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Cook County Recorder 53.00



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(The Above Space For Recorder's Use Only)

**FIRST MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING**

**THIS FIRST MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING** (this "Mortgage") dated as of December 6, 2000 is made by **720-726 RANDOLPH ASSOCIATES LLC**, an Illinois limited liability company, whose address is 3000 West Dundee Avenue, Suite 407 Northbrook, Illinois 60062 ("**Mortgagor**"), in favor of **CIB BANK** whose address is 20527 South LaGrange Road, Frankfort, Illinois 60423 (together with its successors and assigns, including each and every holder of the Note, as defined below, "**Mortgagee**").

**RECITALS**

**WHEREAS**, Mortgagor is in the process of redeveloping certain real property commonly known as 720-726 West Randolph Street, Chicago, Illinois (the "**Development Property**");

**WHEREAS**, Borrower is in the process of constructing on the Development Property up to 65 residential condominium units, 77 deeded automobile parking spaces, 12 deeded motorcycle parking spaces, and a certain commercial retail area (collectively, the "**Project**"). The Project and all other portions of the Development Property, all as legally described on **Exhibit A** attached hereto, are collectively referred to herein as the "**Property**";

**WHEREAS**, Mortgagor and Mortgagee have executed that certain Construction Loan Agreement dated concurrently herewith (the "**Loan Agreement**") pursuant to which Mortgagee has agreed to make, and Borrower has accepted, a loan in the maximum principal amount of Twenty Million and No/100 Dollars (\$20,000,000) the ("**Loan**"), which Loan is evidenced by a certain Construction Note dated concurrently herewith and executed by Mortgagor in favor of Mortgagee (the "**Note**");

**WHEREAS**, Borrower shall use the proceeds of the Loan to finance the construction of the Project;

**WHEREAS**, this Mortgage is given to secure the Note, and this Mortgage secures not only the indebtedness from Mortgagor to Mortgagee existing on the date of the Mortgage, but also all future advances under the Note, whether such advances are obligatory or are to be made at the option of the Mortgagee, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage, even though there may be no advance under the Note made at the time of the execution of this Mortgage and even though there may be no indebtedness outstanding under the Note at the time any advance is made;

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## AGREEMENTS

**NOW, THEREFORE**, to secure payment of the indebtedness evidenced by the Note, including the principal thereof and interest thereon, and any extensions, substitutions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due and owing or required to be paid hereunder or as provided in the Note, the Loan Agreement or any other document evidencing or securing the Loan (collectively, the "**Liabilities**"), and in consideration of One Dollar (\$1.00) in hand paid, receipt whereof is hereby acknowledged, Mortgagor does hereby GRANT, BARGAIN, SELL, MORTGAGE, WARRANT AND CONVEY to Mortgagee, its successors and assigns, the Property;

**TOGETHER WITH** all right, title and interest, including the right of use or occupancy, which Mortgagor may now have or hereafter acquire in and to the following (the Property, together with the property described below, is herein called the "**Mortgaged Property**":

- (a) any lands occupied by streets, alleys, or public places adjoining said Property or in such streets, alleys or public places adjoining said Property or in such streets, alleys or public places;
- (b) all improvements, tenements, hereditaments, gas, oil, minerals, easements, fixtures and appurtenances, and all other rights and privileges thereunto belonging or appertaining;
- (c) all right, title and interest of Mortgagor under any Declaration of Condominium Ownership recorded against the Mortgaged Property, as the same may be amended from time to time, including without limitation, Mortgagor's right, title and interest in all common elements and limited common elements;
- (d) all buildings, improvements, personal property, fixtures, fittings and furnishings, owned by Mortgagor and now or hereafter attached to, located at, or placed in the improvements on the Development Property including, without limitation all machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection; all maintenance supplies and repair equipment; all draperies, carpeting, floor coverings, screen, storm windows and window coverings, blinds, awnings, shrubbery and plants; all elevators, escalators and shafts, motors, machinery, fittings and supplies necessary for their use; all building materials and supplies now or hereafter delivered to the Development Property (it being understood that the enumeration of any specific articles of property shall in no way be held to exclude any items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Mortgagor in any such items hereafter acquired, as well as the Mortgagor's interest in any lease, or conditional sales agreement under which the same is acquired, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Development Property;
- (e) all rents, income, contract rights, leases and profits now due or which may hereafter become due under or by virtue of any lease, license or agreement, whether written or verbal, for the use or occupancy of the Development Property or any part thereof together with all tenant security deposits;
- (f) all awards, payments, proceeds now or hereafter obtainable by Mortgagor under any policy of insurance insuring the Development Property including but not limited to the proceeds of casualty insurance, title insurance, business interruption/rents insurance or other insurance maintained with respect to the Development Property whether by Mortgagor or otherwise;
- (g) all awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Development Property,

