



THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Mayer/ Brown & Platt
90 South LaSalle Street
Chicago, Illinois 60603
Attention: Jack Edelbrock

ADDRESS OF PREMISES:
1600 McConnor Parkway
Schaumburg, IL
P.I.N.: 07-12-400-036

CONSTRUCTION MORTGAGE

THIS CONSTRUCTION MORTGAGE, (the "Mortgage") is made as of September 21, 2000, by WINDY POINT OF SCHAUMBURG, LLC, a Delaware limited liability company (the "Borrower"), having an address c/o Fifield Realty Corp., 20 N. Wacker Drive, Suite 3200, Chicago, Illinois 60606, to NATIONAL CITY BANK OF MICHIGAN-ILLINOIS, a national banking association, having an address at 2021 Spring Road, Oak Brook, Illinois 60523 (the "Lender").

Borrower has executed and delivered to Lender a Note (the "Note") of even date herewith payable to the order of Lender in the principal sum of Forty Three Million, Two Hundred Five Thousand and No/100 Dollars (\$43,205,000.00), bearing interest and payable as set forth in the Note, and due no later than September 21, 2002 (i.e., the outside, extended maturity date).

In order to secure the payment of the principal indebtedness under the Note and interest and premiums on the principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor, and to secure the payment of all other sums which may be at any time due under the Note or this Mortgage (collectively sometimes referred to herein as "Indebtedness"); and to secure the performance and observance of all the provisions contained in this Mortgage, the Note, or that Construction Loan Agreement (the "Loan Agreement") of even date herewith made by Borrower and Lender, and to secure performance by Borrower under the "Loan Documents," as defined in the Loan Agreement; and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower DOES HEREBY MORTGAGE AND CONVEY unto Lender, its successors and assigns forever, the following described property, rights and interests (which are referred to herein as the "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Land (as hereinafter defined) and not secondarily:

THE LAND located in the State of Illinois and legally described in Exhibit "A" attached hereto (the "Land");

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Borrower and on, or used or intended to be used in connection with the Land or the improvements, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing and all of the right, title and interest of Borrower in and to any such personal property or fixtures

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together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Borrower or on its behalf (the "Improvements");

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Borrower of, in and to the same;

TOGETHER WITH all income from the Premises to be applied against the Indebtedness, provided, however, that Borrower may, so long as no Default has occurred hereunder, collect income as it becomes due, but not more than one (1) month in advance thereof;

TOGETHER WITH all interest of Borrower in all leases now or hereafter on the Premises whether written or oral (the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Borrower to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Borrower and forming a part of or used in connection with the Land or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, bidets, urinals, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Borrower and placed on the Land or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Lender as a secured party and Borrower as Debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Section 14 hereof; and

TOGETHER WITH all proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Borrower hereby appoints Lender (which appointment is effective upon Default by Borrower hereunder) its attorney-in-fact and authorizes Lender, at its option, on behalf of Borrower, or the successors or assigns of Borrower, to adjust, compromise, claim, collect and receive such proceeds, to give proper acquittances therefor, and, subject to Sections 9, 10 and 11 below, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Lender, of the

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Indebtedness, notwithstanding the fact that the same may not then be due or that the Indebtedness is otherwise adequately secured.

TO HAVE AND TO HOLD the Premises, unto the Lender, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Default as hereinafter defined; the Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

BORROWER COVENANTS that it is lawfully seized of the Land, that the same is unencumbered (other than the Permitted Exceptions described in the Loan Agreement), and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend the Land and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

PROVIDED, NEVERTHELESS, that if Borrower shall pay in full when due the Indebtedness and shall timely perform and observe all of the provisions herein and in the Note and the Loan Agreement provided to be performed and observed by the Borrower, then this Mortgage and the interest of Lender in the Premises shall be released but shall otherwise remain in full force.

BORROWER FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. *Payment of Indebtedness and Performance of Covenants.* Borrower shall (a) pay the Indebtedness when due and (b) punctually perform and observe all of the requirements of Note, this Mortgage, and the Loan Agreement. Borrower shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note, but not otherwise.

2. *Maintenance, Repair, Compliance with Law, Use, etc.* Borrower shall (a) promptly repair or restore, any portion of the Improvements which may become damaged whether or not proceeds of insurance are available or sufficient for that purpose (but subject to the provisions of Sections 9 and 10 below); (b) keep the Premises in good condition and free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any improvements at any time in the process of erection upon the Premises; (e) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority (subject to the right of Borrower to contest such laws); (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (g) comply with any restrictions of record with respect to the Premises and the use thereof; and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (h) cause the Premises to be managed in a competent and professional manner. Without the prior written consent of Lender, Borrower shall not cause, suffer or permit any (i) material alterations of the Premises except as contemplated by the Plans and Specifications (defined in the Loan Agreement) or as required by law or except as permitted or required to be made by the terms of any Leases approved by Lender; (ii) change in the intended use or occupancy of the Premises for which the Improvements were constructed, as provided in the Loan Agreement; (iii) change in the identity of the person or firm responsible for managing the Premises; (iv) zoning reclassification with respect to the Premises; (v) unlawful use of, or nuisance to exist upon, the Premises; or (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in Leases and other matters approved by Lender.

