

THIS INSTRUMENT WAS)
PREPARED BY AND AFTER)
RECORDING RETURN TO:)

Krysha X. Donoso Salyers)
First American Bank)
1650 Louis Avenue)
Elk Grove Village, Illinois 60007)

PERMANENT INDEX #:)
17-09-127-001)
17-09-127-035)

STREET ADDRESS:)
653 N. Kingsbury)
Chicago, Illinois)



**CONSTRUCTION MORTGAGE, SECURITY AGREEMENT
AND FIXTURE FINANCING STATEMENT**

01030430

THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage"), made August 15, 2001, by and between **Smithfield Properties XV, L.L.C.**, an Illinois limited liability company (hereinafter referred to as "Borrower" and "Mortgagor"), and **First American Bank**, an Illinois banking corporation (hereinafter referred to as "Mortgagee");

WITNESSETH:

WHEREAS, the Borrower is justly indebted to Mortgagee in the principal sum of Twenty Eight Million and 00/100 Dollars (\$28,000,000.00), evidenced by the certain Revolving Note of even date herewith (the "Note"), made by the Borrower pursuant to the Revolving Loan Agreement, dated August 15, 2001, between the Borrower and Mortgagee (the "Loan Agreement"), and made payable to the order of and delivered to Mortgagee, in and by which Note the Borrower promised to pay the principal sum and interest as set forth in the Note in installments as provided in the Note, with a final maturity date occurring on July 31, 2002 (or earlier as so provided in the Note or the Loan Agreement); and

NOW, THEREFORE, the Mortgagor, to secure the payment of the principal sum of money and the interest and other charges and income due in accordance with the terms, provisions and limitations of this Mortgage, the Note (and all extensions, renewals, refinancings, modifications, amendments, and replacements thereof), and the Loan Agreement and the performance of the covenants and agreements herein contained by Mortgagor to be performed, and the performance of the covenants and agreements contained in the Loan Agreement to be performed by the Borrower, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt of which is hereby acknowledged, does by these presents GRANT, BARGAIN, MORTGAGE and CONVEY unto Mortgagee, its successors and assigns, the real estate described on Exhibit A attached hereto and all of its estate, right, title and interest therein, situated, lying and being in the City of Chicago, County of Cook, and State of Illinois, which, with the property hereinafter described, is referred to herein as the "Premises";

TOGETHER with all buildings and other improvements of every kind and description now or hereafter erected or placed on the Premises and all

materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon and all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues, profits and monies for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with the real estate and not secondarily), including, without limiting the foregoing, if and to the extent owned by Mortgagor or the Borrower: (a) all floor area rights, lot area rights and development rights, including, without limitation, the excess floor area rights and the residential minimum lot area acquired by Borrower from 445 W. Erie, LLC and referenced in that certain Agreement of Covenants and Restrictions dated November 30, 2000 between 445 W. Erie, LLC and borrower and recorded on December 1, 2000 in the Cook County Recorder's Office as Document No. 00943675; (b) all fixtures, fittings, furnishings, appliances, apparatus, equipment and machinery including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, ovens, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other air-conditioning, plumbing and heating fixtures, mirrors, mantles, refrigerating plants, refrigerators, iceboxes, dishwashers, carpeting, furniture, laundry equipment, cooking apparatus and appurtenances, and all building material, supplies and equipment now or hereafter delivered to the Premises and intended to be installed therein; all other fixtures and personal property of whatever kind and nature at present contained in or hereafter placed in any building standing on the Premises; such other goods, equipment, chattels and personal property as are usually furnished by landlords in letting other premises of the character of the Premises; and all renewals or replacements thereof or articles in substitution thereof; and all proceeds and profits thereof and all of the estate, right, title and interest of the Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Premises or intended to be used in connection with the operation thereof; (c) all of the right, title and interest of Mortgagor or the Borrower in and to any fixtures

or personal property subject to a lease agreement, conditional sale agreement, chattel mortgage, or security agreement, and all deposits made thereon or therefor, together with the benefit of any payments now or hereafter made thereon; (d) all leases and use agreements of machinery, equipment and other personal property of Mortgagor or the Borrower in the categories hereinabove set forth, under which Mortgagor is the lessee of, or entitled to use, such items; (e) all rents, income, profits, revenues, receipts, leases, tenancies, licenses or other use agreements or arrangements now existing or hereafter created of the Premises or any part thereof including any business conducted thereon) with the right to receive and apply the same to indebtedness due Mortgagee and Mortgagee may demand, sue for and recover such payments but shall not be required to do so; (f) all monies on deposit with Mortgagee representing deposits made by purchasers of condominium units constructed or to be constructed on the Premises; (g) all promissory notes, letters of credits, letter of credits rights, and supporting obligations now existing or hereinafter created, and all amendments and supplements thereto, (h) all judgments, awards of damages and settlements hereafter made as a result of or in lieu of any taking of the Premises of any part thereof or interest therein under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the improvements thereon or any part thereof or interest therein, including any award for change of grade of streets; (i) all proceeds of the conversion, voluntary or involuntary of any of the foregoing into cash or liquidated claims; (j) any monies on deposit with the Mortgagee for the payment of real estate taxes or special assessments against the Premises or for the payment of premiums on policies of fire and other hazard insurance covering the collateral described hereunder or the Premises, and all proceeds paid for damage done to the collateral described hereunder or the Premises; and (k) all substitutions, replacements, additions and proceeds, including insurance and condemnation award proceeds, of any of the foregoing property; it being understood that the enumeration of any specific articles of property

shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby. As to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of the real estate, this Mortgage is hereby deemed to be, as well, a "Security Agreement" as defined in revised Article 9 of the Uniform Commercial Code in the form approved by the State of Illinois on July 1, 2001 and codified at 810 Ill. Comp. Stat. 5/9-101 et. seq. (West 2001) (the "Illinois Uniform Commercial Code") and creates a security interest in favor of Mortgagee, which Mortgagor hereby grants to Mortgagee as Secured Party in all property including, without limitation, all personal property, fixtures and goods affecting property either referred to or described herein or in any way connected with the use or enjoyment of the Premises. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law or, as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Uniform Commercial Code, all at Mortgagee's sole election. Borrower and Mortgagee agree that the filing of such a Financing Statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing the intention of the parties hereto that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real

estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Premises whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee under this Mortgage or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the Illinois Uniform Commercial Code records.

