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Cook County Recorder 87.50



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REPLACEMENT MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE made as of the 18<sup>th</sup> day of December, 2000 by and between SCI ILLINOIS SERVICES, INC., an Illinois corporation, whose address is c/o Service Corporation International, Inc., P.O. Box 130543, 1929 Allen Parkway, Houston, Texas 77219, Attention: Ray Gipson (herein referred to as "Mortgagor") and MATTHEW J. LAMB, whose address is 1308 North Astor, Chicago, Illinois 60610 (herein referred to as the "Mortgagee").

WITNESSETH:

00030621

THAT WHEREAS, on February 7, 1992 NEW YORK FUNERAL CHAPELS, INC. formerly known as WALTER B. COOKE, INC., a New York Corporation (herein referred to as "NYF") purchased from Mortgagee the real estate and improvements commonly known as 1035 North Dearborn Street, Chicago, Illinois 60610 ("the First Property") and that as part of the consideration for said purchase, NYF gave Mortgagee a Purchase Money Promissory Note dated February 7, 1992 in the original principal amount of \$1,810,000.00 which Note bears interest at 8 1/2% per annum and was payable in equal annual installments over a ten (10) year period (the foregoing Note, the Promissory Note Modification Agreement described below, and the Assumption of Liability and Note Amendment Agreement described below shall herein be collectively referred to as the "Note" and the Note shall at all times for the purposes hereof be deemed to be the Note as modified by the Promissory Note Modification Agreement and said Assumption of Liability and Note Amendment Agreement); and

WHEREAS, through the Purchase Money Mortgage and Security Agreement dated February 7, 1992 and recorded as Document No. 92082296, NYF as Mortgagor granted to Mortgagee a first mortgage on the First Property to secure the Note (herein referred to as the "Prior First Mortgage"); and

WHEREAS, by a Promissory Note Modification Agreement dated February 7, 1995 between NYF and Mortgagee the term of the Note was extended to February 7, 2010 and the amortization and payment schedule were changed (the Note shall at all times for the purposes

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hereof be deemed to be the Note as modified by said Promissory Note Modification Agreement), and by Amendment No. 1 Purchase Money Mortgage and Security Agreement dated February 7, 1995 and recorded as Document No. 9529302, the Prior First Mortgage was amended so that said Note term extension was reflected in said Prior First Mortgage; and

WHEREAS, NYF now desires to sell the First Property but prefers not to pay off the current outstanding principal balance of the Note which is presently \$1,318,440.89 even though said current outstanding balance is due and payable at Mortgagee's option upon the sale of the First Property; and

WHEREAS, Mortgagee prefers that the Note principal balance not be paid off because he is receiving a favorable interest rate on said Note and further because said Note payoff would result in very substantial capital gains taxation imposed on the Mortgagee; and

WHEREAS, Mortgagor will receive very substantial financial benefits from NYF's sale of the First Property because as part of said sale, the purchaser thereof has agreed to build a funeral home facility on the First Property for Mortgagor and to deed said facility to Mortgagor. Mortgagor will also receive additional financial benefit if Mortgagee does not exercise its due on sale rights because NYF which is a close affiliate of Mortgagor will then not be required to expend funds to pay off the Note. Therefore, because Mortgagor is receiving such substantial financial benefits from such sale and from such non-exercise of Mortgagee's due on sale rights, it is willing to grant this Mortgage and to assume liability for the payment of the indebtedness of the Note and for the performance of the terms and conditions of the Note pursuant to the Assumption of Liability and Note Amendment Agreement executed herewith, provided that Mortgagee herewith releases the Prior First Mortgage; and

WHEREAS, Mortgagee is herewith releasing the Prior First Mortgage along with all other security documents made in conjunction therewith; and

WHEREAS, by herewith executing the Assumption of Liability and Note Amendment Agreement, the Mortgagor has herewith become a Co-Debtor under the Note and is justly indebted to the Mortgagee in the current principal balance under said Note which balance is ONE MILLION THREE HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED FORTY DOLLARS AND EIGHTY-NINE CENTS (\$1,318,440.89) and Mortgagor has promised to pay said current principal balance and interest at the rate and in installments as provided in said Note with a final payment of the entire balance, if not sooner paid, to be due on the 7th day of February, 2010.

NOW THEREFORE, to secure the payment of said principal sum of money, said interest, and other indebtedness in accordance with the terms and provisions of the Note secured hereby, and to secure the performance of all covenants and agreements contained in this Mortgage, the Note and in the other security documents executed herewith, together with all reborrowings, future advances and readvances under the Note and modifications, extensions, substitutions, exchanges, refinancings and renewals of the Note (each of which reborrowings,

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future advances and readvances, modifications, extensions, substitutions, exchanges, refinancings and renewals shall enjoy the same priority as the initial advances), together with all fees, charges, interest and other amounts due thereon, including but not limited to any sums advanced by Mortgagee to protect the security of this Mortgage or discharge the obligations of Mortgagor herewith and to secure the payment of all amounts due or that may become due under any other security documents, with all fees, charges, interest and other amounts due thereon, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, and of the mutual covenants and recitals herein contained, and of the mutually valuable considerations given and received by the Mortgagor and Mortgagee, the receipt and sufficiency of each of which is hereby acknowledged, MORTGAGOR does by these presents MORTGAGE, GRANT, CONVEY, ASSIGN, and RELEASE unto the Mortgagee, his successors and assigns, with power of sale, forever, the following-described real estate and all of its estate, right, title and interest therein, situated, lying and being in the County of Cook and State of Illinois, to-wit:

**THE REAL ESTATE MORTGAGED HEREBY IS DESCRIBED ON  
EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF**

which, with the property hereinafter described, is referred to herein as the "Premises" or as the "Mortgaged Premises."

TOGETHER with all improvements, tenements, easements, hereditaments and appurtenances thereunto belonging and all rents, issues and profits thereof for so long and during all such times as the Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all partitions, attached floor coverings, now of hereafter therein or thereon, all elevators, and all fixtures, apparatus and equipment used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration, and ventilation, including (without restricting the foregoing) all fixtures, apparatus and equipment used in the operation of any business conducted on the Premises (other than trade fixtures, furnishings and furniture installed by space tenants therein), the structures or buildings, additions and improvements, and replacements thereof, erected upon the realty, including any on-site total energy systems providing electricity, heating and air conditioning, and all plant, equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures or buildings or of any structures or buildings heretofore or hereafter standing on the realty or on any part hereof, and

TOGETHER with (1) all of Mortgagor's rights further to encumber said Premises for debt, and (2) all of Mortgagor's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinated in any respect to any mortgage or deed of trust other than this Mortgage. Mortgagor hereby represents, as a special inducement to the Mortgagee to make the loan secured hereby, that as of the date hereof there are no encumbrances to secure debt junior to this Mortgage and covenanting that there are to be none as of the date when this Mortgage becomes of record, and

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TOGETHER with all rights, privileges, permits, licenses, easements, consents, tenements, hereditaments and appurtenances now or at any time hereafter belonging to or in any way appertaining to the Premises or to any property now or at any time hereafter comprising a part of the Mortgaged Premises; and all right, title and interest of Mortgagor, whether now or at any time hereafter existing, in all reversions and remainders to the Premises and such other property, and all rents, income, issues, to the Premises and such other property, and all leases, rents, income, issues, profits, royalties and revenues, accounts, contract rights and general intangibles derived from or belonging to such Premises and other property subject to this Mortgage or any part thereof, and

TOGETHER with, any and all proceeds of the conversion, whether voluntary or involuntary, of all or any part of the Premises and other property and interests subject to this Mortgage into cash or liquidated claims, including, without limitation by reason of specification, proceeds of insurance, condemnation awards and any and all other property of every name and nature from time to time be delivery or writing of any kind conveyed, mortgaged, pledged, assigned or transferred for additional security for this Mortgage, and all judgments and all additions to, replacements of, substitutions for and all proceeds (including without limitation goods, accounts, general intangibles, chattel paper, documents, instruments, money and the proceeds thereof) and the products of the Premises and any other property and interests subject to this Mortgage.

