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Cook County Recorder 77.50

MORTGAGE AND SECURITY AGREEMENT

This instrument prepared by the below-named attorney, in consultation with attorneys admitted to practice in the State of Illinois. After recording return to:



0010115000

Judith E. Gowing, Esq.
Dickinson Wright PLLC
38525 Woodward Avenue
Suite 2000
Bloomfield Hills, MI 48304

Property Address:
2200-2222 West 95th Street
Chicago, IL 60643

- PIN:
- 25-06-320-019
- 25-06-320-020
- 25-06-320-041
- 25-06-319-006
- 25-06-319-010
- 25-06-319-011

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MORTGAGE AND SECURITY AGREEMENT

from

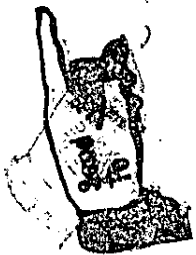
WHEN RECORDED RETURN TO:
FIRST AMERICAN TITLE
ATTN: EILEEN MELMAN
755 WEST BIG BEAVER ROAD SUITE 700
TROY MI 48084

DB BEVERLY, L.L.C.
20 North Wacker Drive
Chicago, Illinois 60606

to

WILMINGTON TRUST COMPANY, not in its individual capacity, but solely as Owner Trustee
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890

Dated as of February 2, 2001



02/02/2001

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MORTGAGE AND SECURITY AGREEMENT

MORTGAGE AND SECURITY AGREEMENT dated as of the 2nd day of February, 2001 (this "Mortgage"), made by DB BEVERLY, L.L.C., an Illinois limited liability company, whose address is 20 North Wacker Drive, Suite 1500, Chicago, Illinois 60606 (together with its permitted successors and assigns, the "Mortgagor"), in favor of WILMINGTON TRUST COMPANY, not in its individual capacity but solely as Owner Trustee under the Trust Agreement dated January 22, 2001, whose address is Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890 (together with its permitted successors and assigns, the "Mortgagee").

Preliminary Statement

Pursuant to a Project Loan Agreement dated as of the date hereof between the Mortgagor and the Mortgagee (as amended, supplemented or otherwise modified from time to time, the "Project Loan Agreement"), the Mortgagee has agreed to make a loan in the principal amount of \$3,903,926.05 (the "Project Loan") to Mortgagor, upon the terms and subject to the conditions set forth therein, to be evidenced by the promissory note of even date herewith in the principal sum of \$3,903,926.05 (the "Project Loan Note") issued by the Mortgagor under the Project Loan Agreement, which Project Loan is due and payable as provided in the Project Loan Agreement but in any event not later than March 1, 2016 (the "Maturity Date").

TO SECURE DUE AND PUNCTUAL PAYMENT OF THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST (INCLUDING INTEREST ACCRUING DURING THE PENDENCY OF ANY BANKRUPTCY, INSOLVENCY OR RECEIVERSHIP OR OTHER SIMILAR PROCEEDING, REGARDLESS OF WHETHER ALLOWED OR ALLOWABLE IN SUCH PROCEEDING) ON THE PROJECT LOAN WHEN AND AS DUE, WHETHER AT MATURITY, BY ACCELERATION AND THE DUE AND PUNCTUAL PERFORMANCE OF ALL COVENANTS, AGREEMENTS, OBLIGATIONS AND LIABILITIES OF THE MORTGAGOR UNDER OR PURSUANT TO THE PROJECT LOAN AGREEMENT, THIS MORTGAGE AND THE OTHER PROJECT LOAN DOCUMENTS (THE "OBLIGATIONS"), THE MORTGAGOR HEREBY GRANTS TO THE MORTGAGEE A LIEN UPON AND A SECURITY INTEREST IN, AND HEREBY MORTGAGES, WARRANTS, GRANTS, ASSIGNS, TRANSFERS AND SETS OVER TO THE MORTGAGEE:

(A) the parcel(s) of real property (the "Land") described on Exhibit A (together with the Land, Improvements, Appurtenant Rights, Fixtures and Equipment relating thereto being collectively referred to as the "Property");

(B) all the estate, right, title, claim or demand whatsoever of the Mortgagor, in possession or expectancy, in and to the Property or any part thereof;

(C) all buildings, structures, Fixtures, Equipment and other improvements of any kind or nature existing at any time and from time to time on or under the Land, together with any and all appurtenances to such buildings, structures or improvements, including sidewalks, utility pipes, conduits and lines, parking areas and roadways, and excluding any modifications or additions thereto (collectively, the "Improvements");

(D) all right, title and interest of the Mortgagor in and to all of the fixtures, furnishings and fittings of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof (together with, in each case, attachments, components, parts and accessories) currently owned or subsequently acquired by the Mortgagor and now or subsequently attached to, or contained in or used or usable in any way in connection with any operation or letting of the Property (all of the foregoing in this paragraph (D) being referred to as the "Fixtures");

(E) all right, title and interest of the Mortgagor in and to all of the fixtures, chattels, business machines, machinery, apparatus, equipment, furnishings, fittings and articles of personal property of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof (together with, in each case, attachments, components, parts and accessories) currently owned or subsequently acquired by the Mortgagor and now or subsequently attached to, or contained in or used or usable in any way in connection with any operation or letting of the Property, including without limitation, all screens, awnings, shades, blinds, curtains, draperies, artwork, carpets, rugs, storm doors and windows, furniture and furnishings, heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilating, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, refrigerators, display cases, elevators, loading and unloading equipment and systems, stoves, ranges, laundry equipment, cleaning systems (including window cleaning apparatus), telephones, communication systems (including satellite dishes and antennae), televisions, computers, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings and fixtures of every kind and description (all of the foregoing in this paragraph (E) being referred to as the "Equipment");

(F) all right, title and interest of the Mortgagor in and to all substitutes and replacements of, and all additions and improvements to, the Improvements and the Fixtures and Equipment, subsequently acquired by the Mortgagor or constructed, assembled or placed by the Mortgagor on the Land, immediately upon such acquisition, release, construction, assembling or placement, including, without limitation, any and all building materials whether stored at the Property or offsite, and, in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor;

(G) all right, title and interest of the Mortgagor in all general intangibles related to the operation of the Improvements now existing or hereafter arising;

(H) all right, title and interest of the Mortgagor in and to all unearned premiums under insurance policies now or subsequently obtained by the Lessee relating to the Property or the Fixtures and the Mortgagor's interest in and to all proceeds of any such insurance policies (including title insurance policies) including the right to collect and receive such proceeds; and all judgments, settlements, awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the present or any subsequent owner of the Property for the taking by eminent domain, condemnation or otherwise, of all or any part of the Property or any easement or other right therein;