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3. Liens.

3.1. *Prohibition.* Subject to the provisions of Section 4 hereof, Borrower shall not create or suffer or permit any encumbrance to attach to or be filed against the Premises or any part thereof, excepting only (i) the lien of real estate taxes and assessments not due, (ii) any liens and encumbrances of Lender, and (iii) any other lien or encumbrance permitted by the terms of the Loan Agreement.

3.2. *Contest of Mechanic's Liens Claims.* Notwithstanding the foregoing prohibition against encumbrances, Borrower may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Lien and defer payment and discharge thereof during the pendency of such contest, provided that:

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

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

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

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

3.3. *Contest of Laws.* Notwithstanding the foregoing requirements, to comply with requirements of laws, Borrower may in good faith and with reasonable diligence contest the validity or applicability of any law and defer compliance therewith during the pendency of such contest, provided that:

3.3.1. Such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such law;

3.3.2. Within ten (10) days after Borrower has determined to contest such law, Borrower shall have notified Lender in writing of Borrower's intention to contest such law;

3.3.3. Borrower shall have either obtained a title insurance endorsement insuring Lender against loss by reason of the failure of Borrower to comply with such law or Borrower shall have deposited with Lender at such place as Lender may from time to time in writing

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appoint, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money (the "Deposits") which shall be sufficient in the judgment of Lender to pay in full any fine and all interest which might become due thereon as a consequence of a failure to comply with such law. Borrower shall increase the Deposits whenever, in the judgment of Lender, such increase is advisable. The Deposits are to be held without any allowance of interest.

3.3.4. Borrower's contest of such law shall not be reasonably expected to cause a delay in the Completion Date (as defined in the Loan Agreement).

The Deposits shall be applied to any fine ultimately levied against Borrower or the Premises as a consequence of noncompliance with any such law. If the contest of the law is resolved in favor of the Borrower or the fine does not entirely deplete the Deposit, and provided Borrower is not in default hereunder, Lender shall pay the Deposits, or any part thereof, to the Borrower.

4. Taxes

4.1. *Payment.* Borrower shall pay when due, all taxes, assessments and charges of every kind levied or assessed against the Premises or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Borrower, and Borrower shall furnish to Lender receipts therefor on or before the date the same are due; and shall discharge any claim or lien relating to taxes upon the Premises, other than matters expressly permitted by the terms of the Loan Agreement.

4.2. *Contest.* Borrower may, in good faith and with reasonable diligence, contest the validity or amount of any such Taxes, provided that:

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

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

4.2.3. Borrower has deposited with Lender, at such place as Lender may from time to time in writing designate, a sum of money or other security acceptable to Lender that, when added to the monies or other security, if any, deposited with Lender pursuant to Section 8 hereof, is sufficient, in Lender's judgment, to pay in full such contested Tax, including interest and penalties, and shall increase such deposit to cover additional interest and penalties whenever Lender deems such an increase advisable.

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

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full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon.

5. *Change in Tax Laws.* If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Lender, Borrower or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Borrower shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Lender the payment of the whole or any part of the taxes required to be paid by the Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Lender in the Premises, or the manner of collection of taxes, so as to affect this Mortgage, the Indebtedness of Lender, then, and Borrower, upon demand by Lender, shall pay such taxes, or reimburse Lender therefor on demand, unless Lender determines, in Lender's exclusive judgment, that such payment or reimbursement by Borrower is unlawful; in which event the Indebtedness shall be due within thirty (30) days after written demand by Lender to Borrower. Nothing in this Section 5 shall require Borrower to pay any income, franchise or excise tax imposed upon Lender, excepting only such which may be expressly levied against the income of Lender as a complete or partial substitute for taxes required to be paid by Borrower pursuant hereto.

6. *Insurance Coverage.* Borrower will insure the Premises against such perils and hazards, and in such amounts and with such limits, as required by the Loan Agreement.