TO HAVE AND TO HOLD the Premises unto the Mortgagee, his successors and assigns, for ever for the purposes and uses herein set forth. If any improvements or property become a part of the Premises after the date hereof by location or installation on the Premises or in the building or buildings now or in the future situated thereon or otherwise, then this Mortgage shall immediately attach to and constitute a lien or security interest against such additional items without further act or deed of Mortgagor.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **CONDITION OF TITLE**, Mortgagor represents and warrants, to and covenants with Mortgagee, his successors and assigns that: (a) it is the owner of a fee simple interest in the Premises; (b) this Mortgage is and shall remain a valid and enforceable lien on the Premises to secure the performance of each and every obligation of the Mortgagor set forth in the Note and all other security documents; and (c) it will forever warrant and defend to Mortgagee, his successors and assigns, the Premises against all claims and demands whatsoever not specifically excepted in this Mortgage.

2. **MAINTENANCE, REPAIR AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC.**: Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep said premises in good condition and repair, without waste, and free from mechanics' liens or claims for lien; (c) pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit

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satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon said Premises; (e) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (f) make no material alterations in said Premises except as required by law or municipal ordinance, or except as hereinafter expressly permitted; (g) suffer or permit no change in the general nature of the occupancy of the Premises, without Mortgagee's prior written consent; (h) initiate or consent to any zoning reclassification, without Mortgagee's prior written consent; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note secured hereby; (j) make no structural modification, addition or demolition to the existing improvements, nor allow any tenant to so do, without the advance written consent of Mortgagee except for customary improvements, replacing equipment and repairs to the structure, or except as hereinafter expressly permitted.

3. **REPRESENTATIONS AND COVENANTS:** Mortgagor hereby represents and covenants to Mortgagee that:

3.1 **ORGANIZATION, POWER, ETC.:** Mortgagor (a) is a for profit corporation, duly organized, validly existing and in good standing under the laws of the State of Illinois and has complied with all conditions prerequisite to its doing business in the State of Illinois; (b) has the power and authority to own its properties and to carry on its business as now being conducted; (c) is qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; and (d) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

3.2 **VALIDITY OF LOAN INSTRUMENTS:** (a) the execution, delivery and performance by Mortgagor of the Note secured hereby, this Mortgage, and all additional security documents, and the borrowing evidenced by the Note secured hereby (1) are within the powers of Mortgagor; (2) have been duly authorized by all requisite actions; (3) have received all necessary governmental approvals and (4) do not violate any provision of any law, any order of any court or agency of government or any indenture, agreement or other instrument to which Mortgagor is a party, or by which it or any portion of the Mortgaged Premises is bound, or be in conflict with, result in breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of its property or assets, except as contemplated by the provisions of this Mortgage and any additional documents securing the Note secured hereby; and (b) the Note secured hereby, this Mortgage, and all additional documents securing the aforesaid Note, when executed and delivered by Mortgagor, will constitute the legal, valid and binding obligations of Mortgagor, and other obligers named therein, if any, in accordance with their respective terms.

3.3 **OTHER INFORMATION:** All other information, reports, papers, balance sheets, statements of profit and loss, and data given to Mortgagee, his agents, employees,

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representatives or counsel in respect of Mortgagor or others obligated under the terms of this Mortgage and all other documents securing the payment of the Note secured hereby are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee a true and accurate knowledge of the subject matter.

**3.4 LITIGATION:** There is not now pending against or affecting Mortgagor or others obligated under the terms of this Mortgage and all other documents securing the payment of the Note secured hereby, nor, to the knowledge of Mortgagor or others obligated under the terms of this Mortgage and all other documents securing the payment of the Note secured hereby is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency which if adversely determined would materially impair or affect the financial condition or operation of Mortgagor or the Mortgaged Premises.

**3.5 ASBESTOS:** Mortgagor shall not install nor permit to be installed in the Premises asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material, and with respect to any such material currently present in the Premises shall promptly either (a) remove any material which such regulations deem hazardous and require to be removed or (b) otherwise comply with such federal and state regulations, at Mortgagor's expense. If Mortgagor shall fail to so remove or otherwise comply, Mortgagee may declare this Mortgage to be in default and/or do whatever is necessary to eliminate said substances from the premises or otherwise comply with the applicable law, regulation, or otherwise comply with the applicable law, regulation, or order and the costs thereof shall be added to the indebtedness evidenced by the note and secured by the Mortgage. Mortgagor shall give Mortgagee and his agents and employees access to the premises to remove said asbestos or substances. Mortgagor shall defend, indemnify, and save Mortgagee harmless from all costs and expenses (including consequential damages) asserted or prove against Mortgagee by any party, as a result of the presence of said substances, and any removal or compliance with regulations. The foregoing indemnification shall be an ongoing recourse obligation of Mortgagor and shall survive repayment of the Note.

**3.6 LEGAL PROCEEDINGS AND REMEDIAL ACTIONS:** Mortgagor shall keep and maintain the Property in compliance with and shall not cause or permit the Premises to be in violation of any federal, state or local laws, ordinances, or regulations relating to the environment or industrial hygiene or to the environmental conditions on, under or about the Premises, including but not limited to, soil and groundwater conditions. Mortgagor shall not use, generate, manufacture, keep, store, or dispose of on, under, or about the Premises or transport to or from the Premises any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous materials," "toxic substances" under any applicable federal or state or local laws or regulations (collectively referred to hereinafter as "Hazardous Materials"). Mortgagor shall immediately advise, Mortgagee in writing of (i) any and all enforcement, clean up, remedial, removal, or other governmental or regulatory actions instituted, completed, or threatened pursuant to any applicable federal, state, or local laws, ordinances or regulations relating to any Hazardous

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Materials ("Hazardous Materials Laws") on the Premises; (ii) all claims made or threatened by any third party against Mortgagor or the Premises relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises any part thereof to be classified as "border-zone property," under the provisions of applicable law, or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability, or use of the Premises under any Hazardous Material Laws, Mortgagee shall have the right to join and participate in, as a party if he so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have his reasonable attorneys' fees in connection therewith paid by Mortgagor. Mortgagor shall be solely responsible for and indemnifies and holds harmless Mortgagee, his employees, agents, successors, and assigns, from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the use, generation, storage, presence, release, threatened release, discharge, disposal, removal, remediation, correction, or clean-up, of Hazardous Materials on, under, or about the Property, and/or the violation of any environmental laws, rules, regulations or ordinances, including without limitation (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, clean up, or detoxification of the Property and the preparation and implementation of any closure, remedial, or other required plans; and (c) all reasonable costs and expenses incurred by Mortgagee in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. Mortgagor shall be solely and completely responsible for all removals of Hazardous Materials and for all remediations, clean-ups, corrective actions, and settlements in regard to any and all Hazardous Material issues and shall pay for all of the foregoing and do all of the foregoing in compliance with all laws, rules, orders, regulations and governmental conditions and in compliance with all requirements of the Mortgagee. Notwithstanding the foregoing, without Mortgagee's prior written consent, which shall not be unreasonably withheld, Mortgagor shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Premises nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent, or compromise might, in Mortgagee's reasonable judgment, impair the value of Mortgagee's security hereunder; provided, however, that Mortgagee's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Premises either poses an immediate threat to the health, safety, or welfare of any individual or is of such a nature that an immediate remedial response is necessary, and it is not possible to obtain Mortgagee's consent before taking such action, providing that in such event Mortgagor shall notify Mortgagee as soon as practicable of any action so taken.

In the event Mortgagor fails to fully comply with any of the foregoing, after notice to Mortgagor and the expiration of the cure period permitted under applicable law, regulation, or order, Mortgagee may either declare this Mortgage to be in default or cause the Premises to be freed from the Hazardous Material with the costs of the removal added to the indebtedness evidenced by the Note and secured by this Mortgage (regardless of whether such indebtedness

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then increases the outstanding balance of the Note to an amount in excess of the face amount thereof). Mortgagee shall have the right at any time to conduct an environmental audit of the Premises, at Mortgagor's expense, and Mortgagor shall cooperate in the conduct of such environmental audit. Mortgagor shall give Mortgagee and his agents and his employees access to the Premises to remove Hazardous Material and Mortgagor agrees to indemnify and hold Mortgagee free and harmless from and against all loss, costs, damage, and expense (including attorneys' fees and costs) Mortgagee may sustain by reason of the assertion against Mortgagee by any party of any claim in connection with such Hazardous Material. The foregoing indemnification shall be an ongoing recourse obligation of Mortgagor and shall survive repayment of the Note.