Borrower shall execute, acknowledge and deliver to Mortgagee, within ten (10) days after request by Mortgagee, any and all security agreements and any other similar security instruments reasonably required by Mortgagee, in form and of content reasonably satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Borrower that, in the reasonable opinion of Mortgagee, is essential to the operation of the Premises and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the state in which the Premises are located. Borrower agrees to cooperate and join with Mortgagee in taking such steps as are necessary, in Mortgagee's

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judgment, to perfect or continue the perfected status of the security interests granted hereunder, including, without limitation, the execution and delivery of any financing statements, amendments thereto, continuation statements, affidavits, certificates or other documents as Mortgagee may request in order to perfect, preserve, maintain, continue and extend such security instruments. Borrower further agrees to pay to Mortgagee all fees, costs and expenses (including, without limitation, all reasonable attorneys' fees and expenses and court costs) incurred by Mortgagee in connection with the preparation, execution, recording, filing and refiling of any such document. Mortgagee may at any time and from time to time, file financing statements, continuation statements and amendments thereto that describe the property of Borrower in particular or as all assets of the Borrower or words of similar effect and which contain any other information required by the Illinois Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower. Borrower agrees to furnish any such information to Mortgagee promptly upon request. Any such financing statements, continuation statements or amendments may be signed by Mortgagee on behalf of Borrower, and may be filed at any time in any jurisdiction whether or not Revised Article 9 of the Uniform Commercial Code is then in effect in that jurisdiction.

Borrower shall, at any time and from time to time, take such steps as Mortgagee may require for Mortgagee to insure the continued perfection and priority of Mortgagee's security interest in any of Borrower's property and of the preservation of its rights therein..

Mortgagor covenants (a) that it is lawfully seized of the Premises, (b) that the same are subject only to (i) the liens, encumbrances, conditions, restrictions, easements, leases, and other matters, rights or interests disclosed in Schedule B (or an equivalent section or portion) of the mortgage loan title

insurance policy delivered to Mortgagee, and (ii) matters disclosed in writing by Mortgagor to Mortgagee, and (c) that it has good right, full power and lawful authority to convey and mortgage the same and that it will forever defend the Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

TO HAVE AND TO HOLD the Premises unto the Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens.** Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed, provided Mortgagee makes the insurance proceeds available; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (except for mechanics' liens being contested in good faith and as to which adequate reserves have been set aside in conformity with generally accepted accounting principles consistently maintained by the Borrower); (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete within a reasonable time all public improvements and any building or buildings now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (f) make alterations in the Premises only in accordance with plans and specifications duly approved by Mortgagee; (g) suffer or permit no change in the general nature of the occupancy of the Premises, without Mortgagee's written consent; (h) initiate or acquiesce

in no zoning variation or reclassification, without Mortgagee's written consent, which consent shall not be unreasonably withheld, delayed, or conditioned; (i) pay the indebtedness secured hereby when due according to the terms hereof or of the Loan Agreement and the Note.

2. Payment of Taxes. Mortgagor shall pay, before any penalty attaches (except to the extent diligently contested in good faith by appropriate proceedings and provided proper reserves are established on the books of the Borrower), all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises when due, and shall furnish to Mortgagee paid tax receipts within thirty (30) days after the final due date of such taxes when requested by the Mortgagee. During the continuance of a default, the Mortgagee reserves the right to require Mortgagor to make monthly deposits into an escrow account established and controlled by Mortgagee for the payment of taxes under terms and in an amount satisfactory to Mortgagee.

3. Insurance. Mortgagor shall cause all buildings and improvements now or hereafter situated on the Premises to be insured against loss or damage by fire and such other hazards as may be requested from time to time by Mortgagee, including, but not limited to, hazards ordinarily insured against by other companies similarly situated in operating like businesses and properties, and including comprehensive public liability insurance as required by Mortgagee and flood insurance if the Premises is within an area designated by any government agency as a flood risk area. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee. Without limiting the generality of the foregoing, property and casualty insurance shall be in amounts and forms insuring the full replacement cost of fixed

assets of the Borrower. All policies shall name Mortgagee as an additional insured and as loss payee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to their respective dates of expiration. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance. Unless the Mortgagor shall provide the Mortgagee with the evidence of insurance required herein. In the event the Mortgagee may purchase insurance at the Mortgagor's expense solely to protect the Mortgagee's interest in the Premises this insurance may, but need not, protect Mortgagor's interests. The coverage that the Bank may purchase may not pay any claim that the Mortgagor makes or any claim that is made against the Mortgagor in connection with the Premises. The Mortgagor may later cancel any insurance purchased by the Mortgagee, but only after providing the Mortgagee with evidence that the Mortgagor has obtained insurance as required by this agreement. If the Mortgagee purchases insurance for the Premises, the Mortgagor will be responsible for the costs of that insurance, including interest and any other charges the Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Mortgagor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on Mortgagor's own.