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

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

8.1. Borrower shall, if required by Lender (but not prior to achievement of Stabilized Occupancy [as defined in the Loan Agreement]), deposit with Lender on the first business day of each month, an amount equal to one-twelfth (1/12) of the Taxes and Premiums thereof to become due with respect to the Premises between one (1) and thirteen (13) months after the date of such deposit; provided that in the case of the first such deposit, Borrower shall deposit in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to Taxes and Premiums to become due within thirteen (13) months after such first deposit, will provide (without interest) a sufficient fund to pay such Taxes and Premiums, one (1) month prior to the date when they are due. The amounts of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Lender's estimate of the amount of Taxes and Premiums.

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Borrower shall promptly upon the demand of Lender make additional Tax and Insurance Deposits as Lender may from time to time require due to (i) failure of Lender to require, or failure of Borrower to make, Tax and Insurance Deposits in previous months, (ii) underestimation of the amounts of Taxes and/or Premiums, due dates and amounts of Taxes and/or Premiums, or (iii) application of the Tax and Insurance Deposits pursuant to Section 8.3 hereof. Additionally, upon the execution hereof, Borrower shall deposit with Lender, as a Tax and Insurance Deposit, the amount of all Taxes and Premiums to become due and payable prior to the first monthly Tax and Insurance Deposit or within one month thereafter. Lender shall hold all Tax and Insurance Deposits without any allowance of interest thereon. Notwithstanding any provision hereof to the contrary, Lender shall not require Borrower to make Tax and Insurance Deposits unless one or more of the following events has occurred: (i) a Default has occurred hereunder; (ii) Borrower has failed to provide for the payment of Taxes and Premiums in a manner satisfactory to Lender; or (iii) Borrower has failed to maintain the insurance policies in a manner satisfactory to Lender.

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

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

8.4. Notwithstanding anything herein contained to the contrary, Lender shall not be liable for any failure to apply the Tax and Insurance Deposits unless Borrower, while no Default exists hereunder, shall have (i) requested Lender in writing to make application of such Deposits to the payment of the Taxes or Premiums and (ii) presented Lender with bills for such Taxes or Premiums.

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

9. *Proceeds of Insurance.* Borrower will give Lender prompt notice of any loss or damage to the Premises, and:

9.1. In case of loss or damage covered by any of the casualty insurance policies, Lender (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (i) if Borrower is in Default or if the estimated recovery exceeds \$100,000 settle and adjust any claim under such insurance policies without the consent of Borrower, or (ii) otherwise, allow Borrower to settle and adjust such claim without the consent of Lender; provided that in case Lender is authorized to, collect and receipt for any such insurance proceeds, the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to Lender upon demand

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or may be deducted by Lender from said insurance proceeds prior to any other application thereof. Each insurance company which has issued an insurance policy is hereby authorized and directed to make payment for all casualty losses covered by any insurance policy to Lender alone, and not to Lender and Borrower jointly.

9.2. Lender shall, in its sole discretion, elect to apply the proceeds of insurance policies consequent upon any casualty either (i) to reduce the Indebtedness; or (ii) to reimburse Borrower for the cost of restoring or repairing the Premises subject to the conditions and in accordance with the provisions of Section 10 hereof. In the event Lender applies the proceeds of insurance policies to the Indebtedness and such proceeds do not discharge that Indebtedness in full, the entire Indebtedness shall become immediately due and payable with interest thereon at the Default Rate specified in the Note (the "Default Rate").

Notwithstanding the foregoing, Proceeds shall be made available to Borrower for repair and/or reconstruction of the Premises provided that:

- (i) Borrower is not otherwise in Default;
- (ii) The repairs and/or reconstruction can be completed so no termination of the Lease of a portion of the Premises to Zurich America Insurance will occur (subject to force majeure and other events beyond the reasonable control of Borrower); and
- (iii) The Casualty or Condemnation does not result in the termination of any Lease demising a material portion (i.e., in excess of the equivalent of one floor of the Premises) of the Premises.

9.3. Provided that the insurance proceeds are made available to Borrower, Borrower shall restore or repair the Improvements, to be of at least equal value, and of substantially the same character as prior to such casualty, all to be effected in accordance with plans, specifications and procedures approved in advance by Lender, and Borrower shall pay all costs of such restoring or repairing in excess of the insurance proceeds. In the event that (i) initial construction of the Project has been completed (as evidenced by the issuance of a certificate of occupancy), (ii) casualty insurance proceeds are less than \$50,000, and (iii) Borrower is permitted to apply such proceeds to restoration of the Premises, such proceeds may be paid directly to Borrower.