4. **PAYMENT OF TAXES:** Mortgagor shall pay before the due date and before any penalty attaches all general taxes, and shall pay special charges, and other charges against the premises when due, and shall, furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.

5. **TAX DEPOSITS.** If Mortgagee so directs, Mortgagor covenants and agrees to deposit at such place as the Mortgagee may from time to time in writing appoint, and in the absence of such appointment, than at the office of Mortgagee commencing on the first day of the first month after the date hereof, and on the first day of each month thereafter until the indebtedness secured by this Mortgage is fully paid, and all obligations secured by this Mortgage are full discharged, a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on said premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Mortgagor, at the time of the first deposit under this paragraph, will also deposit with Mortgagee a reserve amount, based upon the taxes and assessments so ascertainable or so estimated by the Mortgagee, as the case may be, for taxes and assessments on said premises, on an accrual basis in order to pay the taxes as they become due along with the deposits being made hereunder. Such deposits are to be held without any allowance of interest and need not be kept separate and apart, and are to be used for the payment of taxes and assessments (general and special) on said premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable the Mortgagor shall, within ten (10) days after receipt of demand therefor, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) for any year, the excess shall be applied on subsequent deposit or deposits. Receipts showing and evidencing payment of all such taxes and assessments (general and special) shall be exhibited to Mortgagee within thirty (30) days after the due date for payment of same.

6. **MORTGAGEE'S INTEREST IN AND USE OF DEPOSITS:** In the event of a default in any of the provisions contained in this Mortgage or in the Note secured hereby, the Mortgagee may at his option, without being required to do so, apply any monies at the time on



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deposit pursuant to this Mortgage on any of Mortgagor's obligations herein or in the note contained, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits, shall be paid to Mortgagor or to the then owner or owners of the mortgaged premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held in trust to be irrevocably applied by the depositary for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor; provided, however, that neither the Mortgagee nor said depositary shall be liable for any failure to apply to the payment of taxes and assessments for payments of which they were deposited, accompanied by the bills for such taxes and assessments. All deposits made by or for the benefit of Mortgagee hereunder shall be held without allowance of interest and need not be kept separate and apart, but may be commingled with any funds then in control of Mortgagee.

7. **INSURANCE:** Mortgagor shall keep the Premises and all buildings and improvements now or hereafter situated on the premises insured against loss or damage by fire and extended coverage, malicious mischief and vandalism and such other hazards and losses and in such amounts as may reasonably be required by Mortgagee, but in any case for the full insurable value thereof, including, without limitation on the generality of the foregoing, war damage insurance whenever in the opinion of Mortgagee such protection is necessary. Mortgagor shall also provide and keep in effect plate glass and comprehensive public liability insurance with such limits for personal injury and death and property damage as Mortgagee may require, and will also keep in effect rent loss insurance in an adequate amount to cover principal and interest payments, real estate taxes and hazard insurance premiums for a period of not less than twelve (12) months, employer's liability and workmen's compensation insurance, in such amounts as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms, companies, and amounts satisfactory to Mortgagee, with standard mortgage loss payable clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced hereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver the original or certified complete copies of all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration. If any renewal policy is not delivered to Mortgagor thirty (30) days before the expiration of any existing policy or policies with evidence of premium paid Mortgagee may, but is not obligated, to obtain the required insurance on behalf of Mortgagor (or insurance in favor of Mortgagee alone) and pay the premiums thereon. Any monies so advanced shall be so much additional indebtedness secured hereby and shall become immediately due and payable with interest thereon, at the Default Rate as defined herein.

So long as any sum remains due hereunder or under the note secured hereby, Mortgagor covenants and agrees that it shall not place, or cause to be placed or issued, any separate casualty, fire, rent loss, liability, or war damage insurance from the insurance required to be maintained under the terms hereof, unless in each such instance the Mortgagee herein is, included therein as the payee under a standard mortgagee's loss payable clause. Mortgagor

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covenants to advise Mortgagee whenever any such separate insurance coverage is placed, issued or renewed, and agrees to deposit the original of all such policies with Mortgagee.

In the event of a foreclosure of this Mortgage, or in case of any transfer of title to the Mortgaged Premises in extinguishment of the debt secured hereby, all right, title and interest of Mortgagor to any insurance policy covering this mortgaged premises shall pass to the Mortgagee or transferees of the Mortgaged Premises.

**8. ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE:** A. In case of loss, the Mortgagee (or after entry of decree of foreclosure, purchaser at the sale; or the decree creditor as the case may be) is hereby authorized either (i) to settle and adjust any claim under such insurance policies without consent of Mortgagor, or (ii) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In either case Mortgagee is authorized to collect and receipt for any such insurance money. In the case of a loss, such insurance proceeds may, at the option of Mortgagee, either be applied in reduction of the indebtedness secured hereby, whether due or not, or be held by the Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on said premises. In the event Mortgagee elects to apply said insurance proceeds in reduction of the indebtedness secured hereby, all expenses and fees of collection shall first be deducted and paid to Mortgagee, and it is further covenanted and agreed that should the net insurance proceeds be insufficient to pay the then existing indebtedness secured hereby together with all accrued interest thereon, fees and charges, Mortgagee may, at his sole election, declare the entire unpaid balance of the debt secured hereby to be immediately due and payable, and the failure of the payment thereof shall be a default hereunder.

B. In the event Mortgagee elects to permit any such insurance proceeds to be applied to pay for the cost of rebuilding or restoration of the buildings and improvements on the Mortgaged Premises, such funds will be made available for disbursement by Mortgagee; provided however, that (i) should any insurance company have, in the opinion of Mortgagee, a defense against Mortgagor (but not against Mortgagee) to any claim for payment due to damage or destruction of the mortgaged premises or any part thereof by reason of fire or other casualty submitted by Mortgagee or any party on behalf of Mortgagee, or should such company raise any defense against Mortgagee (but not against Mortgagor) to such payment, or (ii) should the net proceeds of such insurance collected by Mortgagee together with any funds deposited by Mortgagor with Mortgagee be less than the estimated cost of the requisite work as determined by Mortgagee, which estimate shall include a reasonable contingency, then in either case Mortgagee may, at his option, whether or not Mortgagee has received funds from any insurance settlements, declare the unpaid balance of the debt secured hereby to be immediately due and payable, and Mortgagee may then treat the same as in the case of any other default hereunder. In the event such proceeds are applied toward restoration or rebuilding, the buildings and improvements shall be so restored or rebuilt as to be of at least equal value and substantially the same character as prior to such damage or destruction. Such proceeds shall be made available, from time to time, upon such reasonable conditions as are imposed by Mortgagee and upon the

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Mortgagee being furnished with satisfactory evidence of the architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments, including, insurance against mechanic's liens and/or a performance bond or bonds in form satisfactory to Mortgagee which shall be the sole or a dual obligee, and which bonds shall be written with such surety company or companies as may be satisfactory to Mortgagee. All plans and specifications for such rebuilding or restoration shall be presented to and approved by Mortgagee prior to the commencement of any such repair or rebuilding. Disbursement of such insurance proceeds shall not exceed ninety (90%) percent of the value of the work performed from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of the work free and clear of liens.

C. In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the building or improvements shall be used to pay restoring the building or improvements shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings and the balance if any shall be paid to the owner of the equity of redemption if he shall then be entitled to the same, or as the court may direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the Mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decreed creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then and in every such case, each successive redepton may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redepton. In the event of foreclosure sale, Mortgagee is hereby authorized without the consent of Mortgagor, to assign any and all insurance policies to the purchaser to be protected by any of the said insurance policies.