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including any awards for damages sustained to the Development Property, for a temporary taking, change of grade of streets or taking of access;

(h) all contracts, licenses, permits, management records, files, consents, governmental approvals and intangibles used, useful or required in the ownership and management of the Development Property together with all soil reports, building permits, variances, licenses, utility permits and other permits and agreements relating to the construction or equipping of the improvements on the Development Property, or the operation or maintenance of the Development Property, including, without limitation, all warranties and contract rights;

(i) each contract or agreement for the design, construction and equipping of the improvements located or to be located on the Development Property, together with all rights, title and interest of Mortgagor in and to any existing or future changes, extensions, revisions, modifications, guarantees or performance, or warranties of any kind thereunder;

(j) all plans and specifications, all surveys, site plans, working drawings and papers, relating to the Development Property and the construction and equipping of the improvements on the Development Property, including without limitation, all architectural and site plans prepared;

(k) all building supplies and materials ordered or purchased for use in connection with the construction and equipping of the improvements on the Development Property;

(l) all rights and interests of Mortgagor in and under any and all service and other agreements relating to the operation, maintenance, and repair of the Development Property or the buildings and improvements thereon;

(m) all right and interest in and to the use of the name and logo "City View Tower at Randolph" and "City View Tower at Randolph Condominium Association";

(n) all contracts for the sale of condominium units at the Development Property between the Mortgagor, as seller, and third parties, as purchasers, for the purchase of individual condominium units at the Development Property together with proceeds payable thereunder including each purchase agreement now or hereafter entered into, all deposits paid under any purchase agreement and the purchase price payable on each unit purchase;

(o) all replacements and substitutions for the foregoing whether or not any of the foregoing is or shall be on or attached to the Property; and

(p) all proceeds of the foregoing.

It is mutually agreed, intended, and declared, that all of the aforesaid Property owned by Mortgagor shall, so far as permitted by law, be deemed to form a part and parcel of the Property and for the purpose of this Mortgage be deemed to be real estate and covered by this Mortgage. Items in (c), (d), (e), (f), (g), (h) and (i) of this paragraph are sometimes collectively referred to herein as "Collateral".

It is also agreed that if any of the property herein mortgaged is a fixture or of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a fixture filing or a security agreement, as the case may be, and Mortgagor agrees to execute, deliver and file or refile any financing statement, continuation statement or other instruments Mortgagee may require from time to time to perfect or renew such security interest under the Uniform Commercial Code. Mortgagee's filing of one or more separate fixture filing financing statements shall in no way impair Mortgagee's security interest in said fixtures.

As additional security for the repayment of the Liabilities, Mortgagor has executed and delivered to Mortgagee that certain Assignment of Leases and Rents dated of even date herewith (the "Assignment") which, among other things, pledges and assigns to Mortgagee all the rents, issues and

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profits of the Mortgaged Property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing, including all deposits or money as advance rent, for security or as earnest money or as down payment for the purchase of all or any part of the Mortgaged Property, under any and all present and future leases, contracts or other agreements relative to the ownership or occupancy of all or any portion of the Mortgaged Property. The terms and provisions of the Assignment are hereby incorporated by reference.

Nothing herein contained shall be construed as constituting the Mortgagee as a mortgagee-in-possession in the absence of the taking of actual possession of the Mortgaged Property by the Mortgagee. In the exercise of the powers herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by Mortgagor.

**TO HAVE AND TO HOLD** the Mortgaged Property, properties, rights and privileges hereby conveyed or assigned, unto Mortgagee, its successors and assigns, forever for the uses and purposes herein set forth. Mortgagor hereby releases and waives all right under and by virtue of any Homestead Exemption Laws, and Mortgagor hereby covenants that as of the date of this Mortgage, Mortgagor is well seized of said real estate and Mortgaged Property in fee simple, and with full legal and equitable title to the Mortgaged Property, with good right, full power and lawful authority to sell, assign, convey and mortgage the same, and that it is free and clear of encumbrances, except for any encumbrances of record consented to by Mortgagee, and that Mortgagor will forever defend the same against all lawful claims.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

**1. Payment of Indebtedness and Performance of Covenants.**

Mortgagor agrees to pay, when due or declared due, all of the Liabilities and to duly and punctually observe all of the terms, provisions, conditions, covenants and agreements on Mortgagor's part to be performed or observed as provided in this Mortgage, the Loan Agreement, the Note and all other documents which evidence, secure or guarantee the Liabilities.

**2. Representations.**

Mortgagor hereby represents that:

(a) Mortgagor is duly authorized to make and enter into this Mortgage and to carry out the transactions contemplated herein.