(I) all right, title and interest of the Mortgagor in and to (i) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property or any part thereof and (ii) all plans and specifications relating to the Property;

(J) all rents, payments, purchase prices, receipts, revenues, issues and profits payable under any leases or subleases with respect to the Property, including, but not limited to, all right, title and interest of the Mortgagor in and to (i) the lease agreement dated the date hereof (the "Lease") between the Mortgagor, as lessor, Borders, Inc., as tenant (the "Tenant"), and (ii) all other leases, subleases (if, and to the extent that the Mortgagor has any rights, title or interest therein), including, without limitation, any assignments thereof (including, without limitation, all guarantees of any such leases, assignment of leases and subleases) and other agreements affecting the use, enjoyment or occupancy of the Property and the Improvements heretofore or hereafter entered into (the leases described in clause (ii) above are hereinafter referred to as the "Other Leases") and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Property and the Improvements (the "Rents") whether paid or accruing before or after the filing by or against the Mortgagor of any petition for relief under the Bankruptcy Code (as hereinafter defined) and all proceeds from the sale or other disposition of the Leases or the Other Leases and the right to receive and apply the Rents to the payment of the Obligations and the right to receive and apply any payments made to the Mortgagor by the Tenant in connection with any condemnation, including, without limitation, the Tenant's purchase of the Property, to payment of the Obligations;

(K) all appurtenances in respect of or otherwise relating to the Lease, including, but not limited to, all the estate and rights of the Mortgagor of, in and to (i) all modifications thereto, (ii) all of the Mortgagor's rights, if any, pertaining to deposits of the Tenant under the Lease (including lessee security deposits, if any), (iii) all other options, privileges and rights granted and demised to the Mortgagor under the Lease, (iv) all the right or privilege of the Mortgagor to terminate, cancel, abridge, surrender, merge, modify or amend the Lease and (v) any and all possessory rights of the Mortgagor and other rights and/or privileges of possession, including, without limitation, the Mortgagor right to elect to take possession of the Property and Improvements;

(L) any and all rights to make divisions or other partitions of the Land, subject to applicable zoning and platting requirements of the Illinois Plat Act, as it shall be amended from time to time;

(M) subject to the terms and provisions of this Mortgage, the right, in the name and on behalf of the Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Property or any part thereof;

(N) all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which the Mortgagor now has or may hereafter acquire in the Property or any part thereof, and all reserve accounts, accounts for the deposit, collection and/or disbursement of the Rents and other accounts now or hereafter in existence with respect to the Project Loan, including, without limitation, all interest reserve accounts and replacement reserve accounts provided for under any documentation entered into or delivered by the Mortgagor in connection with the Project Loan;

(O) all rights which the Mortgagor now has or may hereafter acquire, to be indemnified and/or held harmless from any liability, loss, damage, costs or expense (including, without limitation, attorneys' fees and disbursements) relating to the Property or any part thereof;

(P) all of the Mortgagor's claims and rights to damages and any other remedies in connection with or arising from the rejection of the Lease by the Tenant or any trustee, custodian or receiver pursuant to the U.S. Bankruptcy Code, as amended (the "Bankruptcy Code") in the event that there shall be filed by or against the Tenant any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereafter in effect; and

(Q) all proceeds, both cash and noncash, of the foregoing.

(All of the foregoing property and rights and interests now owned or held or subsequently acquired by the Mortgagor and described in the foregoing clauses (A) through (Q) are collectively referred to as the "Mortgaged Property").

TO HAVE AND TO HOLD the Mortgaged Property and the rights and privileges hereby mortgaged unto the Mortgagee, its successors and assigns forever for the uses and purposes set forth, until all of the Obligations are paid and/or performed; the Mortgagor hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois.

1. Definitions. Capitalized terms used but not otherwise defined in this Mortgage shall have the respective meanings specified in Appendix A to the Lease. An "Event of Default" shall mean an Event of Default under, and as defined in, the Project Loan Agreement.

2. Payment of Obligations. The Mortgagor shall pay the Obligations in accordance with the terms of the Project Loan Agreement and perform each term to be performed by it under the Project Loan Agreement. All the covenants, conditions and agreements contained in (a) the Project Loan Note, (b) the Project Loan Agreement and (c) all and any of the documents other than the Project Loan Note, the Project Loan Agreement or this Mortgage now or hereafter executed by the Mortgagor and/or others and by or in favor of the Mortgagee, which evidences, secures or guarantees all or any portion of the payments due under the Project Loan Note or otherwise is executed and/or delivered in connection with the Project Loan Note, the Project Loan Agreement and this Mortgage, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

3. Warranty of Title. The Mortgagor warrants that the Mortgagor has good title to the Mortgaged Property and has the right to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that, except for this Mortgage, the Mortgagor possesses an unencumbered fee estate in the Property and the Improvements subject to the Lease and that it owns such interests in the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for the Lease, the lien of this Mortgage and those exceptions set forth in the policy of title insurance issued to secure the lien of this Mortgage (collectively, the "Permitted Exceptions"). Subject to the Permitted Exceptions, the Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to the Mortgagee against the claims of all persons whomsoever.

4. Payment of Taxes, etc.

(a) All taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") shall be paid on or prior to the date the same become due and payable. The Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever (the "Prohibited Encumbrances") which may be or become a lien or charge against the Mortgaged Property, subject to 4(b) hereof. The Mortgagor shall furnish, or cause to be furnished, to the Mortgagee or its designee receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent, or at such other time as the Mortgagor shall receive or be entitled to receive such receipts from the Tenant under the Lease.

(b) Subject to the terms of the Lease (provided that no Lease Event of then exists in which case, without regard to the terms thereof) Mortgagor may (after prior written notice to Mortgagee) at its own expense, contest, or permit to be contested, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, the Other Charges or the Prohibited Encumbrances, provided that (i) no Event of Default has occurred and is continuing under the Project Loan Agreement, (ii) such proceeding shall suspend the collection of the Taxes,

the Other Charges or the Prohibited Encumbrances from the Mortgagor and from the Mortgaged Property, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Mortgagor is subject and shall not constitute a default thereunder if contested by the Mortgagor, or under the Lease if contested by the Tenant, (iv) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost during the pendency of such contest, and (v) the Mortgagee shall not be subjected to civil or criminal liability as a result of such contest or such delay in payment. So long as no Lease Event of Default has occurred and is continuing, and subject to the terms of the Lease, the Tenant may at the Tenant's own expense, commence or cause to be commenced any contest provided for in the first sentence of this Section 4(b) in accordance with the terms hereof.