4. Adjustment of Losses With Insurer and Application of Proceeds of Insurance. In case of loss or damage by fire or other casualty, provided that Mortgagor is not in default of any of the

covenants, agreements or conditions contained in the Note, this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagor is authorized to (a) settle and adjust any claim under insurance policies which insure against such risks, or (b) agree with the insurance company or companies on the amount to be paid in regard to such loss, subject in all cases to the consent of Mortgagee, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, in the event of a total casualty or in the event of a default of any of the covenants, agreements or conditions contained in the Note, this Mortgage, the Loan Agreement or any of the other Loan Documents, or if an event has occurred which, with the passage of time or the giving of notice or both, would become an event of default under the Note, this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee is authorized, without the consent or approval of Mortgagor, to (a) settle and adjust any claim under insurance policies which insure against such risks, or (b) agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and issue a receipt for any such insurance money. The insurance proceeds shall be made available to Mortgagor to repair and restore the Premises if, and only if, all of the following conditions are satisfied:

(i) no default, or event which with the giving of notice or passage of time would constitute a default, shall have occurred under the Note, this Mortgage, the Loan Agreement or any of the other Loan Documents;

(ii) the insurance proceeds shall, in Mortgagee's sole and absolute judgment, be sufficient to complete the repair and restoration of the buildings, structures and other improvements on the Premises to an architectural and economic unit of substantially the same character and the same value as existed immediately prior to such casualty, or, if Mortgagee shall determine, in its sole and absolute discretion, that the insurance proceeds are insufficient, Mortgagor shall have deposited with Mortgagee the amount of the deficiency in cash

within fifteen (15) days after Mortgagee's demand therefor;

(iii) after such repair or restoration, the Premises shall, in Mortgagee's sole and absolute judgment, adequately secure the outstanding balance of the Loan;

(iv) any and all Contracts for the sale of condominium units in the Project remain in full force and effect;

(v) the insurers do not deny liability to the insureds; and

(vi) such loss does not occur during the last six (6) months of the term of the Loan.

In all other cases, the insurance proceeds may, at the option of Mortgagee, be applied in the reduction of the indebtedness secured hereby, whether due or not, in such order as Mortgagee shall determine in its sole and absolute discretion, or be held by Mortgagee and used to reimburse Mortgagor for the cost of rebuilding or restoring buildings or improvements on the Premises.

Notwithstanding anything herein to the contrary, in case of any loss after foreclosure proceedings have been instituted, all insurance proceeds shall, at Mortgagee's option, be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if said owner shall then be entitled to the same, or as the court may otherwise direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor. Any foreclosure decree may further provide that in case of any one or more redemptions made under said decree, each successive redeemptor may cause the

preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redelector. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

Nothing contained in this Mortgage shall create any responsibility or obligation on Mortgagee to collect any amount owing on any insurance policy, to rebuild, repair or replace any damaged or destroyed portion of the Premises, or to perform any act hereunder.

Upon Mortgagor's request, and provided all of the conditions set forth in clauses (i) through (vi) of this paragraph of Section 4 have been satisfied or upon Mortgagee's election, to apply such insurance proceeds toward repairing, restoring, and rebuilding such improvements, such insurance proceeds shall be made available therefor, by Mortgagee, or such other depository designated by Mortgagee, from time to time, to Mortgagor or at Mortgagee's option directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Mortgagee may impose to ensure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof, provided that Mortgagee is furnished with evidence reasonably satisfactory to Mortgagee of the estimated cost of such repairs, restoration and rebuilding and with architect's and other certificates, waivers of lien, certificates, contractors' sworn statements, and other evidence of the estimated cost thereof and of payments as Mortgagee may require and approve in its sole and absolute discretion. If the cost of rebuilding, repairing or restoring the building and improvements can reasonably exceed the sum of FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00), then Mortgagor shall

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obtain Mortgagee's approval of plans and specifications for such work before such work shall be commenced. Such approval shall not be unreasonable withheld, delayed, or conditioned. In any case, where the insurance proceeds are made available for rebuilding and restoration, such proceeds shall be disbursed in the manner and under the conditions that Mortgagee may require and upon Mortgagee being furnished with satisfactory evidence of the estimated cost of completion thereof and with architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed from time to time are represented by completed and in place work and that the work is free and clear of mechanics' lien claims. If the estimated cost of completion exceeds the amount of the insurance proceeds available, Mortgagor immediately shall, on written demand of Mortgagee, deposit with Mortgagee in cash the amount of such estimated excess cost. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of the proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. Any surplus which may remain out of the insurance proceeds after payment of the cost of building or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto, without interest.

5. Condemnation. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or make the proceeds available for restoration or rebuilding of the Premises. Irrespective of whether such proceeds are made available for restoration or

rebuilding, and irrespective of whether such proceeds are adequate for such purpose, the buildings and improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by Mortgagee. Such approval shall not be unreasonably withheld, delayed, or conditioned. In the event said proceeds are made available for rebuilding or restoration, the proceeds of the award shall be disbursed in the manner and under the conditions that Mortgagee may require and paid out in the same manner as provided in Section 4 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. In such event, if the estimated cost to complete rebuilding or restoration exceeds the proceeds of the condemnation awards, Mortgagor immediately shall, on written demand of Mortgagee, deposit with Mortgagee in cash the amount of such excess cost. Any surplus which may remain out of any such award after payment of such cost of building or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto, without interest.

6. Effect of Extensions of Time.

If the payment of the indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness secured hereby is released or additional security is taken, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation, or taking of additional security or release, and their liability and the lien and all provisions of this Mortgage shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, taking of additional security or release.

