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Cook County Recorder 101.00



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Property

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**MORTGAGE AND SECURITY AGREEMENT  
WITH ASSIGNMENT OF RENTS**

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THIS MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS (this "Mortgage") made as of March 7, 2001, by BRYN MAWR PLACE, L.L.C., an Illinois limited liability company (the "Mortgagor"), for the benefit of CIG INTERNATIONAL, LLC, a Delaware limited liability company (the "Mortgagee").

**WITNESSETH:**

WHEREAS, Mortgagor has concurrently herewith executed and delivered to Mortgagee a certain Mortgage Note in the principal amount of Two Million Six Hundred Thousand and 00/100 Dollars (\$2,600,000.00) (said Mortgage Note and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "Note"), the proceeds of which shall be used to acquire, develop and construct improvements upon the

**This Instrument Prepared By  
and After Recording Return to:**

Derek L. Cottier  
Schwartz Cooper Greenberger  
& Krauss Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601

**Property Identification Nos.:**

See Exhibit "A" hereto

**Address of Property:**

See Exhibit "A" hereto

**BOX 333-CTI**

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Premises as more fully described in the Loan Agreement dated of even date herewith by and between Mortgagor and Mortgagee (the "Loan Agreement") and payment thereof is secured by this Mortgage, financing statements and other security documents (this Mortgage, the Note, and Loan Agreement and such other foregoing documents are collectively hereinafter referred to as the "Loan Documents").

NOW, THEREFORE, to secure (i) the payment when and as due and payable of the principal of and interest on the Note or so much thereof as may be advanced from time to time, (ii) the payment of all other indebtedness which this Mortgage by its terms secures, and (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Loan Agreement, the Note and each of the other Loan Documents (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "Indebtedness Hereby Secured"), the Mortgagor does hereby GRANT, SELL, CONVEY, MORTGAGE and ASSIGN unto the Mortgagee, its successors and assigns, and does hereby grant to Mortgagee, its successors and assigns a security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI and VII below, all of same being collectively referred to herein as the "Mortgaged Property":

## GRANTING CLAUSE I:

THE LAND located in Cook County, Illinois which is legally described on Exhibit "A" attached hereto and made a part hereof (the "Land");

## GRANTING CLAUSE II:

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Mortgagor now or hereafter acquired in and to any of the foregoing including without limitation those certain improvements to be constructed on the Land pursuant to the Loan Agreement (the "Improvements");

## GRANTING CLAUSE III:

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Mortgagor, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Land or the

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Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights");

## GRANTING CLAUSE IV:

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Mortgagor and forming a part of, or used, usable or obtained for use in connection with the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (the "Fixtures"); it being agreed that all of said property owned by the Mortgagor and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Mortgage.

## GRANTING CLAUSE V:

TOGETHER WITH all existing and future goods and items of personal property located on the Land or in the Improvements which are now or in the future owned by the Mortgagor and used, usable or obtained for use in connection with the Land or the improvements or any present or future operation, occupancy, maintenance or leasing thereof, or any construction on or at the Land or the Improvements, but which are not effectively made Fixtures under Granting Clause Fourth; including, but not limited to, building materials, supplies, equipment and inventories located on the Premises or elsewhere and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto (the "Personal Property");

## GRANTING CLAUSE VI:

TOGETHER WITH all right, title and interest which the Mortgagor hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property (herein collectively referred to as the "Premises") or any portion thereof, whether written or oral (herein collectively referred to as the "Leases") and all right, title and interest which the Mortgagor now has

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or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Mortgagor any statutory rights;

## GRANTING CLAUSE VII:

TOGETHER WITH any and all Awards and Insurance Proceeds, as hereinafter respectively defined, or proceeds of any sale, option or contract to sell the Premises or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and the Mortgagor hereby authorizes, directs and empowers the Mortgagee, at its option, on the Mortgagor's behalf, or on behalf of the successors or assigns of the Mortgagor, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable attorneys' fees, costs and disbursements, to apply the Net Proceeds, as hereinafter defined, to the extent not utilized for the Restoration of the Mortgaged Property as provided in Section 10 or 11 hereof, upon the Indebtedness Hereby Secured as provided herein, notwithstanding the fact that the same may not then be due and payable or that the Indebtedness Hereby Secured is otherwise adequately secured; and the Mortgagor agrees to execute and deliver from time to time such further instruments as may be requested by the Mortgagee to confirm such assignment to the Mortgagee of any such proceeds;

## GRANTING CLAUSE VIII:

TOGETHER WITH all rights reserved to or granted to the developer and declarant under the provisions of the any (i) declaration of restrictive covenants and easements affecting the Land and the Premises, or (ii) declaration of condominium ownership for the institution of a regime of condominium ownership affecting the Land and the Premises or otherwise granted to the developer pursuant to the provisions of the Illinois Condominium Property Act, 765 ILCS 605/1 et. seq. (the "Condominium Act").

## GRANTING CLAUSE IX:

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Mortgagor now has or hereafter may acquire of, in and to the Premises, or any part thereof, and any and all other property of every kind and name from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Mortgagor or by anyone on behalf of the Mortgagor to the Mortgagee;

TO HAVE AND TO HOLD the Mortgaged Property, unto the Mortgagee, and its successors and assigns, IN FEE SIMPLE forever; subject, however, to those encumbrances which the Mortgagee has approved in writing (the "Permitted Encumbrances");

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default hereunder, the Mortgagor shall be permitted to possess and use the Mortgaged Property;

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SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if the Mortgagor shall pay in full when due the Indebtedness Hereby Secured and shall duly and timely perform and observe all of the covenants and conditions herein required to be performed and observed by the Mortgagor, then the Mortgagee shall execute and deliver to the Mortgagor such instruments as may be reasonably requested by the Mortgagor which are sufficient to release this Mortgage.

NOTWITHSTANDING any provision hereof to the contrary, this Mortgage shall secure all future advances made in connection with the Mortgaged Property within ten (10) years from the date hereof, whether such advances are obligatory or are made at the option of the Mortgagee or otherwise and whether or not such advances are evidenced by the Note, to the same extent as if such advances were made on the date of execution and delivery hereof, with interest on such future advances at the rate of Default Interest, provided that the aggregate outstanding balance of the Indebtedness Hereby Secured shall at no time exceed Two Million Six Hundred Thousand Dollars (\$2,600,000.00). All covenants, warranties and agreements contained in this Mortgage shall be equally applicable to future advances.

## THE MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Representations of the Mortgagor. The Mortgagor hereby represents and warrants to the Mortgagee as follows:

(a) The Borrower (i) is a limited liability company duly formed and validly existing under the laws of the State of Illinois and has complied with all conditions prerequisite to its doing business in the State of Illinois; (ii) has the power and authority to own its properties and to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; and (iv) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(b) The Mortgagor has good and marketable title to an indefeasible fee simple estate in the Premises, subject to no liens, charges or encumbrances, other than the Permitted Encumbrances; that it has good, right and lawful authority to mortgage the Mortgaged Property in the manner and form herein provided; that this Mortgage is and shall remain a valid and enforceable lien on the Mortgaged Property subject only to the lien of the Senior Lender (as hereinafter defined) and the other Permitted Encumbrances; that Mortgagor and its successors and assigns shall defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the Land.

(c) The Mortgagor has and shall maintain title to the Collateral, including any additions or replacements thereto, free of all security interests, liens and encumbrances, other than

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the security interest of the Senior Lender and the security interest hereunder, and has good right to subject the Collateral to the security interest hereunder.