5. Condemnation.

(a) The Mortgagor shall promptly give or shall cause the Tenant to promptly give the Mortgagee written notice of the actual or threatened commencement of any Condemnation and shall deliver to the Mortgagee copies of any and all papers served on or received by the Mortgagor in connection with such Condemnation. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise, the Mortgagor shall continue to pay the Obligations at the time and in the manner provided for its payment in the Project Loan Note, in this Mortgage and the other Project Loan Documents and the Obligations shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by the Mortgagee to the discharge of the Obligations. Subject to the terms of the Lease, the Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein and in the Project Loan Note. Subject to the terms of the Lease (provided that no Lease Event of Default has occurred and is continuing), the Mortgagor shall cause the award or payment made in any Condemnation, which is payable to the Mortgagor, to be paid directly to the Mortgagee.

(b) All condemnation awards or payments required to be applied to restoration and repair of the Mortgaged Property under the Lease shall be disbursed in accordance with the provisions of the Lease for such restoration and repair subject to compliance with the following conditions: (i) no Lease Event of Default then exists; (ii) the Mortgagor or the Tenant, as the case may be, proceeds promptly after the award or payment is made to restore or repair, and (iii) the restoration or repair is performed in compliance with the Lease and all applicable laws, rules, and regulations.

If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of such award or payment, the Mortgagee shall have the right, whether or not a deficiency judgment on the Project Loan Note shall have been sought, recovered or denied, and subject to the terms of the Lease (provided that no Lease Event of Default then exists), to receive said award or payment, or a portion thereof sufficient to pay the Obligations. The Mortgagor shall file and prosecute or cause to be filed and prosecuted its claim or claims for any such award or payment in connection with any Condemnation in good faith and with due diligence and, subject to the terms of the Lease (provided that no Lease Event of Default then exists), cause the

same to be paid over to the Mortgagee, and hereby irrevocably authorizes and empowers the Mortgagee, in the name of the Mortgagor or otherwise, to collect and receive any such award or payment and to file and prosecute such claim or claims, and although it is hereby expressly agreed that the same shall not be necessary in any event, the Mortgagor shall, upon demand of the Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to the Mortgagee, free and clear of any encumbrances of any kind or nature whatsoever.

6. Maintenance of Mortgaged Property. (a) The Mortgaged Property shall be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment or as otherwise permitted under the Lease) without the consent of the Mortgagee. The Mortgagor shall cause the Mortgaged Property to be in compliance with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. The Mortgagor shall cause any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 5 hereof to be promptly repaired, replaced or rebuilt, as provided in the Lease. Subject to Section 13.2 of the Lease (provided that no Lease Event of Default then exists), the Mortgagor shall not initiate, join in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a lawful nonconforming use, the Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of the Mortgagee unless the Tenant is otherwise permitted to do so under the Lease without the Mortgagor's consent.

(b) Subject to the Lessee's rights under the Lease (provided that no Lease Event of Default then exists), the Mortgagor agrees that the Mortgaged Property shall at all times strictly comply, to the extent applicable, with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Administration Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

(c) Notwithstanding any provisions set forth herein or in any other document regarding the Mortgagee's approval of alterations of the Mortgaged Property, the Mortgagor shall not alter or permit the Mortgaged Property to be altered in any manner which would increase the Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of the Mortgagee. The Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to the Mortgagee.

(d) The Mortgagor agrees to give prompt notice to the Mortgagee of the receipt by the Mortgagor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

7. Insurance. The provisions of Article XV of the Lease regarding Insurance Requirements and of Article XVI of the Lease regarding the use of insurance proceeds are incorporated herein by this reference and made a part hereof to the same extent and with the same force as if fully set forth herein. Mortgagor covenants and agrees to perform all obligations under such Sections upon Tenant's failure to perform such obligations.

8. Environmental. The provisions of Section 16.2 of the Lease regarding environmental matters are incorporated herein by this reference and made a part hereof to the same extent and with the same force as if fully set forth herein. Mortgagor covenants and agrees to perform all obligations under such Section 16.2 upon Tenant's failure to perform such obligations.

9. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Obligations from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or the Mortgagee's interest in the Mortgaged Property, the Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event the Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by the Mortgagor would be unlawful or taxable to the Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, the Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Obligations immediately due and payable.

10. No Credits on Account of the Obligations. The Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Taxes or the Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Obligations. In the event such claim, credit or deduction shall be required by law, the Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Obligations immediately due and payable, at par.

11. Documentary Stamps. If at any time the United States of America, any state or commonwealth thereof or any subdivision of any such state or commonwealth shall require revenue or other stamps to be affixed to the Project Loan Note or this Mortgage, or impose any other tax or charge on the same, the Mortgagor will pay for the same, with interest and penalties thereon, if any.

12. Excess Interest. It being the intention of Mortgagee and Mortgagor to comply with the laws of the State of Illinois with regard to the rate of interest charged hereunder, it is agreed that, notwithstanding any provision to the contrary in the Project Loan Note, this Mortgage, or any of the other Project Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection of all or any portion of the indebtedness evidenced by this Mortgage, the Project Loan Note, or any of the other Project Loan Documents. If any Excess Interest is provided for, or

is adjudicated to be provided for, in the Project Loan Note, this Mortgage, or any other Project Loan Documents, then in such event:

- (a) the provisions of this paragraph shall govern and control;
- (b) Mortgagor shall not be obligated to pay any Excess Interest;
- (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit against either the then outstanding principal balance due under the Project Loan Note, or the accrued and unpaid interest thereon, which interest shall not exceed the maximum amount permitted by law, or both; (ii) refunded to the payor thereof; or (iii) any combination of the foregoing;
- (d) the applicable interest rate or rates shall be automatically subject to reduction to the maximum lawful rate allowed to be contracted for in writing under the application of the usury laws of the aforesaid State, and the Project Loan Note, this Mortgage, and the other Project Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in such interest rate or rates; and
- (e) Mortgagor shall not have any action or remedy against Mortgagee for any damages whatsoever or any defense to enforcement of the Project Loan Note, the Mortgage, or any of the other Project Loan Documents arising out of the payment or collection of any Excess Interest.

13. Recording of Mortgage, etc. The Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of the Mortgagee in, the Mortgaged Property. The Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. The Mortgagor shall hold harmless and indemnify the Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

14. Right of Entry. Subject to the rights of the Tenant under the Lease (provided that no Lease Event of Default then exists), the Mortgagee and its agents shall have the right at any time upon reasonable notice and during normal business hours to enter and inspect the Mortgaged Property.