7. Effect of Changes in Laws Regarding Taxation.

In the event of the enactment after this date of any law of the state in which the Premises is located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or

liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holders thereof, then, and in any event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor, provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable ninety (90) days after the giving of such notice.

8. Construction Mortgage.

This Mortgage secures an obligation incurred for the construction of improvements on the Premises and constitutes a "Construction Mortgage" within the meaning of Section 9-313(1) of the Illinois Uniform Commercial Code. The proceeds of the loan secured hereby are to be disbursed by Mortgagee to Mortgagor and/or the Borrower, in accordance with the provisions contained in the Loan Agreement. 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 hereby to the same extent as though the Loan Agreement were fully incorporated in this Mortgage. In the event of any inconsistencies or conflicts between this Mortgage and the Loan Agreement, the terms of the Loan Agreement shall govern and control.

9. Other Amounts Secured: Maximum Indebtedness.

Mortgagor acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal

is repaid in whole or part and future advances made at a later date, as well as any amounts owed to Mortgagee as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Mortgagee in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed the sum of Fifty-Six Million and 00/100 Dollars (\$56,000,000).

10. Mortgagee's Performance of Defaulted Acts. In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of the Landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax or any leases of the Premises or to protect the Premises and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable on demand and with interest thereon at the rate per annum applicable under the Note upon and after an Event of Default under the Loan Agreement. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

11. Mortgagee's Reliance on Tax Bills. In case of any default by Mortgagor herein or under the Loan Agreement, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner

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deemed expedient. Mortgagee, in making any such payment not made by Mortgagor as required by the terms of this Mortgage or the Loan Agreement, is hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

12. Acceleration of Indebtedness in Case of Default. If (a) default is made in the due and punctual payment of the principal (or any part(s) thereof) of the Note, or the Mortgagor or the Mortgagor fails to pay, within (10) days after written notice and opportunity to cure, any installment of interest on the Note or any other sum due and payable under the Loan Agreement, the Note, or this Mortgage; or (b) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions herein contained, required to be kept or performed or observed by Mortgagor or the Borrower within thirty (30) days after such performance is due provided, however, that if such default is of a nature that it cannot be cured within thirty (30) days after such performance is due and if the Borrower is diligently taking steps to cure such default, then the Borrower shall have such additional period of time, not to exceed sixty (60) days, as may be reasonably required to complete such steps to cure such default; or (c) default shall be made in the due observance or performance of any of the covenants, agreements or conditions contained, required to be kept or observed by Mortgagor or the Borrower in any other instrument given at any time to secure the payment of the Note; or (d) an Event of Default shall occur under the Loan Agreement; or (e) Mortgagor or the Borrower or any guarantor of the indebtedness secured hereby becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they

mature, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for a major portion of its property or business; or (f) any petition is filed or proceeding is commenced for any attachment, levy, or seizure of any property of Mortgagor or the Borrower or any guarantor of the indebtedness subject to a lien in favor of Mortgagee; or any judgment or judgments, writ or writs, warrant or warrants of attachment, or any similar process or processes in an aggregate amount in excess of \$500,000.00 shall be entered or filed against Mortgagor or the Borrower or any guarantor of the indebtedness or against any property or assets of Mortgagor or the Borrower or any guarantor of the indebtedness and remains unvacated, unbonded or unstayed for a period of sixty (60) days; or (g) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors is instituted for or against Mortgagor or the Borrower or any guarantor of the indebtedness and, if instituted against Mortgagor or the Borrower or any guarantor of the indebtedness secured hereby, are allowed against Mortgagor or the Borrower or any guarantor of the indebtedness or are consented to or are not dismissed within sixty (60) days after such institution, then and in every such case if default shall be continuing the whole of the indebtedness secured hereby shall, at once, at the option of Mortgagee, become immediately due and payable without notice to Mortgagor. Notwithstanding anything to the contrary set forth in this Paragraph 12, in the event of any material adverse change in the condition or affairs (financial or otherwise) of William Harris Smith ("Guarantor"), which in the reasonable discretion of Mortgagee, materially impairs Mortgagee's security or materially increases Mortgagee's risk relative to the risks inherent at the date hereof, or in the event of the death or incompetency of the Guarantor, if the Mortgagor tenders, and if Mortgagee in its sole discretion accepts, a substitute or additional Qualified Guarantor (as hereinafter defined) within a period of thirty (30) days after demand therefor by the Mortgagee (in the event of any material adverse

change in the condition or affairs (financial or otherwise) of the Guarantor) or within a period of thirty (30) days after the death or incompetency of the Guarantor (in the event of the death or incompetency of the Guarantor), then any such material adverse change in the condition or affairs (financial or otherwise) of the Guarantor, or death or incompetency of the Guarantor, shall not be deemed to be a default hereunder. Mortgagor acknowledges and agrees that Mortgagee shall not be obligated to accept any such a substitute or additional guarantor, even if such guarantor otherwise meets or exceeds the criteria for a Qualified Guarantor. The term "Qualified Guarantor" shall mean an individual who in the sole judgment of the Mortgagee, has the same or better personal net worth and creditworthiness as Guarantor and the same or better competency and experience as Guarantor in the construction and development of projects substantially the same or larger and more complex in scope to the Project and the sale of condominium units in projects substantially the same or larger and more complex in scope than the Project.

13. **Application of Funds.** If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, as set forth in Sections 4 or 5 hereof, or while Mortgagor is holding deposits for the payment of taxes, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply holding deposits for the payment of taxes, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards and deposits then held by it in reduction of the indebtedness secured hereby, and any excess held by it over the amount of indebtedness then due shall be returned to Mortgagor or any party entitled thereto, without interest.

