

THIS DOCUMENT WAS  
PREPARED BY AND  
WHEN RECORDED RETURN  
BY MAIL TO:



Todd Finnely  
Fremont Investment & Loan  
303 West Madison Street  
Suite 900  
Chicago, IL 60606  
Commercial Real Estate Department  
Loan No.: 950114010



## MORTGAGE AND FIXTURE FILING

THE PROMISSORY NOTE SECURED HEREBY  
PROVIDES FOR A VARIABLE INTEREST RATE

**THIS MORTGAGE AND FIXTURE FILING** (this "**Mortgage**") is made as of November ~~20~~, 2000, by **MOB VENTURES, L.L.C.**, an Illinois limited liability company ("**Borrower**"), whose mailing address is c/o Access Realty Group, 3738 North Southport, Chicago, Illinois 60613 to **FREMONT INVESTMENT & LOAN**, a California industrial loan association ("**Lender**"), whose mailing address is 175 N. Riverview Drive, Anaheim, California 92808, Attn: Commercial Real Estate Department, Loan No. 950114010.

This Mortgage is given, inter alia, for the purpose of securing a loan (the "**Loan**") from Lender to Borrower, the proceeds of which are to be used to finance the real property having a street address of 1750 North Clark Street, located in the City of Chicago, County of Cook, State of Illinois, more particularly described in Exhibit A attached hereto and by this reference incorporated herein (the "**Property**"). All initially-capitalized terms used herein without definition shall have the meanings given such terms in the Loan Agreement (as hereinafter defined). As used herein, "attorneys' fees and costs" shall have the meaning given in Article 1 of the Loan Agreement.

**FOR GOOD AND VALUABLE CONSIDERATION**, including the indebtedness herein recited and the mortgage herein created, the receipt of which is hereby acknowledged, Borrower hereby irrevocably mortgages, grants, transfers, conveys, warrants and assigns to Lender and its successors and assigns forever under and subject to the terms and conditions hereinafter set forth, the Property;

### TOGETHER WITH:

(a) All buildings and improvements now or hereafter erected on the Property, including, without limitation, fixtures, tenements, attachments, appliances, equipment, building systems, machinery, and other articles now or hereafter attached to such buildings and improvements, except to the extent, if any, owned by tenants under Leases (collectively, the "**Improvements**"), all of which shall be deemed to be part of the Property; and

(b) All rents, issues, profits, revenue, royalties, income, proceeds, earnings and other benefits, including, without limitation, prepaid rents (collectively, the "**Rents**") derived from any lease, sublease,

1044141 00684094

1ST AMERICAN TITLE Order #

1200157A  
30/5/00

license, franchise, occupancy or other agreement now existing or hereafter created affecting all or any portion of the Project (as hereinafter defined) or the use or occupancy thereof (collectively, the "Leases"); and

(c) All estate, right, title and interest of Borrower in, to and under all of the Leases; and

(d) All easements, tenements, hereditaments, appurtenances, rights-of-way and rights now owned or hereafter acquired by Borrower and used or useful in connection with the Project or as a means of access thereto, including, without limitation, all rights to the use of common drive entries, all oil, gas and other hydrocarbons, all other minerals and all water and water rights and shares of stock evidencing the same; and

(e) All right, title and interest of Borrower now owned or hereafter acquired in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Project and any and all sidewalks, vaults, alleys and strips and gores of land adjacent to or used in connection with the Project; and

(f) All proceeds from and rights to (including, without limitation, payments, judgments, awards, settlements, contract rights, profits, general intangibles, rebates and benefits and rights at law and in equity) any insurance policies now or hereafter in effect with respect to the Project, including, without limitation, casualty insurance, rental loss or business interruption insurance and flood and earthquake insurance, whether or not such policies contain a Mortgage Clause/Lender's loss payable endorsement in favor of Lender and whether or not such policies are required to be maintained by Borrower pursuant to the Loan Documents (as hereinafter defined); and

(g) All estate, interest, right, title, other claim or demand, both at law and in equity which Borrower now has or may hereafter acquire in any and all awards made for any Condemnation Event (as hereinafter defined) of the Project or any portion thereof or interest therein, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages; and

(h) All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, subsidy payments, credits, waivers and payments, whether in cash or in kind, due from or payable by any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (each, a "Governmental Agency") relating to any or all of the Project or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development, ownership, occupancy, use or operation of the Project; and

(i) All refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Agency for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Borrower with respect to the Project or upon any or all of the Project itself or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development, ownership, occupancy, use or operation of the Project; and

(j) All rights, title, interests, estates or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Project or any portion thereof, including, without limitation, any greater estate in the Project or any portion thereof.

The entire estate, property and interest hereby mortgaged, conveyed and assigned to Lender is collectively referred to herein as the "Project."

**FOR THE PURPOSE OF SECURING** (collectively, the "Secured Obligations"):

**A.** Payment of indebtedness in the total principal amount of Three Million Two Hundred Twenty-Five Thousand and No/100 Dollars (\$3,225,000.00), or so much thereof as may have been advanced from

time to time by Lender, with interest thereon, evidenced by (i) that certain Secured Promissory Note (Bridge Loan) of even date herewith, and all modifications, extensions, renewals and replacements thereof, in the amount of Three Million Two Hundred Twenty-Five Thousand and No/100 Dollars (\$3,225,000.00) (collectively, the "**Bridge Note**"), or (ii) that certain Secured Promissory Note (Term Loan), and all modifications, extensions, renewals and replacements thereof, in the amount of Three Million Two Hundred Twenty-Five Thousand and No/100 Dollars (\$3,225,000.00) (collectively, the "**Term Note**", and collectively with the Bridge Note, the "**Note**"), executed or to be executed by Borrower pursuant to that certain Loan and Security Agreement of even date herewith between Borrower and Lender, and all supplements, amendments and modifications thereto and all extensions and renewals thereof (collectively, the "**Loan Agreement**"), in connection with a bridge loan and a term loan (collectively, the "**Loan**"), made by Borrower to Lender;

**B.** Payment of all sums advanced by Lender to protect the Project and all other amounts owing by Borrower to Lender under the Loan Documents, with interest thereon at the rate set forth in the Note;

**C.** Performance of every obligation, covenant and agreement of Borrower contained herein or in the Loan Agreement, the Note or the other Loan Documents; and

**D.** Performance of every obligation, covenant and agreement of Borrower contained in any document, instrument or agreement now or hereafter executed by Borrower which recites that the obligations thereunder are secured by this Mortgage.

