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Cook County Recorder 123.00



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## CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT WITH COLLATERAL ASSIGNMENT OF LEASES AND RENTS [RECOURSE] LOAN # 8420-00415

THIS CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT WITH COLLATERAL ASSIGNMENT OF LEASES AND RENTS (this "mortgage") dated 10/22/01, between UPTOWN NATIONAL BANK OF CHICAGO not personally but as Trustee under Trust Agreement dated 11/15/99, and known as Trust Number 99-130, (the "Mortgagor") and MICHAEL J. MCKIERNAN, PATRICIA J. MCKIERNAN, the ("Co-Borrower") and COMMUNITY INVESTMENT CORPORATION having its principal place of business at 222 South Riverside Plaza, Chicago, IL 60606 ("Mortgagee" herein).

### RECITALS

WHEREAS, Mortgagor and Co-Borrower UPTOWN NATIONAL BANK OF CHICAGO and MICHAEL J. MCKIERNAN, PATRICIA J. MCKIERNAN, (the "Mortgagor and Co-Borrower" herein) have executed and delivered to Mortgagee, an Adjustable Rate Construction Loan Note of even date herewith in the principal amount of TWO MILLION FIVE HUNDRED SIXTY THOUSAND Dollars (\$2,560,000.00), which bears interest at the rate, and is payable in installments and on the dates, provided for therein, with a final payment, if not sooner paid, on 10/1/21, and which note together with all notes delivered in substitution or exchange therefor are hereinafter collectively called the "Note;" and

WHEREAS, Mortgagee requires that the prompt payment of the Note, including the interest due in accordance with the terms thereof, and any additional indebtedness accruing to Mortgagee pursuant to the Note, be secured by this Mortgage and further secured by the Security Agreement and Assignment of Interest in Land Trust of even date herewith (the "Security Agreement") executed and delivered by Co-Borrower to Mortgagee;

NOW, THEREFORE, Mortgagor to secure payment of the indebtedness due or to become due pursuant to the Note, this Mortgage and the Security Agreement, and the performance of the covenants herein and therein contained to be performed, kept and observed by Mortgagor and/or Co-Borrower, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged does hereby MORTGAGE, GRANT and CONVEY unto Mortgagee, its successors and assigns, the real estate situated in the City of CHICAGO, County of COOK, and State of Illinois, as more particularly described in Exhibit A attached hereto and made a part hereof.

TOGETHER with all easements, rights of way, licenses, privileges, tenements, hereditaments and appurtenances belonging thereto and all rents, issues, proceeds and profits therefrom, including all right, title, estate and interest of Mortgagor therein at law or in equity;

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**TOGETHER** with all buildings, structures and improvements now or hereafter erected thereon and all materials intended for construction, reconstruction, alteration and repair of such buildings, structures and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the real estate immediately upon the delivery thereof to the premises, and also all machinery, apparatus, equipment, goods, systems and fixtures of every kind and nature now or hereafter located in or upon or affixed to said real estate or any part thereof, owned or hereafter acquired by Mortgagor and used or usable in connection with any present or future operation of the building on the real estate, including without limitation, all heating, lighting, refrigerating, ventilating, air conditioning, air cooling, lifting, fire extinguishing, plumbing, cleaning, communications, and power equipment, systems and apparatus, all gas, water and electrical equipment, systems and apparatus; all engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, blinds, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all items of furniture, furnishings, equipment and personal property owned by Mortgagor and used in the operation of said real estate; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems and fixtures are or will become a part of the real estate and are acknowledged to be a portion of the security for the indebtedness secured hereby and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part of the real estate or does not constitute a "fixture" [as defined in the Uniform Commercial Code of the State of Illinois (the "Code")], this Mortgage is hereby deemed to be a Security Agreement under the Code for the purpose of creating a security interest in such property, which Mortgagor hereby grants to Mortgagee as "Secured Party" (as defined in the Code); all of the foregoing, taken together with the real estate, are hereinafter sometimes collectively referred to as the "Mortgaged Premises."

**TO HAVE AND TO HOLD**, the Mortgaged Premises unto Mortgagee, its successors and assigns, forever, for the uses and purposes set forth herein. Mortgagor covenants that at the time of the execution and delivery of this Mortgage it holds fee simple title to the Mortgaged Premises and has the right and power, and has been duly authorized and directed, to grant, mortgage and convey the same in the manner and form herein provided; and that the Mortgaged Premises are free from all liens and encumbrances whatsoever excepting only the lien of general and special real estate taxes not yet due and payable; and the Second Mortgage Lien, if any, which has been heretofore disclosed to and approved by Mortgagee; and that Mortgagor and Co-Borrower will defend the rights and privileges accruing to Mortgagee on account of this Mortgage forever against all lawful claims and demands whatsoever.

**THIS MORTGAGE IS GIVEN TO SECURE:** (i) payment of the indebtedness secured hereby; and (ii) the performance of each and every of the covenants, conditions and agreements contained in the Note, this Mortgage and the Security Agreement or in any other instrument to which reference is expressly made in this Mortgage.

MORTGAGOR AND CO-BORROWER, for themselves, their successors and assigns, HEREBY COVENANT AND AGREE WITH MORTGAGEE that:

**1. PAYMENT AND COMPLIANCE WITH NOTE.**

Mortgagor and Co-Borrower will duly and punctually pay all principal and interest due on the Note and any late charges required thereunder, and the principal of, and interest on, any Future Advances (as hereinafter defined) secured by this Mortgage, and will otherwise comply with the terms and conditions of the Note, at the times and in the manner therein provided.