14. Due on Sale -- Due on Encumbrance. Without Mortgagee's prior written consent, Borrower shall not, directly or indirectly, create, suffer or permit to be created or filed or to remain against the Premises, or any part thereof, hereafter any mortgage lien or other lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to the Premises, whether superior or inferior to the lien of this Mortgage; provided, however, that Borrower may, within ten (10) days after the filing thereof, contest in good faith by appropriate legal or administrative proceedings any lien claim arising from any work performed, material furnished or obligation incurred by Borrower upon furnishing Mortgagee security and indemnification satisfactory to Mortgagee, in its sole and absolute discretion, for the final payment and discharge thereof. Mortgagee may at its option accelerate the maturity date of the indebtedness evidenced by the Note, whereupon the whole of the indebtedness secured hereby shall at once become immediately due and payable (without any cure or grace period), if Mortgagor shall (whether voluntarily or by operation of law), without the prior written consent of Mortgagee, sell, mortgage, encumber, hypothecate or otherwise transfer the Premises or any part thereof, or otherwise cease to own the Premises, or if the Borrower shall (whether voluntarily or by operation of law), without the prior written consent of Mortgagee, sell, mortgage, encumber, hypothecate, or otherwise transfer the beneficial interest in Mortgagor of any portion thereof, or otherwise cease to own the beneficial interest in Mortgagor or the full power of direction over Mortgagor.

(a) if Borrower is a corporation, any sale, conveyance, assignment or other transfer of all or any portion of the stock of such corporation, that results in a material change in the identity of the person(s) or entities in control of such corporation, or any corporation which controls any of Borrower;

(b) if Borrower is a partnership, any sale, conveyance, assignment or other transfer of all or any portion of the partnership interest of Borrower or any

entity or entities in control of Borrower, or any partnership which controls Borrower;

(c) if Borrower is a limited liability company, any sale, conveyance, assignment or other transfer of all or any portion of the membership interest of any member of Borrower;

(d) any sale, conveyance, assignment or other transfer of all or any portion of the stock, partnership or membership interest of any entity directly or indirectly in control of any corporation, partnership or limited liability company constituting Borrower or any corporation, partnership or limited liability company which controls Borrower, or any sale, conveyance, assignment or other transfer by Borrower in any corporation, partnership or limited liability company in which Borrower has a controlling interest, directly or indirectly; and

(e) any hypothecation of all or any portion of any stock, partnership or membership interest of Borrower, or of all or any portion of the stock, partnership or membership interest of any entity directly or indirectly in control of such corporation, partnership or limited liability company or any corporation, partnership or limited liability company which controls Borrower, or any sale, conveyance, assignment or other transfer by Borrower in any corporation, partnership or limited liability company in which Borrower has a controlling interest, directly or indirectly.

Any waiver by Mortgagee of the provisions of this Section 14 shall not be deemed to be a waiver of the right of Mortgagee in the future to insist upon strict compliance with the provisions hereof.

Notwithstanding the foregoing, (1) Mortgagor shall have the right to enter into agreements for the sale of individual condominium units and parking spaces in the Project on forms approved by the Mortgagee and provided that such agreements satisfy the criteria set forth in Section 2.18 of the Loan Agreement as Valid Sales Contracts; (2) Mortgagor shall have the right to

convey individual condominium units and parking spaces in the Project pursuant to Valid Sales Contracts reviewed and approved by the Mortgagee provided that the conditions set forth in Section 8.11 of the Loan Agreement are satisfied; and (3) the individual members of Mortgagor shall be permitted to transfer their membership interests in Mortgagor to members of such member's immediate family solely for purposes of tax planning or estate planning, provided, however, that (i) all such transfers of membership interests shall not exceed, in the aggregate, thirty percent (30%) of the total membership interests in Mortgagor, and (ii) William Harris Smith shall continue to own the controlling membership interests in Mortgagor.

15. Foreclosure: Expense of Litigation. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage for such indebtedness or part thereof. In any civil action to foreclose the lien of this Mortgage, there shall be allowed and included as additional indebtedness in the order or judgment 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, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such civil actions or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Section, and such expenses and fees as may be incurred in the protection of the Premises and maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including

probate, bankruptcy and appellate proceedings, or in preparations for the commencement or defense of any proceeding or threatened civil actions or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the rate of interest applicable under the Note upon the occurrence of an Event of Default under the Loan Agreement, and shall be secured by this Mortgage.

16. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 15 hereof; second, all other items which may under the terms hereof or the Loan Agreement constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as provided herein or in the Loan Agreement; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

17. Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead, and Mortgagee or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession,

control, management and operation of the Premises during the whole of such period. The court from time to time may authorize the receiver to apply the net income in his hands to the payment in whole or in part of: (a) the indebtedness secured hereby, or by any judgment or order foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency

18. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole indebtedness secured hereby is declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agent or attorneys. In such event Mortgagee in its discretion may, in accordance with law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power to: (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) elect to disaffirm

any lease or sublease which is then subordinate to the lien hereof; (c) extend or modify any then existing leases and to make new leases, 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 indebtedness hereunder and beyond the date of 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 and all persons whose interests in the Premises are subject to the lien of this Mortgage and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from a foreclosure of this Mortgage, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (e) insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) receive all of such avails, rents, issues and profits, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without prior notice to Mortgagor provided that Mortgagor shall give subsequent notice thereof. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss, damage, or expense (including reasonable attorneys' fees) which Mortgagee may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Mortgagee incur

any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

19. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers conferred herein, shall have full power to use and shall apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(i) to the payment of the operating expenses of the Premises, including cost of management, established claims for damages, if any, and premiums on insurance hereinabove authorized;

(ii) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises;

(iii) to the payment of all repairs, replacements, alterations, additions, betterments, and improvements of the Premises and of placing the Premises in such condition as will, in the judgment of Mortgagee, make it readily marketable;

(iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

20. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at 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 as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the

beginning of 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 default or acquiescence therein.