Upon payoff of the Bridge Note by proceeds of the Term Loan, the lien of this Mortgage shall continue uninterrupted and shall secure the Term Loan and payment of the Term Note with the same priority as if the Term Loan had been made as of the date hereof and without further action by Lender or Borrower, and no further recordings perfecting or otherwise securing the lien created by this Mortgage for the purposes of securing the Term Note shall be required.

Notwithstanding anything to the contrary contained herein or in the other Loan Documents, this Mortgage does not secure any obligations or liabilities arising out of the Environmental Indemnity or any Post-Foreclosure Transfer Environmental Losses (as defined therein). It is the express intention of Borrower and Lender that such obligations and liabilities be unsecured.

**TO PROTECT THE SECURITY OF THIS MORTGAGE, BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS:**

## **ARTICLE 1**

### **BORROWER'S COVENANTS**

#### **1.1 Title.**

Borrower represents, warrants and covenants that (a) it is the lawful owner of good and marketable fee title to the Project, subject only to the title exceptions set forth in the Title Policy, (b) it will maintain and preserve the lien of this Mortgage until all of the Secured Obligations have been paid and satisfied in full, (c) it has full power and authority to grant the Project as provided in this Mortgage, and (d) it will forever warrant and defend its grant made herein against any and all claims and demands whatsoever, except as specifically provided in this Mortgage.

## **1.2 Payment of Secured Obligations.**

Borrower shall pay when due the principal of and the interest on the Loan, all charges, fees and other sums as provided in the Loan Documents, the principal of and interest on any future advances secured by this Mortgage, and the principal of and interest on any other indebtedness secured by this Mortgage.

## **1.3 Maintenance, Repair and Alterations.**

Borrower (a) shall keep the Project in good condition and repair, reasonable wear and tear excepted, (b) shall pay or cause to be paid when due all utility charges with respect to all or any portion of the Project and all other assessments or charges of a similar nature, (c) except as expressly provided herein, shall not remove, demolish or substantially alter any of the Improvements without Lender's prior written consent, (d) shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Project and promptly restore in like manner any portion of the Improvements which may be damaged or destroyed from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefor, (e) shall comply with all Laws now or hereafter affecting the Project or any part thereof or requiring any alterations or improvements, (f) shall not commit or permit any waste or deterioration of the Project, and (g) shall not change the current use of the Project without Lender's prior written consent. Notwithstanding the foregoing, Lender's prior written consent shall not be required for nonstructural improvements or alterations which (x) are required by the terms of any Lease entered into by Borrower in accordance with the terms of the Loan Documents, or (y) do not exceed One Hundred Thousand Dollars (\$100,000.00) in cost in the aggregate.

## **1.4 Impositions; Impounds.**

**A.** As used herein, "**Impositions**" means all real estate and personal property taxes and other taxes and assessments, water and sewer charges, utility charges, insurance premiums, ground rents, and all other governmental charges relating to all or any portion of the Project, including, without limitation, any interest, costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Project, all of any kind and nature whatsoever that at any time may be assessed, imposed or become a Lien upon the Project or any portion thereof, whether general or special, ordinary, extraordinary or supplemental, foreseen or unforeseen; any and all other charges, expenses, payments or assessments of any nature, if any, which are or may become a lien upon the Project or any portion thereof (excluding the Loan Documents); and any license fee, tax or assessment (other than Lender's income taxes) imposed on Lender and measured by or based in whole or in part upon the amount of the outstanding Secured Obligations.

**B.** Borrower shall pay all Impositions prior to delinquency. At Lender's request, Borrower shall provide Lender with reasonable evidence of the payment of such Impositions. Without limiting Borrower's obligation to pay all Impositions prior to delinquency, Borrower shall have the right to contest any imposition assessed against the Project as provided in Section 1.12.

**C.** At Lender's request at any time after the occurrence of an Event of Default under any of the Loan Documents, Borrower shall pay to Lender, each time a payment is due under the Note, a cash reserve in the amount reasonably estimated by Lender to be equal to the total of the amount next due for all Impositions and insurance premiums for the insurance required by the Loan Agreement, divided by, in each instance, the number of payments required under the Note before such Impositions and insurance premiums will become due, less two (funds deposited for this purpose are referred to herein as "**Impounds**"). In such event Borrower agrees to cause all bills, statements or other documents relating to Impositions or insurance to be sent directly to Lender. Upon receipt of such bills, statements or other documents, and providing that

Borrower has deposited sufficient Impounds with Lender pursuant to this Section 1.4(C), Lender shall timely pay such amount as may be due thereunder out of the Impounds so deposited with Lender. If at any time and for any reason the Impounds deposited with Lender are insufficient to pay such amounts, Lender may notify Borrower and Borrower shall, within ten (10) days after such notice, deposit an amount equal to such deficiency with Lender. If at the end of any calendar year there is an excess amount held by Lender, Lender, at its option, may elect to apply such excess against the subsequent payments to be made by Borrower under this Section 1.4(C) or to any other payment required to be made by Borrower under the Loan Documents or to refund such amounts to Borrower. Borrower's obligations under this Section 1.4(C) shall be in addition to all other payments required to be made by Borrower under the Loan Documents. The Impounds shall be held in an account with Lender and shall not bear interest unless required by law and if so required at the rate required by law and all interest earned thereon will be added to the Impounds annually on December 31st, and Lender may commingle the Impounds with its own funds. Borrower hereby grants Lender a security interest in the account in which the Impounds are deposited to secure the payment and performance of the Secured Obligations.

**D.** Upon the occurrence of an Event of Default under any of the Loan Documents, Lender may apply the balance of the Impounds to any amounts owing to Lender under the Loan Documents in such order as Lender may determine, notwithstanding that such amounts may not yet be due according to the terms thereof. Should Borrower fail to deposit with Lender (exclusive of any amounts which have been applied by Lender to any of the Secured Obligations) sums sufficient to fully pay such Impositions at least ten (10) business days before delinquency thereof, Lender may, at Lender's election, but without any obligation to do so, advance any amounts required to make up the deficiency, which advances, if any, shall (i) bear interest at the Default Interest Rate (as defined in the Note), (ii) be subject to loan fees as provided in Section 2.5 of the Note, (iii) be secured hereby, and (iv) be payable within ten (10) days after demand by Lender. Lender shall not be a trustee, special depository, or any other fiduciary acting for the benefit of Borrower with respect to the Impounds and Lender shall have no obligations with respect to the Impounds, any Impositions or any insurance coverage except as expressly provided in this Section 1.4.