Anything in this Paragraph 8 to the contrary notwithstanding, it is an operating covenant hereof that in case the Premises have been submitted to the Condominium Property Act of the State of Illinois; and pursuant thereto in the event a Condominium Declaration covering the Premises has been duly executed and filed, then and in such case the proceeds of any insurance resulting from fire or other insured casualty shall be used to repair such damage, and restore the Premises, notwithstanding the state or condition of this Mortgage or the Note secured hereby; and with the further proviso that any excess insurance loss proceeds after payment of the full cost of the repair and restoration of the Premises shall be used for the purposes set forth in the Condominium Declaration. It is the express purpose and intention of this Mortgage and the express understanding of the parties hereto that so long as a Condominium Declaration covering the Premises is of record and in full force and effect, the negotiations for settlement, receipt of use and disposition of insurance loss proceeds shall be governed by the terms and provisions of the Condominium Declaration, the interest or estate of the Mortgagee notwithstanding.

Nothing contained in this Mortgage shall create any responsibility or obligation on the Mortgagee to collect any amount owing on any insurance policy to rebuild, repair and replace

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any damaged or destroyed portion of the Premises or any improvements thereon or to perform any act hereunder.

## 9. METHOD OF TAXATION:

9.1 STAMP TAX: If by the laws of the United States of America, or of any state, municipality or other governmental body having jurisdiction over the Mortgagor or its property any tax imposition or assessment is due or becomes due in respect of the issuance of the Note hereby secured, this Mortgage or upon the interest of Mortgagee in the Premises, or any tax, assessment or imposition is imposed upon the foregoing, the Mortgagor covenants and agrees to pay such tax, levy, assessment or imposition in the manner required by any such law and the failure to so pay same shall constitute a default hereunder and at the option of the Mortgagee all sums secured hereby shall be immediately due and payable. The Mortgagor further covenants to hold harmless and agrees to indemnify the Mortgagee, his successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note secured hereby.

9.2 CHANGE IN METHOD OF TAXATION: In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of land for the purpose of taxation any lien hereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder hereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due any payable sixty (60) days from the giving of such notice.

10. NO MERGER: It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, unless a contrary intent is manifested by Mortgagee, as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

11. PREPAYMENT PRIVILEGE: At such time as the Mortgagor is not in default either under the term of the Note secured hereby or under the terms of this Mortgage, the Mortgagor shall have the privilege of making prepayments on the principal of said Note (in addition to the required payments) solely in accordance with the terms and conditions set forth

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in said Note and subject to the payment of prepayment premium provided therein.

**12.1 ASSIGNMENT OF RENTS AND LEASES:** To further secure the indebtedness secured hereby, Mortgagor does hereby sell, assign and transfer unto the Mortgagee all the rents, issues and profits now due with respect to the Premises and does hereby sell, assign and transfer unto Mortgagee all Mortgagor's right, title and interest as lessor under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Mortgagor or his agents or beneficiaries under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all of such leases and agreements, and all the avails thereunder, unto the Mortgagee, and Mortgagor does hereby appoint irrevocably the Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Premises as provided in Paragraphs 17 and/or 18 hereof) to rent, lease or let all or any portion of the premises to any party or parties at such rents and upon such terms as said Mortgagee shall in his discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter exist on the premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Mortgagee would have upon taking possession pursuant to the provisions of Paragraphs 17 and/or 18 hereof.

12.2 The Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the said Premises has been or will be, without Mortgagee's consent, waived, released, reduced, discounted, or otherwise discharged or compromised by the Mortgagor. The Mortgagor waives any rights of set off against any person in possession of any portion of the Premises. Mortgagor agrees that it will not assign any lease or any rents or profits of the Premises except to Mortgagee or with the prior written consent of the Mortgagee.

12.3 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 premises by the Mortgagee pursuant to Paragraphs 17 and/or 18 hereof. 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.

12.4 The Mortgagor further agrees to assign and transfer to the Mortgagee all future leases upon all or any part of the premises hereinbefore described and to execute and deliver, at the request of the Mortgagee, all such further assurances and assignments in the Premises as the Mortgagee shall from time to time require.

12.5 Although it is the intention of the parties that the assignment contained in this Paragraph 12 shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that so long as Mortgagor is not in default

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hereunder, or under the secured hereby, or under the assignment of lease executed and delivered to Mortgagee concurrently herewith, it shall have the privilege of collecting and retaining the rents accruing under the leases assigned hereby, until such time as Mortgagee shall elect to collect such rents pursuant to the terms and provisions of this Mortgage.

12.6 The Mortgagor expressly covenants and agrees that if Mortgagor, as lessor under any lease for all or any part of the Mortgaged Premises, shall fail to perform and fulfill any term, covenant, condition or provision in said lease or fulfilled, at the times and in the manner in said lease or leases provided, or if Mortgagor shall suffer or permit to occur any breach or default under the provisions of any assignment of any lease or leases given as additional security for the payment of the indebtedness secured hereby, such breach or default shall constitute a default hereunder and entitle Mortgagee to all rights available to him in such event.

12.7 At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office wherein this Mortgage was registered or filed for record, of a unilateral declaration to that effect.

13. **ADDITIONAL RIGHTS OF MORTGAGEE:** The Mortgagor hereby covenants and agrees that:

13.1 If the payment of said indebtedness or any part thereof be extended or varied or if any part of the security be released, the lien and all provisions hereof shall continue in full force.

13.2 In the event the ownership of the Mortgaged Premises or any part thereof, becomes vested in a person or entity other than Mortgagor (without hereby implying Mortgagee's consent to any assignment transfer or conveyance of the mortgaged premises) the Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to said debt in the same manner as with Mortgagor without in any way vitiating or discharging Mortgagor's liability hereunder or upon the debt. No sale of the Mortgaged Premises, and no forbearance on the part of the Mortgagee, and no extension of the time for the payment of the debt hereby secured, given by the Mortgagee, shall operate to release, modify, change, or affect the original liability, if any, of Mortgagor, either in whole or in part.

13.3 The Mortgagee, at his sole option and without notice, (a) may release any part of the Mortgaged Premises, or any person liable for the debt, without in any way affecting the lien hereof upon any part of the Mortgaged Premises not expressly released; (b) may agree with any party obligated on the debt, or having any interest in the Mortgaged Premises, to extend the time for payment of any part or all of the debt; (c) may accept a renewal Note or notes therefor; (d) may take or release other or additional security for the indebtedness; (e) may consent to any

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plat, map or plan of the Premises; (f) may consent to the granting of any easement; (g) may join in any extension or subordination agreement; (h) may agree in writing with Mortgagee to modify the rate of interest or period of the amount of the monthly installments payable thereunder; or (i) may waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the indebtedness. Any such agreement shall not in any way extend the lien hereof as against the title of all parties having any interest in the mortgaged premises which interest is subject to this Mortgage.

13.4 This Mortgage is intended only as security for the obligations herein set forth. Notwithstanding anything to the contrary contained in this Mortgage, the Mortgagee shall have no obligation or liability under, or with respect to, or arising out of this Mortgage and shall not be required or obligated in any manner to perform or fulfill any of the obligations of the Mortgagor hereunder.

14.1 **MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS:** In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient. By way of illustration and not in limitation of the foregoing, Mortgagee may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any part of the Premises; complete construction; make repairs; collect rents; prosecute collection of any sums due with respect to the Premises; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Mortgaged Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at Default Rate as defined herein. In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee shall (as long as it acts in good faith) be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee, and no inaction of Mortgagee hereunder, shall ever be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. All sums paid by the Mortgagee for the purposes herein authorized, or authorized by any loan agreement executed in connection with this Mortgage or the indebtedness secured hereby and pursuant to this Mortgage and shall be secured by the Mortgage with the proviso that the aggregate amount of the indebtedness secured advances shall not exceed two hundred (200%) percent of the amount of the original indebtedness secured hereby.