(b) This Mortgage has been duly executed and delivered pursuant to authority legally adequate therefor; Mortgagor has been and is authorized and empowered by all necessary persons having the power of direction over it to execute and deliver this Mortgage; this Mortgage is a legal, valid and binding obligation of Mortgagor, enforceable in accordance with its terms, subject to bankruptcy and other law, decisional or statutory of general application affecting the enforcement of creditors' rights, and to the fact that the availability of the remedy of specific performance or of injunctive relief in equity is subject to the discretion of the court before which any proceeding therefor may be brought.

(c) Mortgagor is not now in default under any instruments or obligations relating to the Mortgaged Property and no party has asserted any claim of default against Mortgagor relating to the Mortgaged Property.

(d) The execution and performance of this Mortgage and the consummation of the transactions hereby contemplated will not result in any breach of, or constitute a default under, any articles of incorporation, bylaws, articles of organization, operating agreement, mortgage, lease, bank loan, credit agreement, trust indenture or other instrument to which Mortgagor is a party or by

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which it may be bound or affected; nor do any such instruments impose or contemplate any obligations which are or may be inconsistent with any other obligations imposed on Mortgagor under any other instruments heretofore or hereafter delivered by Mortgagor.

(e) There are no actions, suits, or proceedings, including, without limitation, any condemnation or bankruptcy proceedings, pending or threatened against or affecting Mortgagor or the Mortgaged Property, or which may adversely affect the validity or enforceability of this Mortgage, at law or in equity, or before or by any governmental authority; Mortgagor is not in default with respect to any writ, injunction, decree or demand of any court or any governmental authority affecting the Mortgaged Property.

(f) Mortgagor has made a physical investigation of the Mortgaged Property, and, to the best of Mortgagor's knowledge, no Environmental Conditions, as defined in **Section 3(c)** hereof, are present on or affect the Mortgaged Property.

(g) All statements, financial or otherwise, submitted to Mortgagee in connection with this transaction are true and correct in all material respects and fairly present the financial condition of the parties or entities covered by such statements as of the date hereof.

(h) The execution of this Mortgage does not subject the Mortgaged Property to the reporting requirements under the Illinois Responsible Property Transfer Act ("**IRPTA**"); provided, however, that if the provisions of IRPTA do apply to this transaction, Mortgagor will prepare and record all necessary documents required under IRPTA and do all things necessary to comply with the provisions of IRPTA.

### 3. **Maintenance, Repair, and Compliance with Law, etc.**

(a) Mortgagor agrees: (i) not to abandon the Mortgaged Property; (ii) to keep the Mortgaged Property in good, safe and insurable condition and repair and not to commit or suffer waste; (iii) to refrain from impairing or diminishing the value of the Mortgaged Property or this Mortgage; and (iv) to cause the Mortgaged Property to be managed in a competent and professional manner.

(b) Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (i) material alterations of the Mortgaged Property except as required by law or ordinance, and except for the construction of the Project in accordance with the Loan Agreement; (ii) change in the intended use or occupancy of the Mortgaged Property for which the improvements were constructed, including without limitation any change which would increase any fire or other hazard; (iii) change in the identity of the person or firm responsible for managing the Mortgaged Property; (iv) zoning reclassifications with respect to the Mortgaged Property; (v) unlawful use of, or nuisance to exist upon, the Mortgaged Property; (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Mortgaged Property; or (vii) execution by Mortgagor of any leases in breach of the terms and provisions of the Assignment.

(c) Mortgagor agrees not to cause or permit any toxic or hazardous substance or waste, or underground storage tanks, or any other pollutants which could be detrimental to the Mortgaged Property, human health, or the environment, or that would violate any local, state or federal laws or regulations (collectively, "**Environmental Conditions**") to be present on or affect the Mortgaged Property. If Mortgagee determines that Environmental Conditions either do or may exist at the Mortgaged Property, upon demand, Mortgagor shall take at its own expense any and all measures necessary to eliminate such Environmental Condition. If at any time Environmental Conditions are present or affect the Mortgaged Property, Mortgagor agrees to indemnify, defend and save Mortgagee, its successors and assigns, harmless, from and against all damage suffered by reason of the Environmental Conditions. Borrower has executed and delivered in favor of Mortgagee a separate Environmental Indemnity Agreement dated of even date herewith (the "**Environmental Indemnity**")

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in order to evidence and more specifically define Mortgagor's obligations under this **Section 3(c)**. The terms and provisions of the Environmental Indemnity are incorporated herein by reference.

## 4. **Taxes, Liens.**

(a) Mortgagor agrees to pay, not later than the due date and before any penalty or interest attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed or imposed on or against the Mortgaged Property and, at the request of the Mortgagee, to exhibit to Mortgagee, official receipts evidencing such payments.