## **1.5 Insurance**

Borrower shall at all times maintain and keep in force or caused to be maintained and kept in force, at no expense to Lender, policies of insurance in accordance with the terms of the Loan Agreement.

## **1.6 Casualty.**

**A.** Borrower shall promptly notify Lender of any damage or destruction to any portion of the Project, whether or not covered by insurance. Without limiting Lender's security interest in any insurance proceeds, Borrower shall be authorized, so long as no Event of Default or Potential Default has occurred under any of the Loan Documents, to collect and receive all proceeds of insurance ("**Casualty Proceeds**") with respect to any casualty involving damage to the Project which is less than the Casualty Threshold (a "**Minor Casualty**"). Lender is authorized, at its option upon written notice to Borrower, to settle and adjust any claim with respect to any casualty damage to the Project equal to or greater than the Casualty Threshold (a "**Major Casualty**") or, if an Event of Default or Potential Default has occurred under any of the Loan Documents, any Minor Casualty. Lender is authorized to collect and receive all Casualty Proceeds with respect to any Major Casualty, or, if an Event of Default or Potential Default has occurred under any of the Loan Documents, any Minor Casualty, and Borrower hereby authorizes and directs any affected insurance company to make payment of such Casualty Proceeds directly to Lender. Borrower shall promptly pay over to Lender any Casualty Proceeds received by Borrower relating to a Major Casualty or, if an Event of Default or Potential Default has occurred under any of the Loan Documents, a Minor Casualty. Borrower agrees to execute and deliver to Lender, within ten (10) days after Lender's request, such further assignments of any Casualty Proceeds as Lender may reasonably require. As used herein, "**Casualty Threshold**" shall mean

the lesser of (i) Two Hundred Fifty Thousand Dollars (\$250,000), or (ii) ten percent (10%) of the outstanding principal balance of the Loan at the time of such casualty.

**B.** Subject to the provisions of Section 1.6(F), Lender shall apply all Casualty Proceeds with respect to a Major Casualty remaining after the deduction of all reasonable expenses of collection and settlement thereof, including, without limitation, reasonable attorneys' and adjustors' fees and costs, to the reconstruction of the Project, provided that and so long as (i) no Event of Default or Potential Default has occurred under any of the Loan Documents; (ii) Lender in its reasonable judgment and all applicable Governmental Agencies shall have approved the final plans and specifications for the reconstruction of the Project; (iii) Lender shall have approved in its reasonable judgment a budget of all costs of reconstruction of the Project, a construction schedule for such work (which schedule shall reasonably show the completion of such reconstruction no later than the date which is thirty (30) days prior to the then effective maturity date of the Note) all construction contracts and subcontracts for such work and such other documents relating to such reconstruction as Lender shall reasonably require; (iv) Borrower shall have delivered to Lender completion and/or performance bonds and Builder's All Risk insurance reasonably acceptable to Lender; (v) Lender shall have determined that after the reconstruction work is completed, the value of the Project, as determined by Lender in its sole discretion in the same manner as Lender's original appraisal of the Project, shall be not less than the value of the Project immediately prior to such event; and (vi) Borrower shall have deposited with Lender in cash, from time to time including, without limitation, as the budgeted reconstruction costs as approved by Lender change, the deficiency, if any, between the costs of the reconstruction of the Project and such net Casualty Proceeds then held by Lender. All Casualty Proceeds so applied to the reconstruction of the Project shall be disbursed under such conditions as Lender may reasonably require and shall be disbursed only as repairs or replacements are effected and as continuing expenses become due and payable. Any surplus which may remain out of such Casualty Proceeds after payment of such cost of rebuilding or restoration shall, at the option of Lender, be applied to the outstanding principal balance of the Note or the other amounts owing by Borrower to Lender under the Loan Documents.

**C.** If any one or more of the conditions set forth in Section 1.6(B) are not satisfied at any time: (i) Lender shall not be obligated to disburse any further Casualty Proceeds and Lender may, at its option, apply all Casualty Proceeds then held by Lender to the prepayment of the outstanding balance of the Note, together with accrued interest, and the other amounts owed to Lender under the Loan Documents in such order as Lender may elect, notwithstanding that such amounts may not be due and payable; (ii) if the Casualty Proceeds are not sufficient to repay the Note in full, Borrower shall immediately pay the remaining balance, together with interest accrued thereon and all other amounts owing to Lender under the Loan Documents; and (iii) if there are Casualty Proceeds remaining after the repayment of the foregoing amounts, such remaining proceeds shall be paid over to the persons legally entitled thereto.

**D.** If after any Major Casualty there are no or insufficient Casualty Proceeds available, or if when or after any casualty occurs, an uncured Event of Default or Potential Default under any of the Loan Documents exists, then upon written notice to Borrower, the outstanding balance of the Note, together with accrued interest, shall become immediately due and payable unless all of the conditions set forth in Section 1.6(B) are satisfied and Borrower deposits with Lender, in cash, such funds as Lender deems necessary for such repair and restoration.

**E.** Nothing contained in this Section 1.6 shall be deemed to excuse Borrower from repairing or maintaining the Project as provided in Section 1.3 or restoring all damage or destruction to the Project, regardless of whether or not there are Casualty Proceeds available to Borrower or whether any such Casualty Proceeds are sufficient in amount. The application or release by Lender of any Casualty Proceeds shall not cure or waive any Event of Default or Potential Default under the Loan Documents or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

F. Notwithstanding anything to the contrary set forth in this Section 1.6, if the then applicable law allows Lender to retain any Casualty Proceeds and apply such amounts to the Secured Obligations, Lender may elect, in its sole discretion, to apply all Casualty Proceeds with respect to any Major Casualty, or, if an Event of Default or Potential Default has occurred under any of the Loan Documents, any Minor Casualty, to the repayment of the Secured Obligations in such order as Lender may elect.