14.2 **RELIANCE ON TAX BILLS:** Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien of title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any

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other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

15. **ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT:** If (a) default be made in the due and punctual payment of the Note secured hereby, or any installment due in accordance with the terms thereof, either of principal or interest or in the payment of any sum required to be paid by Mortgagor or the maker of said Note herein required or set forth in said Note or pursuant to the terms of any collateral or security agreement executed in connection with this Mortgage or the indebtedness secured hereby; or (b) the Mortgagor, or any beneficiary of the Mortgagor (if the Mortgagor is a trust), or any guarantor of the obligation secured hereby shall file a petition in voluntary bankruptcy or under Title II of the United States Code or any other similar law, statute or regulation, state or federal, whether now or hereafter provided; or (c) the Mortgagor or any beneficiary of the Mortgagor (if the Mortgagor is a trust) or any guarantor of the obligation secured hereby shall be appointed for the Mortgagor, such beneficiary or guarantor or for all of its (their) property or the major part thereof in any involuntary proceeding, or any court shall have taken jurisdiction of the property of the Mortgagor, any beneficiary of the Mortgagor (if the Mortgagor is a trust) or any guarantor of the obligation secured hereby or the major part thereof in any involuntary proceedings for the reorganization, dissolution, liquidation or winding up of the Mortgagor, such beneficiary or guarantor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days, or (d) the Mortgagor, any beneficiary of the Mortgagor (if the Mortgagor is a trust) or any guarantor of the indebtedness secured hereby shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall apply for or consent to the appointment of a receiver or trustee or liquidator of all its property or a significant part thereof; (e) the Mortgagor or any guarantor of the indebtedness secured hereby shall become insolvent or generally unable to pay its debts, or (f) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained, or contained in the Note, in any and all guarantees made in connection with this Mortgage and in any other loan, collateral or security agreement executed in connection with this Mortgage or the indebtedness secured hereby and required to be kept or performed or observed by the Mortgagor and the same shall continue for ten (10) days after written notice given by the Mortgagee to the Mortgagor; or (g) if any representation or warranty made by Mortgagor or others in, under or pursuant to the Note secured by this Mortgage, or any document further securing the obligations secured hereby shall prove to have been false or misleading in any material aspect as of the date on which such representation or warranty was made; or (h) if the holder of a Mortgage or of any other lien on the Mortgaged Premises (without hereby implying Mortgagee's consent to any such mortgage or other lien) institutes foreclosure proceedings or other proceedings for the enforcement of its remedies thereunder and the same remain undischarged or unbonded to Mortgagee's satisfaction for a period of ten (10) days, then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of the Mortgagee, become immediately due and payable, together with accrued interest thereon, without notice to Mortgagor.

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If while any insurance proceeds or condemnation awards are held by or for the Mortgagee to reimburse Mortgagor or any lessee for the costs of repair, rebuilding or restoration or building(s) or other improvement(s) on the premises, as set forth in Paragraph 8 and 21 hereof, the Mortgagee shall be or become entitled to accelerate the maturity of the indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for him in reduction of the indebtedness, and any excess held by it over the amount of the indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

16. **FORECLOSURE; EXPENSE OF LITIGATION:** When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof, and in the event of the default in the payment of any installment due under the Note secured hereby, the owner of such Note may accelerate the payment of same and may institute proceedings to foreclose this Mortgage for the entire amount then unpaid with respect to said Note. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays 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 such abstracts of title, title searches and examinations, title insurance policies Torrens certificates, and similar data and assurance with respect to title as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate as set forth herein and shall be secured by this Mortgage.

16.1 This Mortgage may be foreclosed once against all, or successfully against any portion or portions of the Premises, as the Mortgagee may elect. This Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by one or any foreclosure or by one or any sale, and may be foreclosed successively and in parts, until all of the Premises have been foreclosed against and sold.

16.2 Mortgagee may employ counsel for advice or other legal service at Mortgagee's discretion in connection with any dispute as to the obligations of Mortgagor hereunder, or as to the title of Mortgagee to the Mortgaged Premises pursuant to this Mortgage, or in any litigation to which Mortgagee may be a party which may affect the title to the Mortgaged Premises or the validity of the indebtedness hereby secured, and any attorneys' fees so incurred shall be added to and be a part of the debt hereby secured. Any costs and expenses incurred in connection with

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any other dispute or litigation affecting said debt or Mortgagee's title to the Mortgaged Premises, including reasonably estimated amounts to conclude the transaction, shall be added to and be a part of the indebtedness hereby secured. All such amounts shall be payable by Mortgagor to Mortgagee without formal demand, and if not paid, shall be included as a part of the mortgage debt and shall include interest at the Default Rate as set forth herein from the dates of their respective expenditures.

16.3 The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by said Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on said Note in the order of priority therein described; fourth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

16.4 After an event of default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the premises. The failure to join any tenant or tenants of the premises as party defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any time existing to the contrary notwithstanding.

16.5 Mortgagee may proceed to protect and enforce his rights by an action or actions at law or by a suit or suits in equity, either for the specific performance of any covenant or agreement contained herein, or for the foreclosure of this Mortgage, or for monetary damages, or for the enforcement of any other appropriate legal, statutory, or equitable remedy.

16.6 Mortgagee shall have all rights and remedies available to him at law, in equity, by statute, under this Mortgage and/or under the other documents given as security herewith in the event of a default or event of default under the Note, this Mortgage, or any other document given as security herewith. No remedy herein conferred upon or otherwise available to Mortgagee intended to be or shall be construed to be exclusive of any other remedy or remedies; but each and every such remedy 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. No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power, or shall be construed to be a waiver of any such default or event of default or an acquiescence therein.

17. **APPOINTMENT OF RECEIVER:** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for

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such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of any obligation secured hereby, including without limitation the following, in such order of application as the Mortgagee may elect: (i) amounts due upon the Note secured hereby; (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises; (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises; (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same; provided that such application is made prior to foreclosure sale; and (vi) the deficiency in case of a sale and a deficiency.

## 18. MORTGAGEE'S RIGHT OF POSSESSION IN CASE OF DEFAULT:

18.1 In any case in which under the provisions of this Mortgage the Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereon or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises or any part thereof personally, or by its agents or attorneys, as for condition broken, and Mortgagee in his discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of the premises, together with all documents, books, records, papers and accounts of the Mortgagor or then owner of the Premises relating thereto, and may exclude the Mortgagor, his agents or servants, wholly therefrom and may as attorney in fact or agent of the Mortgagor, or in his own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by his agents, contractors or nominees and with full power to use such measures, legal or equitable, as in his discretion or in the discretion of his successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to the Mortgagor, and with full power to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, to elect to disaffirm

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any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises, including completion of construction in progress, as to him may seem judicious, to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof, to employ watchmen to protect the Mortgaged Premises, to continue any and all outstanding contracts for the erection and completion of contracts and obligations wherever necessary in his own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Mortgagor, to receive all avails, rents, issues, profits and proceeds therefrom and to perform such other acts in connection with the management and operation of the Mortgaged Premises as Mortgagee, in his discretion, may deem proper.

18.2 The Mortgagee shall not be obligated to perform or discharge, nor does he hereby undertake to perform or discharge, any obligation, duty or liability under any leases, and the Mortgagor shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or demands whatsoever which may be asserted against him by reason of any alleged obligations or undertakings on his part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should the Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and the Mortgagor shall reimburse the Mortgagee therefor immediately upon demand.

18.3 **POWER OF SALE:** Without limiting any rights of Mortgagee provided elsewhere herein or by law, equity, or statute but by way of amplification, Mortgagee in his discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Premises, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in such manner and upon such notice as required by law. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers the property so sold, in the manner and form as provided by law, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that Mortgagee as said attorney-in-fact shall lawfully do by virtue hereof. All proceeds of any such sale or sales, remaining after payment of: (a) the costs and expenses of such sale or sales (including attorneys' fees of Mortgagee); (b) all other indebtedness arising under the provisions of this Mortgage; (c) all principal and interest and other amounts due on the indebtedness evidenced by the Note, including interest on overdue principal and interest at the default rate of interest provided for under the Note or any of the other documents given as security herewith, shall be paid to Mortgagor, its successors and assigns, or to whomever may be lawfully entitled to receive the same. Notwithstanding anything contained herein to the contrary, it is understood and agreed that Mortgagee may foreclose this Mortgage without declaring the whole indebtedness evidenced by the Note and intended to be secured hereby due; and if any foreclosure sale is made because of an Event of Default for less than the full amount

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which may become due under the Note, such sale may be made subject to the unmatured portion of the indebtedness secured by this Mortgage and such sale, if so made, shall not in any manner affect the unmatured portion of the indebtedness intended to be secured by this Mortgage but as to such unmatured portion of the debt to be secured, several sales may be made for any other portion of the indebtedness to be secured, whether matured at the time or subsequently occurring.

