documents; and

(ii) all of such Subordinate Creditor's right, title, interest or claim, if any, in and to all awards or other compensation made for any taking or condemnation of any part of the Mortgaged Property (or any portion thereof) for application or disposition thereof in accordance with the terms, conditions and provisions of the Loan Documents.

(f) **Subordination Upon Bankruptcy or Insolvency.**

(i) In the event of (A) any insolvency or bankruptcy case or proceeding under the Bankruptcy Code, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, against or with respect to the Mortgagor, (B) any liquidation, dissolution or other winding up of the Mortgagor, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (C) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Mortgagor, then and in any such event, every payment or distribution, whether in cash, property or securities, to which each Subordinate Creditor would otherwise be entitled shall instead be paid over to Mortgagee for application on account of the Obligations, in such order as the Mortgagee shall determine in its sole and absolute judgment.

(ii) Each Subordinate Creditor shall hereby be deemed to have irrevocably authorized the Mortgagee (but Mortgagee shall have no obligation to take any such action), upon the occurrence of any of the events described in subparagraph (i), above, to demand, sue for, collect and receive every such payment or distribution described in subparagraph (i), above, to file claims

and proofs of claims in any statutory or nonstatutory proceeding, to vote the full amount of the Subordinate Debt in its sole discretion in connection with any resolution, arrangement, plan or reorganization, compromise, settlement or extension and to take all such other action (including, without limitation, the right to participate in any composition of creditors and the right to vote the amount of the Subordinate Debt at creditor's meetings for the election of trustees, acceptances of plans and otherwise), in the name of the Mortgagee or in the name of such Subordinate Creditor or otherwise, as the Mortgagee may deem necessary or advisable in order for Mortgagee to receive the full benefit of this Section 55 to the fullest extent permitted by law. Each Subordinate Creditor shall hereby be deemed to have agreed, upon the occurrence of any of the events set forth in subparagraph (i), above, to promptly take such action as may be reasonably requested at any time by the Mortgagee, to deliver any instruments required to collect the amount of its Subordinate Debt and to file appropriate proofs of claim in respect thereof, to deliver any instruments evidencing its Subordinate Debt to the Mortgagee, on demand therefor, and to execute and deliver such powers of attorney, assignments or other instruments as may be requested by the Mortgagee in order to enable the Mortgagee to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or in respect of the Subordinate Debt.

(g) **Delivery of Payments.** If any payment or realization or distribution of security or the proceeds of any thereof is collected or received by a Subordinate Creditor in respect of all or any portion of its Subordinate Debt in contravention of any term, condition or provision hereof, then and in such event, such payment shall be deemed to be the property of, segregated, received and shall be held in trust for the benefit of, and shall be immediately paid over or delivered forthwith to, the Mortgagee (duly endorsed or assigned, if necessary).

(h) **Modification of Loan Documents.** The provisions of this Section 55 shall continue to be in full force and effect notwithstanding that, without any notice to or consent by any Subordinate Creditor, without limiting or diminishing any rights or remedies of the Mortgagee hereunder, and without any other action on the part of the Mortgagee or the Mortgagor in respect of a Subordinate Creditor:

(i) any demand for payment of all or any portion of the Obligations made by the Mortgagee may be rescinded in Mortgagee's sole and absolute discretion;

(ii) the Obligations or any portion thereof may be renewed, refinanced, accelerated, extended, restructured, released, or otherwise modified including, without limitation (A) with respect to a reclassification, restructuring or conversion of all or any portion of the Obligations, or (B) with respect to an increase in the principal amount of the Note in excess of the original maximum principal amount thereof (together with interest thereon), in Mortgagee's sole and absolute discretion;

(iii) this Mortgage and each or any of the other Loan Documents may from time to time be amended, modified, or restated, in Mortgagee's sole and absolute discretion;

(iv) any of the collateral for any of the Obligations (including without limitation, any of the Mortgaged Property) may be sold, exchanged, waived, surrendered or released by the Mortgagee, in Mortgagee's sole and absolute discretion;

(v) any Person may be released from liability for the payment or collection of any portion of the Obligations, including, without limitation, any guarantor thereof, in Mortgagee's sole and absolute discretion; and

(vi) the Mortgagee may exercise, refrain from exercising or release any right or remedy it may have against the Mortgagor and/or any other Person including, without limitation, any guarantor, whether such right or remedy exists by virtue of the Loan Documents, by law or otherwise, and the Mortgagee may waive any default or Event of Default occurring hereunder or under any of the other Loan Documents, all in Mortgagee's sole and absolute discretion.