**2. OTHER PAYMENTS.**

Mortgagor and Co-Borrower will deposit monthly with Mortgagee or a depository designated by Mortgagee, in addition to the monthly installments of interest or principal and interest due on the Note, and concurrently therewith, until the principal indebtedness evidenced by the Note is paid, the following:

- (a) a sum equal to the amount estimated by Mortgagee as sufficient together with the payment of approximately equal installments as will result in the accumulation of a sufficient amount of money to pay all Impositions (as hereinafter defined) falling due with respect to the Mortgaged Premises, at least thirty (30) days before the applicable due date; and

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- (b) a sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance required under paragraph 4 hereof. Each installment shall be in an amount which, with the payment of approximately equal installments as will result in the accumulation of a sufficient sum of money to pay all renewal premiums upon such policies of insurance with respect to the Mortgaged Premises, at least thirty (30) days before the expiration date or dates of the policy or policies to be renewed.

All such payments described in this paragraph 2 shall be held by Mortgagee or the depository designated by Mortgagee, in trust, without accruing of any obligation for the payment of interest thereon. When the indebtedness secured hereby has been paid in full, any remaining deposits shall be refunded to Mortgagor or Co-Borrower. The deposits required to be maintained hereunder are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness secured hereby and shall be applied for the purposes herein expressed and shall not be subject to the direction or control of Mortgagor or Co-Borrower.

If the funds so deposited are insufficient to pay, when due, all Impositions or premiums as aforesaid, Mortgagor and Co-Borrower will deposit, within ten (10) days after receipt of demand therefor, such additional funds as may be necessary to pay such Impositions or Premiums. If the funds deposited exceed the amounts required to pay such Impositions or Premiums, the excess shall be applied to a subsequent deposit or deposits.

Neither Mortgagee nor any depository designated by Mortgagee shall be liable for any failure to make the payments of insurance premiums or impositions unless Mortgagor or Co-Borrower, while not in default hereunder, shall have requested Mortgagee or such depository to make application of such deposits to the payment of the particular insurance premiums or Impositions, accompanied by the bills for such insurance premiums or Impositions. Notwithstanding the foregoing, Mortgagee may, at its option, make or cause the depository to make any such application of the aforesaid deposits without any direction or request to do so by Mortgagor or Co-Borrower.

### 3. PAYMENT OF TAXES.

Unless reserves have been established for such impounds, Mortgagor and Co-Borrower shall pay, or cause to be paid, all taxes, assessments, general or special, and other charges levied on or assessed, placed, confirmed or made against the Mortgaged Premises, or which become a lien upon or against the Mortgaged Premises or any portion thereof or which become payable with respect thereto or with respect to the use, occupancy or possession thereof ("Impositions" herein). Mortgagor and Co-Borrower will furnish to Mortgagee a receipt evidencing payment of all applicable Impositions within sixty (60) days of the applicable due date. Mortgagor and Co-Borrower reserve the right to contest real estate tax payments provided Mortgagor or Co-Borrower gives written notice to Mortgagee of such contest and tenders to the Mortgagee such security for the payment of real estate taxes and protection of the security of this Mortgage as the Mortgagee may require not later than ten (10) business days prior to the due date for the tax.

### 4. INSURANCE.

- A. Mortgagor and Co-Borrower will keep and maintain, at their sole cost and expense, insurance policies with respect to the Mortgaged Premises issued by insurance companies approved by Lender and covering loss by perils, hazards, liabilities and other risks and casualties and in form and such amounts as required by Lender. Each carrier providing the insurance coverages required by this Section 4.A shall be licensed in Illinois have a rating of at least A- or better from A.M. Best's Rating Service. Policies (or evidence of insurance printed on ACCORD Form 27) in form and amounts reasonably satisfactory to Lender, endorsed to protect Lender's interest with the standard mortgagee clause or loss payable clause in favor of Lender, shall be delivered to Lender, together with evidence of renewals and the payment of premiums.

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- (i) Mortgagor and Co-Borrower shall keep the improvements now existing or hereafter erected on Mortgaged Property insured for the "full insurable value" of the Mortgaged Property under a replacement cost form of insurance policy against loss or damage resulting from, fire, windstorms, explosions, and other hazards as may be required by Lender.
  - (ii) Comprehensive liability and property damage insurance; and
  - (iii) Boiler and mechanical coverage; and
  - (iv) Such other insurance in amounts and against such insurable risks as Mortgagee may from time to time reasonably require.
- B. All policies of insurance required hereunder shall be in forms acceptable to Mortgagee and shall contain a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days prior written notice to Mortgagee. Mortgagor and Co-Borrower will obtain waiver of subrogation endorsements where applicable. Mortgagor and Co-Borrower will deliver to Mortgagee the originals of all insurance policies, or certificates thereof with copies of the original policies, and all additional, renewal or replacement policies not less than thirty (30) days prior to their respective expiration dates.
- C. The Mortgagor and or Co-Borrower hereby irrevocably assign to the Mortgagee all unearned premiums (current or future), and claims (current or future), of any policy or policies of insurance required to be maintained hereunder or any renewals thereof, as further security for the payment of the indebtedness secured hereby. In the event of a foreclosure sale or other transfer of title to the Mortgaged Premises in extinguishment of the debt secured hereby, all right, title and interest of Mortgagor and Co-Borrower in and to any policy or policies of insurance then in force will pass to the purchaser or grantee thereof subject to the rights of the Mortgagee hereunder, if any.
- D. Unless provided with evidence of the insurance coverage required by herein, Mortgagee, Mortgagee may purchase the required insurance at the expense of Mortgagor and Co-Borrower such insurance coverage, may, but need not, protect the interest of the Mortgagor. The coverage purchased may, but need not, pay any claim made or any claim that is made by or against Mortgagor in connection with the Mortgaged Premises. Insurance Mortgagor has obtained insurance as required herein. Any costs for the purchase of such insurance for the Mortgaged Premises, will be the responsibility of the Mortgagor, including interest and other charges which may be imposed in connection with the placement of the insurance, until the effective date, the cancellation, or expiration of the insurance. The cost of such insurance will be added to the monthly payment or may be added to the total outstanding balance or obligation at Mortgagee's option. The cost of the insurance may be more than the cost of insurance the Mortgagor may be able to obtain.
- E. In the event of any loss to or damage of the Mortgaged Premises by fire or other casualty, Mortgagor or Co-Borrower will give immediate notice thereof to Mortgagee and Mortgagee may thereupon make proof of loss or damage if the same is not promptly made by Mortgagor or Co-Borrower or the holder of the Second Mortgage Lien, if any. Subject to the rights of the holder of the Second Mortgage Lien, if any, all proceeds of insurance shall be payable to Mortgagee and each insurance company with which a claim is filed is authorized and directed to make payment thereof directly to Mortgagee. Provided an Event of Default has not occurred or is existing, Mortgagor or Co-Borrower shall be authorized and empowered to settle, adjust or compromise any claim for loss, damage or destruction under any policy or policies of insurance; provided, however, that if the same is not effected by Mortgagor or Co-Borrower within ninety (90) days of such loss