10. *Disbursement of Insurance Proceeds.* Insurance proceeds held by Lender for restoration or repairing of the Premises shall be disbursed from time to time upon Lender being furnished with (i) evidence satisfactory to it of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance, to fully pay for the restoration or repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Lender may require and approve. No payment made prior to the final completion of the restoration or repair shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Lender in its sole judgment; funds other than insurance proceeds shall be disbursed prior to disbursement of such proceeds, except as may otherwise be provided in the Loan Agreement; and at all times the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited or irrevocably committed, to the satisfaction of Lender, by or on behalf of Borrower to pay the cost of such repair or restoration, shall be sufficient in the reasonable judgment of Lender to pay the entire unpaid cost of the restoration or repair, free of all liens or claims for lien. Any surplus remaining out of insurance proceeds held by Lender after payment of such costs of restoration or repair shall be paid to Borrower, provided Borrower is not

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in default hereunder. No interest shall be allowed to Borrower on account of any proceeds of insurance or other funds held by Lender.

11. *Condemnation and Eminent Domain.* All awards (the "Awards") made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, are hereby assigned by Borrower to Lender. Lender may collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. Borrower shall immediately notify Lender of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Premises and shall deliver to Lender copies of all papers served in connection with any such proceedings. Borrower shall make, execute and deliver to Lender, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Lender for the purpose of assigning the Awards to Lender. If any portion of or interest in the Premises is taken by condemnation or eminent domain, and the remaining portion of the Premises is not, in the judgment of Lender, a complete economic unit having substantially equivalent value (when added to the Award) equal to or greater than the value of the Premises as it existed prior to the taking, then, at the option of Lender, the entire Indebtedness shall immediately become due. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including attorneys' fees, Lender shall be entitled to apply the net proceeds toward repayment of such portion of the Indebtedness as it deems appropriate without affecting the lien of this Mortgage; provided, however, subject to compliance with clauses (i), (ii) and (iii) of Section 9.2 hereof, the necessary portion of the Award shall be applied to reimburse Borrower for the cost of restoration and rebuilding the Premises in accordance with plans, specifications and procedures approved in advance by Lender, and such Award shall be disbursed in the same manner as is hereinabove provided above for the application of insurance proceeds, provided that any surplus after payment of such costs shall be applied on account of the Indebtedness. The portion of the Award that is not applied for reimbursement of such restoration costs, the Award shall be applied against the Indebtedness, in such order or manner as Lender shall elect. Lender's obligation to make any portion of the Award available to Borrower is subject to the conditions set forth in Section 9.2 of this Mortgage with respect to casualty insurance Proceeds.

12. *Assignment of Rents, Leases and Profits.* To further secure the Indebtedness, Borrower hereby assigns unto Lender all of the rents, leases and income now or hereafter due under any Leases agreed to by Borrower or the agents of Borrower or which may be made or agreed to by Lender under the powers herein granted, it being the intention hereby to establish an assignment of all such Leases, rents and income thereunder, to Lender pursuant to 705 ILCS 5/31.5. Borrower hereby irrevocably appoints Lender its attorney-in-fact (such power to be exercised only while a Default hereunder is continuing; this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Lender), with or without taking possession of the Premises as provided in Section 18 hereof, to lease any portion of the Premises to any party upon such terms as Lender shall determine, and to collect all rents due under each of the Leases, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession pursuant to the provisions of Section 18 hereof. Borrower represents that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Borrower. Borrower agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the taking of actual possession of the Premises by Lender pursuant to Section 18 hereof. Borrower expressly waives all

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liability of Lender in the exercise of the powers herein granted Lender. Borrower shall assign to Lender all future leases upon any part of the Premises and shall execute and deliver, at the request of Lender, all such further assurances and assignments in the Premises as Lender shall from time to time require. Although the assignment contained in this section is a present assignment, Lender shall not exercise any of the rights or powers conferred upon it by this section until a Default shall exist under this Mortgage. Within thirty (30) days of Lender's written demand, Borrower will furnish Lender with executed copies of each of the Leases and shall use all commercially reasonable efforts to obtain and furnish to Lender estoppel letters from each tenant in a form satisfactory to Lender. If Lender requires that Borrower execute and record a separate collateral assignment of rents or separate assignments of any of the Leases to Lender, the terms of those assignments shall control in the event of a conflict with the terms of this Mortgage. Upon written request of Borrower, with respect to any Lease that conforms with the standards of Section 2(b)(ii) of the Collateral Assignment of Leases and Rents, Lender will enter into a subordination, nondisturbance and attornment agreement (an "SNDA") with the tenant under such Lease, such SNDA to be reasonably acceptable to Lender in form and substance.

13. *Observance of Lease Assignment.* Borrower agrees that, except as permitted by the Collateral Assignment of Leases and Rents, if Borrower shall terminate any of the Leases for reasons other than the default of the tenant or modify any of the Leases without Lender's prior written consent, or if Borrower shall suffer any default under the provisions of the Collateral Assignment of Leases and Rents and such default shall not be cured within the applicable grace period provided therein; then such default shall constitute a Default hereunder and at the option of Lender, and without notice to Borrower, the Indebtedness shall become due as in the case of other Defaults.