21. Compliance With Illinois Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Sections 735 ILCS 5/15-1101 et seq., Illinois Compiled Statutes) (herein called 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. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee 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. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 735 ILCS 5/15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Section 15 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

22. Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself, and all who may claim through or under it, waives any and all right to have

the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from any order, judgment or decree of foreclosure of this Mortgage on behalf of Mortgagor, the trust estate and all persons beneficially interested therein, and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. Mortgagor hereby represents and warrants to Mortgagee that it has been directed in writing by the appropriate beneficiaries and holders of the power of direction of the trust estate to expressly waive all rights of redemption to the Premises and reinstatement of the loan secured hereby in the manner herein set forth. Mortgagor does hereby further expressly waive, to the extent now or hereafter permitted by law, all rights of reinstatement of this Mortgage pursuant to Section 15-1602 of the Act.

23. Waiver of Notice. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note.

24. Release upon Payment and Discharge of Mortgagor's Obligations. Mortgagee shall release this Mortgage and the lien thereof by proper instrument within 45 days after payment and discharge of all indebtedness secured hereby, in accordance with the terms and conditions in the Note and the Loan Agreement, and including a reasonable fee to Mortgagee for the execution of such release.

25. Filing and Recording Fees. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county, and municipal taxes, and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage.

26. Compliance With Laws. To Mortgagor's knowledge, except as disclosed in writing to Mortgagee on or before the date hereof, the Premises and its present use complies, and at all times shall comply, with all applicable laws and governmental regulations including, without limitation, all applicable federal, state and local laws pertaining to air and water quality, hazardous waste, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and utility availability. Except as disclosed in writing to Mortgagee on or before the date hereof, to the best of Mortgagor's knowledge, neither Mortgagor nor, any previous owner or occupier of the Premises, used, generated, stored or disposed of, on, under or about the Premises any Hazardous Materials. For purposes of this Mortgage, Hazardous Materials shall mean and include any hazardous substance, hazardous material, toxic substance, solid waste, or any pollutant or contaminant now or hereafter defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called applicable "Superfund" or "Superlien" or "Non-priority lien" law, the Toxic Substances Control Act, or the Resource Conservation and Recovery Act, all as amended from time to time. Further, to the best of Mortgagor's knowledge, except as disclosed in writing to Mortgagee on or before the date hereof, the Premises does not contain any underground tanks and does not contain and has not in the past contained any asbestos-containing material in friable form. Mortgagor shall protect, indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, successors and assigns, from and against any and all loss, damage, cost, expense or liability (including attorneys' reasonable fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials or asbestos on, under or about the Premises including without limitation (a) all foreseeable consequential damages; and (b) the costs of any required or necessary repair,

cleanup or detoxification of the Premises and the preparation and implementation of any closure, remedial or other required plans. This indemnity shall survive the payment of the Note and the reconveyance or release of the lien of this Mortgage, or the extinguishment of the lien by foreclosure or action in reconveyance or extinguishment or deed in lieu of foreclosure. This indemnity shall not apply to any claims, losses, liabilities, damages, penalties, and expenses which are incurred by Mortgagee solely as a direct result of any act or omission of the Mortgagee and which are not the result, in whole or in part, of any pre-existing condition or event. Pursuant to Section 11.13 of the Loan Agreement, in the event that any investigation, site monitoring, containment, clean-up, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary or desirable under any applicable local, state or federal law or regulation, any judicial order, or by any governmental entity or person because of, or in connection with the current or future presence, suspected presence, release or suspected release of any Hazardous Materials in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within the Premises (or any portion thereof), Mortgagor shall within thirty (30) days after written demand for performance thereof by Mortgagee (or such shorter period of time as may be required under any applicable law, regulation, order or agreement), commence and thereafter diligently prosecute to completion, all the Remedial Work. All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All costs and expenses of Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's reasonable attorneys' fees and costs incurred in connection with monitoring or review of the Remedial Work. In the event Mortgagor shall fail to timely prosecute to completion, the Remedial Work and upon the expiration of 10 business days following written notice and demand made by Mortgagee to Mortgagor, if Mortgagor has not caused commencement of the Remedial Work, Mortgagee may, but shall not be required to, cause the Remedial

Work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall become part of the indebtedness secured hereby.

27. Indemnity. Except for the grossly negligent acts or omissions or willful misconduct of Mortgagee, its agents, representatives, employees, affiliates, servants or licensees Mortgagee agrees to indemnify and hold harmless Mortgagee from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including attorneys' fees and disbursements) which may be imposed on, incurred or paid by or asserted against Mortgagee by reason or on account of, or in connection with, (a) any willful misconduct of Mortgagor or any default by Mortgagor hereunder or under any other documents executed at any time to secure the payment of the Note, (b) Mortgagee's good faith and commercially reasonable exercise of any of its rights and remedies, or the performance of any of its duties, hereunder or under any other documents executed at any time to secure payment of the Note, (c) the construction, reconstruction or alteration of the Premises, (d) any negligence of Mortgagor, or any negligence or willful misconduct of any lessee of the Premises, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees or (e) any accident, injury, death or damage to any person or property occurring in, on or about the Premises or any street, drive, sidewalk, curb or passageway adjacent thereto, except for the willful misconduct or gross negligence of the indemnified person. Any amount payable to Mortgagee under this Section shall be due and payable within ten (10) days after demand therefor and receipt by Mortgagor of a statement from Mortgagee setting forth in reasonable detail the amount claimed and the basis therefor, and such amounts shall bear interest, from and after the date such amounts are paid by Mortgagee until paid in full by Mortgagor, at the rate of interest applicable under the Note upon the occurrence of an Event of Default under the Loan Agreement. Mortgagor's obligations under this Section shall not be affected by the absence or unavailability of insurance