18.4 **ACCELERATED REDEMPTION**: If upon compliance with provisions of law, Mortgagee is permitted to accelerate the time of the sale of the Premises, then upon compliance with such provisions of law, Mortgagee at his opinion and his sole and absolute discretion, may accelerate the sale of the Premises as so permitted.

18.5 **WAIVER OF MARSHALLING**: Notwithstanding the existence of any other security interests in or liens on the Premises or on other property of Mortgagor or other parties held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Premises and such other property shall be subjected to the remedies provided by this Mortgage or otherwise. Mortgagee shall have the right to determine the order in which any and all portions of the indebtedness secured by this Mortgage are satisfied from the proceeds realized upon the exercise of the remedies provided in this Mortgage or otherwise. The Mortgagor, any party who consent to this Mortgage, and any party who now or hereafter acquires a security interest in or lien on the Premises and who has actual or constructive notice of this Mortgage, hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law, in equity or by this Mortgage or any other security document related hereto.

19. **APPLICATION OF INCOME RECEIVED BY MORTGAGEE**: The Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Paragraph 12 and Paragraph 18 hereof, shall have full power to use and apply the avails, rents, issues and profits of the premises to the payment of or on account of the following, in such order as the Mortgagee may determine: (a) to the payment of the operating expenses of the Premises including cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and his agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes and special assessments now due or which may hereafter become on the Premises; (c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, and of placing said property in such condition as will, in the judgment of the Mortgagee, make it readily rentable, saleable, or otherwise useable; (d) to the payment of any indebtedness secured hereby in the order of priority set forth in the Note or other document evidencing same or any deficiency which may result from any foreclosure sale.

20. **ACCESS BY MORTGAGEE**: Mortgagor will at all times deliver to the Mortgagee duplicate or certified copies of all leases, agreements and documents relating to the premises and

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shall permit access by the Mortgagee to its books and records, construction project reports, if any, tenant registers, insurance policies and other papers for examination and making copies and extracts thereof. The Mortgagee, his agents and designees shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

21. **CONDEMNATION:** Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the Mortgaged Premises taken or damaged under the power of eminent domain or by condemnation. The Mortgagor hereby empowers Mortgagee, at his election to settle, compromise and adjust jointly with Mortgagor any and all claims or rights arising under any condemnation or eminent domain proceedings relating to the Premises or any portion thereof. The Mortgagor shall so settle, compromise and adjust any such claims or rights in the event the Mortgagee does not elect to do so as provided above. Nothing contained in this Mortgage shall create any responsibility or obligation on the Mortgagee to collect any amount owing due to any condemnation or eminent domain proceeding or to rebuild, repair or replace any portion of the Premises or any improvements thereon or to perform any act hereunder. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or to require Mortgagor to restore or rebuild, in which event the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoring of buildings or improvements on the Premises, in accordance with plans and specifications to be submitted to and approved by Mortgagee. If the Mortgagor is obligated to restore or replace the damaged or destroyed building or improvements under the terms of any lease or leases which are or may be prior to the lien of this Mortgage and if such taking does not result in cancellation or termination of such lease, the award shall first be used to reimburse Mortgagor for the cost of rebuilding or restoring of buildings or improvements on the Premises, provided Mortgagor is not then in default under this Mortgage. In the event Mortgagor is required or authorized, by Mortgagee's election as aforesaid, to rebuild or restore, the proceeds of the award shall be paid out in the same manner as is provided in Paragraph 8 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration, Mortgagor shall pay such cost in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto.

22. **RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS:** Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness and other obligations secured hereby and upon payment of a reasonable fee to Mortgagee for preparation of any necessary instruments.

23. **NOTICES:** All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, forwarded by expedited messenger or overnight commercial carrier with evidence of delivery, or sent by registered, certified or regular mail to any party hereto at its address stated above or at such

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other address of which it shall have notified the party giving such notice in writing. Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice.

24. **WAIVER OF DEFENSE**: No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

25. **WAIVER OF STATUTORY RIGHTS**: Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. The Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its behalf and on behalf of each and every person, except decree or judgment creditors of the Mortgagor, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

26. **MAINTENANCE OF MORTGAGOR'S EXISTENCE**: So long as any part of the Note hereby secured remains unpaid, the Mortgagor shall maintain its existence and shall not merge into or consolidate with any other corporation, firm, joint venture or association; nor convey, transfer, lease or otherwise dispose of all or substantially all of its property, assets, stock or business except as hereinafter expressly provided.

27. **MORTGAGOR'S ADDITIONAL COVENANTS**: Mortgagor further covenants and agrees with Mortgagee, his successors and assigns as follows:

27.1 Mortgagor will fully comply with all of the terms, conditions and provisions of all leases on the Premises so that the same shall not become in default, and will do all that is needful to preserve all said leases in force. Except for taxes and assessments to be paid by Mortgagor pursuant to Paragraph 3 of this Mortgage, Mortgagor will not create or suffer or permit to be created, subsequent to the date of this Mortgage, any lien or encumbrance which may be or become superior to any lease affecting the Premises; and

27.2 No construction shall be commenced upon the land hereinbefore described or upon any adjoining land at any time owned or controlled by Mortgagor or by other business entities related to Mortgagor, unless the plans and specifications for such construction shall have been submitted to and approved in writing by Mortgagee to the end that such construction shall not, in the reasonable judgment of Mortgagee, entail prejudice to the loan evidenced by the Note and this Mortgage.

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27.3 In the event of the happening of any casualty, of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable) resulting in damage to or destruction of the Mortgaged Premises or any part thereof, Mortgagor will give notice thereof to Mortgagee, and will promptly, at Mortgagor's sole cost and expense (whether or not there are sufficient and available insurance proceeds) commence and diligently continue to restore, replace, repair or rebuild the Mortgaged Premises to be of at least equal value and substantially the same character and condition as prior to such casualty; provided, however, that if the Mortgagee has elected to use insurance loss proceeds to apply toward payment of the mortgage indebtedness as provided for in this Mortgage, the provisions of this Paragraph 27.3 shall not apply.

27.4 Mortgagor will not commit or permit any waste on the Mortgaged Premises and will keep the buildings, fences and other improvements now or hereafter erected on the Mortgaged Premises in sound condition and in good repair and free from mechanic's liens or other liens or claims for liens not expressly subordinate to the lien hereof, and will neither do nor permit to be done anything to the Mortgaged Premises that may impair the value thereof; and the Mortgagee shall have the right of entry upon the Mortgaged Premises at all reasonable times for the purpose of inspecting the same.

27.5 No building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or materially altered, without the prior written consent of the Mortgagee, except that the Mortgagor shall have the right to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete, provided that either (i) simultaneously with or prior to such removal any such equipment shall be replaced with other equipment of a value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrances, and by such removal and replacement the Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage, or (ii) any net cash proceeds received from such disposition shall be paid over promptly to the Mortgagee to be applied to the last installments due on the indebtedness secured, without any charge for prepayment.

27.6 The Mortgagor will pay all utility charges incurred in connection with the premises and all improvements thereon and maintain all utility services now or hereafter available for use at the Premises.

27.7 Mortgagor will at all time fully comply with and cause the Premises and the use and condition thereof, to fully comply with all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders, and decrees of any kind whatsoever that apply or relate thereto, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights, use, noise and pollution) which are applicable to the Mortgagor or the Premises.

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27.8 Mortgagor will, for the benefit of the Mortgagee, fully and promptly perform each obligation and satisfy each condition imposed on it under any contract relating to the Premises, or other agreement relating thereto, so that there will be no default thereunder and so that the persons (other than Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of Mortgagee; and Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such person to avoid such performance.