(b) Mortgagor shall not create, suffer or permit any mortgage, lien, charge or encumbrance to attach to or be filed against the Mortgaged Property, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, including mechanic's liens, materialmen's liens, or other claims for lien made by parties claiming to have provided labor or materials with respect to the Mortgaged Property and excepting only the lien of real estate taxes and assessments not due or delinquent and any liens and encumbrances of Mortgagee. Notwithstanding the foregoing, Mortgagor may in good faith and with due diligence, contest any mechanic's or materialmen's liens or the validity thereof by appropriate legal proceedings which shall have the effect of preventing the collection of such lien or liens so contested; provided that, pending any such legal proceedings Mortgagee shall provide Mortgagee with an endorsement to its lender's policy of title insurance, in form and substance acceptable to Mortgagee and insuring Mortgagee against losses resulting from such lien, or shall give Mortgagee such security as may be deemed satisfactory to Mortgagee to insure payment of the amount of such lien or liens and all interest and penalties thereon. If, at any time during the continuance of such contest, the Property or any part thereof is, in the judgment of Mortgagee, in danger of being forfeited or lost, Mortgagee may use such security for the payment of such lien or liens.

## 5. **Change in Tax Laws.**

Mortgagor agrees that, if the United States or the State of Illinois or any of their subdivisions having jurisdiction, shall levy, assess, or charge any tax, assessment or imposition upon this Mortgage or the credit or indebtedness secured hereby or the interest of Mortgagee in the Mortgaged Property or upon Mortgagee by reason of or as holder of any of the foregoing, then, Mortgagor shall pay, or reimburse Mortgagee for, such taxes, assessments or impositions, and, unless all such taxes, assessments and impositions are paid or reimbursed by Mortgagor when and as they become due and payable, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee, notwithstanding anything contained herein or in any law heretofore or hereafter enacted.

## 6. **Restrictions on Transfer.**

Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, contract for, consent to, suffer or permit any Prohibited Transfer. A "**Prohibited Transfer**" shall be any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any of the following:

(a) the Mortgaged Property or any part thereof or interest therein, excepting only sales or other dispositions of Collateral no longer useful in connection with the operation of the Mortgaged Property ("**Obsolete Collateral**") or sales of completed condominium units or a sale of the Commercial Area (as defined in the Loan Agreement), each in accordance with the terms and conditions of the Loan Agreement; or

(b) all or any part of the membership interest of the Mortgagor except to the extent permitted by the Loan Agreement.

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All of the above described transactions shall be a Prohibited Transfer if such transactions occur, are granted, accomplished, attempted or effectuated without the prior written consent of Mortgagee. Further, all such transactions shall be a Prohibited Transfer regardless of whether such transactions are effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise. Mortgagor acknowledges that Mortgagee shall be under no obligation to consent to any of the Prohibited Transfers and that any such consent may be subject to changes in the applicable interest rates charged under any instrument evidencing the Liabilities, the payment of a fee to Mortgagee or such other modifications to the terms and conditions of this Mortgage or any other agreement which evidences or secures the repayment of the Liabilities as Mortgagee in its sole discretion may determine. Further, any sale of Obsolete Collateral shall be allowed only to the extent 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.

## 7. **Insurance.**

Mortgagor shall at all times comply with the provisions with respect to insurance set forth in **Article 8** of the Loan Agreement.

## 8. **Compliance with Laws.**

Mortgagor agrees that it will comply with all restrictions affecting the Mortgaged Property. Mortgagor shall also comply with all laws, ordinances, acts, rules, regulations and orders of any legislative, executive, administrative or judicial body, commission or officer, whether federal, state or local, exercising any power or regulation or supervision over Mortgagor, or any part of the Mortgaged Property, whether the same be directed to the repair thereof, manner or use thereof, structural alterations or buildings located thereon, or otherwise, unless any failure to so comply could not have a material adverse effect on the ownership, operation or sale of the Project or any part thereof.

## 9. **Stamp Tax.**

Mortgagor agrees that, if the United States Government or any department, agency or bureau thereof or of the State of Illinois or any of its subdivisions shall at any time require documentary stamps to be affixed to the Mortgage, Mortgagor will, upon request, pay for the stamps in the required amount and deliver them to Mortgagee, and Mortgagor agrees to indemnify Mortgagee against liability on account of such documentary stamps, whether such liability arises before or after payment of the Liabilities and regardless of whether this Mortgage shall have been released.