(i) **Waiver of Notice, Etc.** For the purposes hereof, each Subordinate Creditor shall be deemed to have waived promptness, diligence, notice of acceptance and any other notice with respect to the Loan, this Mortgage and the other Loan Documents, and each Subordinate Creditor shall be deemed to have waived any requirement that Mortgagee protect, secure, perfect or take any other measures with respect to any Lien or any Mortgaged Property or other collateral or pursue or exhaust any right, remedy or action against Mortgagor or any other Person.

(j) **Reaffirmation of Prohibited Indebtedness.** Nothing in this Section 55 shall be construed as abrogating, defeating or diminishing the provisions of the Loan Documents with respect to (i) prohibitions on the incurrence of additional Indebtedness by Mortgagor, (ii) the existence of other Liens or security interests on the Mortgaged Property, or (iii) any other provision

hereof, this Section 56 being set forth herein solely to provide additional rights and remedies to Mortgagee.

56. Counterparts. This Mortgage may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document. All such counterparts shall constitute one instrument.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Mortgagor has caused this Acquisition and Improvement Mortgage, Security Agreement and Fixture Filing to be duly executed under seal and delivered on the day and year first herein above written.

Mortgagor:

20 SOUTH CLARK STREET, LLC,
a Delaware limited liability company

By: M&J Manager, Inc., its Manager

By: 

Marc R. Wilkow,
President

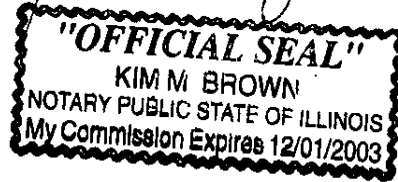
Property of Cook County Clerk's Office

STATE OF ILLINOIS)
)
COUNTY OF COOK)

On August 17, 2000 before me Kim M Brown, a Notary Public, State of Illinois, personally appeared Man Wilkow, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kim M Brown



Property of Cook County Clerk's Office

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

PARCEL 1:

LOTS 12, 13, 14, 15, 16, 17, 18 AND 33 IN ASSESSOR'S DIVISION OF BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO (EXCEPTING ANY PART THEREOF FALLING WITHIN THAT PART OF THE WEST ½ OF CLARK STREET LYING EAST OF AND ADJOINING THE EAST LINE OF SAID LOTS 12 TO 18, BOTH INCLUSIVE) IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR THE PURPOSE OF USING, OCCUPYING, OPERATING, RENTING, MAINTAINING, REPAIRING, RENOVATING, REPLACING AND REBUILDING THE STRUCTURES AND IMPROVEMENTS NOW OR HEREAFTER LOCATED IN OR ON THE WEST 30.00 FEET OF THAT PART OF SOUTH CLARK STREET WHICH LIES EAST OF AND ADJACENT TO THE EAST LINE OF LOTS 12, 13, 14, 15, 16, 17, AND 18 IN ASSESSOR'S DIVISION OF BLOCK 118 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN;

AND WHICH PART OF SOUTH CLARK STREET LIES SOUTH OF THE NORTH LINE OF SAID LOT 12 EXTENDED EAST, AND NORTH OF THE SOUTH LINE OF SAID LOT 18, EXTENDED EAST,

AS CREATED AND DEFINED IN A DEED FROM THE FIRST NATIONAL BANK OF CHICAGO, A NATIONAL BANKING ASSOCIATION TO CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER THE PROVISIONS OF A TRUST AGREEMENT DATED DECEMBER 15, 1983 AND KNOWN AS TRUST NO. 1084503, DATED AS OF DECEMBER 15, 1983 AND RECORDED DECEMBER 28, 1983 AS DOCUMENT 26910513 AND AS AMENDED BY INSTRUMENT RECORDED OCTOBER 3, 1984 AS DOCUMENT 27281019, IN COOK COUNTY, ILLINOIS.