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or damage, Mortgagee may settle, adjust or compromise such claim without notice to or the consent of Mortgagor or Co-Borrower. Subject to the rights of the holder of the First Mortgage Lien, if any, all insurance proceeds shall, in the sole discretion of Mortgagee, be applied to the restoration, repair, replacement or rebuilding of the Mortgaged Premises or to and in reduction of any indebtedness secured by this Mortgage.

## 5. DAMAGE OR DESTRUCTION.

- A. In the event of damage to or destruction of the Mortgaged Premises, in whole or in part, Mortgagee shall make the proceeds received under any insurance policies available to Mortgagor and Co-Borrower for the rebuilding and restoration of the Mortgaged Premises, subject to the following conditions: (a) Mortgagor or Co-Borrower is not then in default under any of the terms, covenants and conditions of this Mortgage, the Security Agreement or the Note; (b) all then-existing leases shall continue in full force and effect without reduction or abatement of rental (except during the period of untenability); (c) Mortgagee shall be given satisfactory proof that such improvements have been fully restored or that by the expenditure of such proceeds will be fully restored, free and clear of all liens, except as to the lien of this Mortgage and the Second Mortgage Lien, if any; (d) if such proceeds are insufficient to restore or rebuild the improvements, Mortgagor and Co-Borrower will deposit promptly with Mortgagee the amount deficient in order to restore or rebuild the improvements; (e) if Mortgagor or Co-Borrower fails within a reasonable period of time, subject to delays beyond its control, to restore or rebuild the improvements, then Mortgagee, at its option, may restore or rebuild the improvements, for or on behalf of Mortgagor and Co-Borrower and for such purposes may do all necessary acts, including using the funds deposited by Mortgagor or Co-Borrower pursuant to this Mortgage; (f) waiver of the right of subrogation shall be obtained from any insurer under such policies of insurance who, at that time, claims that no liability exists as to Mortgagor or the insured under such policies and (g) the excess of said insurance proceeds above the amount necessary to complete such restoration shall be applied as a credit upon any portion of the indebtedness secured hereby. In the event any of the foregoing conditions are not or cannot be satisfied, then Mortgagee may use or apply the proceeds as a credit upon any portion of the indebtedness hereby secured. Under no circumstances shall Mortgagee become personally liable for the fulfillment of the terms, covenants and conditions contained in any leases with respect to the Mortgaged Premises nor become obligated to take any action to restore the improvements comprising the Mortgaged Premises.
- B. In the event Mortgagee elects to apply such proceeds to restoring the improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve. 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 said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of all liens.

## 6. CONDEMNATION.

- A. All awards heretofore or hereafter made or to be made to Mortgagor and Co-Borrower by any governmental or other lawful authority for any taking, by condemnation or eminent domain of the whole or any part of the Mortgaged Premises or any improvement located thereon or any easement therein or appurtenant thereto are hereby assigned by Mortgagor and Co-Borrower to Mortgagee, which award Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittances

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therefor, and Mortgagee shall use or apply the proceeds of such award or awards in the same manner as is set forth in paragraph 5 above with respect to insurance proceeds received subsequent to a fire or other casualty affecting all or any part of the Mortgaged Premises. Mortgagor and Co-Borrower covenant and agree to give immediate notice to Mortgagee of the actual or threatened commencement of any such proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises.

- B. In the event of any damage or taking by eminent domain of less than all of the Mortgaged Premises, Mortgagee shall make available the proceeds of any award received in connection with and in compensation for any such damage or taking for the purpose of rebuilding and restoring the Mortgaged Premises, subject to the terms and conditions set forth in subparagraph 5A, above. In the event any of the foregoing conditions are not or cannot be satisfied, then Mortgagee may use or apply the award as a credit against any portion of the indebtedness hereby secured. Under no circumstances shall Mortgagee become personally liable for the fulfillment of the terms, covenants, and conditions contained in any lease with respect to the Mortgaged Premises nor become obligated to take any action to restore the improvements.
- C. In the event Mortgagee elects to apply such award to restoring the improvements, the proceeds thereof shall be made available upon the terms and conditions set forth in subparagraph 5B above.