27.9 Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the indebtedness secured hereby and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the indebtedness secured hereby, this Mortgage and all other documents securing the indebtedness secured hereby and all assignments thereof.

27.10 Mortgagor shall not lease all or any portion of the Premises nor enter into any tenancies or other possessory arrangements for all or a portion of the Premises except with the prior express written consent of Mortgagee.

27.11 Mortgagor shall not allow changes in the use of the Premises during the pendency of this Mortgage.

27.12 Mortgagor covenants that the proceeds of the indebtedness secured hereby will not be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve System.

27.13 Whenever provisions is made herein for the approval, satisfaction or consent of Mortgagee, or that any matter be to Mortgagee's satisfaction, unless specifically stated to the contrary, such approval or consent shall be at Mortgagee's sole discretion.

## 28. USURY LAW, ETC.:

28.1 Mortgagor represents and agrees that the proceeds of the Note secured by this Mortgage will be used for the purpose specified in the Illinois Interest Act Section 15 ILCS 205/4 (or any replacement or amendment) and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said Section.

28.2 If from any circumstances whatever fulfillment of any provision of this Mortgage or the Note secured hereby at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by applicable usury statute or any other law, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, and paid according to the provisions of the Note, so that in no event shall any exaction be possible under this Mortgage or the Note that is in excess of the limit of such validity; but such obligation shall

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be fulfilled to the limit of such validity. In no event shall the Mortgagor, its successors or assigns, be bound to pay for the use, forbearance or detention of the money loaned and secured hereby interest of more than the legal limit, and the right to demand any such excess shall be and hereby is waived. The provisions of this paragraph shall control every other provision of this Mortgage and the Note secured hereby.

**29. BINDING ON MORTGAGEE'S SUCCESSORS AND ASSIGNS, GUARANTOR AND SUCCESSORS AND ASSIGNS OF GUARANTOR; GENDER:** This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor, the Guarantor, the successors, vendees and assigns and all persons claiming under or through Mortgagor and Guarantor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors, vendees and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby. Wherever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders.

**30. CAPTIONS:** The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**31. SEVERABILITY:** In the event any of the provisions contained in this Mortgage or in any documents secured hereby or in any collateral or security documents executed in connection herewith shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the obligations secured hereby or any other such document and same shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and therein. This Mortgage has been executed and delivered at Chicago, Illinois and shall be construed in accordance therewith and governed by the laws of the state where the premises are located. Mortgagor hereby submits itself to the jurisdiction of the State of Illinois and covenants, terms and conditions hereof and waives any and all personal rights to object to such jurisdiction for the purpose of litigation to enforce this Mortgage.

Without limiting the generality of the foregoing, in the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as amended from time to time (the "IMF Act"), then the IMF Act shall take precedence over such provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee is under the IMF Act in the absence of said provision, then Mortgagee shall be vested with the rights granted in the IMF Act to the fullest extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to, before or after any decree or judgment or foreclosure, shall be added to the indebtedness secured

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hereby or by the judgment of foreclosure.

32. **NO LIABILITY ON MORTGAGEE**: Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor, whether hereunder, under any of the leases affecting the Premises, under any contract relating to the premises or otherwise, and Mortgagor shall and does hereby agree to indemnify against and hold Mortgagee harmless of and from: any and all liability, loss or damage which Mortgagee may incur or with respect to any portion of the premises or under or by reason of his exercise of rights hereunder; and any and all claims and demands whatsoever which may be asserted against him by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any of the contracts, documents or instruments affecting any portion of the Mortgaged Premises or effecting any rights of the Mortgagor thereto. Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against Mortgagee in his exercise of the powers herein granted to him, and Mortgagor expressly waives and releases any such liability. Should Mortgagee incur any such liability, loss or damage under any of the leases affecting the premises or under or by reason hereof, or in the defense of any claims or demands, Mortgagor agrees to reimburse Mortgagee immediately upon demand for the full amount thereof including costs, expenses and attorneys' fees.

33. **MORTGAGOR NOT A JOINT VENTURER OR PARTNER**: Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor (if foregoing, Mortgagor is a trust). Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of his becoming a Mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the indebtedness secured hereby, or otherwise.

34. **DEFEASANCE CLAUSE**: If Mortgagor pays to Mortgagee said principal sum and all other sums payable to Mortgagee as are hereby secured, in accordance with the provisions of the Note and in the manner and at the times therein set forth, without deduction, fraud, or delay, then and from thenceforth this Mortgage, and the estate hereby granted, shall cease and become void, anything herein contained to the contrary notwithstanding.

35. **FLOOD INSURANCE**: If the Mortgaged Premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the Act), the Mortgagor will keep the Mortgaged Premises covered for the term of the Note by flood insurance up to the maximum limit of coverage available under the Act.

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36. **MORTGAGEE'S RIGHT TO EXERCISE REMEDIES:** The rights and remedies of Mortgagee as provided in the Note secured hereby, in this Mortgage, and in any other agreements further securing the obligations secured hereby or available under applicable law, shall be cumulative and concurrent and may be pursued separately, successfully or together against Mortgagor or against other obligors or against the Mortgaged Premises, or against any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. No delay or omission of Mortgagee to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such remedy given by this Mortgage to Mortgagee and any such right or power may be exercised from time to time as often as may be deemed expedient by Mortgagee. Nothing in this Mortgage or in the Note secured hereby shall affect the obligation of Mortgagor to pay the principal of, and interest on, said Note in the manner and at the time and place therein respectively expressed.

37. **INCORPORATION OF RIDERS, EXHIBITS AND ADDENDA:** All riders, exhibits and addenda attached to this Mortgage are by express and specific reference incorporated in and made a part of this Mortgage; and with the proviso that the covenants contained in each of said riders, exhibits and addenda, and the other things therein set forth shall have the same force and effect as any other covenant or thing herein expressed.

38. **SUBROGATION:** To the extent that Mortgagee, on or after the date hereof, pays any sum due under any provision or law or any instrument or document creating any lien prior or superior to the lien of this Mortgage, or Mortgagor or any other person pays any such sum with the proceeds of the loan secured hereby, Mortgagee shall have and be entitled to a lien on the Mortgaged Premises equal in priority to the lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the indebtedness secured hereby. Mortgagee shall be subrogated, notwithstanding his release of record, to the lien of all mortgages, trust deeds, superior titles, vendors' liens, liens, charges, encumbrances, rights and equities on the Mortgaged Premises, to the extent that any obligation under any thereof is directly or indirectly paid or discharged with proceeds of disbursements or advances under the Note secured hereby or any other agreements executed in connection with the indebtedness secured hereby.

39. **MORTGAGEE'S LIEN FOR CHARGES AND EXPENSES:** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceed disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses (with the exception of those relating to appraisals, and Mortgagee's attorney's fees) and all advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby.

40. **COOPERATIVE OWNERSHIP AND CONDOMINIUM:** So long as any balance remains due and owing under the Note secured hereby, Mortgagor agrees that it will not,

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without the written consent of the Mortgagee first having been obtained, permit, allow or cause any of the following events to occur, to-wit: (a) the conversion of the Mortgaged Premises to a cooperation form of ownership, wherein the tenants or occupants of the buildings on the premises participate in a scheme, plan or device to jointly own and operate the Mortgaged Premises and wherein the title to the premises is vested in a trust, corporation or other titleholding device for use and benefit of the cooperative entity or its participants therein; (b) the conversion of the Mortgaged Premises to a condominium form of ownership and in this connection to the Condominium Act of the state where the premises are located, and will not file (or cause to be filed) a Condominium Declaration pursuant to the provisions of said Act without Mortgagee's express written approval or consent of Mortgagee being first had and obtained, Mortgagee may declare the loan secured hereby to be in default, in consequence whereof the Mortgagee may foreclose this Mortgage or avail itself of such rights and remedies herein reserved or permitted by law as in such case made and provided.

41. **DEFAULT RATE:** The term "Default Rate" when used in this Mortgage shall be defined to mean an annual rate equal to twelve (12%) percent per annum.