### **1.7 Condemnation.**

A. In the event that any proceeding or action is commenced for the taking of the Property or the Project, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation proceeding or in any other manner (any of the foregoing being a "**Condemnation Event**"), or should Borrower receive any written notice or other information relating to a threatened Condemnation Event, Borrower shall give prompt written notice thereof to Lender. Borrower hereby assigns to Lender all compensation, rights of action, proceeds of any award and any claim for damages relating to such Condemnation Event ("**Condemnation Proceeds**") and all such amounts shall be paid to Lender; provided, however, that so long as no Event of Default or Potential Default exists under any of the Loan Documents, Borrower shall be entitled to reasonably participate in any action, proceeding or settlement relating to such Condemnation Event. Borrower shall promptly pay over to Lender any Condemnation Proceeds relating to any Condemnation Event received by Borrower. Lender may, at its option without regard to the adequacy of its security, commence, appear in and prosecute, in its own name or in Borrower's name, any action or proceeding, or make any compromise or settlement, in connection with any Condemnation Event; provided that Lender shall be under no obligation to question the amount of any Condemnation Proceeds payable with respect to any such Condemnation Event. Borrower agrees to execute and deliver to Lender, within ten (10) days after Lender's request, such further assignments of any Condemnation Proceeds as Lender may reasonably require.

B. Subject to the provisions of Section 1.7(D), Lender shall apply, in the manner set forth in Section 1.6(B) with respect to a Major Casualty, all Condemnation Proceeds remaining after deduction of all reasonable expenses of collection and settlement thereof, including, without limitation, reasonable attorneys' fees and costs, to the reconstruction of the Project on the Property to the maximum extent possible given such Condemnation Event, provided that and so long as (a) Lender reasonably determines that the taking will not materially affect the use and operation of the Project based upon the use and operation thereof immediately prior to such taking; and (b) all of the conditions set forth in Section 1.6(B) shall have been satisfied. If any one or more of the foregoing conditions are not satisfied at any time, Lender shall apply such Condemnation Proceeds to the repayment of the Note as provided in Section 1.6(C).

C. Nothing contained in this Section 1.7 shall be deemed to excuse Borrower from repairing or maintaining the Project as provided in Section 1.3 or restoring all damage to the Project, regardless of whether or not there are Condemnation Proceeds available to Borrower or whether any such Condemnation Proceeds are sufficient in amount. The application or release by Lender of any Condemnation Proceeds shall not cure or waive any Event of Default or Potential Default under the Loan Documents or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

D. Notwithstanding anything to the contrary set forth in this Section 1.7, if the then applicable law allows Lender to retain any Condemnation Proceeds and apply such amounts to the Secured Obligations, Lender may elect, in its sole discretion, to apply all Condemnation Proceeds to the repayment of the Secured Obligations in such order as Lender may elect.

**1.8 Liens and Encumbrances.**

Borrower shall pay and promptly discharge, at Borrower's cost and expense, all Liens against the Project or any portion thereof or interest therein, except Liens expressly permitted under the Loan Documents. Without limiting Borrower's obligation to pay and discharge any such Lien, Borrower shall have the right to contest Liens as provided in Section 1.12. If Borrower fails to discharge any Lien or to contest the same as provided in the immediately preceding sentence, Lender may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by bonding as provided herein, and all amounts expended by Lender in connection therewith shall (a) bear interest at the Default Interest Rate, (b) be subject to loan fees as provided in Section 2.5 of the Note, (c) be secured hereby, and (d) be payable within ten (10) days after demand by Lender. Lender shall have no obligation to make any further disbursements of Loan proceeds pursuant to Section 2.6 of the Note until all such Liens are released, discharged or bonded against to Lender's reasonable satisfaction.

**1.9 Actions Affecting Project.**

Borrower shall promptly give Lender written notice of, and shall appear in and contest, any action or proceeding purporting to affect the Project, the Personal Property or the security of this Mortgage or any of the other Loan Documents or the rights or powers of Lender. Borrower shall pay all costs and expenses, including, without limitation, title costs and reasonable attorneys' fees and costs, in any such action or proceeding in which Lender may appear.

**1.10 Transfer of Project.**

**A.** Borrower acknowledges that the financial stability and managerial and operational ability of Borrower and its members are a substantial and material inducement for Lender's agreement to make the Loan to Borrower. In order to induce Lender to make the Loan, Borrower agrees that, in the event of any "transfer" (as hereinafter defined) of the Project or any portion thereof or of any interest in Borrower or its members without the prior written consent of Lender, such transfer shall constitute an Event of Default hereunder without the need for notice or an opportunity to cure and Lender shall have the absolute right, at its option, without demand or notice, to declare all of the Secured Obligations immediately due and payable. Lender may grant or deny such consent in its sole discretion and, if Lender shall give such consent, any such transfer shall be subject to this Mortgage and the other Loan Documents and such transferee shall assume all obligations under the Loan Documents and the Environmental Indemnity and agree to be bound by all of the terms thereof pursuant to an assumption agreement in form and substance acceptable to Lender. Such assumption shall not, however, release Borrower or any other party from any liability under the Loan Documents or the Environmental Indemnity without Lender's prior written consent, which may be withheld in Lender's sole discretion. Consent to one such transfer shall not be deemed to be a waiver of the right to require consent to future or successive transfers.

**B.** As used herein, "transfer" shall mean the direct or indirect, voluntary or involuntary, sale, transfer, conveyance, assignment, encumbrance, hypothecation or other alienation of (a) all or any portion of the Project by Borrower, (b) general partnership interests or managing membership interests, as applicable, in Borrower or its constituent general partners or managing members, or (c) stock, limited partnership interests or non-managing membership interests, as applicable, in Borrower or its constituent partners or members which results in a change in control of Borrower or its constituent general partners or managing members. "Transfer" shall not include (i) the leasing of individual office or commercial units, or other rentable area in the Project so long as Borrower complies with the provisions of the Loan Documents with respect to such leasing activity, or (ii) transfers of title or interests under will or testament or applicable law of descent. As used herein, the term "control" (with correlative meanings as to the terms "controlling"



and "under common control with") shall mean the ability to affect the management and policies of Borrower, whether by voting control, contract or otherwise.

**C.** Without limiting the generality of this Section 1.10, in the event ownership of the Project, or any part thereof, becomes vested in a person or persons other than Borrower, without the prior written approval of Lender as provided herein, Lender may, in its sole discretion and without obligation to do so, and without notice to Borrower, waive such Event of Default and deal with such successor(s) in interest with respect to the Loan Documents and the Environmental Indemnity, without in any way releasing, discharging or otherwise affecting the liability of Borrower or any other party under the Loan Documents or the Environmental Indemnity or for any of the Secured Obligations.