## 7. MAINTENANCE OF MORTGAGED PREMISES.

Mortgagor and Co-Borrower shall keep and maintain, or cause to be kept and maintained, the Mortgaged Premises in good order, condition and repair and will make, or cause to be made, as and when necessary, all repairs, renewals and replacements, as and when necessary, structural and non-structural, exterior and interior, ordinary and extraordinary. Mortgagor and Co-Borrower shall refrain from and shall not permit or suffer the commission of waste in or about the Mortgaged Premises nor remove, demolish or alter the structural character of any improvements at any time erected on the Mortgaged Premises except in accordance with the provisions of the Construction Loan Agreement hereinafter described and otherwise upon the prior written consent of the Mortgagee. All rehabilitation and construction performed in, on or about the Mortgaged Premises shall be in strict conformance with the provisions of paragraphs 5, 6, and 8 hereof.

To the extent required by Mortgagee or the holder of the Second Mortgage Lien, if any, Mortgagor and Co-Borrower will promptly repair, restore, replace or rebuild any part of the Mortgaged Premises which may be damaged or destroyed by fire or other casualty or taken under power of eminent domain.

Mortgagor and Co-Borrower grant to Mortgagee and any person authorized to act on behalf of Mortgagee the right to enter upon the Mortgaged Premises and inspect the same at all reasonable times, provided however, nothing contained herein shall be construed as an obligation on the part of Mortgagee to make such inspections.

## 8. COMPLIANCE WITH LAWS.

Mortgagor and Co-Borrower shall promptly comply, or cause compliance with, all present and future laws, rules, ordinances, regulations and other requirements of each and every governmental authority having jurisdiction over the Mortgaged Premises with respect to the construction, rehabilitation, use or operation of the Mortgaged Premises or any portion thereof.

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## 9. REPORTS.

Mortgagee shall have the right to inquire and receive information as to the status of the land trust and the beneficial interest of such land trust including the right to receive, upon demand, certified copies of the trust agreement, assignments of beneficial interest, and other information from the trustee as the Mortgagee may reasonably require.

## 10. CONSTRUCTION LOAN AGREEMENT.

The indebtedness evidenced by the Note and secured by this Mortgage is to be used for the rehabilitation of certain buildings, structures and improvements on the real estate herein described in accordance with the provisions of the Construction Loan Agreement among Mortgagor, Co-Borrower and other parties dated of even date herewith ("Construction Loan Agreement"). Mortgagor and Co-Borrower covenant that they will perform all the terms, covenants, and conditions of the Construction Loan Agreement to be kept and performed by Mortgagor and Co-Borrower. All advances and indebtedness arising and accruing under the Construction Loan Agreement from time to time shall be secured hereby to the same extent as though the Construction Loan Agreement were fully incorporated in this Mortgage. The occurrence of an Event of Default under the Construction Loan Agreement which is not cured within the applicable grace period, shall constitute an Event of Default under this Mortgage entitling Mortgagee to all of the rights and remedies conferred upon Mortgagee by the terms of the Note, the Security Agreement and this Mortgage. In the event of any conflict between the terms of this Mortgage, the Note or the Security Agreement and the terms of the Construction Loan Agreement (including without limitation provisions, relating to notice or waiver thereof), the Construction Loan Agreement terms shall prevail over the terms of the Note, the Security Agreement and this Mortgage.

## 11. SALES, TRANSFER, ASSIGNMENT OR ADDITIONAL ENCUMBRANCE.

Mortgagor and Co-Borrower shall not, without the prior written consent of Mortgagee first obtained, option, sell, contract to sell, assign, transfer, mortgage, pledge or otherwise dispose of or encumber, whether by operation of law or otherwise, any or all of its interest in the Mortgaged Premises. Any such option, sale, contract, assignment, transfer, mortgage, pledge or other disposition or encumbrance made without Mortgagee's prior written consent shall give Mortgagee the right, at its option, to accelerate the indebtedness secured by this Mortgage causing the full principal balance and accrued interest, to become immediately due and payable. The beneficial interest in or the power of direction under the title holding trust of the Mortgaged Premises shall not be sold, transferred, assigned, pledged or conveyed, in whole or in part, without the prior written consent of the Mortgagee first obtained. If the owner of any portion of said beneficial interest is a partnership, the owner shall not suffer or permit any change in or substitution or withdrawal of fifty percent (50%) or greater interest in the owner without the prior written consent of the Mortgagee. If the owner of any portion of said beneficial interest is a corporation, the owner shall not suffer or permit any sale, assignment or other transfer of fifty percent (50%) or more of the stock of said owner, without the prior written consent of the Mortgagee.

Any such sale, transfer, assignment, pledge, conveyance or substitute made without the Mortgagee's prior written consent shall give the Mortgagee the right, at its sole option, to accelerate the indebtedness secured by this Mortgage causing the full principal balance and accrued interest to be immediately due and payable.

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## 12. LATE CHARGE.

In the event any installment or other amount due hereunder shall be delinquent and remain unpaid as of the fifteenth (15th) day of the month in which such payment is due during the period when interest alone is payable, or as of the first (1st) day of the month following the month in which such payment is due during the period when installments of principal and interest are payable, there shall be due, at the option of the Mortgagee, a late charge equal to five percent (5%) of the amount of such delinquency.

## 13. PREPAYMENT PRIVILEGE.

Privilege is reserved to prepay in whole or in one or more monthly installments or principal upon thirty (30) days' prior written notice to the Mortgagee without penalty, premium or charge.