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

14.1. Borrower (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Lender and no other party, and liens and encumbrances, if any, expressly permitted by the Loan Agreement.

14.2. The Collateral is to be used by Borrower solely for business purposes.

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

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

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

14.6. Upon Default hereunder, Lender shall have the remedies of a secured party under the Code, including without limitation (to the fullest extent provided under the Code), the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Borrower can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace or violation of Leases), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Lender shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Borrower's right of redemption in satisfaction of Borrower's obligations, as provided in the Code. Lender may, without breaching the peace or violating any Leases, render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Lender may require Borrower to assemble the Collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to both parties. Lender will give Borrower at least twenty (20) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Borrower hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Lender may buy at any public sale. Lender may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Lender so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Lender, shall be applied against the Indebtedness in such order or manner as Lender shall select. Lender will account to Borrower for any surplus realized on such disposition.

14.7. The terms and provisions contained in this Section 14 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

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

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

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

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

15.2. All or any portion of the beneficial interest or power of direction in or to the trust under which Borrower is acting, if Borrower is a Trustee;

15.3. Any shares of capital stock of a corporate Borrower, a corporation which is a beneficiary of a trustee Borrower, a corporation which is a general partner in a partnership Borrower, a corporation which is a general partner in a partnership beneficiary of a trustee Borrower, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subsection (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealer's Automated Quotation System), except that transfer of ownership interests among existing owners of such entities is not prohibited to the extent there is no transfer of control of such entity.

15.4. All or any part of the partnership or joint venture interest, as the case may be, of a partnership Borrower or a partnership beneficiary of a Trustee Borrower if Borrower or such beneficiary is a partnership or a joint venture; in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section 15 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives or (iv) transfers by any person for estate planning purposes to an inter vivos trust for the benefit of such person or his/her family members, provided that such person retains the power to direct such trust's actions.

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15.5. Notwithstanding the foregoing, the transfer of limited liability company membership interests among existing owners of Borrower is not prohibited to the extent that, after such transfer, control (i.e., the legal power to direct the day-to-day affairs) of Borrower is vested in FRC Windy Point L.L.C., an affiliate of Fifield Realty Corp., The Travelers Insurance Company ("Travelers") or an affiliate of Travelers. In the event that Travelers or such other entity shall assume control of Borrower, then Travelers or such other entity shall not delegate the leasing, management or management of the construction of the Project to any third party without the prior written consent of Lender.

16. *Defaults.* If one or more of the following events (herein called "Defaults") shall occur:

16.1. If Borrower shall, after the expiration of any applicable grace periods, fail to make payments of amounts owed under the Note or this Mortgage when due;

16.2. If any default shall, after the expiration of any applicable grace periods, exist under any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness;

16.3. The occurrence of a Prohibited Transfer;

16.4. If default shall continue for thirty (30) days after notice thereof by Lender to Borrower in the punctual performance or observance of any other agreement or condition herein contained which default remains uncured for a period of thirty (30) days after written notice from Lender to Borrower, except that if such default cannot by its nature be cured within said time period, and if Borrower commences promptly to cure such default after notice thereof and thereafter diligently pursues the curing thereunder (and in all events cures such default within ninety (90) days after notice thereof), Borrower shall not be in Default hereunder on account of such default during said period of diligent curing;

16.5. If (and for the purpose of this subsection 16.5 only, the term Borrower shall mean not only Borrower, but also any beneficiary of a trustee Borrower, any managing member in a limited liability company Borrower, any owner of more than ten percent (10%) of the stock in a corporate Borrower or a corporation which is the managing member in a limited liability company Borrower and each person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness or any of the covenants or agreements contained herein (but subject in such case to Section 11.1 of the Loan Agreement)):

16.5.1. Borrower shall file a voluntary petition in bankruptcy or for relief under the Federal Bankruptcy Act or any similar state or federal law;

16.5.2. Borrower shall file a pleading in any proceeding admitting insolvency;

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

16.5.4. A substantial part of Borrower's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;

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

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

16.5.7. A default shall occur under any document evidencing or securing the Phase I Facility (as that term is defined in the Loan Agreement) and such default is not cured within any applicable grace or cure period);

then Lender may, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Lender hereunder, declare, without further notice, all Indebtedness immediately due with interest thereon at the Default Rate, whether or not such Default be thereafter remedied by Borrower, and Lender may immediately proceed to foreclose this Mortgage and to exercise any right provided by this Mortgage, the Note, the Loan Agreement or otherwise.