covering the same or by the failure or refusal by any insurance carrier to perform any obligation on its part under any such policy of covering insurance. If any claim, action or proceeding is made or brought against Mortgagor and/or Mortgagee which is subject to the indemnity set forth in this Section, Mortgagor shall at its sole cost and expense resist or defend against the same, if necessary, in the name of Mortgagee, by attorneys for Mortgagor's insurance carrier (if the same is covered by insurance) or otherwise by attorneys approved by Mortgagee. If any claim, action or proceeding is made or brought against Mortgagee described in clause (c), (d) or (e) hereof which is subject to the indemnity set forth in this Section, Mortgagee shall give written notice thereof to Mortgagor, and Mortgagor shall at its sole cost and expense resist or defend against the same, by attorneys approved by Mortgagee. If for any reason Mortgagor does not undertake such defense and vigorously and continuously prosecute such defense of Mortgagee by attorneys approved by Mortgagee, Mortgagee shall have the right in its discretion, to engage its own attorneys to resist or defend, or assist therein, and Mortgagor shall pay, or, on demand, shall reimburse Mortgagee for the payment of, the reasonable fees and disbursements of Mortgagee's attorneys.

28. Giving of Notice. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and shall be given in person or by the mailing thereof by certified mail addressed to Mortgagor at: Smithfield Properties, L.L.C., c/o Wooton Construction, Ltd. 400 West Huron, Chicago, Illinois 60610, Attention: William Harris Smith, with a copy of any notice delivered to Mortgagor also delivered to Charles E. Alexander, Esq., Charles E. Alexander, P.C., 400 West Huron Street, Chicago, Illinois 60610, or to Mortgagee at: First American Bank, 1650 Louis Avenue, Elk Grove Village, Illinois 60007, , with a copy of any notice delivered to Mortgagee also delivered to Duane, Morris & Heckscher LLP, 227 West Monroe Street, Suite 3400, Chicago, Illinois 60606, Attention: David B. Yelin, Esq., or at such

other place as any party hereto may by notice in writing designate as a place for service of notice.

29. Conflicts; Inconsistencies. In the event of any conflicts or inconsistencies between the terms, conditions, representations, warranties and covenants set forth in this Mortgage and the terms, conditions, representations, warranties and covenants set forth in the Revolving Note, the Loan Agreement, or any of the other Loan Documents, the terms, conditions, representations, warranties and covenants set forth in the Loan Agreement shall govern and control.

30. Miscellaneous.

(i) This Mortgage, and all provisions hereof, shall extend to and be binding upon Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness secured hereby or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of Mortgagee named herein, and the holder or holders, from time to time, of the Note. The word "indebtedness" when used herein shall include the principal sum evidenced by the Note, together with all interest, additional interest, and late charges thereon and other sums due thereunder and all other sums due to Mortgagee under the Loan Agreement or this Mortgage. The word "Note" when used herein shall include all extensions, renewals, refinancings, modifications, amendments, and replacements thereof.

(ii) In the event one or more of the provisions contained in this Mortgage or the Note or in any other security documents given to secure the payment of the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or

unenforceability shall not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage shall be construed and governed by the laws of the State of Illinois.

(iii) At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Mortgagee in connection with the indebtedness secured hereby, provided, however, notwithstanding anything to the contrary herein, the total aggregate indebtedness secured by this Mortgage shall not exceed an amount equal to two (2) times the face amount of the Note.

(iv) No offset or claim that Mortgagor now has or may have in the future against Mortgagee shall relieve Mortgagor from paying any amounts due under the Note or from performing any other obligations contained herein or secured hereby.

(v) Mortgagor shall not by act or omission permit any building or other improvement on the Premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as zoned for its present or intended use. Any act or omission by Mortgagor which would

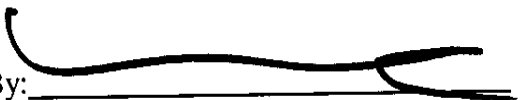
result in a violation of any of the provisions of this Section shall be void.

(vi) Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

IN WITNESS WHEREOF, the Mortgagor has executed this instrument the day and year first written above.

Smithfield Properties XV, L.L.C.

By: Wooton Construction, Ltd., Manager

By: 
William Harris Smith, President

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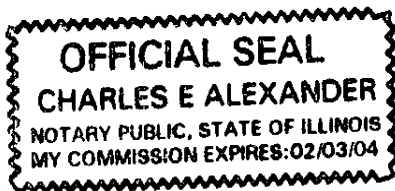
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Charles Alexander, a
Notary Public in and for said County, in the State
aforesaid, do hereby certify that William Harris
Smith, known to me to be the President of Wooton
Construction, Ltd., known to me to be the Manager
of Smithfield Properties XV, L.L.C., an Illinois
limited liability company, appeared before me this
day in person and severally acknowledged that he
signed and delivered the said instrument as Manager
of said company, as his free and voluntary act and as
the free and voluntary act and deed of said company,
for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this
24th day of August, 2001.