## **1.11 Conditions to Assumption.**

**A.** Without limiting the generality of Section 1.10, Lender may impose certain conditions in connection with its consideration of and/or its granting of consent (which consent may be withheld in Lender's sole discretion) to the transfer of the Project and the assumption of the Loan and the obligations under the Loan Documents and the Environmental Indemnity by the purchaser, transferee or assignee of the Project, including, without limitation, the following conditions:

- (i) Lender shall have approved the creditworthiness of the proposed purchaser, transferee or assignee in light of Lender's then current underwriting criteria for similar properties and loans, the particular requirements of the Project, and the managerial, financial and operational ability of the proposed purchaser, transferee or assignee;
- (ii) Lender shall have received (a) a nonrefundable assumption fee of one percent (1%) of either the original Term Loan Amount, in the event of an assumption prior to the Term Loan Closing Date, or the sum of the then outstanding principal balance of the Term Loan plus the amount of all undisbursed advances, if any, under the Term Loan, in the event of an assumption on or after the Term Loan Closing Date, and (b) a nonrefundable processing fee of Five Thousand Dollars (\$5,000);
- (iii) At Lender's election, Lender shall have received, at Borrower's expense, such environmental, building inspection and seismic reports as may be required by Lender and Lender shall have approved all such reports;
- (iv) Lender shall have received reimbursement of all reasonable costs incurred by Lender in connection with the request for such assumption, including, without limitation, reasonable credit reporting fees, attorneys' fees and costs, appraisal fees, environmental inspection fees, building inspection fees, seismic report fees, and all other costs and expenses which are reasonably necessary in connection with the consideration of such request or with such assumption;
- (v) The parties shall execute and deliver all documents and agreements required by Lender in connection with the assumption, including, without limitation, an express assumption of the Loan and the obligations under the Loan Documents and the Environmental Indemnity, all of which shall be in form and substance acceptable to Lender; and
- (vi) Lender shall receive, at Borrower's expense, such endorsements to the Title Policy as are reasonably requested by Lender in connection with such assignment.

**B.** Any such assumption under this Section 1.11 shall not, however, release Borrower or any other party from any liability under the Loan Documents or the Environmental Indemnity without Lender's prior written consent, which may be withheld in Lender's sole discretion. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

**C.** Borrower acknowledges and agrees that if any information contained in the reports received by Lender pursuant to Section 1.11(A)(iii) is not acceptable to Lender, Lender may elect in its discretion to disapprove such assumption or Lender may require the correction of any such condition or matter in a manner acceptable to Lender as a condition to Lender's consent pursuant to this Section 1.11.

## **1.12 Contesting Impositions and Liens.**

Without limiting Borrower's obligation to pay all Impositions as provided in Section 1.4 or to pay and discharge all Liens as provided in Section 1.8, Borrower shall have the right, at Borrower's expense and in Borrower's name, to contest in good faith any Imposition or Lien against the Project by appropriate legal or administrative proceedings which are not prejudicial to Lender's rights if (a) Borrower shall have demonstrated to Lender's satisfaction that such proceedings shall conclusively operate to prevent enforcement prior to final determination of any such proceedings, and (b) Borrower shall have furnished such bond, surety or other security in connection therewith as is reasonably satisfactory to Lender. In the event that, by any such contest, the security of this Mortgage or any of the other Loan Documents is endangered or the Project or any portion thereof is subject to imminent loss or forfeiture, such Impositions or Liens, as applicable, shall be immediately paid. Borrower hereby indemnifies and agrees to defend and hold the Indemnitees harmless from all expenses, loss, claims, damage or liability that may be imposed in connection with any such contest or resulting loss.

## **1.13 Business Loan.**

Borrower stipulates, represents, warrants, affirms and agrees that the Loan secured hereby is a "business loan" within the meaning of Sections 205/4(a) or (c) of Chapter 815 of the Illinois Compiled Statutes, as amended.

## **1.14 No Property Manager Lien.**

Any property management agreement for or relating to all or any part of the Project, whether now in effect or entered into hereafter by Borrower or on behalf of Borrower, shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Mortgage and the Loan Documents any and all mechanic's lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law, including, without limitation, Illinois Compiled Statutes, Chapter 770, Section 60/1. Such property management agreement or a short form thereof, including such subordination, shall, at Lender's request, be recorded with the office of the recorder of deeds for the county in which the Project is located. Borrower's failure to cause any of the foregoing to occur shall constitute an Event of Default under this Mortgage.

## **1.15 IRPTA.**

Borrower represents and warrants that there are no "facilities" at, on or under the Project, which are subject to reporting under Section 312 of the Federal Emergency Planning Community Right-to-Know Act of 1986, and federal regulations promulgated thereunder and there are no underground storage tanks at, on or under the Property which require notification under Section 9002 of the Solid Waste Solid Disposal Act, as now or hereafter amended (42 U.S.C. 6991) and the Responsible Property Transfer Act of 1988 (Chapter 765

of the Illinois Compiled Statutes, Section 90/1 et seq.) is not applicable to Borrower's borrowing of the indebtedness secured by this Mortgage.

## **1.16 Waiver.**

Borrower, on behalf of itself and all persons now or hereafter interested in the Project, voluntarily and knowingly hereby: acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes Chapter 735, Section 5/15-1101 et seq., herein the "Act"), or residential real estate (as defined in the Act); waives, to the fullest extent permitted by applicable law, any and all rights of reinstatement or redemption and any and all other rights and benefits under all present and future appraisement, homestead, moratorium, valuation, exemption, stay, extension, redemption and marshalling statutes, laws or equities now or hereafter existing, and agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of the Project. Without limiting the generality of the preceding sentence, Borrower, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Project subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of reinstatement or redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Borrower, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Project shall be sold in the event of any sale or sales pursuant hereto and to have any of the Project and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

## **1.17 Compliance With Mortgage Foreclosure Act.**

**A.** If any provision of this Mortgage is inconsistent with any applicable provision of the Act (as defined above), 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 fairly be construed in a manner consistent with the Act.