42. **SECURITY AGREEMENT:** This Mortgage shall be deemed a Security Agreement as defined in the Illinois Uniform Commercial Code. This Mortgage creates a security interest in favor of Mortgagee in all machinery, apparatus, equipment fittings, fixtures and articles of personal property of the following type: all heating, lighting, laundry, incinerating and power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention apparatus, elevators, escalators, stairs, awnings, screens, storm cabinets, partitions, ducts and compressors, furniture, carpets and garage equipment, now or at any time hereafter affixed to, attached to, placed upon or used or usable in any way in connection with the use, enjoyment, occupancy or operation of the buildings or other improvements on the real estate described on Exhibit "A" attached hereto and by this reference incorporated herein, property including all personal property, fixtures and goods affecting property either referred to or described herein or in anyway connected with the use or enjoyment of the Premises. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and the hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Mortgaged Premises and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purpose and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee, (iii) any such item is referred to or reflected in any such Financing Statement so

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filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property mortgaged hereby, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect (1), (2) and (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal government, must be filed in the Commercial Code records.

Notwithstanding the aforesaid, the Mortgagor covenants and agrees that so long as any balance remains unpaid on the Note secured hereby, it will execute (or cause to be executed) and delivered to Mortgagee, such renewal certificates, affidavits, extension statements or other documentation in proper form, so as to keep perfected the lien created by any Security Agreement and Financing Statement given to Mortgagee by Mortgagor, and to keep and maintain the same in full force and effect until the entire principal indebtedness and all interest to accrue thereunder has been paid in full; with the proviso that the failure of the undersigned Mortgagor to so do shall constitute a default hereunder and under the Note secured hereby.

#### **43. PROHIBITION ON SALE OR FINANCING:**

43.1 Any sale, conveyance, assignment, pledge, hypothecation, encumbrance or other transfer of title to, or any interest in, or the placing of any lien upon the premises or any portion of any entity owning any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent and approval of the creditworthiness of the purchaser and the terms of the sale shall be an event of default hereunder.

43.2 For the purpose of, and without limitation the generality of, Paragraph 43.1, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the premises and therefore an event of default hereunder: (a) any sale, conveyance, assignment or other transfer of any general partnership interest in any limited partnership or general partnership (hereinafter called the "Partnership") which is the Mortgagor or the beneficiary of Mortgagor (if Mortgagor is a trust); (b) any grant of a security interest in any general partnership interest in the Partnership; (c) any sale, conveyance, assignment or other transfer of any share of stock of any corporation that is the Mortgagor or the beneficiary of Mortgagor (the "Corporation") or directly or indirectly controlling the Partnership or the Corporation which results in any material change in the identity of the individuals previously in control of the Partnership or the Corporation; (d) the grant of a security interest in any share of stock of any corporation that is the Mortgagor or the beneficiary of Mortgagor or directly or indirectly controlling the Partnership or the Corporation which could result in a material change in the identity of the individuals previously in control of the Partnership or the Corporation if the secured party holding such security interest would exercise its remedies; and (e) the

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assignment, transfer, pledge or grant of a security interest in the beneficial interest in Mortgagor.

43.3 It is understood and agreed that the indebtedness secured hereby was created solely due to the financial sophistication, creditworthiness, background and business sophistication of the Mortgagor (or in the event Mortgagor is a trust the beneficiary of Mortgagor) and Mortgagee continues to rely upon same as the means of maintaining the value of the premises. It is further understood and agreed that any secondary or junior financing placed upon the interests of the Mortgagor (or in the event the Mortgagor is a trust, the beneficial interest of the trust) may divert funds which would otherwise be used to pay the indebtedness secured hereby, and could result in acceleration and/or foreclosure by any such junior lienor. Any such action would force the Mortgagee to take measures, and incur expenses, to protect its security, and would detract from the value of the premises mortgaged hereby, and impair the rights of the Mortgagee granted hereunder.

Therefore so long as the undersigned Mortgagor owns the Premises, Mortgagor shall be permitted to place no secondary (junior) mortgage financing on the Premises.

43.4 Any consent by Mortgagee to, or any waiver of any event which is prohibited under this Paragraph 43 shall not constitute a consent to, or waiver of, any right, remedy or power of Mortgagee upon a subsequent event of default.

44. **FORBEARANCE BY MORTGAGEE NOT A WAIVER:** Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Mortgagee of payment of any sum secured by this Mortgage after the due date of such payment shall not be a waiver of Mortgagee's rights either to require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Mortgagee's receipt of any awards, proceeds or damages under the provisions hereof operate to cure or waive Mortgagor's default in payment of sums secured by this Mortgage.

45. **ESTOPPEL CERTIFICATE:** Mortgagor shall within ten (10) days of a written request from Mortgagee furnish Mortgagee with a written statement, duly acknowledged, setting forth the sums secured by this Mortgage and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Mortgage or the other Documents signed herewith.

46. **EXPENSES:** Mortgagor shall pay all reasonable fees and expenses incurred by Mortgagee at any time, including the reasonable fees of counsel, in connection with the preparation, issuance, maintenance and amendment of any other documents signed herewith and the administration, protection and enforcement of Mortgagee's rights under this Mortgage or any

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other collateral documents, including without limitation, the protection and enforcement of such rights in any bankruptcy, reorganization or insolvency proceeding involving Mortgagor.

47. **AMENDMENTS:** This Mortgage and any provision hereof may be changed, waived, discharged or terminated only in writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has executed this Mortgage and Security Agreement as of the day and year first above written.

ATTEST:

SCI ILLINOIS SERVICES, INC., an  
Illinois corporation

Judith M. Marshall

~~Assistant~~ Secretary  
Judith M. Marshall

BY Curtis G. Briggs

Vice President  
Curtis G. Briggs

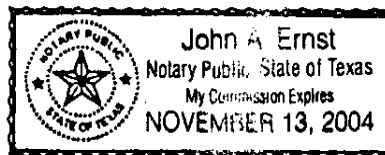
DATED: December 18, 2000

STATE OF ILLINOIS     )  
  )  
  )     SS  
COUNTY OF COOK     )

I, John A. Ernst, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Curtis G. Briggs as Vice President and Judith M. Marshall, as ~~Assistant~~ Secretary of SCI ILLINOIS SERVICES, INC., personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary of said corporation, respectively, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation for the uses and purposes therein set forth; and said Secretary did then and there acknowledge that he, as custodian of the corporate seal of said Corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 18 day of December, 2000.

John A. Ernst  
Notary Public



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THIS DOCUMENT WAS PREPARED BY AND AFTER RECORDING MAIL TO:  
CHARLES B. FRIEDMAN  
39 SOUTH LASALLE STREET-SUITE 808  
CHICAGO, ILLINOIS 60603

ADDRESS: 4701-4733 West 103rd Street, Oak Lawn, Illinois 60453

P.I.N.'S:	24-15-101-011	24-15-101-025
	24-15-101-012	24-15-101-026
	24-15-101-013	24-15-101-027
	24-15-101-014	24-15-101-028
	24-15-101-015	24-15-101-029
	24-15-101-016	24-15-101-039

Property of Cook County Clerk's Office

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## EXHIBIT A - LEGAL DESCRIPTION

Lots 1 to 16 both inclusive and Lots 34 to 38 both inclusive and together with the 20 foot vacated alley lying South of Lots 1 to 10 also the 20 foot vacated alley lying East of Lots 11 to 15 and West of Lots 34 to 38 also the West 1/2 of the vacated alley lying East of the adjoining Lot 16, all in Block 3 in Cicero Gardens, a subdivision of the Northwest 1/4 of the Northwest 1/4 of Section 15, Township 37 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Pin numbers: 24-15-101-011; 24-15-101-012; 24-15-101-013;  
24-15-101-014; 24-15-101-015; 24-15-101-016;  
24-15-101-025; 24-15-101-026; 24-15-101-027;  
24-15-101-028; 24-15-101-029; 24-15-101-039.

Common address: 4701-4733 West 103rd Street  
Oak Lawn, Illinois 60453

Property of Cook County Clerk's Office

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