## 14. PRIORITY OF LIEN: AFTER-ACQUIRED PROPERTY.

- A. This Mortgage is and will be maintained as a valid mortgage lien on the Mortgaged Premises, and shall at all times be prior and superior to any other mortgage or trust deed securing any obligations now or hereafter becoming or falling due. Mortgagor and Co-Borrower will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Mortgaged Premises, or any portion thereof, or against the rents, issues and profits therefrom, any lien, security interest, encumbrance or charge either prior or subordinate to or on a parity with the lien of this Mortgage.
- B. Mortgagor and Co-Borrower will keep and maintain the Mortgaged Premises free from all liens for monies due and payable to persons furnishing labor or providing materials to the Mortgaged Premises in connection with any rehabilitation, construction, modification, repair or replacement thereof. If liens shall be filed against the Mortgaged Premises, Mortgagor and Co-Borrower agree to immediately cause the same to be discharged of record.
- C. In no event shall Mortgagor and Co-Borrower do, or permit to be done, or omit to do, or permit the omission of, any act or thing, the doing of which, or omission to do which, would impair the security of this Mortgage. Mortgagor and Co-Borrower shall not initiate, join in or consent to any change in any private restriction or agreement materially changing the uses which may be made of the Mortgaged Premises or any part thereof without the prior written consent of Mortgagee first obtained.
- D. All property of every kind acquired by Mortgagor and Co-Borrower after the date hereof which is required or intended by the terms of this Mortgage to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor and Co-Borrower, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien and security of this Mortgage. Mortgagor and Co-Borrower will do such further acts and execute, acknowledge and deliver such further conveyances, mortgages, security agreements, financing statements and assurances as Mortgagee shall reasonably require for accomplishing the purposes of this Mortgage.
- E. If any action or proceeding shall be instituted to evict Mortgagor and Co-Borrower to recover possession of the Mortgaged Premises or any part thereof or to accomplish any other purpose which would materially affect this Mortgage or the Mortgaged Premises, Mortgagor and Co-Borrower will immediately upon service of notice thereof, deliver to Mortgagee a true copy of each petition, summons, complaint, notice of motion, order to show cause or other process, pleadings, or papers, however designated, served in any such action or proceeding.



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## 15. MORTGAGEE'S RIGHT TO CURE.

If Mortgagor or Co-Borrower shall default in the performance or observance of any term, covenant, condition or obligation required to be performed or observed by Mortgagor and Co-Borrower under this Mortgage, then, without waiving or releasing Mortgagor or Co-Borrower from any of its obligations hereunder, Mortgagee shall have the right, but shall be under no obligation, to make any payment and/or perform any act or take such action as may be appropriate to cause such term, covenant, condition or obligation to be promptly performed or observed on behalf of Mortgagor and Co-Borrower. All sums expended by Mortgagee in connection therewith, including without limitation reasonable attorney's fees and expenses, shall become immediately due and payable by Mortgagor and Co-Borrower upon written demand therefor with interest at the Default Interest Rate (as hereinafter defined) from the date of advancement by Mortgagee until paid and shall be secured by this Mortgage. Mortgagor and Co-Borrower shall have the same rights and remedies in the event of nonpayment of any such sums by Mortgagor and Co-Borrower as in the case of a default by Mortgagor and Co-Borrower in the payment of the indebtedness evidenced by the Note.

## 16. DEFAULT INTEREST RATE.

The "Default Interest Rate" shall mean interest at a rate equal to two (2) percent above the then-current interest rate under the Note.

## 17. INDEMNIFICATION.

Mortgagor and Co-Borrower will protect, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorney's fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of (a) the ownership of the Mortgaged Premises or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor and Co-Borrower to perform or comply with any of the terms of this Mortgage; or (e) performance of any labor or services or the furnishing of any materials of other Property in respect of the Mortgaged Premises or any part thereof. Any amounts payable to Mortgagee by reason of the application of this paragraph shall become immediately due and payable and shall bear interest at the Default Interest Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations of Mortgagor and Co-Borrower under this paragraph shall survive any termination or satisfaction of this Mortgage.

## 18. ASSIGNMENT OF RENTS AND LEASES.

As additional security for the obligations secured by this Mortgage, Mortgagor and Co-Borrower hereby transfer and assign to Mortgagee, all the rights, title and interest of Mortgagor and Co-Borrower as Lessors, in and to those certain leases identified by schedule in "Exhibit B" if attached hereto and made a part hereof and any renewals or extensions thereof, and all future leases made by Mortgagor and Co-Borrower with respect to the Mortgaged Premises, and all of the rents, issues, proceeds and profits therefrom; provided that Mortgagor and Co-Borrower shall have the right to collect and retain such rents so long as an Event of Default has not occurred or is existing. Notwithstanding the foregoing, the assignment of rents and leases made by Mortgagor and Co-Borrower hereunder shall be deemed a present assignment.

Mortgagee shall not be obligated to perform or discharge, nor does Mortgagee hereby undertake to perform or discharge, any obligation, duty or liability under any of such leases, and Mortgagor and Co-Borrower hereby agree to indemnify and hold Mortgagee harmless of and from all liability, loss or damage which it

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may incur under said leases or under or by reason of the assignment thereof and all claims and demands whatsoever which may be asserted against Mortgagee. Should Mortgagee incur any 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 made in connection therewith, the amount thereof, including without limitation reasonable attorney's fees and expenses, shall be secured hereby, and shall become immediately due and payable upon demand with interest at the Default Interest Rate from the date of advancement by Mortgagee until paid.

Upon the occurrence or existence of an Event of Default, Mortgagee, or any authorized agent of Mortgagee or any judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Mortgaged Premises and to collect the rents therefrom including any rents past due. All rents collected by any of the foregoing parties shall be applied first to payment of the costs of management of the Mortgaged Premises and collection of rents, including without limitation receiver's fees, premiums or bonds and reasonable attorney's fees and expenses, and then to the sums secured by this Mortgage. Any such party shall be liable to account only for the rents actually received.