15. Other Covenants. At any time and from time to time, upon the written request of the Mortgagee, and at the sole expense of the Mortgagor, the Mortgagor will promptly and duly execute and deliver such further instruments and documents and take such further actions as the Mortgagee reasonably may request for the purposes of obtaining or preserving the full benefits of this Mortgage and of the rights and powers granted by this Mortgage.

16. Remedies.

(a) Upon the occurrence and during the continuation of any Event of Default, the Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against the Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee:

(i) declare the entire Obligations to be immediately due and payable;

(ii) upon such terms and after such notice thereof as may be required or permitted by applicable law, institute proceedings for the complete judicial foreclosure of this Mortgage;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Obligations then due and payable, subject to the continuing lien of this Mortgage for the balance of the Obligations not then due;

(iv) sell the Mortgaged Property at a public sale to the highest bidder for cash in lawful money of the United States payable at the time of sale, such sale to be conducted in accordance with applicable law free from and in bar of the equity of redemption and all other rights of redemption, statutory or otherwise, homestead, dower, elective share, rights of appraisal or valuation, and all other rights and exemptions of every kind, all of which are hereby expressly waived by the Mortgagor;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Project Loan Note;

(vi) subject to the Tenant's rights under the Lease (if still in effect) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of the Mortgagor, any beneficial owner of Mortgagor or of any person, firm or other entity liable for the payment of the Obligations;

(vii) the Mortgagee may, subject to the terms of the Lease (if still in effect and provided that no Lease Event of Default then exists), enter into or upon the Mortgaged Property, either personally or by its agents, servicers, nominees or attorneys and dispossess the Mortgagor and its agents and servants therefrom, and thereupon the Mortgagee may (1) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (2) complete any construction on the Mortgaged Property in such manner and form as the Mortgagee deems advisable; (3) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (4) exercise all rights and powers of the Mortgagor with respect to the Mortgaged Property, whether in the name of the Mortgagor or otherwise, including, without limitation, the right to cancel, enforce or modify the Lease and, if the Lease shall no longer be in effect, the right to make, cancel, enforce or modify new leases, obtain and evict lessees, and demand, sue for, collect and receive all earnings, revenues, rents, issues profits and other income of the Mortgaged Property and every part thereof; and (5) apply the receipts from the Mortgaged Property to the payment of the Obligations, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, assessments, insurance and Other Charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of the Mortgagee, its counsel, agents and employees; or

(viii) pursue such other rights and remedies as may be available at law and in equity.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by the Mortgagee to the payment of the Obligations in such priority and proportion as the Mortgagee in its discretion shall deem proper.

(c) To the extent permitted by applicable law, the Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Mortgagee without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this paragraph, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagee is hereby irrevocably appointed

the true and lawful attorney of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this paragraph shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

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

(f) No recovery of any judgment by Mortgagee and no levy of execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before. Notwithstanding the foregoing, upon satisfaction in full of the Obligations, the Mortgagee shall release of record the Mortgaged Property from the lien of this Mortgage.

17. Remedies Not Exclusive. The Mortgagee shall be entitled to enforce payment of the indebtedness and performance of the Obligations and to exercise all rights and powers under this Mortgage or under any of the Project Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, security agreement, pledge lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as the Mortgagee may determine in its absolute discretion. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Project Loan Documents to the Mortgagee or to which it may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Mortgagee. In no event shall the Mortgagee, in the exercise of the remedies provided in this Mortgage (including, without limitation, in connection with the assignment of Rents to Mortgagee, or the appointment of a receiver and the entry of such receiver on to all or any part of the Mortgaged Property), be deemed a "mortgagee in possession," and the Mortgagee shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

18. Performance by the Mortgagee of the Mortgagor's Obligations. If the Mortgagor fails to perform or comply with any of its agreements contained herein, the Mortgagee, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement. The expenses of the Mortgagee incurred in connection with actions undertaken as provided in this Section, together with interest thereon at a rate per annum equal to the default rate set forth in the Project Loan Note, from the date of payment by the Mortgagee to the date reimbursed by the Mortgagor, shall be payable by the Mortgagor to the Mortgagee on demand.

19. Duty of the Mortgagee. The Mortgagee's sole duty with respect to the custody, safekeeping and physical preservation of any Mortgaged Property in its possession, under Section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as the Mortgagee deals with similar property for its own account. Neither the Mortgagee nor any of its respective directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon any of the Mortgaged Property or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Mortgaged Property upon the request of the Mortgagor or any other Person or to take any other action whatsoever with regard to the Mortgaged Property or any part thereof.

20. Powers Coupled with an Interest. All powers, authorizations and agencies contained in this Mortgage are coupled with an interest and are irrevocable until this Mortgage is terminated and the lien created hereby is released.

21. Execution of Financing Statements. Pursuant to Section 9-402 of the Uniform Commercial Code, the Mortgagor authorizes the Mortgagee to file financing statements with respect to the Mortgaged Property without the signature of the Mortgagor in such form and in such filing offices as the Mortgagee reasonably determines appropriate to perfect the security interests of the Mortgagee under this Mortgage. A carbon, photograph or other reproduction of this Mortgage shall be sufficient as a financing statement for filing in any jurisdiction.

22. Grant of Security; Incorporation by Reference. In addition to constituting a mortgage lien on those portions of the Mortgaged Property classified as real property (including fixtures to the extent they are real property), this Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code or within the meaning of the common law with respect to those parts of the Mortgaged Property classified as personal property (including fixtures to the extent they are personal property). The Mortgagor hereby grants to the Mortgagee a security interest in and to the following property whether now owned or hereafter acquired (collectively, the "Secured Property") for the benefit of the Mortgagee to further secure the payment and performance of the Obligations:

- (a) Those parts of the Mortgaged Property classified as personal property (including (i) fixtures to the extent they are personal property and (ii) personal property and fixtures that are leased by the Mortgagor, but only to the extent the Mortgagor can

grant to the Mortgagee a security interest therein without breaching the terms of such lease);

(b) All general intangibles, contract rights, accounts and proceeds arising from all insurance policies required to be maintained by the Mortgagor and related to the Mortgaged Property hereunder;

(c) All proceeds of any judgment, award or settlement in any Condemnation in connection with the Mortgaged Property, together with all general intangibles, contract rights and accounts arising therefrom;

(d) All permits, consents and other governmental approvals in connection with the construction of the Improvements or the operation of the Mortgaged Property, to the extent any of the same may be assigned, transferred, pledged or subjected to a security interest;

(e) All plans and specifications, studies, tests and design materials relating to the design, construction, repair, alteration or leasing of the Mortgaged Property, to the extent any of the same may be assigned, transferred, pledged or subjected to a security interest; and

(f) All cash and non-cash proceeds of the above-mentioned items.