17. *Foreclosure.* If the Indebtedness is not paid in full when due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-101, *et seq.* (1998) (the "Act") and to exercise any other remedies of Lender provided in the Note, this Mortgage, the Loan Agreement, or which Lender may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

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

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18.1. hold, operate, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as Lender may deem necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;

18.2. cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Borrower to cancel the same;

18.3. elect to disaffirm any Lease or sublease of all or any part of the Premises made subsequent to this Mortgage without Lender's prior written consent (if such consent was required);

18.4. extend or modify any then existing Leases and make new Leases of all or any part of the Premises, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed to a purchaser at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

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

18.6. apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness in such order and manner as Lender shall select.

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

19. *Receiver.* Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint upon petition of Lender, and at Lender's sole option, a receiver of the Premises pursuant to the Act. Such appointment may be made either before or after sale, without regard to solvency or insolvency of Borrower at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to make leases to be binding upon all parties, including the mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure, all as provided in the Act. In addition, such receiver shall also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that

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any such leases, and the options or other provisions to be contained therein, shall be binding upon Borrower and all the persons whose interest in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Indebtedness or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale, or (b) the deficiency in case of a sale and deficiency.

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

21. *Insurance During Foreclosure.* In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors. The foreclosure decree may further provide that in the case of one or more redemptions under said decree, each successive redemption may cause the preceding loss clause attached to each casualty insurance policy to be cancelled and a new loss payable clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Lender may, without the consent of Borrower, assign any insurance policies to the purchaser at the sale, or take such other steps as Lender may deem advisable to protect the interest of such purchaser.

22. *Waiver of Right of Redemption and other Rights.* To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly

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waives any and all rights of redemption and reinstatement under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower acknowledges that the Premises do not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

23. *Lender's Performance of Borrower's Obligations.* In case of Default, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during any period of redemption, Lender may, but shall not be required to, make any payment or perform any act herein required of Borrower (whether or not Borrower is personally liable therefor) in any manner deemed expedient to Lender. Lender may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs, including management fees, of every kind in connection therewith, so that the Premises shall be useable for their intended purposes. All such monies paid and expenses incurred, including attorneys' fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due with interest thereon at the Default Rate specified in the Note. Inaction of Lender shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this Section or any exercise by Lender of its rights hereunder prevent any default from constituting a Default. Lender, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs thereof, may do so in such amounts and to such persons as Lender may deem appropriate. Nothing contained herein shall be construed to require Lender to advance monies for any purpose.

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

25. *Successors and Assigns.*

25.1. *Holder of the Note.* Subject to Section 10.1 of the Loan Agreement, this Mortgage and each provision hereof shall be binding upon Borrower and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of Lender and its successors

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and assigns. Wherever herein Lender is referred to, such reference shall be deemed to include the holder from time to time of the Note; and each such holder of the Note shall have all of the rights afforded hereby, and may enforce the provisions hereof, as fully as if Lender had designated such holder of the Note herein by name.

25.2. *Covenants Run with Land; Successor Owners.* All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. If the ownership of Premises or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to Borrower, deal with such person with reference to this Mortgage and the Indebtedness in the same manner as with Borrower without in any way releasing Borrower from its obligations hereunder. Borrower will give immediate written notice to Lender of any conveyance, transfer or change of ownership of the Premises, but nothing in this Section shall vary the provisions of Section 15 hereof.

26. *Effect of Extensions and Amendments.* If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Lender, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Lender to amend, modify, extend or release the Note, this Mortgage or any other document or instrument evidencing, securing or guarantying the Indebtedness, in each case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

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

28. *Environmental Matters.* Borrower represents that it is currently in compliance with, and covenants and agrees that, it will manage and operate the Premises and will use all reasonable efforts to cause each tenant to occupy its demised portion of the Premises in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Borrower further covenants and agrees that it shall not install or permit to be installed in the Premises asbestos or any substance containing asbestos and deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. Borrower shall remove from the Premises and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and

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ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Borrower, Lender and/or any third party with respect to hazardous or toxic materials. Borrower shall send to Lender within five (5) days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Borrower agrees to indemnify, defend with counsel reasonably acceptable to Lender (at Borrower's sole cost), and hold Lender harmless against any claim, response or other costs, damages, liability or demand (including, without limitation, reasonable attorneys' fees and costs incurred by Lender) arising out of any claimed violation by Borrower of any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements. The foregoing indemnity shall survive repayment of the Indebtedness but shall be subject to termination with respect to Borrower under those conditions set forth for termination of the indemnities provided in that certain Environmental Indemnity of even date herewith made by Borrower (and others) in favor of Lender.