(d) The Mortgagor shall, so long as it is owner of the Premises, do all things necessary to preserve franchises, rights and privileges as a legal entity under the laws of the state of its formation and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Premises or any part thereof.

## 2. Payment of Indebtedness; Performance of Covenants, Maintenance, Repair, Compliance With Law, Use, etc.

(a) The Mortgagor shall, prior to the expiration of any grace period: (i) pay the Indebtedness Hereby Secured when due; and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Mortgagor as provided in the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

(b) The Mortgagor shall (i) promptly repair, restore, replace or rebuild any portion of the Premises which may be damaged or destroyed whether or not Insurance Proceeds are available or sufficient for that purpose in accordance with Section 9 hereof; (ii) keep the Premises in good condition and repair, free from waste; (iii) pay all operating costs and expenses of the Premises when due; (iv) comply with all legal requirements applicable to all or any portion of the Premises, or the use and occupancy, thereof (subject to the right of the Mortgagor to contest the enforceability or applicability of any such legal requirements in good faith, diligently and at its expense by appropriate proceedings which shall not subject the Mortgagor or the Mortgagee to any risk of civil or criminal liability and which shall operate during the pendency thereof to prevent the imposition or foreclosure of any lien upon, or any interference with the availability, use or occupancy of, the Mortgaged Property or any part thereof), and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Premises or the use and occupancy thereof; (v) refrain from any action and correct any condition known to the Mortgagor or which would materially increase the risk of fire or other hazard to the Premises or any portion thereof; and (vi) cause the Premises to be managed in a competent and professional manner.

(c) Without the prior written consent of the Mortgagee, the Mortgagor shall not cause, suffer or permit (i) any material alteration of the Premises, except as required by any applicable legal requirement or as otherwise contemplated by the Loan Agreement; (ii) any change in the intended use or occupancy of the Premises, including without limitation any change which would increase any fire or other hazard; (iii) any change in the identity of the Mortgagor or the person or firm responsible for managing the Premises; or (iv) any modification of the licenses, permits, privileges, franchises, covenants, conditions or declarations of use applicable to the Premises, except as required to operate the Premises in the manner required hereunder.

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3. Compliance with Loan Agreement. Mortgagor will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

4. Provisions of Loan Agreement. The proceeds of the Note are to be disbursed by the Mortgagee in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Mortgagor covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Mortgagor for the enforceability of this Mortgage and the Note, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Mortgage; provided, however, that the total indebtedness secured by the Note and any other document or instrument now or hereafter given as security for the indebtedness hereby secured shall not in any event exceed two times the stated principal amount of the Note. Upon the occurrence of an Event of Default under the Loan Agreement, the Mortgagee may (but need not): (i) declare the entire principal indebtedness and interest thereon due and payable and pursue all other remedies conferred upon Mortgagee by this Mortgage or by law upon a default; or (ii) complete the construction of the improvements described in the Loan Agreement and enter into the necessary contracts therefor. All monies so expended shall be so much additional indebtedness secured by this Mortgage and shall be payable on demand with interest at the rate of Default Interest. Mortgagee may exercise either or both of the aforesaid remedies. The provisions, rights, powers and remedies contained in the Loan Agreement are in addition to and not in substitution for, those contained herein.

5. Liens, Contest and Defense of Title.

(a) Except for the lien in favor of the Senior Lender pursuant to the Senior Loan Documents, the Mortgagor shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder, whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Mortgage, including liens for labor or materials with respect to the Premises ("Mechanic's Liens").

(b) Notwithstanding paragraph (a) of this Section, the Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Mortgage; and (ii) within ten (10) days after the Mortgagor has been notified of the filing of any such Mechanic's Liens, the Mortgagor shall have notified the Mortgagee in writing of the Mortgagor's intention to contest such Mechanic's Liens, or to cause such other party to contest such

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Mechanic's Liens, and shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to the Mortgagee, insuring the Mortgagee against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement the Mortgagor may deposit and keep on deposit with the Mortgagee (or such depository as may be designated by the Mortgagee) a sum of money sufficient, in the judgment of the Mortgagee, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Mortgagee in its sole discretion to protect the priority of this Mortgage. In case the Mortgagor shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Mortgagee may, at its option, apply any money and liquidate any securities then on deposit with the Mortgagee (or other depository designated by the Mortgagee) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Mortgagor shall forthwith, upon demand, deposit with the Mortgagee (or other depository designated by the Mortgagee) the sum which shall be necessary to make such payment in full. If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist) when the Mortgagee has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Mortgagee (or other depository) under this Section 5(b) shall be paid to the Mortgagor, provided that no Event of Default shall then exist.

(c) If the lien and security interest of the Mortgagee in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attached, directly or indirectly, the Mortgagor shall immediately notify the Mortgagee and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

## 6. Payment and Contest of Taxes.

(a) The Mortgagor shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Mortgaged Property, or any part thereof, or any interest therein, or any income or revenue therefrom, or any obligation or instrument secured hereby, including without limitation any tax referred to in Section 6(a) hereof, and all installments thereof ("Taxes"), on or before the date such Taxes are due; and the Mortgagor shall discharge any claim or lien relating to Taxes upon the Premises. The Mortgagor shall provide the Mortgagee with copies of paid receipts for Taxes, if requested by the Mortgagee, within ten (10) days after so requested by the Mortgagee.

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(b) Notwithstanding paragraph (a) of this Section, the Mortgagor may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that: (i) such contest shall prevent the collection of the Taxes so contested and the sale or forfeiture or impairment of the lien of this Mortgage; (ii) the Mortgagor shall have notified the Mortgagee in writing of the Mortgagor's intention to contest such Taxes before any increase by interest, penalties or costs; and (iii) the Mortgagor shall have deposited or caused to be deposited with the Mortgagee (or other depository designated by the Mortgagee) a sum of money or other security acceptable to the Mortgagee which, when added to the monies or other security, if any, deposited with the Mortgagee (or other depository designated by the Mortgagee) pursuant to Section 40 hereof, shall be sufficient, in the Mortgagee's reasonable judgment, to pay in full such contested Taxes and all penalties and interest which are or might become due thereon. If the Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, the Mortgagee may, at its option, liquidate any securities and apply the monies then on deposit with the Mortgagee (or other depository), in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon according to any written bill, notice or statement, without inquiry as to the amount, validity or enforceability thereof. If the amount of money and any such security so deposited shall (in the Mortgagee's reasonable judgment) at any time be insufficient for the payment in full of such Taxes, together with all penalties and interest which are or might become due thereon, the Mortgagor shall forthwith, upon demand, either deposit with the Mortgagee (or other depository designated by the Mortgagee) a sum (or such other security as shall be reasonably satisfactory to the Mortgagee) which when added to the funds then on deposit, shall (in the Mortgagee's reasonable judgment) be sufficient to make such payment in full, or, if the Mortgagee (or other depository) has applied funds so deposited on account of such Taxes, restore such deposit to an amount satisfactory to the Mortgagee. After final disposition of such contest and upon the Mortgagor's written request and delivery to the Mortgagee of an official bill for such Taxes, the Mortgagee (or other depository) shall liquidate any securities and apply the monies, if any, then on deposit under this Section 6 to the payment of such Taxes or that part thereof then the balance, if any, in excess of the amount required to be on deposit with the Mortgagee (or other depository) under Section 40 hereof shall be refunded to the Mortgagor after such final disposition, provided that no Event of Default shall then exist.