**B.** Without in any way limiting or restricting any of Lender's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, Lender shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Lender any right, remedies, powers or authorities upon default of Borrower which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Lender shall be vested with all of the rights, remedies, powers and authorities granted in the Act to the fullest extent permitted by law.

**C.** Without limiting the generality of the foregoing, all expenses incurred by Lender, to the extent reimbursable, under Sections 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure.

## ARTICLE 2

### EVENTS OF DEFAULT; REMEDIES

**2.1 Events of Default.** The occurrence of any of the following events shall be an Event of Default hereunder (an "Event of Default"):

**A.** Borrower's failure to pay any principal, interest, or other monies due under the Note or other Loan Documents within the ten (10) days after such amount is due; or

**B.** The occurrence of an Event of Default under any of the Loan Documents (as "Event of Default" is defined therein).

### **2.2 Acceleration and Other Remedies.**

Upon the occurrence of an Event of Default, Lender may, at its option, declare all of the Secured Obligations to be immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter Lender may:

**A.** Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Project or the Personal Property, or any part thereof, in its own name or in the name of a receiver appointed by the court, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Project or the Personal Property, including, without limitation (i) taking possession of Borrower's books and records, (ii) completing the construction of the Improvements, (iii) maintaining or repairing the Improvements, the Property or the Personal Property, (iv) increasing the income from the Project or the Personal Property, with or without taking possession of the Project or the Personal Property, (v) entering into, modifying, or enforcing Leases, (vi) suing for or otherwise collecting the Rents or other amounts owing to Borrower, including those past due and unpaid, and (vii) applying the same, less costs and expenses of operation and collection including, without limitation, reasonable attorneys' fees and compensation for the services of Lender or any receiver, to any of the Secured Obligations, all in such order as Lender may determine. The entering upon and taking possession of the Project, the taking possession of any Personal Property, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any Event of Default or Potential Default or notice of default hereunder;

**B.** Commence an action to foreclose this Mortgage and its security interests under the other Loan Documents as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof and thereof; and/or

**C.** Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing all or any portion of the Secured Obligations, or by law or equity.

### **2.3 Intentionally Omitted.**

### **2.4 Personal Property.**

**A.** Concurrently herewith, Borrower has executed and delivered to Lender the Loan Agreement which grants Lender a security interest in certain Personal Property described therein. Upon the occurrence of an Event of Default, Lender may proceed at its election, in any sequence: (i) to dispose of any Personal

Property separately from the sale of real property in accordance with Article 9 of the Illinois Uniform Commercial Code or other applicable law; (ii) to dispose of some or all of the Project and the Personal Property in any combination consisting of both real and personal property together in one or more sales to be held in accordance with the provisions of Section 9-501(4) of the Illinois Uniform Commercial Code; and (iii) to exercise any remedies of a secured party under the Illinois Uniform Commercial Code or any other applicable law. Expenses of retaking, holding, preparing for sale, selling or the like shall include Lender's reasonable attorneys' fees and costs.

**B.** Upon the occurrence of an Event of Default, in addition to Lender's rights under the Illinois Uniform Commercial Code, Lender may, but shall not be obligated to, at any time and at the expense of Borrower (i) give notice to any person of Lender's rights hereunder and enforce such rights; (ii) insure, protect, defend and preserve the Personal Property and any rights or interests of Lender therein; (iii) inspect the Personal Property; and (iv) endorse, collect and receive any right to payment of money owing to Borrower under or from the Personal Property. Lender shall have no duty or obligation to make or give any presentments, demands for performance, notices of non-performance, notices of protest or notices of dishonor in connection with any of the Personal Property.

**C.** Any disposal of the Personal Property may, at Lender's election, be at public sale, without having the Personal Property at the place of sale, and upon terms and in such manner as Lender may determine. Unless the Personal Property is perishable or threatens to decline rapidly in value or is of a type customarily sold on a recognized market, Lender shall give Borrower at least five (5) days prior written notice of the time and place of any public sale of the Personal Property or any other intended disposition thereof. Such notice may be mailed to Borrower as provided in Section 3.15. Lender may be a purchaser at any such sale of the Personal Property.

**D.** In connection with any exercise of Lender's remedies under this Section 2.4, Lender may take immediate and exclusive possession of the Personal Property, or any part thereof, and with or without judicial process, enter upon any property on which the Personal Property, or any part thereof, may be situated and remove the same without any liability therefor or, at Lender's option, Borrower shall assemble the Personal Property and make it available to Lender at the time and place designated by Lender and reasonably convenient to Borrower and Lender. Lender shall be entitled to operate, hold, maintain, repair, preserve and prepare the Personal Property for sale or Lender may, without removal, render the Personal Property unusable and dispose of the Personal Property on Borrower's property. Lender may exercise all rights and powers of Borrower with respect to the Personal Property or any portion thereof and Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact (which power is coupled with an interest) to enforce, in the name of Borrower or Lender, all rights and powers of Borrower with respect to such Personal Property. Lender and its agents and representatives shall have the right to enter upon any or all of Borrower's property to exercise Lender's rights hereunder.

## **2.5 Appointment of Receiver.**

Upon the occurrence of an Event of Default, Lender, as a matter of right and without notice to Borrower or anyone claiming under Borrower, and without regard to the then value of the Project or the adequacy of any security for the Secured Obligations, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers for the Project, and Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided herein. Borrower agrees to promptly deliver to any such receiver all Leases, Rents, documents, financial data and other information requested by such receiver in connection with the Project and, without limiting the foregoing, Borrower hereby authorizes Lender to deliver to any such receiver

any or all of the Leases, Rents, documents, data and information in Lender's possession relating to the Project.

## **2.6 Remedies Not Exclusive.**

Lender shall be entitled to enforce payment and performance of any of the Secured Obligations and to exercise all rights and powers under this Mortgage or under any Loan Document or other agreement or any Laws now or hereafter in force, notwithstanding that some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as Lender may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender and Lender may pursue inconsistent remedies.

## **2.7 Request for Notice.**

Borrower hereby requests a copy of any notice of default and that any notices hereunder be mailed to it at the address set forth above in this Mortgage.

## **2.8 Forbearance by Lender Not a Waiver.**

Any forbearance by Lender in exercising any right or remedy hereunder or under any of the other Loan Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of any of the Secured Obligations nor shall Lender's receipt of any awards, proceeds or damages under this Mortgage operate to cure or waive Borrower's default in payment of any of the Secured Obligations.