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

30. *Execution of Separate Security Agreements, Financing Statements, etc.; Estoppel Letter.* Borrower will do, execute, acknowledge and deliver all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Lender shall require for the better assuring, conveying, mortgaging, assigning and confirming unto Lender all property mortgaged hereby or property intended so to be, whether now owned by Borrower or hereafter acquired. Without limitation of the foregoing, Borrower will assign to Lender, upon request, as further security for the Indebtedness, its interests in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instrument satisfactory to Lender, but no such assignment shall be construed as a consent by the Lender to any agreement, contract, license or permit or to impose upon Lender any obligations with respect thereto. From time to time, Borrower will furnish within five (5) days after Lender's request a written and duly acknowledged statement of the amount due under the Note and under this Mortgage and whether any alleged offsets or defenses exist against the Indebtedness.

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

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

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33. *Governing Law.* The place of negotiation, execution, and delivery of this Mortgage and the location of the Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of the Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

34. *Business Loan.* The proceeds of the Note will be used for the purposes specified in 815 ILCS 205/4 (1998), and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

35. *Inspection of Premises and Records.* Borrower shall keep full and correct books and records showing in detail the income and expenses of the Premises. Lender and its agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times upon reasonable prior notice to Borrower.

36. *Financial Statements.* Borrower shall furnish financial statements to Lender in accordance with the Loan Agreement.

37. *No Joint Ventures.* Borrower acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall Lender be deemed to be a partner or joint venturer with Borrower. Lender shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.

38. *Time of the Essence.* Time is of the essence of the Note, this Mortgage, and any other document or instrument evidencing or securing the Indebtedness.

39. *Captions and Pronouns.* The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

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

41. *Notices.* Any notice or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given (i) when personally delivered, (ii) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth above, or (iii) on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth above and at the additional addresses specified in the Loan Agreement, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance

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herewith. Except as otherwise specifically required herein, notice of the exercise of any right, power or option granted to Lender by this Mortgage is not required to be given.

42. *Partial Releases; Release Upon Sale to Third Parties.* Borrower may obtain the release of the entire Premises, and/or the Restaurant Parcel (as identified on Exhibit A) (each a "Release Parcel", collectively the "Release Parcels"), provided that the following conditions are met:

42.1 In the case of the Restaurant Parcel, the release is solely for the purpose of a transfer of the Restaurant Parcel to an unaffiliated bona fide purchaser for a use not deemed detrimental to the remaining portion of the Premises, in the reasonable judgment of Lender (and Lender acknowledges that the contract between Borrower and HSA Acquisitions, Inc., dated July 14, 2000 meets the foregoing requirement); and

42.1.1 not less than 20 days prior to the date of the release, Borrower delivers to Lender a notice setting forth (A) the date of the release; (B) the name of the proposed transferee; (C) the intended use of the Release Parcel; and (D) any other information reasonably necessary for Lender to determine that the requirements of this Section 42 have been (or will be upon the release) complied with; and

42.1.2 there is no default under the Loan Documents on either the notice date or the release date;

42.1.3 Borrower delivers evidence reasonably satisfactory to Lender that Borrower has complied with any requirements of any agreement binding the Release Parcel, including any Lease, that the release does not violate any such agreement or Lease and that the transferee has assumed all of Borrower's obligations with respect to such agreements or Leases relative to the Release Parcel;

42.1.4 Borrower delivers evidence reasonably satisfactory to Lender that the portion of the Premises not being released conforms to and is in compliance with Law and such remaining portion of the Premises constitutes one or more self-contained units, having direct on-site (or via recorded easement) connection to all utilities and direct access (or via recorded easement) to one or more public streets;

42.1.5 Borrower delivers to Lender a fully executed amendment (reasonably satisfactory to Lender) to each reciprocal easement agreement affecting the Premises that joins the transferee of the Release Parcel as a party to the agreement and that provides for any additional easements, restrictions and payment obligations that Lender deems reasonably necessary for the continued operation and maintenance of the remaining Premises;

42.1.6 Borrower delivers to Lender evidence reasonably satisfactory to Lender that after the release, the remaining portion of the Premises will continue to be served by the parking areas required by applicable law;

42.1.7 Borrower pays all of Lender's reasonable expenses relating to the release, including Lender's attorneys' fees; and

42.1.8 Borrower delivers to Lender any other information, approvals and documents reasonably required by Lender relating to the release.

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42.2 Borrower causes the Release Price associated with the Release Parcel to be paid to Lender. As used in this Mortgage, the "Release Price" means:

42.2.1 with respect to the Restaurant Parcel, the greater of (a) \$950,000 or (b) 100% of the actual net proceeds of the sale;

42.2.2 with respect to the entire Premises (or any portion thereof that remains after giving effect to prior releases), the sum of (a) the principal and interest outstanding on the Loan at the time of the release plus (b) fifteen percent (15%) of the Loan Amount (as defined in the Loan Agreement), not to exceed, in any case the lesser of, (i) the amount necessary to pay the indebtedness under both the Note and with respect to the note evidencing the Phase I Facility or (ii) the net proceeds of such sale; provided that, notwithstanding the foregoing limitation, the amount required to be paid by the Borrower to secure the release of the Premises shall never be less than the indebtedness under the Note.