## 10. **Deposits for Taxes and Insurance Premiums.**

Following a default by Mortgagor in the payment of taxes or insurance premiums and upon written request by Mortgagee, Mortgagor agrees to make monthly deposits into an account set up with Mortgagee, which account shall be pledged to Mortgagee, of an amount equal to the sum of 1/12th of the annual general real estate taxes levied on the Mortgaged Property and 1/12th of the annual premium required to maintain insurance in force on the Mortgaged Property in accordance with the provisions of this Mortgage, the amount of such taxes and premiums, if unknown, to be estimated on the basis of the previous year's taxes or premiums. Mortgagor shall provide Mortgagee with the original real estate tax bill or insurance invoice not later than ten (10) days before the payment is due and shall concurrently deposit into said account an amount equal to the difference between the amount available in the aforesaid escrow account for such payment, giving effect to other taxes or expenses which are also paid from said account, as shown on Mortgagee's records and the amount required to be paid. Provided that no Event of Default, as hereinafter defined, has occurred, funds in such account, including the supplemental deposits required by the preceding sentence, shall be used by Mortgagor to pay such taxes and premiums

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on their respective due dates. From and after the occurrence of an Event of Default under this Mortgage, Mortgagor will pay such funds to Mortgagee for application on the Liabilities.

## 11. Leases.

Mortgagor agrees faithfully to perform all of its obligations under the Assignment and under all present and future leases or other agreements relative to the occupancy of the Mortgaged Property at any time assigned to Mortgagee as additional security for the payment and performance of the Liabilities. Mortgagor shall comply with **Section 7.19** of the Loan Agreement with respect to leases and shall refrain from any action or inaction which could result in termination of any such leases or agreements or in the diminution of the value thereof or of the rents or revenues due thereunder. Mortgagor further agrees that any lease of the Mortgaged Property made after the date of recording of this Mortgage shall contain a covenant to the effect that the lessee under such lease shall, at Mortgagee's option, agree to attorn to Mortgagee as lessor and, upon demand, to pay rent to Mortgagee.

## 12. Indemnification.

In addition to the provisions of the Environmental Indemnity, Mortgagor further agrees to indemnify Mortgagee from all loss, damage and expense, including reasonable attorneys' fees and paralegals' fees and expenses and the costs of any settlement or judgment, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage, and all such fees, expenses and costs shall be deemed additional Liabilities secured hereby.

## 13. Casualty and Condemnation.

**Section 7.6** and **Article 9** of the Loan Agreement with respect to condemnation and casualties, respectively, are incorporated herein by reference.

## 14. Mortgagee's Performance of Mortgagor's Obligations.

Mortgagor agrees that Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient after reasonable inquiry into the validity thereof. By way of illustration, and not in limitation of the foregoing, Mortgagee may, but need not, (a) make full or partial payments of insurance premiums or tax payments which are unpaid by Mortgagor, if any, or (b) purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof, or (c) redeem all or any part of the Mortgaged Property from tax or assessment. All money paid for any of the purposes herein authorized and all other moneys advanced by Mortgagee to protect the Mortgaged Property and the lien hereof shall be additional Liabilities secured hereby and shall become immediately due and payable without notice and shall bear interest at the Default Rate (as defined in the Note) until paid to Mortgagee in full. In making any payment hereby authorized relating to taxes, assessments or prior liens or encumbrances, Mortgagee shall be the sole judge of the legality, validity and priority thereof and of the amount necessary to be paid in satisfaction thereof.

## 15. Inspection.

Mortgagee, or any person designated by Mortgagee in writing, shall have the right, from time to time hereafter, to call at the Mortgaged Property, or at any other place where information relating thereto is kept or located, during reasonable business hours and, without hindrance or delay, to make such inspection and verification of the Mortgaged Property, and the affairs, finances and business of Mortgagor, including all books, records and documents relating thereto, in connection with the Mortgaged Property, as Mortgagee may consider reasonable under the circumstances, and to discuss the same with any agents or employees of Mortgagor. Mortgagor shall be liable for all costs and fees related to such inspections, field audits and verifications.



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## 16. Events of Default.

Any of the following occurrences or acts shall constitute an event of default under this Mortgage ("**Event of Default**") if such act occurs and is not cured within any applicable cure period:

- (a) the occurrence of an Event of Default under the Note, whether in payment or otherwise, or in the payment or performance of the Liabilities;
- (b) the occurrence of an Event of Default under the Loan Agreement, the Assignment, the Environmental Indemnity, the Loan Documents (as defined in the Loan Agreement) or any other agreement, security agreement, assignment, instrument or other agreement made by Mortgagor in favor of Mortgagee which evidences or secures or the Loan;
- (c) the occurrence of a default under any guaranty related to the Note or the Liabilities or any other agreement, security agreement, assignment, instrument or other agreement made by any guarantor in favor of Mortgagee with respect to the Note or the Liabilities;
- (d) failure by Mortgagee to observe or perform any of Mortgagor's covenants, agreements, or obligations under this Mortgage and failure to cure such default within thirty (30) days after being served with written notice from Mortgagee; provided, however, that if the Mortgagor promptly commences and diligently pursues a cure which cannot reasonably be cured within the 30 day period, the Mortgagor shall have an additional 60 day period to complete such cure;
- (e) the occurrence of a Prohibited Transfer (as defined above); or
- (f) the abandonment of the Mortgaged Property or a substantial part thereof which continues for thirty (30) consecutive days.