## **ARTICLE 3**

### **MISCELLANEOUS PROVISIONS**

#### **3.1 Maximum Secured Obligations.**

The present amount of the Loan secured hereby is \$3,225,000.00; the maximum amount, including present and future Secured Obligations, which may be secured hereby at any one time is \$9,675,000.00, plus interest, plus any disbursements for taxes and insurance on the Project, plus interest thereon at the rate set forth in the Note, and any other sums advanced in accordance with the terms hereof or any of the other Loan Documents to protect the security of this Mortgage or any of the Loan Documents.

### **3.2 Indemnification.**

Borrower hereby indemnifies and agrees to defend and hold Lender and the Indemnitees harmless against all expenses, loss, claims, demands, and liabilities which any of them may incur, suffer, or sustain in the execution of the rights and obligations created hereunder or in the performance of any act required or permitted hereunder or by law, unless caused by the grossly negligent or willful misconduct of the indemnified party.

### **3.3 Intentionally Omitted.**

### **3.4 Inspections.**

Subject to the rights of tenants at the Project, during normal business hours and upon reasonable advance notice (except in the event of an emergency, in which event entry shall not be limited to normal business hours and no advance notice shall be necessary) Lender, or its agents, employees or representatives, are authorized to enter upon or in any part of the Project for the purpose of inspecting the same and performing any of the acts Lender is authorized to perform hereunder or under the terms of any of the Loan Documents.

### **3.5 Borrower Waiver of Rights.**

Borrower waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Project, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Secured Obligations in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other Secured Obligation, and (e) any rights, legal or equitable, to require marshalling of assets or to require foreclosure sales in a particular order. Lender shall have the right to determine the order in which any or all of the Project shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein.

### **3.6 Lender's Powers.**

Without affecting the liability of any other Person for the payment or performance of any of the Secured Obligations, and without affecting the lien or priority hereof or of any of the other Loan Documents upon any property not released, Lender may, without notice, release any Person so liable, extend the maturity or modify the terms of any Secured Obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Project and/or the Personal Property, and/or take or release any other security or make compositions or other arrangements with debtors. Lender may also accept additional security, either concurrently herewith or hereafter, and sell the same or otherwise realize thereon either before, concurrently with, or after sale hereunder.

### **3.7 Non-Waiver.**

By accepting late payment or performance of any of the Secured Obligations, Lender shall not waive its rights against any Person obligated directly or indirectly hereunder or on any of the Secured Obligations, either to require prompt payment when due of all other sums so secured or to declare a Potential Default or Event of Default for failure to make such prompt payment. No exercise of any right or remedy by Lender

# UNOFFICIAL COPY

00932126

hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

### **3.8 Protection of Security.**

Upon an Event of Default under any of the Loan Documents, Lender may, without obligation, and without notice to or demand upon Borrower and without releasing Borrower from any of the Secured Obligations, (a) make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof or of any of the other Loan Documents; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or of any of the other Loan Documents, the value thereof or the rights or powers of Lender; or (c) pay, purchase, contest, or compromise any Lien which, in the judgment of Lender, is prior or superior hereto or Lender's security interest under any of the other Loan Documents. In exercising any such power, Lender is authorized to enter upon the Project or any other property on which the Personal Property is located and to incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title and reasonable attorneys' fees and costs and consultants' fees and costs. Any expenditures made by Lender under this Section 3.8 shall (w) bear interest at the Default Interest Rate, (x) be subject to loan fees as provided in Section 2.5 of the Note, (y) be secured hereby, and (z) be payable within ten (10) days after demand by Lender.

### **3.9 No Merger of Lease.**

If both the lessor's and lessee's estate under any Lease or any portion thereof which constitutes a part of the Project or other security under the Loan Documents shall at any time become vested in one owner, this Mortgage and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Lender so elects as evidenced by recording a written declaration so stating, and, unless and until Lender so elects, Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien created by this Mortgage on the Project pursuant to the provisions hereof, any Leases then existing and affecting all or any portion of the Project shall not be destroyed or terminated by application of the law of merger, as a matter of law or as a result of such foreclosure, unless Lender or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any Lease unless Lender or such purchaser shall give written notice thereof to the applicable tenant or subtenant.

### **3.10 Subordination.**

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 any Casualty Proceeds, Condemnation Proceeds or other compensation resulting from damage to the Project or any Condemnation Event) to any or all contracts of sale and/or any or all Leases upon the execution by Lender of a unilateral declaration to that effect and the recordation thereof in the Official Records of the County in which the Project is situated.

### **3.11 Reconveyance.**

Upon written request of Borrower stating that all sums secured hereby have been paid, Lender shall release and reconvey to Borrower, or to the person or persons legally entitled thereto, without warranty, any portion of the Project then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."



### **3.12 Rules of Construction.**

When the identity of the parties hereto or the circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. Article and Section headings in this Mortgage are included herein for convenience of reference only and shall not constitute a part of this Mortgage for any other purpose or be given any substantive effect.

### **3.13 Severability.**

If any term of the Mortgage or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent.

### **3.14 Successors and Assigns.**

This Mortgage shall be binding upon and shall inure to the benefit of the Borrower and Lender and their respective successors and assigns. As used herein, "Lender" shall include all holders of the Note, including, without limitation, pledgees of the Note, whether or not named as Lender herein. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors authorized by Lender.

### **3.15 Notices.**

Any notice, request, demand or other document or demand required or permitted under this Mortgage shall be in writing addressed to the appropriate address set forth above and shall be deemed delivered upon the earliest of (a) actual receipt, (b) the next business day after the date when sent by recognized overnight courier, or (c) the second business day after the date when sent by registered or certified mail, postage prepaid. Any party may, from time to time, change the address at which such written notice or other documents or demands are to be sent, by giving the other parties written notice of such change in the manner hereinabove provided.

### **3.16 Governing Law.**

This Mortgage shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois.

### **3.17 Amendments and Waivers.**

This Agreement and the other Loan Documents may only be modified in writing signed by all of the parties hereto or thereto or their respective successors and assigns. No waiver of any provision of this Agreement or of any of the other Loan Documents, or consent to any departure by Borrower therefrom, shall in any event be effective without the written agreement of Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. Except as expressly required by the terms of the Loan Documents, no notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

### **3.18 Subrogation.**

To the extent that proceeds of the Note are used to pay any outstanding Lien against the Project, such proceeds have been or will be advanced by Lender at Borrower's request and Lender shall be

subrogated to any and all rights and Liens held by any owner or holder of such outstanding Liens, irrespective of whether such Liens are released.