42.3 The Lender shall apply the Release Price so received first to the payment of Lender's costs and expenses (including LIBOR related "breakage costs" and the professional fees and expenses of Lender's consultants and attorneys) and next to reduction of the Indebtedness under this Mortgage and then to reduction of any indebtedness under the Phase I Facility. In so applying the Release Price, Lender shall take reasonable care to minimize any costs (including LIBOR related breakage costs), but Borrower shall nevertheless be responsible for all such costs, as provided in the Note and in the promissory note evidencing Borrower's indebtedness under the Phase I Facility.

The Release Price for the Restaurant Parcel paid to Lender as provided hereinabove may be reborrowed by Borrower in accordance with the terms of the Loan Agreement and theretofore, the principal amount of the Loan outstanding shall decrease upon such repayment and increase if and when Borrower reborrowes the Release Price. To that end, this Mortgage secures, among other indebtedness, a "revolving credit" arrangement within the meaning of 815 ILCS 205/4.1 and 205 ILCS 5/5d. The Loan is payable as set forth in the Note and the Loan Agreement, but in no event shall any future advances be made under the Note later than twenty (20) years from the date of this Mortgage and the total unpaid balance so secured at any one time shall not exceed the amount set forth in Section 29 hereof.

43. *Anti-forfeiture.* Borrower hereby expressly represents and warrants to Lender that there has not been committed by Borrower or any other person involved with the Premises any act or omission affording the federal government or any state or local government the right of forfeiture as against the Premises or any part thereof or any monies paid in performance of its obligations under the Note, Mortgage or under any of the other Loan Documents, and Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof, Borrower agrees to indemnify, defend with counsel reasonably acceptable to Lender (at Borrower's sole cost) and hold Lender harmless from and against any claim or other cost (including, without limitation, reasonable attorneys' fees and costs incurred by Lender), damage, liability or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Borrower, the Lender or all or any part of the Premises under any federal or state law in which forfeiture of the Premises or any part thereof or of any monies paid in performance of Borrower's obligations under the Loan Documents is a potential result shall, at the election of Lender, constitute a Default hereunder without notice or opportunity to cure.

44. *Jury Trial Waiver.* The Borrower waives, to the extent permitted by law, trial by jury in any actions brought by either the Borrower or Lender in connection with the Indebtedness.

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

46. This Mortgage shall be subject to Section 14.14 of the Loan Agreement, the terms of which are hereby incorporated by this reference.

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

BORROWER:

WINDY POINT OF SCHAUMBURG, LLC
By: FRC Windy Point L.L.C., its Manager

By: 

Name: Steven Field

Title: Manager

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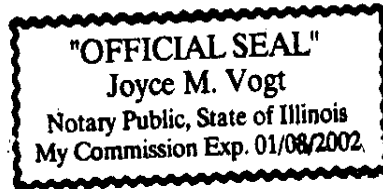
STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Joyce M. Vogt, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Steven D. Fitfield, the aforesaid Managing Member of FRC Windy Point L.L.C. is personally known to me to be the same person whose name is subscribed to the foregoing instrument and as such, he appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 21st day of September, A. D., 2000.

Joyce M. Vogt
Notary Public

My Commission Expires: _____

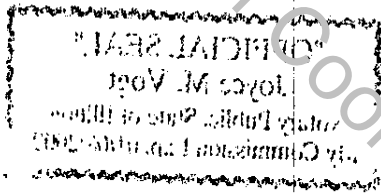


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EXHIBIT A

TO
CONSTRUCTION MORTGAGE
THE LAND

See the attached legal description

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Phase II Legal Description

PARCEL 1:

LOT 2 IN WINDY POINT OF SCHAUMBURG IN SECTION 12, TOWNSHIP 41 NORTH RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 99137488.

PARCEL 2:

LOT 4A IN WINDY POINT OF SCHAUMBURG UNIT NO. 1, BEING A RESUBDIVISION IN SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 1, 1999 AS DOCUMENT NUMBER 99026116, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENTS FOR INGRESS AND EGRESS, PARKING AND SIGNAGE FOR THE BENEFIT OF PARCEL 1 AFORESAID AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RECIPROCAL RIGHTS AND EASEMENTS FOR WINDY POINT OF SCHAUMBURG SUBDIVISION RECORDED FEBRUARY 9, 1999 AS DOCUMENT NUMBER 99137489.