## 17. Rights Upon Default.

If any Event of Default shall have occurred, then, to the extent permitted by applicable law, the following provisions shall apply:

- (a) All sums secured hereby shall, at the option of Mortgagee, become immediately due and payable without presentment, demand or further notice.
- (b) It shall be lawful for Mortgagee to take all actions authorized under applicable law or under any other agreement or instrument delivered by Mortgagor to Mortgagee including, without limitation, the Note and the Loan Agreement.
- (c) It shall be lawful for Mortgagee to (i) immediately foreclose this Mortgage; or (ii) if allowed under Illinois law at the time of such Event of Default, immediately sell the Mortgaged Property either in whole or in separate parcels, as prescribed by Illinois law, under power of sale, which power is hereby granted to Mortgagee to the full extent permitted by Illinois law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant to applicable law.
- (d) If a suit is brought to foreclose this Mortgage, the court in which any proceeding is pending for the purpose of foreclosure of this Mortgage may, at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment of the Liabilities secured hereby, and without regard to the value of the Mortgaged Property or the occupancy thereof as a homestead, appoint Mortgagee as a mortgagee-in-possession or appoint a receiver (the provisions for the appointment of a receiver or mortgagee-in possession being an express condition upon which the loan hereby secured is made) for the benefit of Mortgagee with power to collect the rents, issues

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and profits of the Mortgaged Property, due and to become due, during such foreclosure suit and to do all other things allowed under applicable law.

(e) Mortgagee shall, at its option, have the right, acting through its agents or attorneys, either with or without process of law, forcibly or otherwise, to enter upon and take possession of the Mortgaged Property, expel and remove any persons, goods, or chattels occupying or upon the same, to collect or receive all the rents, issues and profits thereof and to manage and control the same, and to lease the same or any part hereof, from time to time, and after deducting all reasonable attorneys' fees and expenses, and all reasonable expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income upon the Liabilities or other sums secured hereby or upon any deficiency decree entered in any foreclosure proceedings.

(f) Mortgagee or its duly authorized agent shall have the right to enter upon the Mortgaged Property to inspect, appraise and/or conduct any environmental assessments of the Mortgaged Property which Mortgagee, in its sole discretion, deems necessary. All expenses incurred by Mortgagee in connection with any inspections, appraisals or environmental assessments done pursuant hereto shall be additional Liabilities secured hereby and shall become immediately due and payable without notice and shall bear interest at the Default Rate specified in the Note until paid to Mortgagee in full. Nothing contained in this **Section 17(f)** shall create an affirmative duty on the part of Mortgagee, or otherwise bind Mortgagee in any respect, to conduct any such inspection, appraisal or environmental assessment.

(g) If more than one property, lot or parcel is covered by this Mortgage, and if this Mortgage is foreclosed upon, or judgment is entered upon any of the Liabilities, or if Mortgagee exercises its power of sale, execution may be made upon or Mortgagee may exercise its power of sale against any one or more of the properties, lots or parcels and not upon the others, or upon all of such properties or parcels, either together or separately, and at different times or at the same time, and execution sales or sales by advertisement may likewise be conducted separately or concurrently, in each case at Mortgagee's election.

(h) In the event of a foreclosure of this Mortgage, the Liabilities then due the Mortgagee shall not be merged into any decree of foreclosure entered by the court, and Mortgagee may concurrently or subsequently seek to foreclose one or more mortgages which also secure said Liabilities.