### **3.19 Fixture Filing.**

This Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County in which the Project is situated with respect to any and all fixtures included within the term "Project" as used herein, and with respect to any goods or other personal property that may now be or hereafter become such fixtures. Borrower grants to Lender a security interest in all existing and future goods which are now or in the future become fixtures relating to the Project and the proceeds thereof. Borrower covenants and agrees that the filing of this Mortgage in the Official Records of the County where the Project is located shall also operate from the date of such filing as a fixture filing in accordance with Section 9-402 of the Illinois Uniform Commercial Code.

### **3.20 Counterparts.**

This Mortgage may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Mortgage to physically form one document, which may be recorded.

### **3.21 Statement of Condition.**

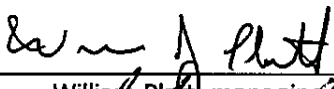
Lender shall furnish any statement required by law regarding the obligations secured hereby or regarding the amounts held in any escrow or reserve fund hereunder. For any such statement, Lender may charge a reasonable fee, not to exceed the maximum amount permitted by law at the time of the request therefor.

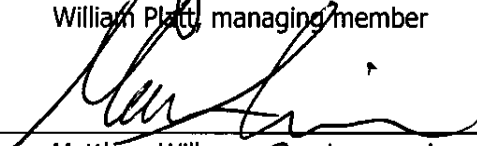
# UNOFFICIAL COPY

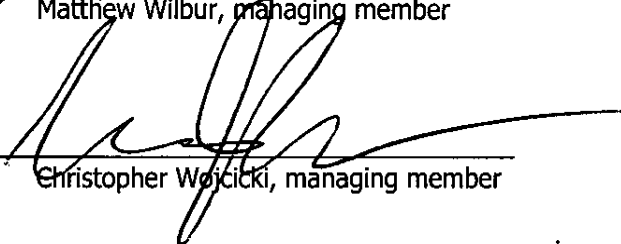
00932126

IN WITNESS WHEREOF, Borrower has executed and delivered this Mortgage as of the date first above written.

MOB VENTURES, L.L.C., an Illinois limited liability company

By:   
William Platt, managing member

By:   
Matthew Wilbur, managing member

By:   
Christopher Wojcicki, managing member

Property of Cook County Clerk's Office

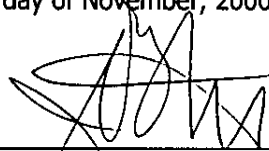
# UNOFFICIAL COPY

00932126

STATE OF ILLINOIS    )  
                                  )  
                                  )    ss.  
COUNTY OF COOK    )

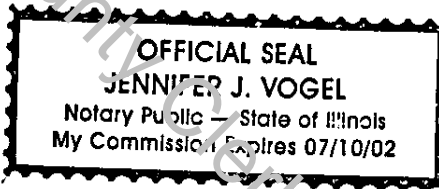
I, Jennifer Vogel a notary public in and for said County, in the State aforesaid, do hereby certify that WILLIAM PLATT, MATTHEW WILBUR, and CHRISTOPHER WOJCICKI, personally known to me to be the managing members of MOB VENTURES, L.L.C., an Illinois limited liability company, each personally known to me to be a managing member of said limited liability company, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such managing members, they signed and delivered the said instrument and caused the seal of said limited liability company to be affixed thereto, pursuant to authority given by the Articles of Organization and Operating Agreement of said limited liability company as their free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal this 16 day of November, 2000.



Notary Public

Commission expires: 7/10/02



## EXHIBIT A

### Legal Description

That certain real property located in the City of Chicago, County of Cook, State of Illinois, having a street address of 1750 North Clark Street more particularly described as follows:

#### PARCEL 1:

THAT PART OF THE PROPERTY, SPACE AND A PORTION OF A MULTI-STORY BUILDING AT 1750 NORTH CLARK STREET, CHICAGO, ILLINOIS SAID PROPERTY, SPACE AND BUILDING PORTION THEREOF LYING BELOW A HORIZONTAL PLANE WHICH IS 53.79 FEET ABOVE CHICAGO CITY DATUM, AND LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY UPWARD AND DOWNWARD FROM THE SURFACE OF THE EARTH TO THE FOLLOWING DESCRIBED PROPERTY: THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 40 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS BEGINNING ON THE EAST LINE OF THE NORTH ADDITION TO CHICAGO 10 FEET SOUTH OF WHERE SAID EAST LINE EXTENDED NORTH WOULD INTERSECT THE NORTH LINE OF LOT 6 IN EDSON'S SUBDIVISION OF LOT 11 IN SAID NORTH ADDITION, THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 11 TO THE SOUTHEAST CORNER THEREOF, THENCE EAST 50 FEET MORE OR LESS TO THE WEST LINE OF NORTH CLARK STREET, THENCE NORTHWESTERLY ALONG THE WEST LINE OF SAID STREET TO A POINT 10 FEET SOUTH OF THE NORTH LINE, EXTENDED EAST, OF SAID LOT 6 AND THENCE WESTERLY ON A LINE PARALLEL WITH THE NORTH LINE OF AFORESAID LOT 6 TO THE PLACE OF BEGINNING, ALSO LOT 6 (EXCEPT THE NORTH 10 FEET THEREOF) AND ALSO EXCEPTING THE WEST 0.62 FEET WHICH LIES SOUTH OF THE NORTH 10 FEET OF SAID LOT 6, LOT 7 (EXCEPT THE WEST 0.62 FEET THEREOF) AND LOT 8 (EXCEPT THE WEST 0.62 FEET THEREOF) THE EAST LINE OF THE WEST 0.62 FEET OF SAID LOTS 6, 7 AND 8 ALSO BEING A LINE 110.62 FEET EAST OF THE EAST LINE OF NORTH WELLS STREET IN EDSON'S SUBDIVISION OF LOT 11 IN NORTH ADDITION TO CHICAGO, A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

NON EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN THE DECLARATION OF EASEMENTS RESTRICTIONS AND COVENANTS RECORDED SEPTEMBER 20, 1979 AS DOCUMENT 25156050.

Permanent Real Estate Tax Identification Number: 14-33-414-043