## 19. EVENTS OF DEFAULT.

Each of the following shall constitute an event of default ("Event of Default"):

- A. If a default, other than the punctual payment of all sums due under the Note, shall occur in the performance or observance of any covenant, term, provision or condition of this Mortgage to be performed or observed by Mortgagor or Co-Borrower which default shall remain uncured after a date specified by Mortgagee in written notice to Mortgagor and Co-Borrower declaring such default but in no event shall such date be less than thirty (30) days from the effective date of such notice; or
- B. If an Event of Default (as therein defined) shall have occurred under the Note; or
- C. If an Event of Default (as therein defined) shall have occurred under the Security Agreement; or
- D. If an Event of Default (as therein defined) shall have occurred under the Construction Loan Agreement; or
- E. If an Event of Default (as therein defined) shall have occurred under the note or the mortgage evidencing and securing, respectively, the Second Mortgage Loan, if any, and such Event of Default remains uncured upon the lapse of the appropriate grace period, if any, provided therein; or
- F. If an Event of Default shall have occurred under a loan agreement or other undertakings by Co-Borrower and Mortgagor, and such event of default results in the acceleration of the maturity of any indebtedness of Co-Borrower or Mortgagor to a third party; or
- G. If Mortgagor or Co-Borrower shall file a petition for protection from creditors under any of the provisions of the Federal Bankruptcy Code or State Insolvency laws or any creditor of Mortgagor or Co-Borrower shall file an involuntary petition against Mortgagor or Co-Borrower under any of the provisions of the Federal Bankruptcy Code or State Insolvency laws which is not dismissed within sixty (60) days after the filing of such involuntary petition; or
- H. If Mortgagor or Co-Borrower shall make a further assignment of the rents, issues or profits of the Mortgaged Premises, or any part thereof, without the prior written consent of Mortgagee; or
- I. If any representation or warranty made by Mortgagor or Co-Borrower in this Mortgage, or made heretofore or contemporaneously herewith by Mortgagor or Co-Borrower in any other instrument,

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agreement or written statement in any way related hereto or to the loan transaction with which this Mortgage is associated, shall prove to have been false or incorrect in any material respect on or as of the date when made and such falsity or incorrectness shall materially affect the security of this Mortgage; or

- J. If rehabilitation of and construction on the Mortgaged Premises is delayed for any reason and in the judgment of Mortgagee there is reasonable doubt as to the ability of Mortgagor and Co-Borrower to complete construction on or before the completion date specified in the Construction Loan Agreement ("Completion Date"); or
- K. If construction is abandoned or is not completed on or before Completion Date; or
- L. If Mortgagee shall disapprove, at any time, any construction work on the Mortgaged Premises and the failure of Mortgagor and Co-Borrower to commence to correct such work to the satisfaction of Mortgagee within ten (10) days after written notice of such disapproval is given to Mortgagor or Co-Borrower; or
- M. If, after delivery of a draw request, Mortgagor and Co-Borrower are unable to satisfy any condition of their right to the receipt of the advance requested pursuant thereto within the period of thirty (30) days after delivery thereof; or
- N. If a lien for the performance of work or the supplying of materials is filed against the Mortgaged Premises and is not promptly discharged by Mortgagor or Co-Borrower; or
- O. If the Mortgaged Premises becomes subject to any lien not previously approved by Mortgagee, or any action by any holder of a junior lien, whether approved by Mortgagee or not, to take possession, to collect rents, to foreclose, or to otherwise enforce rights against Mortgagor and Co-Borrower or the Mortgaged Premises; or
- P. If the general contractor or the major subcontractor(s) identified in the Construction Loan Agreement become bankrupt or insolvent and Mortgagor and Co-Borrower fail to procure a new general contract or subcontract with a new contractor or subcontractor satisfactory to Mortgagee within forty-five (45) days from the occurrence of such bankruptcy or insolvency; or
- Q. If, at any time during the term of the Note, the loan associated with this Mortgage becomes out of balance and, within ten (10) days after notice thereof, Mortgagor and Co-Borrower have not deposited with Mortgagee the amount by which the loan is out of balance. For purposes hereof, the loan shall be deemed out of balance if the amount necessary to complete the rehabilitation of and construction on the Mortgaged Premises as determined by the Mortgagee exceeds the amount available from the balance of the loan proceeds; or
- R. If all or any part of the Mortgaged Premises or any interest therein is sold, transferred, pledged or conveyed or become subject to a contract or option for sale or if the beneficial interest in or power of direction under the title holding trust of the Mortgaged Premises is sold, transferred, assigned, pledged, or conveyed, in whole or in part (including without limitation a collateral assignment thereof to any person other than Mortgagee), or if the owner of said beneficial interest is a partnership, any change in or substitution or withdrawal of fifty percent (50%) or greater interest in the owner, or if the owner is a corporation, any sale, assignment, pledge or other transfer of fifty percent (50%) or more of the stock of said owner,

then, in any such event, at the option of the Mortgagee, the entire unpaid balance due on the Note and all accrued and unpaid interest thereon, and any other sums secured hereby shall become due and payable and thereafter each of said amounts shall bear interest at the Default Interest Rate. All costs and expenses

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incurred by, or on behalf of, Mortgagee (including without limitation reasonable attorney's fees and expenses) occasioned by an Event of Default by Mortgagor or Co-Borrower hereunder shall become immediately due and payable and shall bear interest at the Default Interest Rate from the date of advancement until paid. After the occurrence or existence of an Event of Default, Mortgagee may institute, or cause to be instituted, proceedings for the realization of its rights under this Mortgage, the Note or the Security Agreement.