This Mortgage constitutes a security agreement, fixture filing and financing statement as those terms are used in the Uniform Commercial Code. For purposes of this Section 2.02, this Mortgage is to be filed and recorded in, among other places, the real estate records of Cook County and the following information is to be included: (1) the Mortgagor shall be deemed the "Debtor" with the address set forth for the Mortgagor on the first page of this Mortgage; (2) the Mortgagee shall be deemed to be the "Secured Party" with the address set forth for the Mortgagee on the first page of this Mortgage and shall have all of the rights of a secured party under the Uniform Commercial Code; (3) this Mortgage covers goods which are or are to become fixtures; (4) the name of the record owner of the land is the Debtor, and (5) the tax identification number of the Debtor is 36-4144433.

23. Notices. All notices, requests and demands to or upon the Mortgagee or the Mortgagor to be effective shall be in writing (or by telecopy or similar electronic transfer confirmed in writing) and shall be deemed to have been duly given or made (i) when delivered by hand or (ii) if given by mail, when deposited in the mails by certified mail, return receipt requested, or (iii) if by telecopy or similar electronic transfer, when sent and receipt has been confirmed, addressed as follows:

If to the Mortgagee: Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890
Attention: Corporate Trust Department
Fax: (302) 651-8882

If to the Mortgagor: DB Beverly, L.L.C.
20 North Wacker Drive
Suite 1500
Chicago, Illinois 60606
Attention: Patrick F. Daly

The Mortgagor and the Mortgagee may change their addresses and transmission numbers for notices by notice in the manner provided in this Section.

24. Severability. Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

25. Amendments in Writing; No Waiver; Cumulative Remedies. (a) None of the terms or provisions of this Mortgage may be waived, amended, supplemented, extended, changed, discharged, terminated or otherwise modified except by a written instrument executed by the Mortgagor and the Mortgagee.

(b) No failure to exercise, nor any delay in exercising, on the part of the Mortgagee, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Mortgagee of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Mortgagee would otherwise have on any future occasion.

(c) The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

26. Section Headings. The section headings used in this Mortgage are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

27. Successors and Assigns. This Mortgage shall run with the land and be binding upon the successors and assigns of the Mortgagor and shall inure to the benefit of the Mortgagee and its respective successors and assigns.

28. Mortgagor's Waiver of Rights. Except as otherwise set forth herein, to the fullest extent permitted by law, the Mortgagor waives the benefit of all laws now existing or that may subsequently be enacted providing for (i) any appraisal before sale of any portion of the Mortgaged Property, (ii) any extension of the time for the enforcement of the collection of the indebtedness or the creation or extension of a period of redemption from any sale made in collecting such debt and (iii) exemption of the Mortgaged Property from attachment, levy or sale under execution or exemption from civil process. Except as otherwise set forth herein, to the full extent the Mortgagor may do so, the Mortgagor agrees that the Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, exemption, extension or redemption, or requiring foreclosure of this Mortgage before exercising any other remedy granted hereunder and the Mortgagor, for the Mortgagor and its successors and assigns, and for any and all Persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created.

29. Multiple Security. If the Mortgaged Property shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, then to the fullest extent permitted by law, the Mortgagee may, at its election, commence or consolidate in a single foreclosure action all foreclosure proceedings against all such collateral securing the Obligations (including the Mortgaged Property), which action may be brought or consolidated in the courts of any county in which any of such collateral is located. The Mortgagor acknowledges that the right to maintain a consolidated foreclosure action is a specific inducement to the Mortgagee to extend the Obligations and the Mortgagor expressly and irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have. The Mortgagor further agrees that if the Mortgagee shall be prosecuting one or more foreclosure or other proceedings against a portion of the Mortgaged Property or against any collateral other than the Mortgaged Property, which collateral directly or indirectly secures the Obligations, or if the Mortgagee shall have obtained a judgment of foreclosure and sale or similar judgment against such collateral, then, whether or not such proceedings are being maintained or judgments were obtained in or outside the State in which the Mortgaged Property is located, the Mortgagee may commence or continue foreclosure proceedings and exercise its other remedies granted in this Mortgage against all or any part of the Mortgaged Property and the Mortgagor waives any objections to the commencement or continuation of a foreclosure of this Mortgage or exercise of any other remedies hereunder based on such other proceedings or judgments, and waives any right to seek to dismiss, stay, remove, transfer or consolidate either any action under this Mortgage or such other proceedings on such basis. Neither the commencement nor continuation of proceedings to foreclose this Mortgage nor the exercise of any other rights hereunder nor the recovery of any judgment by the Mortgagee in any such proceedings shall prejudice, limit or preclude the Mortgagee's right to commence or continue one or more foreclosure or other proceedings or obtain a judgment against any other collateral (either in or outside the State in which the Mortgaged Property is located) which directly or indirectly secures the Obligations, and the Mortgagor expressly waives any objections to the

commencement of, continuation of, or entry of a judgment in such other proceedings or exercise of any remedies in such proceedings based upon any action or judgment connected to this Mortgage, and the Mortgagor also waives any right to seek to dismiss, stay, remove, transfer or consolidate either such other proceedings or any action under this Mortgage on such basis. It is expressly understood and agreed that to the fullest extent permitted by law, the Mortgagee may, at its election, cause the sale of all collateral which is the subject of a single foreclosure action at either a single sale or at multiple sales conducted simultaneously and take such other measures as are appropriate in order to effect the agreement of the parties to dispose of and administer all collateral securing the Obligations (directly or indirectly) in the most economical and least time-consuming manner.