PSN: 17-16-204-032
PLA: 20 S. Clark St.
Chicago

UNOFFICIAL COPYEXHIBIT "B"PERMITTED EXCEPTIONS

1. TAXES FOR THE YEAR(S) 1999 AND 2000
2000 TAXES ARE NOT YET DUE OR PAYABLE.

1A. NOTE: 1999 FIRST INSTALLMENT WAS DUE MARCH 01, 2000
NOTE: 1999 FINAL INSTALLMENT NOT YET DUE OR PAYABLE

PERM TAX#	PCL	YEAR	1ST INST	STAT
17 18-204-032-0000	1 OF 1	1999	\$1,131,394.35	PAID

2. RIGHTS OF THE PUBLIC, THE STATE OF ILLINOIS, THE CITY OF CHICAGO AND PUBLIC AND QUASI-PUBLIC UTILITIES, IN AND TO THAT PART OF PARCEL 2, FALLING SOUTH CLARK STREET AS DISCLOSED BY DEEDS RECORDED DECEMBER 2, 1998 AS DOCUMENTS 88556852 AND 88556853.

(AFFECTS PARCEL 2)

3. PERPETUAL, IRREVOCABLE AND EXCLUSIVE EASEMENT FOR THE PURPOSE OF OPERATING, MAINTAINING, REPAIRING, RENOVATING, REPLACING, AND REBUILDING THE VEHICULAR RAMPS AND APPURTENANT STRUCTURES WITHIN THE RAMP AREA AS THEREIN DESCRIBED AS RESERVED IN DEED FROM THE FIRST NATIONAL BANK OF CHICAGO, A NATIONAL BANKING ASSOCIATION, AND FIRST CHICAGO BUILDING CORPORATION, CORPORATION OF ILLINOIS, TO LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1983, AND KNOWN AS TRUST NUMBER 107318, DATED AS OF DECEMBER 15, 1983, AND RECORDED DECEMBER 28, 1983 AS DOCUMENT 26910514 AND IN THE DEED FROM THE FIRST NATIONAL BANK OF CHICAGO, A NATIONAL BANKING ASSOCIATION, AND TO CHICAGO TITLE AND TRUST COMPANY, CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1983, AND KNOWN AS TRUST NO. 1084503 DATED AS OF DECEMBER 15, 1983 AND RECORDED DECEMBER 28, 1983 AS DOCUMENT 26910513 AND THE TERMS AND PROVISIONS THEREOF.

AMENDMENT OF EASEMENT BY INSTRUMENTS RECORDED OCTOBER 3, 1984 AS DOCUMENTS 27281018 AND 27281019.

AMENDMENT OF EASEMENT NO. 2 BY INSTRUMENT RECORDED DECEMBER 2, 1988 AS DOCUMENT 88556857.

4. AGREEMENT DATED MAY 1, 1872 AND RECORDED MAY 26, 1874 AS DOCUMENT 170307 BETWEEN JAMES CAMPBELL AND JAMES L. REYNOLDS RELATING TO A PARTY WALL ON THE DIVIDING LINE BETWEEN PREMISES IMMEDIATELY NORTH OF A LINE 70 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF ORIGINAL LOTS 3 AND 4 AND PREMISES IMMEDIATELY SOUTH OF AND ADJOINING SAME.

(AFFECTS LOT 12)

5. TERMS, PROVISIONS AND CONDITIONS CONTAINED IN OPERATING AGREEMENT DATED

DECEMBER 30, 1983 AND RECORDED JANUARY 3, 1984 AS DOCUMENT 26915263 AMONG THE FIRST NATIONAL BANK OF CHICAGO, A NATIONAL BANKING ASSOCIATION, FIRST CHICAGO BUILDING CORPORATION, AN ILLINOIS CORPORATION, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1983 AND KNOWN AS TRUST NUMBER 107318; AND CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1983 AND KNOWN AS TRUST NO. 1084503.

ASSIGNMENT AND ASSUMPTION OF OPERATING AGREEMENT RECORDED DECEMBER 2, 1988 AS DOCUMENT 88556854 MADE BY AND AMONG CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1983 AND KNOWN AS TRUST NUMBER 1084503; LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1983 AND KNOWN AS TRUST NUMBER 107318 AND AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 1, 1988 AND KNOWN AS TRUST NUMBER 106528-08.

AMENDMENT NO. 1 TO OPERATING AGREEMENT RECORDED DECEMBER 2, 1988 AS DOCUMENT 88556858.