## 20. RIGHTS, POWERS AND REMEDIES OF MORTGAGEE.

Upon the occurrence or existence of an Event of Default, Mortgagee may at any time thereafter, at its election and to the extent permitted by law:

- A. Proceed at law or in equity to foreclose the lien of this Mortgage as against all or any part of the Mortgaged Premises and to have the same sold under the judgment or decree of a court of competent jurisdiction.
- B. Advertise the Mortgaged Premises or any part thereof for sale and thereafter sell, assign, transfer and deliver the whole, or from time to time any part, of the Mortgaged Premises, or any interest therein, at private sale or public auction, with or without demand upon Mortgagor, for cash, on credit or in exchange for other property, for immediate or future delivery, and for such price on such other terms as Mortgagee may, in its discretion, deem appropriate or as may be required by law. The exercise of this power of sale by Mortgagee shall be in accordance with the provisions of any statute of the state in which the Mortgaged Premises are located, now or thereafter in effect, which authorizes the foreclosure of a mortgage by power of sale or any statute expressly amending the foregoing;
- C. Enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and remove Mortgagor and all other persons and property therefrom, and take actual possession of the Mortgaged Premises, or any part thereof, personally or by its or their respective agents or attorneys, together with all documents, books, records, papers and accounts of Mortgagor and Co-Borrower and may exclude Mortgagor and Co-Borrower, their respective agents or servants, wholly therefrom and may, as attorney in fact and agent of Mortgagor and Co-Borrower, or in its or their own name and stead and under the powers herein granted: (i) hold, operate, manage and control the Mortgaged Premises and conduct the business 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 to necessary to enforce the payment or security of the avails, rents, issues and profits of the Mortgaged Premises, including actions for recovery of rents, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every right, privilege and power herein granted at any and all times hereafter, without notice to Mortgagor or Co-Borrower; (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor or Co-Borrower to cancel the same; (iii) elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or new terms to expire, beyond the maturity date of the indebtedness hereunder and the issuance of a deed or deeds to a purchaser at a foreclosure sale, it being understood and agreed that any such leases, and the options of other such provisions contained therein, shall be binding upon Mortgagor and Co-Borrower and all persons whose interest in the Mortgaged Premises are subject to the lien hereof and also upon the purchaser or purchasers at any foreclosure sale, notwithstanding any discharge of the mortgage indebtedness, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any purchaser; (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Premises as Mortgagee may deem judicious to insure and reinsure the Mortgaged Premises and all risks

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incidental to Mortgagee's possession, operation and management thereof and to receive all avails, rents, issues and profits. Mortgagee shall not be under any liability for or by reason of such entry, taking of possession, removal, holding, operation or management, except that any amounts so received shall be applied as hereinafter provided in this paragraph; and

- D. Make application for the appointment of a receiver for the Mortgaged Premises, whether such receivership be incident to a proposed sale of the Mortgaged Premises or otherwise, and Mortgagor and Co-Borrower hereby consent to the appointment of a receiver and agree not to oppose any such appointment and, further, agree that Mortgagee may be appointed the receiver of the Mortgaged Premises. Each receiver shall have the power to take possession and maintain control over the Mortgaged Premises and to collect the rents, issues and profits during the pendency of a foreclosure suit, as well as during any further times when Mortgagor and Co-Borrower, 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 useful for the protection, possession, control, management, and operation of the Mortgaged Premises during the whole of said period. To the extent permitted by law, any receiver may be authorized by the court to extend or modify any then-existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire beyond that maturity date of the indebtedness secured hereunder, it being understood and agreed that any such leases and the options or other provisions contained therein shall be binding upon Mortgagor and Co-Borrower and all persons whose interests in the Mortgaged Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any discharge of the mortgage indebtedness, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any purchaser.

Mortgagor and Co-Borrower agree that Mortgagee may be a purchaser of the Mortgaged Premises or any part thereof or any interest therein at any sale, whether pursuant to foreclosure, power of sale or otherwise, and may apply upon the purchase price the indebtedness secured hereby. Any purchaser at a sale of the Mortgaged Premises shall acquire good title to the property so purchased, free of the lien of this Mortgage and free of all rights of redemption in Mortgagor and Co-Borrower. The receipt of the officer making the sale under judicial proceedings or of Mortgagee shall be sufficient discharge to the purchaser for the purchase money and such purchaser shall not be responsible for the proper application thereof.

Mortgagor and Co-Borrower hereby waive, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Premises or any part thereof or any interest therein. Further, Mortgagor and Co-Borrower hereby expressly waive any and all rights of redemption from sale under any Order or Judgment of foreclosure of this Mortgage on behalf of Mortgagor and Co-Borrower, the trust estate and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Mortgaged Premises subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by the provisions of Section 5/15-1601(b), Code of Civil Procedure of Illinois, or any statute enacted in substitution thereof.

The proceeds of any sale of the Mortgaged Premises or any part thereof or interest therein, whether pursuant to foreclosure or power of sale or otherwise, and all amounts received by Mortgagee by reason or any possession, operation or management of the Mortgaged Premises or any part thereof, together with any other sums at the time held by Mortgagee, shall be applied in the following order:

- First:** To all costs and expenses of the sale of the Mortgaged Premises or any part thereof or any interest therein, or entering upon, taking possession of, removal

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from, holding, operating and managing the Mortgaged Premises or any part thereof, together with (a) the costs and expenses of any receiver of the Mortgaged Premises or any part thereof, appointed pursuant hereto; (b) the reasonable fees and expenses of attorneys, accountants and other professionals employed by Mortgagee or those engaged by any receiver; and (c) any indebtedness, taxes, assessments or other charges prior to the lien of this Mortgage, which Mortgagee may consider necessary or desirable to pay;

**Second:** To any indebtedness secured by this Mortgage at the time due and payable, other than the indebtedness with respect to the Note at the time outstanding;