## 7. Change in Tax Laws.

(a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Mortgagee, the Mortgagor or the Mortgaged Property, any tax is imposed or becomes due in respect of the Note or this Mortgage (excluding income, excise or franchise taxes imposed upon the Mortgagee, except as provided in paragraph (c) below), or any liens on the Mortgaged Property created thereby, then the Mortgagor shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Mortgaged Property for the purpose of taxation by creating any lien thereon, or imposing upon the Mortgagee any liability for the payment of all or any part of the Taxes required

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to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of the Mortgagee in the Mortgaged Property, or the manner of collection of Taxes so as to adversely affect this Mortgage, the Indebtedness Hereby Secured, or the Mortgagee, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such Taxes, or reimburse the Mortgagee therefor on demand, unless the Mortgagee determines, in the Mortgagee's reasonable judgment, that such payment or reimbursement by the Mortgagor is unlawful or that the payment might, in the Mortgagee's judgment, constitute usury or render the Indebtedness Hereby Secured wholly or partially usurious; in which event the Mortgagee may elect to declare the Indebtedness Hereby Secured to be due and payable within ninety (90) days after written demand by the Mortgagee to the Mortgagor.

(c) Nothing contained herein shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such income, franchise or excise tax which may be levied against the income of the Mortgagee as a complete or partial substitute for Taxes required to be paid by the Mortgagor hereunder.

(d) Any tax required to be paid by the Mortgagor pursuant to this Section 7 shall be computed based only upon the Mortgaged Premises.

8. Insurance Coverage. The Mortgagor, at its sole expense, shall continuously maintain, or cause to be maintained, in force the following described policies of insurance (the "Insurance Policies") with respect to the Premises:

(a) Comprehensive General Liability. The policy shall name the Mortgagee as an additional insured and shall include coverage for Premises and Operations, Contractor's Protective Liability (Independent Contractors Coverage), Completed Operations (include written guarantee that coverage will be maintained for two years after final completion and acceptance of the work), Broad Form Blanket Contractual Liability, Broad Form Property Damage, including Completed Operations and Personal Injury Liability. Where any hazard exists, the coverage shall protect against claims of explosive, collapse or underground damage. Minimum coverage amounts shall be as follows:

(i) \$3,000,000 Bodily Injury and Property Damage Combined Each Occurrence; and

(ii) \$3,000,000 Bodily Injury and Property Damage Combined Aggregate.

(b) Worker's Compensation and Structural Work Act. All required coverages at statutory limits, and Employer's Liability with a minimum coverage amount of \$1,000,000 Bodily Injury each accident.

(c) Umbrella or Excess Liability Coverage. The policy shall name the Mortgagee as an additional insured and shall be in addition to the limits of coverage specified above, in an

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amount of not less than \$3,000,000 for any one occurrence and subject to the same aggregate over the Employer's Liability, and Comprehensive General Liability coverages. Umbrella coverage shall be subject to the approval of Lender as to the form and amount of self-insured retention.

(d) Builders Risk Insurance. The Mortgagor shall purchase and maintain a builder's risk property insurance policy upon the entire work at the site equal to the full actual replacement value of the property, as determined by appraisal, and shall be responsible for any loss or damage occurring to the property. Such evidence of insurance shall show an acceptable mortgagee's loss payable clause running to the Mortgagee.

(e) Evidence of Flood Insurance. If applicable.

(f) Such other insurance coverages, customary for prudent owners of properties similar to the Premises, as the Mortgagee may reasonably require.

## 9. Insurance Policies.

(a) All Insurance Policies shall be with such companies, for such term, and in such form and content, as may be reasonably satisfactory to the Mortgagee. All insurance described in Section 8 shall name the Mortgagor as the insured. Any insurance required hereunder may be in the form of blanket insurance policies, subject to the consent of the Mortgagee, which consent shall not be unreasonably withheld.

(b) The Insurance Policies, if appropriate, must insure the interest of the Mortgagee in the Premises as mortgagee and secured party; must contain a waiver of the right of subrogation satisfactory to the Mortgagee and a provision that the interest of the Mortgagee shall not be invalidated by any act or omission of the Mortgagor or owner of the Premises, or any part thereof; and must include a standard non-contributory mortgagee loss payable clause in favor of the Mortgagee, as its interest may appear. Any liability insurance policy shall name the Mortgagee as an "additional insured". All Insurance Policies shall contain a provision that the Mortgagee shall receive not less than thirty (30) days prior written notice before any expiration, cancellation or modification of, or material reduction in coverage under, such policies and shall provide that no claims shall be paid thereunder without at least ten (10) days prior written notice to the Mortgagee. In all cases, the Mortgagor shall immediately give notice to the Mortgagee of any notice received by the Mortgagor of any expiration, cancellation or modification of, or material reduction in coverage under, any such policy. The requirements of this paragraph (b) shall apply to any separate policies of insurance taken out by the Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies.

(c) All insurance premiums shall be paid in full in advance prior to the due date and duplicate originals or certified copies of all Insurance Policies with premiums prepaid (accompanied by paid premium receipts) shall be delivered to the Mortgagee prior to the initial

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disbursement of the Indebtedness Hereby Secured and thereafter, in the case of Insurance Policies about to expire, not less than thirty (30) days prior to such expiration date.

(d) Approval by the Mortgagee of any Insurance Policies shall not be deemed a representation by the Mortgagee as to the adequacy of coverage of such Insurance Policies or the solvency of the insurer.

(e) If the Mortgagor fails to procure, pay the premiums for, or deliver to the Mortgagee any of the Insurance Policies or renewals as required herein, the Mortgagee may elect, but shall not be obligated, to obtain such insurance and pay the premiums therefor. The Mortgagor shall pay to the Mortgagee on demand any premiums so paid with interest thereon at the rate of Default Interest set forth in the Note, from the time of the advance for such payment by the Mortgagee, and said advance and interest shall be part of the Indebtedness Hereby Secured.

(f) In the event of the foreclosure of this Mortgage, or other transfer of title to the Premises, or any part thereof, by nonjudicial foreclosure sale or deed in lieu of foreclosure, the purchaser of the Premises, or such part thereof, shall succeed to all of the Mortgagor's rights, including any rights to unexpired insurance and unearned or returnable premiums, in and to all Insurance Policies required by this Section and Section 8 hereof, subject to limitations on assignment of blanket policies, and limited to such rights as relate to the Premises or such part thereof. If the Mortgagee acquires title to the Premises, or any part thereof, in any manner, it shall thereupon (as between the Mortgagor and the Mortgagee) become the sole and absolute owner of the Insurance Policies and all proceeds payable thereunder with respect to the Premises, or such part thereof, required by this Section, with the sole right to collect and retain all unearned or returnable premiums thereon with respect to the Premises, or such part thereof, if any.

## 10. Casualty Loss; Proceeds of Insurance.

(a) The Mortgagor will give the Mortgagee prompt written notice of any loss or damage to the Premises, or any part thereof, by fire or other casualty.