6. TERMS, PROVISIONS AND CONDITIONS CONTAINED IN SERVICE MARK LICENSE AGREEMENT DATED DECEMBER 29, 1983 AND RECORDED JANUARY 3, 1984 AS DOCUMENT 26915264 AMONG THE FIRST NATIONAL BANK OF CHICAGO, LASALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1983 AND KNOWN AS TRUST NUMBER 107318 AND CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1983 AND KNOWN AS TRUST NO. 1084503.

ASSIGNMENT AND ASSUMPTION OF SERVICE MARK LICENSE AGREEMENT RECORDED DECEMBER 2, 1988 AS DOCUMENT 88556855 MADE BY AND AMONG CHICAGO TITLE AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1983 AND KNOWN AS TRUST NUMBER 1084503; LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 15, 1983 AND KNOWN AS TRUST NUMBER 107318 AND AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 1, 1988 AND KNOWN AS TRUST NUMBER 106528-08.

AMENDMENT NO. 1 TO SERVICE MARK LICENSE AGREEMENT RECORDED DECEMBER 2, 1988 AS DOCUMENT 88556859.

AMENDMENT RECORDED MARCH 14, 1994 AS DOCUMENT 94227335.

7. ENCROACHMENT INTO THE PUBLIC WAY ADJOINING ON THE EAST KNOWN AS SOUTH CLARK STREET OF:

1. CURBING RELATING TO AUTO AND TRUCK RAMPS

AS DISCLOSED BY SURVEY BY ZARKO SEKERZ & ASSOCIATES, INC., NUMBER 990809, LAST REVISED ~~JULY 16~~, 2000.

8. THE LAND LIES WITHIN THE BOUNDARIES OF A SPECIAL SERVICE AREA AS DISCLOSED BY ORDINANCE RECORDED AS DOCUMENT 91075841, AND IS SUBJECT TO ADDITIONAL TAXES UNDER THE TERMS OF SAID ORDINANCE AND SUBSEQUENT RELATED ORDINANCES.

9. SCHEDULE B PART II (MODIFIED)

IN ADDITION TO THE MATTERS SET FORTH IN PART I OF THIS SCHEDULE, THE TITLE TO THE ESTATE OR INTEREST IN THE LAND INSURED IS SUBJECT TO THE FOLLOWING MATTERS WHICH THE COMPANY INSURES ARE SUBORDINATE TO THE LIEN OF THE INSURED MORTGAGE; PROVIDED, HOWEVER, THAT SUCH ASSURANCE IS SUBJECT TO THE OBLIGATIONS OF THE INSURED UNDER THE TERMS AND CONDITIONS OF ANY SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, IF ANY, WHICH MAY BE NOTED AND THE PROVISIONS OF THE LEASES LISTED.

RIGHTS OF THE FOLLOWING TENANTS UNDER UNRECORDED LEASES:

BANK ONE

TOBACCO GATEWAY NEWSTANDS

ASPP

DALEY & GEORGE

INVESTIGATIVE GROUP

COMMONWEALTH EDISON

COMARK INC.

CEMCO

SUSMAN & WATKINS

ENTERPRISE TECHNOLOGY GROUP

MONICO PAVICH & SPEVACK

ISBA

BASES GROUP

INFO. ADVANTAGE

HOULIHAN, LOKEY, HOWARD & ZUKIN

JOHN SCOTT HUFF, P.C.

BURKE & BURKE

KD ASSOC.

CROWLEY BARRETT & KARARA

MCKNISH, KNABE & KRONING

WEIL, FRIEBURG & PETERSEN

OGLETREE, DEAKINS, MURPHY, SMITH & POLK

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00633174

NEW BOSTON SELECT GROUP

COMMERZBANK

ENGINEERING ANIMATION INC.

KUBASIAK, CREMIEUX, FYSTRA REIZEN

FURKON

10. MECHANICS LIENS RESULTING FROM CONTRACTS LET SUBSEQUENT TO DATE OF POLICY.
11. PARTY WALL RIGHTS OF THE OWNERS OF THE PROPERTY SOUTH AND ADJOINING LOT 18 OF THE LAND AND WEST AND ADJOINING LOT 33 OF THE LAND, AS DISCLOSED BY SURVEY MADE BY ZARKO SEKERZ & ASSOCIATES, INC., NUMBER 990809, LAST REVISED JULY 6, 2000, AND ANY AND ALL POSSIBLE RIGHTS AND OBLIGATIONS RELATING THERETO.

Property of Cook County Clerk's Office