30. GOVERNING LAW. THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED.

31. Obligations Are Without Recourse. Anything to the contrary contained in this Mortgage, the Project Loan Agreement, the Project Loan Note or in any other Project Loan Document notwithstanding, neither the Mortgagor nor any partner, member, manager, officer, director or shareholder thereof, nor any officer, director, shareholder or partner of any member of the Mortgagor, or their respective successors or assigns (all such Persons being hereinafter referred to collectively as the "Exculpated Persons"), shall be personally liable in any respect for any representation, warranty, liability, indemnities or obligation hereunder or under the Project Loan Agreement, or in any Project Loan Document including the payment of the principal of, interest the Project Loan Note, or for monetary damages for the breach of performance of any of the covenants contained in the Project Loan Agreement, the Project Loan Note, this Mortgage or any other Project Loan Document. The Mortgagee agrees that, in the event it pursues any remedies available to it under the Project Loan Agreement, the Project Loan Note, the Assignment of Lease, this Mortgage or under any other Project Loan Document, the Mortgagee shall have no recourse against the Mortgagor, nor any Exculpated Person, for any deficiency, loss or claim for monetary damages or otherwise resulting therefrom and recourse shall be had solely and exclusively only against the Mortgaged Property; but nothing contained herein shall be taken to prevent recourse against or the enforcement of remedies against the Mortgaged Property in respect of any and all liabilities, obligations and undertakings contained in this Mortgage, the Project Loan Agreement, the Project Loan Note, the Assignment of Lease or in any other Project Loan Document. Notwithstanding the provisions of this paragraph, nothing in this Mortgage, the Assignment of Lease, the Project Loan Agreement, the Project Loan Note or any other Project Loan Document shall: (a) constitute a waiver, release or discharge or any indebtedness or obligation evidenced by the Project Loan Note or arising under this Mortgage or the Project Loan Agreement or secured by this Mortgage, but the same shall continue until paid or discharged; (b) relieve the Mortgagor from liability and responsibility for the following, Mortgagor hereby acknowledging its personal liability in each case therefor (but only to the extent of the damages arising by reason of): (i) active waste knowingly committed by the Mortgagor with respect to the Property; (ii) any fraud or misrepresentation on the part of the Mortgagor or any such Exculpated Person; (iii) any environmental matter affecting the Property which is introduced or caused by Mortgagor or a Beneficial Owner; (iv) the failure of Mortgagor to maintain its existence as a

special purpose, "bankruptcy remote" entity in good standing, subject to the cure rights set forth in Section 10.1(c) the Project Loan Agreement; (v) the failure of Mortgagor or any Beneficial Owner to comply with the provisions of Section 6 of the Project Loan Agreement; (vi) misappropriation or misapplication by the Mortgagor (i.e., application in a manner contrary to any of the Project Loan Documents) of any insurance proceeds or condemnation award paid or delivered to the Mortgagor by any Person other than the Mortgagee; or (vii) any rents or other income received by the Mortgagor from the Lessee that are not turned over to the Mortgagee in accordance with the Assignment of Lease; or (c) affect or in any way limit the Mortgagee's rights and remedies hereunder with respect to the rights and powers assigned under the Assignment of Lease or to obtain a judgment against the Mortgagor (provided that no deficiency judgment or other money judgment shall be enforced against the Mortgagor except to the extent of the Mortgagor's interest in the Property or to the extent the Mortgagor may be liable as otherwise contemplated in clause (b) of this Section).

Notwithstanding anything to the contrary in this Mortgage, the Project Loan Note, the Project Loan Agreement or any Project Loan Documents, the Mortgagee shall not be deemed to have waived any right which Mortgagee may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Obligations secured by this Mortgage or to require that all collateral shall continue to secure all of the Obligations owing to the Mortgagee.

32. Partial Release; Full Release. The Mortgagee may release, for such consideration or none, as it may require, any portion of the Mortgaged Property without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien, security interest and priority herein provided for the Mortgagee compared to any other lien holder or secured party.

33. Priority. On and prior to the Maturity Date, this Mortgage shall be subject and subordinate to the Lease which affects the Mortgaged Property and, following the Maturity Date, this Mortgage shall be senior to the Lease which affects the Property without any further act by any Person.

34. Miscellaneous. Except as provided in the Operative Agreements, the Mortgagee, with the express written consent of the Mortgagor, may at any time or from time to time renew or extend this Mortgage, or alter or modify the same in any way, or the Mortgagee may waive any of the terms, covenants or conditions hereof in whole or in part and may release any portion of the Mortgaged Property or any other security, and grant such extensions and indulgences in relation to the Obligations secured hereby as the Mortgagee may determine without the consent of any other person and without any obligation to give notice of any kind thereto and without in any manner affecting the priority of the lien hereof on any part of the Mortgaged Property.

35. Waste. Failure of the Mortgagor to pay any taxes or assessments assessed upon or levied against said Mortgaged Property on or prior to the due date or failure of the Mortgagor to procure and maintain insurance as herein provided or under the Project Loan Agreement, shall constitute waste entitling the Mortgagee herein to apply to the circuit court of said county or other court of competent jurisdiction for the appointment of a receiver of said the Mortgaged

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Property for the purpose of preventing such waste, which receiver, subject to order of the court, may collect the rents and income from such the Mortgaged Property and shall exercise such control over such property as to such Court may seem proper.

36. Assignment of Rents and Leases. (a) Mortgagor hereby presently, irrevocably, absolutely and unconditionally transfers, assigns and sets over unto Mortgagee all of its right, title and interest in and to all present and future leases, license agreements, concession agreements, lease termination agreements, and other occupancy agreements of any nature, oral or written, of the Property and of space in the Improvements, together with all modifications, supplements, extensions, renewals and replacements thereof now existing or hereafter made, and also together with the rights to sue for, collect and receive all rents, prepaid rents, additional rents, royalties, security deposits, damage payable upon default by tenant, or other sums in any of said leases provided to be paid to the lessor thereunder, profits, income, license fees, concession fees, lease termination fees and issues of the Mortgaged Property to be applied by Mortgagee in payment of the indebtedness evidenced by the Project Loan Note and also together with any and all guaranties of the obligations of the tenants thereunder and the rights of Mortgagor to receive, hold and apply all bonds and security in all of said leases provided to be furnished to the lessor thereunder, and also together with the rights of Mortgagor to enforce any and all of the agreements, terms, covenants and conditions in all of said leases provided and to give notices thereunder. Mortgagee may receive and collect the Rents personally or through a receiver upon the occurrence of an Event of Default for so long as such Event of Default shall exist, and during the pendency of any foreclosure proceeding and during any redemption period. Mortgagor agrees to consent to a receiver if this is believed necessary or desirable by Mortgagee to enforce its rights under this Section. The collection of Rents by Mortgagee shall in no way waive the right of Mortgagee to foreclose this Mortgage in the event of any Event of Default.