(b) In case of loss or damage covered by any one of the Insurance Policies in excess of \$50,000.00, the Mortgagee is hereby authorized to settle and adjust any claim under such Insurance Policies (and after the entry of a decree of foreclosure, or a sale or transfer pursuant thereto or in lieu thereof, the decree creditor or such purchaser or transferee, as the case may be, are hereby authorized to settle and adjust any claim under such Insurance Policies) upon consultation with, but without the requiring the consent of, the Mortgagor; and the Mortgagee shall, and is hereby authorized to, collect and receipt for any and all proceeds payable under such Insurance Policies in connection with any such loss ("Insurance Proceeds"). Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment (i) of 100% of all such losses of more than said amount directly to Mortgagee alone and (ii) of 100% of all such losses of said amount or less directly to Mortgagor alone, and in no case to Mortgagor and Mortgagee jointly. All reasonable

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costs and expenses incurred by the Mortgagee in the adjustment and collection of any such Insurance Proceeds (including without limitation reasonable attorneys' fees and expenses) shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand or may be paid and deducted by the Mortgagee from such Insurance Proceeds prior to any other application thereof. Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure, other than the gross negligence or willful misconduct of Mortgagee.

(b) Net Insurance Proceeds received by the Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Mortgaged Property or any part thereof shall be applied by the Mortgagee at its option as and for a prepayment on the Note, without a prepayment fee (whether or not the same is then due or otherwise adequately secured), or shall be disbursed for restoration of such improvements ("Restoration"), in which event the Mortgagee shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Note. If Mortgagee elects to permit the use of Insurance Proceeds to restore such improvements it may do all necessary acts to accomplish that purpose, including advancing additional funds, all such additional funds to constitute part of the Indebtedness Hereby Secured. If Mortgagee elects to make the Insurance Proceeds available to Mortgagor for the purpose of effecting the Restoration, or, following an Event of Default, elects to restore such improvements, any excess of Insurance Proceeds above the amount necessary to complete the Restoration shall be applied as and for a prepayment on the Note, without a prepayment fee or premium. No interest shall be payable to Mortgagor upon Insurance Proceeds held by Mortgagee.

(c) So long as any Indebtedness Hereby Secured shall be outstanding and unpaid, and whether or not Insurance Proceeds are available or sufficient therefor, the Mortgagor shall promptly commence and complete, or cause to be commenced and completed, with all reasonable diligence, the Restoration of the Premises as nearly as possible to the same value, condition and character which existed immediately prior to such loss or damage in accordance with plans and specifications approved by the Mortgagee for any Restoration involving costs in excess of \$50,000.00 ("Restoration Plans") and in compliance with all legal requirements. Any Restoration shall be effected in accordance with procedures to be first submitted to and approved by the Mortgagee in accordance with Section 12 hereof. The Mortgagor shall pay all costs of such Restoration.

## 11. Condemnation and Eminent Domain.

(a) Any and all awards (the "Awards") heretofore or hereafter made or to be made to the Mortgagor (or any subsequent owner of the Premises, or any part thereof) by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by the Mortgagor to the Mortgagee, which Awards the

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Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and the Mortgagee is hereby authorized to appear in and prosecute, in the name of and on behalf of the Mortgagor, any action or proceeding to enforce any such cause of action and to make any compromise or settlement in connection therewith and to give appropriate receipts and acquittance therefor in the name and in behalf of the Mortgagor. The Mortgagor shall give the Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises and shall deliver to the Mortgagee copies of any and all papers served in connection with any such proceedings. All reasonable costs and expenses incurred by the Mortgagee in the adjustment and collection of any such Awards (including without limitation reasonable attorneys' fees and expenses) shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee from any Award prior to any other application thereof. The Mortgagor further agrees to make, execute and deliver to the Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever (other than Permitted Encumbrances), any and all further assignments and other instruments deemed necessary by the Mortgagee for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to the Mortgagor for any permanent taking, under any such proceeding.

(b) The proceeds of any Award received by the Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto shall be applied by the Mortgagee at its option as and for a prepayment on the Note, without a prepayment fee (whether or not the same is then due or otherwise adequately secured), or shall be disbursed for Restoration of the Premises, in which event the Mortgagee shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Note. If Mortgagee elects to permit the use of the proceeds of an Award to restore such improvements it may do all necessary acts to accomplish that purpose, including advancing additional funds, all such additional funds to constitute part of the Indebtedness Hereby Secured. If Mortgagee elects to make the proceeds of an Award available to Mortgagor for the purpose of effecting the Restoration, or, following an Event of Default, elects to restore such improvements, any excess of such proceeds above the amount necessary to complete the Restoration shall be applied as and for a prepayment on the Note, without a prepayment fee or premium. No interest shall be payable to Mortgagor upon such proceeds held by Mortgagee.

(c) So long as any Indebtedness Hereby Secured shall be outstanding and unpaid, and whether or not Awards are available or sufficient therefor, the Mortgagor shall promptly commence and complete, or cause to be commenced and completed, with all reasonable diligence the Restoration of the portion of the Premises not so taken as nearly as possible to the same value, condition and character, which existed immediately prior to such taking in compliance with all legal requirements. Any Restoration of the Premises involving costs in excess of \$50,000.00 shall be effected in accordance with Restoration Plans to be first submitted to and approved by the Mortgagee as provided in Section 12 hereof. The Mortgagor shall pay all costs of such Restoration.

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## 12. Disbursement of Insurance Proceeds and Awards.

(a) All Insurance Proceeds and/or Awards received by the Mortgagee as provided in Section 10 or Section 11 hereof shall, after payment or reimbursement therefrom of all reasonable costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by the Mortgagee in the adjustment and collection thereof (the "Net Proceeds"), shall be deposited with the Mortgagee, or such other depository as may be designated by the Mortgagee, and applied as provided in this Section.

(b) The Mortgagee may elect to apply the Net Proceeds to prepayment of the Indebtedness Hereby Secured, whether then due or not. If the Indebtedness Hereby Secured is not prepaid in full, then the Net Proceeds shall be applied to the installments of principal and interest in the inverse order of maturity.

(c) All Net Proceeds which are not applied to the payment of the Indebtedness Hereby Secured shall be applied to fund the payment of the costs, fees and expenses incurred for the Restoration of the Premises as required under Section 10 or Section 11 hereof and such Net Proceeds shall be disbursed through the title company to complete the Restoration; provided that the Mortgagee shall receive the following:

(i) Restoration Plans (unless the costs involved in such Restoration shall not exceed \$50,000.00) which shall be subject to the reasonable approval of the Mortgagee prior to the commencement of the Restoration.

(ii) Such architect's and engineer's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey, opinions of counsel and such other evidences of cost, payment and performance as the Mortgagee may reasonably require and approve.

(d) If the Mortgagor shall fail to commence Restoration within thirty (30) days after the settlement of the claim involving loss or damage to the Premises, and diligently proceed to complete Restoration in accordance with the Restoration Plans and Applicable Laws, or if any other Event of Default shall occur hereunder at any time (whether before or after the commencement of such Restoration) all or any portion of the Indebtedness Hereby Secured may be declared to be immediately due and payable and such Net Proceeds, or any portion thereof, then held, or subsequently received, by the Mortgagee or other depository hereunder may be applied, at the option and in the sole discretion of the Mortgagee, to the payment or prepayment of the Indebtedness Hereby Secured in whole or in part, or to the payment and performance of such obligations of the Mortgagor as may then be in default hereunder.

(e) Any surplus which may remain out of such Net Proceeds after payment of all costs, fees and expenses of such Restoration shall be applied to prepayment of the Indebtedness Hereby Secured in reverse order of the installments due on the Note.