## 18. **Foreclosure.**

In any foreclosure of this Mortgage by action, or any sale of the Mortgaged Property by advertisement, there shall be allowed, and included in the decree for sale in the event of a foreclosure by action, to be paid out of the rents or the proceeds of such foreclosure proceeding or sale the following:

(a) all of the Liabilities and other sums secured hereby which then remain unpaid;

(b) all other items advanced or paid by Mortgagee pursuant to the Loan Agreement, this Mortgage, the Assignment or the Environmental Indemnity, with interest thereon at the Default Rate specified in the Note from the date of advancement; and

(c) all court costs, attorneys' and paralegals' fees and expenses, appraiser's fees, advertising costs, notice expenses, expenditures for documentary and expert evidence, stenographer's charges, publication costs, and costs, which may be estimated as to items to be expended after entry of the decree, of procuring all abstracts of title, title searches and examinations, title guarantees, title insurance policies, Torrens certificates and similar data with respect to title which Mortgagee may deem necessary. All such expense shall become additional Liabilities secured hereby and immediately due and payable, with interest thereon at the Default

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Rate specified in the Note, when paid or incurred by Mortgagee in connection with any proceedings, including but not limited to probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage or any indebtedness hereby secured or in connection with the preparations for the commencement of any suit for foreclosure, whether or not actually commenced, or sale by advertisement. The proceeds of any sale, whether through a foreclosure proceeding or Mortgagee's exercise of the power of sale, shall be distributed and applied to the items described in (a), (b) and (c) of this paragraph as Mortgagee may in its sole discretion determine, and any surplus of the proceeds of such sale shall be paid to Mortgagor.

## 19. **Rights Cumulative.**

Each remedy or right of Mortgagee shall not be exclusive of, but shall be in addition to, every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise of or omission to exercise any remedy or right accruing on any default shall constitute a waiver of default or constitute acquiescence therein, nor shall it affect any subsequent default of the same or different nature.

## 20. **Execution of Additional Documents.**

Mortgagor agrees that, upon request of Mortgagee from time to time, it will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage.

## 21. **WAIVER OF RIGHT OF REDEMPTION.**

MORTGAGOR REPRESENTS THAT IT HAS BEEN AUTHORIZED TO, AND MORTGAGOR DOES HEREBY, WAIVE, TO THE FULL EXTENT PERMITTED UNDER LAW, ANY AND ALL STATUTORY OR EQUITABLE RIGHTS OF REDEMPTION, FOR REINSTATEMENT OR ANY OTHER RIGHT UNDER ANY "MORATORIUM LAW" ON BEHALF OF MORTGAGOR AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PROPERTY SUBSEQUENT TO THE DATE HEREOF.

## 22. **Representation of Title.**

At the time of the delivery of this Mortgage, the Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Property which constitutes real property and owns good title to the portion of the Mortgaged Property which constitutes personal property and has good right, full power and lawful authority to convey and mortgage and grant a security interest in the same, in the manner and form aforesaid; that the same is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever (except as may be agreed to in advance by Mortgagee), and that Mortgagor shall and will forever defend the title to the Mortgaged Property against the claims of all persons whatsoever.

## 23. **Future Advances.**

This Mortgage is given to secure payment of the Note, whether the entire amount thereof shall have been advanced to Mortgagor at the date hereof, or at a later date, or not at all, and to secure the payment and performance of all other liabilities and obligations of Mortgagor under the Note or under any other loan documents made in connection with the Note or this Mortgage and any other amount or amounts that may be added to the indebtedness secured hereby under the terms of this Mortgage, all of which indebtedness being equally secured with and having the same priority as any amounts advanced at the date hereof. It is agreed that any future advances made by Mortgagee to or for the benefit of Mortgagor from time to time under this Mortgage or other aforesaid loan documents and whether or not such advances are obligatory or are made at the option of Mortgagee, or otherwise,

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made at any time from the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and have the same priority as all amounts, if any, advanced as of the date hereof and be subject to all of the terms and provisions of this Mortgage; provided, however, that the aggregate amount of the indebtedness secured hereby together with all such additional sums advanced shall not exceed two hundred percent (200%) of the stated principal amount of the Note.

## 24. **Non-Marshalling Provision.**

Mortgagor hereby agrees that Mortgagee shall have no obligation to marshal any collateral which secures the Liabilities, and it shall require any other of its creditors to waive any such marshalling obligation.

## 25. **Miscellaneous.**

(a) Mortgagor agrees that, without affecting the liability of any person for payment of the Liabilities or affecting the lien of this Mortgage upon the Mortgaged Property or any part thereof (other than persons or property explicitly released as a result of the exercise by Mortgagee of its rights and privileges hereunder), Mortgagee may at any time and from time to time, on request of the Mortgagor, without notice to any person liable for payment of any Liabilities secured hereby, extend the time, or agree to alter the terms of payment of such Liabilities.

(b) Mortgagor certifies and agrees that the proceeds of the Note will be used for proper business purposes, and consistently with the terms of the Loan Agreement and all applicable laws and statutes.

(c) Mortgagor agrees that this Mortgage is to be construed and governed by the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

(d) Upon full payment of all sums secured hereby or upon application on the Liabilities of the proceeds of any sale of the Property in accordance with the provisions of this Mortgage, at the time and in the manner provided, this conveyance shall be null and void and, upon demand therefore following such payment, a satisfaction of mortgage shall be provided by Mortgagee to Mortgagor.