Charles Alexander
Notary Public

MY COMMISSION EXPIRES: 2/3/04



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EXHIBIT A - LEGAL DESCRIPTION

PARCEL 1:

ALL THAT PART OF LOTS 4 AND 5 IN THE NORTH 1/2 OF BLOCK 1 IN THE ASSESSOR'S DIVISION OF THAT PART SOUTH OF ERIE STREET AND EAST OF THE CHICAGO RIVER OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN. DESCRIBED AS FOLLOWS:

COMMENCING ON THE WEST LINE OF SAID LOT 5, BEING THE EAST LINE OF KINGSBURY STREET, AT A POINT 65 FEET 3 5/8 INCHES SOUTH OF THE NORTH WEST CORNER OF SAID LOT 5; THENCE NORTH ON THE WEST LINE OF SAID LOT 5, 65 FEET 3 5/8 INCHES TO THE NORTH LINE OF SAID LOT 5, BEING ALSO THE SOUTH LINE OF ERIE STREET, THENCE EAST OF THE SOUTH LINE OF ERIE STREET, 140.50 FEET MORE OR LESS TO A POINT 337.60 FEET WEST OF THE NORTH EAST CORNER OF LOT 4; THENCE SOUTH ON A LINE PARALLEL TO THE EAST LINE OF SAID LOT 4, 100.00 FEET TO THE NORTH LINE OF AN ALLEY, BEING 9 FEET NORTH OF THE CENTER LINE BETWEEN ONTARIO AND ERIE STREETS; THENCE WEST ON THE NORTH LINE OF SAID ALLEY, 50.40 FEET; THENCE NORTHWESTERLY IN A STRAIGHT LINE TO A POINT WHICH IS 3 FEET 8 3/8 INCHES NORTH OF THE NORTH LINE OF SAID ALLEY AND 38 FEET EAST OF THE WEST LINE OF SAID LOT 4; THENCE NORTHWESTERLY IN A STRAIGHT LINE TO A POINT IN THE WEST LINE OF SAID LOT 4, BEING ALSO THE EAST LINE OF LOT 5, WHICH IS 17 FEET 3 INCHES NORTH OF THE NORTH LINE OF ALLEY AFOREMENTIONED; THENCE NORTH ON SAID LINE OF LOTS 4 AND 5 TO A POINT WHICH IS 32 FEET 6 3/4 INCHES SOUTH OF THE SOUTH LINE OF ERIE STREET; THENCE NORTHWESTERLY IN A STRAIGHT LINE TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF LOTS 1 TO 5 LYING SOUTHWESTERLY AND SOUTHERLY OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT A POINT IN THE WEST LINE OF SAID LOT 5, A DISTANCE OF 65 FEET 3 5/8 INCHES SOUTH OF THE NORTHWEST CORNER OF SAID LOT 5; THENCE SOUTHEASTERLY IN A STRAIGHT LINE TO A POINT WHICH IS 38 FEET EAST OF THE WEST LINE OF SAID LOT 4 AND 12 FEET 8 3/8 INCHES NORTH OF THE LINE MIDWAY BETWEEN ONTARIO AND ERIE STREET; THENCE SOUTHEASTERLY IN A STRAIGHT LINE TO A POINT WHICH IS 62 FEET EAST OF THE WEST LINE OF SAID LOT 4 AND 9 FEET NORTH OF THE LINE BETWEEN ONTARIO AND ERIE STREETS; THENCE EASTERLY ALONG A STRAIGHT LINE, 9 FEET NORTH OF AND PARALLEL WITH THE SAID LINE MIDWAY BETWEEN ONTARIO AND ERIE STREETS TO ITS POINT OF INTERSECTION WITH THE EAST LINE OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN ASSESSOR'S DIVISION OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF ERIE STREET AND EAST OF THE NORTH BRANCH OF THE CHICAGO RIVER, EXCEPT FOR THAT PART FALLING WITHIN THE FOLLOWING DESCRIBED TRACT OF LAND:

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CONTINUATION OF EXHIBIT "A"

ALL OF THE 9 FOOT PRIVATE ALLEY, BEING THE SOUTH 9 FEET OF LOTS 1 TO 5 (INCLUSIVE) IN BLOCK 1 AND LYING BETWEEN THE EAST LINE OF SAID LOT 1, AND THE WESTERLY LINE OF SAID LOT 5 (SAID WESTERLY LINE ALSO BEING THE EASTERLY LINE OF KINGSBURY STREET) IN ASSESSOR'S DIVISION OF PART (SOUTH OF ERIE STREET AND EAST OF THE CHICAGO RIVER) OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3

THE NON-EXCLUSIVE RIGHT TO USE THE PRIVATE ALLEY LYING SOUTH AND ADJOINING PARCELS 1 AND 2 DESCRIBED AS: THAT PART OF THE SOUTH 9 FEET OF THE NORTH HALF IN BLOCK 1 IN ASSESSOR'S DIVISION OF THAT PART SOUTH OF ERIE STREET AND EAST OF THE CHICAGO RIVER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THAT PART OF THE NORTH 9.0 FEET OF YOUNG'S SUBDIVISION OF PART OF THE KINGSBURY TRACT IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL LYING WEST OF A LINE DRAWN PARALLEL WITH THE EAST LINE OF LOT 4 IN SAID NORTH HALF OF BLOCK 1 THROUGH A POINT IN THE NORTH LINE OF LOT 4 AFORESAID, 337.60 FEET WEST TO THE NORTHEAST CORNER THEREOF IN COOK COUNTY, ILLINOIS.

Commonly known as: 653 N. Kingsbury, Chicago, IL

PIN: 17-09-127-001; 17-09-127-035