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(f) Notwithstanding anything to the contrary herein, the Mortgagor may itself adjust losses aggregating not in excess of Fifty Thousand Dollars (\$50,000) if such adjustment is carried out in a competent and timely manner; provided that in any case the Mortgagee is hereby authorized to collect and give receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand.

## 13. The Mortgagee's Performance of the Mortgagor's Obligations.

(a) In case of an Event of Default hereunder the Mortgagee may, but without any obligation to do so, upon simultaneous notice to the Mortgagor, make any payment or perform any act which the Mortgagor is required to make or perform hereunder (whether or not the Mortgagor is personally liable therefor) in any form and lawful manner deemed expedient to the Mortgagee, including without limitation, the right to enter into possession of the Premises, or any portion thereof, and to take any action (including without limitation the release of any information regarding the Premises, the Mortgagor and the obligations secured hereby) which the Mortgagee deems necessary or desirable in connection therewith at the cost and expense of the Mortgagor. The Mortgagee, in addition to any rights or powers granted or conferred hereunder but without any obligation to do so, may rent, operate, and manage the Premises, or any part thereof, including payment of management fees and other operating costs and expenses, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for their intended purposes. All monies paid, and all reasonable expenses paid or incurred in connection therewith, including but not limited to reasonable costs of surveys, evidence of title, court costs and attorneys' fees and expenses and other monies advanced by the Mortgagee to protect the Premises and the lien hereof, to rent, operate and manage the Premises or to pay any such operating costs and expenses thereof or to keep the Premises operational and usable for their intended purposes shall be so much additional Indebtedness Hereby Secured, and shall become immediately due and payable on demand, and with interest thereon at the rate of Default Interest.

(b) The Mortgagee, in making any payment, may do so according to any written bill, notice, statement or estimate, without inquiry into the amount, validity or enforceability thereof.

(c) Nothing contained herein shall be construed to require the Mortgagee to advance or expend monies for any purpose mentioned herein, or for any other purposes.

14. Security Agreement. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of Illinois (the "Code") with respect to (i) all sums at any time on deposit for the benefit of Mortgagor or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and (iii) all of the property owned by Mortgagor and described on



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**Exhibit B** attached hereto and made a part hereof, and all replacements of, substitutions for, additions to, and the proceeds of each of the foregoing (all of said property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness Hereby Secured. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, the lien of the Senior Loan Documents, other liens and encumbrances benefitting Mortgagee, and any Permitted Encumbrances.

(b) The Collateral is to be used by Mortgagor solely for business purposes.

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

(d) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office, except for such financing statements perfecting liens securing the Senior Lender and Mortgagee as the first and second lien holders, respectively. The Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements, continuation statements and other documents in a form satisfactory to the Mortgagee and will do all such acts and things as the Mortgagee may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject only to the lien of the Senior Lender and the Permitted Encumbrances, and the Mortgagor will pay any fee, tax, charge or other cost of filing or recording such financing statements, continuation statements or other documents, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

(e) Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold,

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maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Mortgagee so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness Secured Hereby in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

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

(g) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are herein below set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located. Mortgagor is the record owner of the Premises.

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

15. Restrictions on Transfer. For the purpose of protecting the Mortgagee's security, and keeping the Premises free from subordinate financing liens, the Mortgagor agrees that it, the members of Mortgagor, and any owner of any interest in any entity owning membership interests in Mortgagor, will not:

(a) sell (other than as provided in Section 39 below), assign, transfer, hypothecate, grant a security interest in or convey title (other than as provided in Section 39 below) to (i) the

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Premises, or (ii) any membership interest in Mortgagor, or (iii) any ownership interest in any entity holding a membership interest in Mortgagor;

(b) obtain any financing (other than pursuant to the Senior Loan Documents), all or a part of which, will be secured by (i) the Premises, or (ii) any membership interest in Mortgagor, or (iii) any ownership interest in any entity holding a membership interest in Mortgagor;

without the Mortgagee's prior written consent. The occurrence of any such event without the written consent of the Mortgagee shall be an Event of Default hereunder.

16. Events of Default. Any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(a) If the Mortgagor shall fail (i) to make any payment of interest under the Note within seven (7) days of the date when due (except no grace period will be permitted for payments due on maturity), (ii) to make any payment of principal under the Note when due, or (iii) to make any other payment under the Loan Documents within ten (10) days of the date when due or after demand (or such shorter period as may be expressly provided for herein or therein);

(b) If the Mortgagor shall fail to maintain the insurance coverages in effect as required in Section 8 hereof; or

(c) If a prohibited transfer shall occur as set forth in Section 15 hereof; or

(d) If any representation or warranty made by the Mortgagor or any member thereof pursuant to or in connection with this Mortgage shall prove to be untrue or incorrect in any material respect; or

(e) If any default shall occur in the due and punctual performance of, or compliance with, any of the terms, covenants, conditions or agreements contained herein (other than as described in the preceding clauses (a) through (d) of this Section 16) and the continuance of such default for thirty (30) days after notice thereof shall be given to the Mortgagor by the Mortgagee, provided that if any default referred to in this paragraph (vii) cannot be cured with diligence within said thirty (30) day period, the Mortgagor shall have such additional time (but not in excess of sixty (60) additional days) as may be required to cure such default so long as the Mortgagor commences and diligently pursues all actions necessary to effect such cure; or

(f) If any Event of Default occurs under any other Loan Document.

17. Remedies. When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument), and in addition to such other rights as may be available

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under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Mortgagee may declare the Note and all unpaid indebtedness of Mortgagor hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Mortgagee shall, with respect to the Collateral, have all the rights, options and remedies of a secured party under the Uniform Commercial Code of Illinois, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address set forth in Section 38 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Collateral, may be sold as a single parcel if the Mortgagee elects. The Mortgagor hereby agrees that if the Mortgagee demands or attempts to take possession of the Collateral or any portion thereof in exercise of its rights and remedies hereunder, the Mortgagor will promptly turn over and deliver possession thereof to the Mortgagee, and the Mortgagor authorizes, to the extent the Mortgagor may now or hereafter lawfully grant such authority, the Mortgagee, its employees and agents, and potential bidders or purchasers to enter upon the Premises or any other office, building or property where the Collateral or any portion thereof may at the time be located (or believed to be located) and the Mortgagee may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Collateral or any portion thereof; (iii) maintain, repair or store the Collateral or any portion thereof; (iv) view, inspect and prepare the Collateral or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Collateral or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Collateral, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional Indebtedness Hereby Secured and shall be payable upon demand with interest at the rate of Default Interest.

(c) Foreclosure. Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as from time to time amended (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees,

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appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by Mortgagor, with interest thereon at the rate of Default Interest until paid.

(d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Upon demand by Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Property and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails

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of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Mortgagee to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage without Mortgagee's prior written consent;

(iv) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

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

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of taxes, premiums and other charges applicable to the Mortgaged Property, or in reduction of the Indebtedness Hereby Secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon demand together with interest at the rate of Default Interest. Mortgagee shall not be liable to account to Mortgagor

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for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Property, Mortgagee may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Indebtedness Hereby Secured payable upon demand with interest thereon at the rate of Default Interest.

(f) Indemnity. The Mortgagor hereby agrees to indemnify, defend, protect and hold harmless the Mortgagee and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, lease or consumption of any of the Mortgaged Property, or any part thereof, or as a result of the Mortgagee seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property, except from such liabilities, claims or obligations as result from the negligence of the Mortgagee, its employees, officers or agents.

18. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 17(c) or 20 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

19. Waiver of Right to Redeem - Waiver of Appraisalment, Valuation, Etc. Mortgagor shall not and will not apply for or avail itself of any appraisalment, 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 Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in

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separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other Indebtedness Hereby Secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Mortgagor, on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Section 5/15-1601(b) of the Act, and (ii) any and all rights of reinstatement.

20. Costs and Expenses of Foreclosure. 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 reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and all of which expenditures shall become so much additional indebtedness hereby secured which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the rate of Default Interest.

21. Protective Advances.

(a) All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

- (i) all advances by Mortgagee in accordance with the terms of this Mortgage to:
- (A) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Premises; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

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(ii) payments by Mortgagee of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(vi) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(vii) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act;

(viii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the mortgaged real estate; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged

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real estate is a member in any way affecting the mortgaged real estate; (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(b) All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of Default Interest.

(c) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(i) determination of the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(iv) application of income in the hands of any receiver or Mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

22. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to Section 17(b) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 17(b), 17(c) and 20 hereof; Second, to all other items which under the terms hereof constitute Indebtedness Hereby Secured in addition to that evidenced by the Note with interest thereon as herein provided; Third, to all interest on the Note; Fourth, to all principal on the Note; Fifth, to whomsoever shall be lawfully entitled to same.

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## 23. Rights Cumulative.

(a) Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Mortgagee.

(b) By accepting payment of any sums secured by this Mortgage after the due date thereof, by accepting performance of any of the Mortgagor's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of the Mortgagor which the Mortgagor was obligated but failed to perform or pay, the Mortgagee shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Mortgagor's obligations under this Mortgage, the other Loan Documents or the Note. No waiver or modification of any of the terms of this Mortgage shall be binding on the Mortgagee unless set forth in writing signed by the Mortgagee and any such waiver by the Mortgagee of any Event of Default by the Mortgagor under this Mortgage shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Mortgagee holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

(c) No act or omission by the Mortgagee shall release, discharge, modify, change or otherwise affect the liability under the Note, this Mortgage, or any other obligation of the Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Mortgage except as expressly provided in an instrument or instruments executed by the Mortgagee. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to the Mortgagee by this Mortgage is not required to be given.

## 24. Successors and Assigns.

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(a) This Mortgage and each and every provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of the Mortgagee and its respective successors and assigns. Without limitation of the foregoing, Mortgagor expressly acknowledges that, immediately upon the closing

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of the loan, Mortgagee shall assign and transfer all rights and interests of the Mortgagee hereunder and under each of the other Loan Documents to Lehman Brothers Holdings, Inc., a Delaware corporation ("Lehman"), pursuant to that certain Assignment of Mortgage, Note and other Loan Documents of even date herewith by Mortgagee for the benefit of Lehman (the "Lehman Assignment"), and acknowledges and agrees that, upon execution and delivery of the Lehman Assignment, Lehman shall hold, and may exercise pursuant to the terms of this Mortgage, all of the rights and interests of Mortgagee hereunder.

(b) All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor without in any way releasing or discharging the Mortgagor from its obligations hereunder. The Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 15 hereof.

25. Effect of Extensions and Amendments. If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release.

26. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter; Corrective Documents.

(a) The Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Mortgagee shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired. Without limitation of the foregoing, the Mortgagor will assign to the Mortgagee, upon request, as further security for the Indebtedness Hereby Secured, its interest in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments reasonably satisfactory to the Mortgagee, but no such assignment shall be construed as a consent by the Mortgagee to any agreement, contract, license or permit or to impose upon the Mortgagee any obligations with respect thereto.

(b) From time to time, the Mortgagor will furnish, within ten (10) days after request from the Mortgagee, a written and duly acknowledged statement of the amount due under

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the Note and this Mortgage and whether any alleged offsets or defenses exist against the Indebtedness Hereby Secured.

(c) The Mortgagor and the Mortgagee shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by the Mortgagee or the Mortgagor, as the case may be, to correct such defect, error or omission.

27. Subrogation. If any part of the Indebtedness Hereby Secured is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then by advancing the monies to make such payment the Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

28. Interpretation of Agreement. Should any provision of this Mortgage require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Mortgage, including, without limitation, all Exhibits attached to this Mortgage.

29. Governing Law; Venue; Invalidity of Certain Provisions.

(a) The validity, enforcement and interpretation of this Mortgage shall for all purposes be governed by and construed in accordance with the laws of the State of Illinois, without reference to the conflicts of law principles of that State, and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. Mortgagor hereby irrevocably submits generally and unconditionally to the non-exclusive jurisdiction of any local court, or any United States federal court, sitting in the State of Illinois over any suit, action or proceeding arising out of or relating to this Mortgage. Mortgagor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all services of process in any such suit, action or proceeding in any local court, or any United States federal court, sitting in the State of Illinois, may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address stated in Section 38, and service so made shall be complete five (5) business days after the same shall have been so mailed. Nothing herein shall affect the right of Mortgagee to serve process

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in any manner permitted by law or limit the right of Lender to bring proceedings against Mortgagor in any other court or jurisdiction. This Mortgage shall be construed and enforced according to the laws of the State of Illinois.

(b) The whole or partial invalidity, illegality or unenforceability of any provision hereof at any time, whether under the terms of then applicable law or otherwise, shall not affect (i) in the case of partial invalidity, illegality or unenforceability, the validity, legality or enforceability of such provision at such time except to the extent of such partial invalidity, illegality or unenforceability; or (ii) the validity, legality or enforceability of such provision at any other time or of any other provision hereof at that or any other time.

30. Loan Legal.

(a) The Mortgagor declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the loan is exempt from interest limitations pursuant to the provisions of 815 ILCS 205/4 and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

(b) All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under the provisions of any applicable law.

31. Inspection of Premises and Records. The Mortgagee and its representatives and agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times, after giving reasonable notice to the Mortgagor, and access thereto, subject to the rights of tenants pursuant to Leases, the form of which have been approved by the Mortgagee, shall be permitted for that purpose. The Mortgagee shall use reasonable efforts to avoid disturbing business operations on the Premises during such inspections. The Mortgagor or the Mortgagee thereof shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises and permit the Mortgagee or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time on request at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon.

32. Financial Statements. The Mortgagor shall furnish to the Mortgagee such financial statements and information as required pursuant to Article 6 of the Loan Agreement.

33. Default Interest. All references to Default Interest herein shall mean interest at the rate of Default Interest as provided in the Note.

34. Time is of the Essence. Time is of the essence of this Mortgage.

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

36. The Mortgagor Not a Joint Venturer or Partner. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the Mortgagee shall not be deemed to be such a partner or joint venturer on account of its 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.

37. Environmental Matters. Concurrently herewith, Mortgagor shall execute and deliver an environmental indemnity agreement in form satisfactory to Mortgagee (the "Environmental Indemnity Agreement"). The performance of the covenants, undertakings and obligations of the indemnitees under the Environmental Indemnity Agreement shall be secured by this Mortgage.

38. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) three (3) business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

To Mortgagor:

Bryn Mawr Place, L.L.C.  
c/o Neri Development, Inc.  
7760 West Devon  
Suite B  
Chicago, Illinois 60631  
Attn: Guido C. Neri  
Facsimile: (773) 774-1201

With a copy to:

Di Silvestro and Associates  
5231 North Harlem  
Chicago, Illinois 60656  
Attn: Robert J. Di Silvestro  
Facsimile: (773) 774-4545

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To Mortgagee: CIG International, LLC  
203 North LaSalle Street, Suite 2100  
Chicago, Illinois 60601  
Attn: Carolyn J. Brocavich  
Facsimile: (312) 558-1582

With a copy to: Schwartz Cooper Greenberger & Krauss Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
Attention: Derek L. Cottier  
Facsimile: (312) 782-8416

or to each such party at such other addresses as such party may designate in a written notice to the other parties given at least ten (10) days prior to the date such change becomes effective.

## 39. Releases.

(a) Upon payment in full of all sums due under the Note and this Mortgage and the other of the Loan Documents, the Mortgagee shall, upon the request of, and at the cost of, the Mortgagor, execute a proper release of this Mortgage.

(b) Provided no Event of Default which has occurred and remains uncured, and provided no event has occurred and is continuing which, with notice or the passage of time or both, would constitute an Event of Default, then at the request and sole expense of the Mortgagor, and the satisfaction of the below provisions of this paragraph, the Mortgagee shall cause the release of individual condominium units (individually, a "Unit") created on the Premises from the lien, legal effect and operation of this Mortgage. A partial release shall be delivered only upon: (i) payment in good funds, to or for the account of the Mortgagee by or for the account of the Mortgagor for each such Unit sought to be released, of all of the "Net Disposition Proceeds" (hereinafter defined); (ii) the Mortgagee's prior approval of the sales contract for each Unit sought to be released; and (iii) receipt by the Mortgagee of a certified true copy of the settlement statement pertaining to the sale of each Unit sought to be released. The Net Disposition Proceeds for each Unit shall be as follows: all gross proceeds of sale, less (i) usual and customary proration credits, including, without limitation, credit for earnest money and deposits paid by the purchaser under the applicable Purchase Contract; (ii) customary brokerage fees, not exceeding 6.0% of the gross sales price of the Unit, paid to third parties not affiliated with the Mortgagor or any entity or person owning any interest (directly or indirectly) in the Mortgagor; (iii) usual and customary escrow title and closing costs, including transfer taxes and reasonable legal fees for closings (the total of the items described in subparagraphs (ii) and (iii) shall not exceed 8.0% of the gross sales price of the Unit); and (iv) the principal and accrued interest and other sums due the Senior Lender under the terms of the first mortgage which is then required to be and is paid, in whole or in part, with such proceeds. The Mortgagor shall be



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responsible for the preparation and expense of all partial releases. The Mortgagee shall be given at least ten (10) business days' notice of the Mortgagor's request for a partial release.

(c) Provided no Event of Default which has occurred and remains uncured, and provided no event has occurred and is continuing which, with notice or the passage of time or both, would constitute an Event of Default, then, upon written request from the Mortgagor, the Mortgagee shall execute, acknowledge and join in (i) any easements, rights of way and dedications as may be necessary and/or required by local, county, state or federal authorities or public utility companies for the purposes of acquiring or obtaining utilities, sanitary and storm sewer, water, gas, electric and telephone facilities upon, under and over the Mortgaged Property or off site, (ii) any easements, rights of way or dedications for public road, streets, gutters, sidewalks or similar improvements, and (iii) any and all other instruments required for the general development and construction plans for the Mortgaged Property encumbered hereby, and which instruments are deemed necessary by the Mortgagor in connection with the reasonable and orderly development of the Mortgaged Property. With regard to any and all of the documents described herein, (i) the Mortgagee shall have the right to review and approve same in advance; (ii) said period of review, approval and endorsement shall not exceed ten (10) business days from the date the documents are delivered; (iii) the Mortgagor shall pay all costs and expenses incurred by reason of such review; (iv) the Mortgagee shall pay all costs and fees of preparation, recordation and filing of said documents; and (v) no such document shall impose any obligation or liability, monetary or otherwise, on the Mortgagee.

(d) The Mortgagee may, regardless of consideration, cause the release of any part of the Mortgaged Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of that Mortgaged Property.

40. Escrow Deposits. Following an event which with notice or the passage of time would become an Event of Default, and provided the Senior Lender is not then collecting the same, and without limiting the effect of Sections 6, 7, 8, and 9 hereof, the Mortgagor shall pay to the Mortgagee on the first business day of each calendar month, an amount equal to one-twelfth (1/12<sup>th</sup>) of what the Mortgagee estimates is necessary to pay, on an annualized basis, all (1) Impositions, and (2) such premiums for the insurance policies required under Section 8 hereof ("Premiums") to enable the Mortgagee to pay same at least thirty (30) days before the Impositions would become delinquent and the Premiums are due, and, on demand, from time to time shall pay to the Mortgagee additional sums necessary to pay the Premiums and Impositions. No amounts so paid shall be deemed to be trust funds, but may be commingled with the general funds of the Mortgagee, and no interest shall be payable thereon. In the event that the Mortgagor does not pay such sums for Premiums and Impositions, then the Mortgagee may, but shall not be obligated to, pay such Premiums and Impositions and any money so paid by the Mortgagee shall be reimbursed to the Mortgagee in accordance with Section 9 hereof. If an Event of Default occurs, the Mortgagee shall have the right, at its election, to apply any amounts so held under this Section 40 against all or any part of the Indebtedness Secured Hereby, or in payment of the Premiums or Impositions for which the amounts were deposited. The Mortgagor will furnish to the Mortgagee bills for Impositions and Premiums thirty (30) days before Impositions become delinquent and such Premiums become due.

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## 41. Leases and Other Agreements Affecting the Mortgaged Property.

(a) In order to further secure payment of the Indebtedness Secured Hereby and the observance, performance and discharge of the Mortgagor's obligations under the Loan Documents, the Mortgagor hereby assigns to the Mortgagee all of the Mortgagor's right, title, interest and estate in, to and under all of the leases and sales contracts now or hereafter affecting the Mortgaged Property or any part thereof and in and to all of the Rents and Profits (defined as all rents, income, issues and profits arising from any leases, sales contracts or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property now or hereafter made affecting the Mortgaged Property or any portion thereof). Unless and until an Event of Default occurs, the Mortgagor shall be entitled to collect the Rents and Profits (except as otherwise provided in this Mortgage) as and when they become due and payable. The Mortgagee shall be liable to account only for the Rents and Profits actually received by the Mortgagee pursuant to any provision of any Loan Document.

(b) The Mortgagor shall not, without the express written consent of the Mortgagee, enter into any lease or modify, extend or renew, either orally or in writing, any lease hereafter created upon the Mortgaged Property, or any part thereof. The Mortgagor shall not, without the express written consent of the Mortgagee, terminate or surrender any lease hereafter created upon the Mortgaged Property, or any part thereof. The Mortgagor shall not permit an assignment or sublease of any lease hereafter created upon the Mortgaged Property, or any part thereof, without the express written consent of the Mortgagee.

(c) Each lease of any portion of the Mortgaged Property shall be absolutely subordinate to the lien of this Mortgage, but shall also contain a provision, satisfactory to the Mortgagee, that in the event of the exercise of the power of sale hereunder or a deed in lieu of foreclosure, such lease, at the sole and exclusive option of the purchaser at such sale, shall not be terminated and the tenant thereunder shall attorn to such purchaser and, if requested to do so, shall enter into a new lease for the balance of the term of such lease then remaining, upon the same terms and conditions. If the Mortgagee so requests, the Mortgagor shall cause the tenant under each or any of such leases to enter into subordination and attornment agreements with the Mortgagee which are satisfactory in form, scope and substance to the Mortgagee.