(e) This Mortgage shall be binding upon the Mortgagor and upon the successors, assigns and vendees of the Mortgagor and shall inure to the benefit of the Mortgagee's successors and assigns. All references herein to the Mortgagor and to the Mortgagee shall be deemed to include their successors and assigns. Mortgagor's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for Mortgagor. Further, the term "Note" as used herein shall also include any note executed in renewal, substitution, amendment or replacement thereof.

(f) Time is of the essence of this Mortgage, and any other document or instrument evidencing or securing the Liabilities.

(g) Notices and other communications provided for in this Mortgage shall be in writing and shall be delivered personally, sent via facsimile, mailed, by certified or registered mail, postage prepaid or delivered by overnight courier addressed:

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**If to the Mortgagee:**

CIB Bank  
20527 South LaGrange Road  
Frankfort, IL 60423  
Attention: Daniel J. Regan and Derrick Mars  
Facsimile: (815) 464-4906

**With a copy to:**

Hopkins & Sutter  
Three First National Plaza  
Suite 4100  
Chicago, IL 60602  
Attention: Wayne F. Osoba  
Facsimile: (312) 558-6538

**If to the Mortgagor:**

720-726 Randolph Associates LLC  
3000 West Dundee Avenue, Suite 407  
Northbrook, Illinois 60062  
Attention: Jordan H. Kaiser  
Facsimile: (847) 656-8745

**With a copy to:**

720-726 Randolph Associates, LLC  
3000 W. Dundee Road, Suite 407  
Northbrook, IL 60062  
Attention: Michael Vdovets  
Facsimile: (847) 656-8745

**And a copy to:**

Schwartz, Cooper, Greenberger, Krauss  
180 N. LaSalle Street, Suite 2700  
Chicago, IL 60601  
Attention: Michael S. Kurtzon  
Facsimile: (312) 782-8416

All notices and other communications given to any party hereto in accordance with the provisions of this Mortgage shall be deemed to have been given on the date of personal delivery, mailing or facsimile transmission and on the date one business day after delivery to an overnight courier, in each case addressed to such party as provided in this **Section 25(g)** or in accordance with the latest unrevoked direction from such party.

(h) No modification, waiver, estoppel, amendment, discharge or change of this Mortgage or any related instrument shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, estoppel, amendment, discharge or change is sought.

(i) TO INDUCE MORTGAGEE TO ACCEPT THIS MORTGAGE, MORTGAGOR IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS MORTGAGE SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS.

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MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE AND HEREBY WAIVES ANY OBJECTION IT MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING BROUGHT AGAINST MORTGAGOR BY MORTGAGEE IN ACCORDANCE WITH THIS PARAGRAPH.

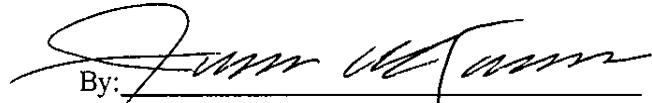
(j) MORTGAGOR AND MORTGAGEE IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS MORTGAGE OR ANY SUCH AGREEMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.


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IN WITNESS WHEREOF, this instrument is executed by Mortgagor as of the date first above written.

**720-726 RANDOLPH ASSOCIATES**, an Illinois limited liability company

By:   
Jordan H. Kaiser, Member

By:   
Michael Vdovets, Member

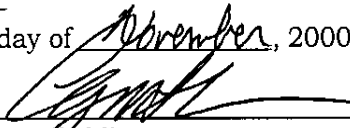
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STATE OF ILLINOIS            )  
  )  
  )        SS  
COUNTY OF COOK            )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Jordon H. Kaiser and Michael Vdovets personally known to me to be Members of 720-726 Randolph Associates LLC, an Illinois limited liability company, and personally known to be the same persons whose names are subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that they signed and delivered the said instrument in their capacity as such Members of such company as their free and voluntary act and deed and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

Given under my hand and official seal this 21<sup>st</sup> day of November, 2000.

  
\_\_\_\_\_  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 22, 23, 24, 25 AND THE WEST 1.16 FEET OF LOT 26 IN BLOCK 65 IN CANAL TRUSTEES' SUBDIVISION OF THE SOUTHWEST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Tax  
Identification Numbers: 17-09-319-006; 17-09-319-007; 17-09-319-008; 17-09-319-018

Property Address: 720 726 West Randolph Street  
Chicago, Illinois

Prepared By and After  
Recording Return To:

Hopkins & Sutter  
Three First National Plaza  
Suite 4300  
Chicago, Illinois 60602  
Attention: Caleb A. Jewell