(b) The Mortgagor agrees with the Mortgagee that the Mortgagor:

(i) shall observe and perform all the obligations imposed upon the lessor under the Lease and shall not do or permit to be done anything (unless the Lease does not permit or prohibits such action or inaction) to impair the value of the Lease as a security for the Obligations;

(ii) shall promptly send copies to the Mortgagee of all notices of default which the Mortgagor shall send or receive thereunder;

(iii) subject to clause (vi) below, shall enforce all of the terms, covenants and conditions contained in the Lease upon the part of the Tenant, thereunder to be observed or performed, short of termination thereof provided, that the Mortgagor shall not pursue any remedies which could affect any payment due from the Tenant (including, but not limited to, the Rent), or which could otherwise adversely affect (1) the rights of the Mortgagor as lessor under the Lease, or (2) the value of the Mortgaged Property, or (3) the rights or interests of the Mortgagee under the Project Loan Documents;

(iv) shall not execute any other assignment of lessor's interest in the Lease as permitted under this Mortgage other than in connection with a transfer of the Mortgaged Property;

(v) shall not alter, modify or change the terms of the Lease without the prior consent of the Mortgagee, or cancel or terminate the Lease or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by the Lease or of any interest therein so as to effect a merger of the estates and rights of, or termination or diminution of the obligations of the Tenant thereunder;

(vi) shall not consent to, reject, approve or disapprove any action or inaction requested by the Tenant including, without limitation any assignment of or subletting under the Lease (*provided, however*, that the Mortgagee's consent to a subletting or assignment shall not be required if such subletting or assignment is in accordance with the terms of the Lease);

(vii) except for any cause of action for money damages for failure to pay Developer Yield or for specific performance for Lessee defaults under the Lease, shall not pursue any claims, rights or remedies under the Lease without the prior written consent of the Mortgagee;

(viii) upon request of the Mortgagee, shall request and use reasonable efforts to obtain an estoppel certificate from the Tenant in substantially the form required by the Lease or if not so required, in form and substance reasonably satisfactory to the Mortgagee; and

(ix) shall execute and deliver at the request of the Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as the Mortgagee shall from time to time reasonably require.

Notwithstanding the above, the Mortgagor agrees that following an Event of Default, the Mortgagee may take any action and exercise any remedy granted under the Project Loan Documents with respect to the Lease or the Mortgaged Property without the Mortgagor's prior approval or consent.

37. Intentionally Omitted.

38. Future Advances. All future advances under the Project Loan Note, this Mortgage and the other Project Loan Documents shall have the same priority as if the future advance was made on the date that this Mortgage was recorded. This Mortgage shall secure all indebtedness of Mortgagor, its successors and assigns under the Project Loan Note, this Mortgage or any of the Project Loan Documents, whenever incurred, such indebtedness to be due at the times provided in the Project Loan Note, in this Mortgage, or in any of the other Project Loan Documents. Notice is hereby given that the indebtedness secured hereby may increase as a result of any defaults hereunder by Mortgagor due to, for example, and without limitation, unpaid interest or late charges, unpaid taxes or insurance premiums which Mortgagee elects to advance, defaults

under leases that Mortgagee elects to cure, attorney fees or costs incurred in enforcing the Project Loan Documents, or other expenses incurred by Mortgagee in protecting the Mortgaged Property.

39. No Merger. In the event the holder of this Mortgage shall acquire the fee title to the Mortgaged Property or any part thereof or a leasehold interest, or any other interest in the Mortgaged Property, or any part thereof, by foreclosure or otherwise, the Mortgagor agrees that the title to the Mortgaged Property or such leasehold or any other interest in the Mortgaged Property or an part thereof, shall not merge with the interests conveyed and mortgaged hereunder as a result of such acquisition or for any other reason, but shall remain separate and distinct estates for all purposes; provided, however, that in such event the holder of this Mortgage may, at its option, elect to merge such interests.

40. Homestead. To the extent permissible under applicable law, the Mortgagor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Obligations, or any part hereof.

41. Waiver of Jury Trial, Submission to Jurisdiction. THE MORTGAGOR IRREVOCABLY WAIVES TRIAL BY JURY AND ANY OBJECTIONS, INCLUDING WITHOUT LIMITATION ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR IN THE FUTURE HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH JURISDICTION. All judicial actions, suits or proceedings brought against the Mortgagor and its property with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Agreement or any other Project Loan Document or for recognition or enforcement of any judgment rendered in any such proceedings may be brought in any trial or appellate state or federal court of competent jurisdiction in the City of Chicago, Illinois. By execution and delivery of this Mortgage, the Borrower accepts, generally and unconditionally, the non-exclusive jurisdiction of such courts and irrevocably waives, and agrees not to plead or claim, any objection that it may ever have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court. The Borrower irrevocably agrees that all process in any proceeding or any court arising out of or in connection with this Agreement or any of the other Project Loan Documents, may be effected by mailing to the Borrower a copy by registered or certified mail or any substantially similar form of mail, postage prepaid, to the Borrower at its address set forth in subsection 11.1 of the Project Loan Agreement or at such other address of which the Mortgagee shall have been notified in accordance with the terms of such subsection. Such service shall be effective five (5) days after such mailing. Such service will be effective and binding service in every respect. The Borrower shall not assert that such service did not constitute effective and binding service within the meaning of any applicable state or federal law, rule, regulation or the like. Nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

42. Illinois Specific Provisions. (a) Mortgagor covenants that the proceeds of the loan evidenced by the Project Loan Note and secured by this Mortgage will be used for the purposes

specified in 815 ILCS 205/4 (1992), as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph.

(b) If Mortgagor does not provide Mortgagee at the signing of this Mortgage with a copy of the "disclosure document" required by the Illinois Responsible Property Transfer Act of 1988 (765 ILCS 90/1 et seq.) as amended ("IRPTA"), Mortgagor represents and warrants that the disclosure and other requirements of IRPTA do not apply to this transaction.

(c) Pursuant to the provisions of 765 ILCS 5/31.5, the mere recordation of this Mortgage entitles Mortgagee immediately to collect and receive Rents upon the occurrence of an Event of Default, without first taking any acts of enforcement under applicable law, including providing notice to Mortgagor, filing foreclosure proceedings, or seeking the appointment of a receiver. Further, Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Mortgaged Property as permitted under Section 36. In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Mortgaged Property.

(d) The powers of a receiver set forth in 735 ILCS 5/15-1704 shall be added to all the powers of a receiver listed in the Mortgage subject to any express limitations on such powers in the Mortgage.

(e) (i) If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et seq. (the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

(ii) Without in any way limiting any of Mortgagee's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, the Mortgagee shall also have all rights, remedies, powers and authorities permitted to the holder of a mortgage under the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Mortgagee any rights, remedies, powers or authorities upon default of the Mortgagor which are more limited than what would be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall have what would be vested under the Act.