(d) The Mortgagor shall not accept payment of advance rents or security deposits equal, in the aggregate, to more than one (1) months' rent.

(e) The Mortgagor covenants and agrees that all contracts and agreements relating to the Mortgaged Property to pay leasing commissions, management fees or other compensation shall (1) provide that the obligation to pay such commissions, fees and other compensation will not be enforceable against any party other than the party who entered into such agreement; (2) be subordinate and inferior in all respects to the lien, operation and effect of this Mortgage; and (3) not be enforceable against the Mortgagee. The Mortgagor shall promptly furnish the Mortgagee with

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evidence of the Mortgagor's compliance with this paragraph upon the execution of each such contract or agreement.

42. Replacement of the Note. Upon notice to the Mortgagor of the loss, theft, destruction or mutilation of the Note, the Mortgagor will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to such replacement note.

43. Waiver of Consequential Damages. The Mortgagor covenants and agrees that in no event shall the Mortgagee be liable for consequential damages, whatever the nature of a failure by the Mortgagee to perform its obligation(s), if any, under the Loan Documents, and the Mortgagor hereby expressly waives all claims that it now or may hereafter have against the Mortgagee for such consequential damages.

44. After Acquired Mortgaged Property. The lien hereof will automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.

45. Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then, the Mortgagee may, at its option declare the Indebtedness Secured Hereby immediately due and payable.

46. Indemnification By the Mortgagor. The Mortgagor shall protect and indemnify the Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the Mortgagee or the members, partners, stockholders, directors, officers, agents or employees of the Mortgagee by reason of (a) ownership of the Mortgaged Property or any interest therein, or receipt of any Rents or other sum therefrom, (b) any accident to, injury to or death of persons or loss of or damage to Mortgaged Property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, (c) any failure on the part of the Mortgagor to perform or comply with any of the terms, covenants, conditions and agreements set forth in this Mortgage, the Note, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Mortgagor or any other persons directly or indirectly liable for the payment of the indebtedness hereby secured, (d) any failure on the part of the Mortgagor to perform or comply with (i) any other agreement executed by the Mortgagor or (ii) any requirement of law, (e) payment of sums for the protection of the lien and security interest of the Mortgagee in and to the Mortgaged Property, (f) performance of any labor or services or the furnishing of any materials or other Mortgaged Property in respect of the Mortgaged Property or any part thereof for construction or maintenance or otherwise, or (g) any action brought against the Mortgagee attacking the validity, priority or enforceability of this

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Mortgage, the Note, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Mortgagor (or any of them) or any other persons directly or indirectly liable for the payment of the indebtedness hereby secured. Any amounts payable to the Mortgagee under this paragraph shall bear interest at the rate of Default Interest and shall be secured by this Mortgage. In the event any action, suit or proceeding is brought against the Mortgagee or the members, partners, stockholders, directors, officers, agents or employees of the Mortgagee by reason of any such occurrence, the Mortgagor, upon the request of the Mortgagee and at Mortgagor's expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Mortgagor and approved by the Mortgagee. Such obligations under this paragraph shall survive the termination, satisfaction or release of this Mortgage.

47. Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MORTGAGE, OR IN ANY WAY CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE DEALING OF MORTGAGOR AND MORTGAGEE WITH RESPECT TO THIS MORTGAGE, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT MORTGAGOR OR MORTGAGEE MAY FILE AN EXECUTED COPY OF THIS GUARANTY WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF MORTGAGOR AND MORTGAGEE TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS MORTGAGE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR, AND MORTGAGOR REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY, THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED BY MORTGAGOR OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

48. Additional Waivers. MORTGAGOR EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY LENDER ON THIS GUARANTY, ANY AND EVERY RIGHT IT MAY HAVE TO (I) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT, SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, AND

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(II) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING.

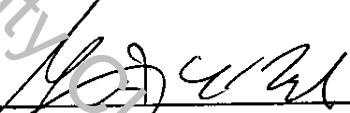
49. Subordination. The Indebtedness Secured Hereby and this grant and the liens and security interests created hereby, as well as all rights and remedies set forth herein, are subordinated to the prior payment in full of the indebtedness evidenced and secured by those certain loan documents ("Senior Loan Documents") evidencing and/or securing the loan made by LaSalle Bank National Association, a national banking association ("Senior Lender") to Mortgagor in the stated amount of \$2,600,000.00, and this instrument is made expressly subject to all terms of that Subordination Agreement by and among Mortgagor and Senior Lender dated as of even date herewith and recorded in the Records of the Recorder of Cook County, Illinois.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be duly executed and delivered as of the day and year first above written.

## MORTGAGOR:

BRYN MAWR PLACE, L.L.C., an Illinois limited liability company

By: Bryn Mawr Place, Inc., an Illinois corporation  
Its: Manager

By:   
Guido C. Meri  
Its: President



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## EXHIBIT "A"

### LEGAL DESCRIPTION

LOTS 16 TO 45, INCLUSIVE, IN CHICAGO'S FOREST RIDGE ESTATES, BEING A SUBDIVISION OF THE NORTH ½ OF THE NORTHWEST ¼ OF SECTION 11, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: Vacant land at the intersection of Bryn Mawr Avenue and East River Road, Chicago, Illinois

PIN NOS.: 12-11-104-001-0000 12-11-104-002-0000  
12-11-104-003-0000 12-11-104-004-0000  
12-11-104-005-0000 12-11-104-006-0000  
12-11-104-007-0000 12-11-104-008-0000  
12-11-104-009-0000 12-11-104-010-0000  
12-11-104-011-0000 12-11-104-012-0000  
12-11-104-013-0000 12-11-104-014-0000  
12-11-104-015-0000 12-11-104-016-0000  
12-11-104-017-0000 12-11-104-018-0000  
12-11-104-019-0000 12-11-104-020-0000  
12-11-104-021-0000 12-11-104-022-0000  
12-11-104-023-0000 12-11-104-024-0000  
12-11-104-025-0000 12-11-104-026-0000  
12-11-104-027-0000 12-11-104-028-0000  
12-11-104-029-0000 12-11-104-030-0000

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## EXHIBIT "B"

### ADDITIONAL COLLATERAL

(1) All personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the Land or the improvements thereon, including all substitutions and replacements thereof and all of the right, title and interest of Mortgagor in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Mortgagor or on its behalf;

(2) Any and all rents revenues, issues, profits, proceeds, income, accounts, accounts receivable, escrows, reserves, impounds, security deposits and other rights to monies now owned or hereafter acquired and arising from or out of the Property and/or the businesses and operations conducted by Mortgagor thereon.

(3) All fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Land or the improvements thereon, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor;

(4) All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or improvements thereon or proceeds of any sale, option or contract to sell the Land or improvements thereon or any portion thereof;

(5) Any and all other personal property of any kind, nature or description, whether tangible or intangible, (including without limitation, any and all goods, contract rights, franchises, licenses, permits, chattel paper, money, deposit accounts, documents, instruments and general intangibles) of Mortgagor relating to or used in connection with the operation or maintenance of the Property, whether now owned or hereafter acquired, or in which Mortgagor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise).



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(6) Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing.

(7) All of the books and records pertaining to the foregoing.

Property of Cook County Clerk's Office

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