(iii) Without limitation, all expenses (including attorneys' fees and expenses) incurred by Mortgagee, to the extent reimbursable under 735 ILCS 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any judgment of foreclosure, shall be added to the indebtedness secured by this Mortgage and included in the judgment of foreclosure.

(f) THE MORTGAGOR, ON BEHALF OF ITSELF AND ALL PERSONS NOW OR HEREAFTER INTERESTED IN THE MORTGAGED PROPERTY, VOLUNTARILY AND KNOWINGLY HEREBY ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE EITHER AGRICULTURAL REAL ESTATE (AS DEFINED IN THE ACT), OR

RESIDENTIAL REAL ESTATE (AS DEFINED IN THE ACT). THE MORTGAGOR, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15-1602) OR REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15-1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

(g) Any property management agreement for or relating to all or any part of the Mortgaged Property, whether now in effect or entered into hereafter by Mortgagor or any agent of the Mortgagor, with a property manager shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Mortgage and the Loan Documents any and all mechanics' lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law (including, without limitation, 770 ILCS 60/0.01). Such property management agreement or a short form thereof including such subordination shall, at the agent's request, be recorded with the Office of the Recorder of Deeds for the county in which the Premises are located. Mortgagor's failure to cause any of the foregoing to occur shall constitute an Event of Default.

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EXHIBIT A

PARCEL 1:

THE SOUTH 50 FEET OF THE NORTH 150 FEET OF LOT 79 IN CHAMBER'S SUBDIVISION OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THEREFROM THAT PORTION OF SAID LOT 79, FALLING IN THE SCHOOLHOUSE LOT, AND EXCEPT ALSO THE WEST 33 FEET OF SAID LOT 79 AND EXCEPT ALSO THAT PORTION OF LOT 79 LYING SOUTH OF A LINE 54 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 6; CONVEYED TO THE CITY OF CHICAGO BY QUIT CLAIM DEED DATED OCTOBER 15, 1930 AND RECORDED NOVEMBER 10, 1930 AS DOCUMENT NUMBER 10786683 IN BOOK 28900, PAGE 276) ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 79 (EXCEPT THE NORTH 150 FEET) IN CHAMBER'S SUBDIVISION OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, (EXCEPT THEREFROM THAT PORTION OF SAID LOT 79 FALLING IN SCHOOL HOUSE LOT AND EXCEPTING ALSO THE WEST 33 FEET OF SAID LOT 79 AND EXCEPTING ALSO THAT PORTION OF LOT 79 LYING SOUTH OF A LINE 54 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 6 AND CONVEYED TO CITY OF CHICAGO BY QUIT CLAIM DEED DATED OCTOBER 15, 1930 AND RECORDED NOVEMBER 10, 1930 AS DOCUMENT 10786683 IN BOOK 28900 PAGE 276 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE NORTH 154 FEET OF THE SOUTH 208 FEET OF THE WEST 175 FEET OF THE EAST 208 FEET OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 14 (OTHERWISE DESCRIBED AS LOT 81 OF GEORGE A. CHAMBER'S SUBDIVISION OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 14) EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOT 41 (EXCEPT THE EAST 93 FEET OF SAID LOT 41) AND EXCEPT THAT PART OF SAID LOT 41 LYING SOUTH OF A LINE 54 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SECTION 6 IN GEORGE A. CHAMBER'S SUBDIVISION OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 14 IN COOK COUNTY, ILLINOIS.

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PARCEL 5:

EAST 93 FEET OF LOT 41 (EXCEPT EAST 33 FEET OF SAID LOT 41) AND EXCEPT THAT PART OF LOT 41 LYING SOUTH OF A LINE 54 FEET NORTH OF AND PARALLEL WITH SOUTH LINE OF SECTION 6 IN GEORGE A. CHAMBER'S SUBDIVISION OF WEST 1/2 OF SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 14 IN COOK COUNTY, ILLINOIS.

PARCEL 6:

THE WEST 1/2 OF THAT PART OF SOUTH BELL AVENUE VACATED BY CITY OF CHICAGO ORDINANCE ENACTED JANUARY 14, 1998, RECORDED APRIL 9, 1998 AS DOCUMENT NO. 98282079, BEING THE EAST 33 FEET OF THE PART OF LOT 41 LYING NORTH OF THE NORTH LINE OF WEST 95TH STREET AS WIDENED BY COOK COUNTY COURT JUDGMENT ENTERED JULY 9, 1941 AS GENERAL NUMBER 49438 IN GEORGE A. CHAMBERS SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 7:

THE EAST 1/2 OF THAT PART OF SOUTH BELL AVENUE VACATED BY CITY OF CHICAGO ORDINANCE ENACTED JANUARY 14, 1998 RECORDED APRIL 9, 1998 AS DOCUMENT NO. 98282079, BEING THE WEST 33 FEET OF LOT 79 LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 41 AND NORTH OF THE NORTH LINE OF WEST 95TH STREET AS WIDENED BY COOK COUNTY COURT JUDGMENT ENTERED JULY 9, 1941 AS GENERAL NUMBER 49438, IN GEORGE A. CHAMBERS' SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

ALSO BEING DESCRIBED AS:

PART OF LOTS 41, 79, AND 81, GEORGE A. CHAMBER'S SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE ADJACENT PORTION OF VACATED SOUTH BELL AVENUE, CITY OF CHICAGO, COOK COUNTY, ILLINOIS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 41; THENCE N 00°11'00" W, 21.00 FEET TO A X SET IN THE CONCRETE SIDEWALK AT THE NORTH LINE OF 95TH STREET AT THE POINT OF BEGINNING; THENCE N 00°11'00"W, 105.37 FEET TO A SET X IN THE CONCRETE SIDEWALK; THENCE N 89°59'43"E, 329.25 FEET TO A SET 3/4" STEEL REBAR; THENCE N 00°09'10"W, 26.47 FEET TO A SET 3/4" STEEL REBAR; THENCE N 89°59'25"E, 88.57 FEET TO A

SET 3/4" STEEL REBAR; THENCE N 00°09'29"W, 22.71 FEET TO A SET 3/4" STEEL REBAR; THENCE N 89°59'39"E, 174.53 FEET BEING PREVIOUSLY RECORDED AS 175.00 FEET TO A SET 3/4" STEEL REBAR; THENCE S 00°09'56"E, 154.61 FEET; THENCE N 90°00'00"W, 592.33 FEET TO A X SET IN THE CONCRETE SIDEWALK AT THE POINT OF BEGINNING.

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