**Third:** To all amounts of principal and interest due and payable on the Note at the time of receipt of proceeds (whether at maturity or on a date fixed for any installment payment or by declaration of acceleration or otherwise), including late charges, and interest at the Default Interest Rate on any overdue principal and (to the extent permitted under applicable law) on any overdue interest, and in case such sums shall be insufficient to pay in full the amount so due and unpaid upon the Note, then, first, to the payment of all amounts of interest and late charges at the time due and payable and, second, to the payment of all amounts of principal;

**Fourth:** The balance, if any, to the person or entity then entitled thereto pursuant to applicable state law.

E. Enter upon the Mortgaged Premises and (i) complete, or cause to be completed, the rehabilitation of and construction on the improvements situated thereon in accordance with plans heretofore approved by or on behalf of the Mortgagee and employ all necessary personnel, at the risk, cost and expense of Mortgagor and Co-Borrower; (ii) discontinue any work commenced with respect to rehabilitation of and construction on the improvements or change any course of action previously undertaken and not be bound by any limitations or requirements of time; (iii) assume any construction contract made by Mortgagor or Co-Borrower in any way relating to the rehabilitation of the improvements and take over and use all, or any part of the labor, materials, supplies and equipment contracted for by Mortgagor or Co-Borrower, whether or not previously incorporated into the improvements; and (iv) in connection with any rehabilitation or construction of the improvements undertaken by Mortgagee pursuant to the provisions of this subparagraph, engage builders, contractors, architects, and engineers and others for the purpose of completing the rehabilitation or construction of the improvements, pay, settle, or compromise all bills or claims which may become liens against the Mortgaged Premises or which have been or may be incurred in any manner in connection with completing the rehabilitation or construction of the improvements, and taken or refrain from taking any action hereunder as Mortgagee may from time to time deem necessary. Mortgagor and Co-Borrower shall be liable to Mortgagee for all sums paid or incurred to complete the improvements whether the same shall be paid or incurred pursuant to the terms of this subparagraph or otherwise and all payments made or liabilities incurred by Mortgagee hereunder of any kind whatsoever shall be paid by Mortgagor and Co-Borrower to Mortgagee, upon demand, with interest at the Default Interest Rate from the date of advancement by Mortgagee until paid, and all such payments shall be additional indebtedness secured by this Mortgage.

F. Apply any monies or securities on deposit with Mortgagee or any depository designated by Mortgagee as required to be maintained under this Mortgage to secure the obligations of Mortgagor or Co-Borrower under the Note, the Security Agreement or this Mortgage in such order and manner as Mortgagee may elect.

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## 21. FEES AND EXPENSES.

If Mortgagee shall incur or expend any sums, including, without limitation, reasonable attorney's fees and expenses, whether or not in connection with any action or proceeding, in order to sustain the lien of this Mortgage or its priority, or to protect or enforce any of Mortgagee's rights hereunder, or to recover any indebtedness secured hereby, all such sums shall become immediately due and payable by Mortgagor and Co-Borrower with interest at the Default Interest Rate. All such sums shall be secured by this Mortgage and be a lien on the Mortgaged Premises prior to any right, title, interest or claim in, to or upon the Mortgaged Premises attaching or accruing subsequent to the lien of this Mortgage. Without limiting the generality of the foregoing, in any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness secured hereby in the judgments for sale all costs and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Premises, stenographer's charges, searches and examinations, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or evidence to bidders at any sale which may be had pursuant to such judgments the true condition of the title or value of the Mortgaged Premises or for any other reasonably necessary purpose. The amount of any such costs and expenses which may be paid or incurred after the judgment for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby in the Judgment for sale.

## 22. EXERCISE OF RIGHTS BY MORTGAGEE.

In the event that Mortgagee (a) grants any extension of time or forbearance with respect to the payment of any indebtedness secured by this Mortgage; (b) takes other or additional security for the payment thereof; (c) waives or fails to exercise any right granted herein, under the Security Agreement or under the Note; (d) grants any release, with or without consideration of the whole or any part of the security held for the payment of the indebtedness secured hereby; (e) amends or modifies in any respect with the consent of either Mortgagor or Co-Borrower any of the terms and provisions hereof or of the Note or the Security Agreement, then, and in any such events, such act or omission to act shall not release Mortgagor or Co-Borrower under any covenant of this Mortgage, the Note or the Security Agreement, nor preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted upon the occurrence or existence of an Event of Default or otherwise and shall not in any way impair or affect the lien or priority of this Mortgage. No right or remedy of Mortgagee shall be exclusive of, but shall be in addition to, every other right or remedy, now or hereafter existing at law or in equity. No delay in exercising, or omission to exercise, any right or remedy, accruing upon the occurrence or existence of an Event of Default shall impair any such right or remedy, or shall be construed to be a waiver of any such default, or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such right or remedy may be exercised concurrently or independently and when and as often as may be deemed expedient by Mortgagee.

## 23. BOOKS AND RECORDS.

Co-Borrower shall keep and maintain at all times at the Co-Borrower's address stated below, or at such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Mortgaged Premises and copies of all written contracts, leases and other instruments which affect the Mortgaged Premises. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Annually, and at any other time upon the Lender's written request, the Co-Borrower shall furnish to Lender, on or before April 30th of each year, the following: (i) a current balance sheet; (ii) Annual Income and Expense Statement of the Mortgaged Premises; (iii) a rent schedule for the property as

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of January 1st showing the name of each tenant, space occupied, lease expiration date, rent payable and rent paid; (iv) current personal financial statements, each in reasonable detail and certified by the Co-Borrower as being true and accurate, and, if Lender shall require, certified to by an independent certified public accountant.

## 24. BUSINESS PURPOSE.

Mortgagor and Co-Borrower warrant that the proceeds of the Note will be used for the purposes specified in Paragraph 815 ILCS 205/4(1)(c) of the Illinois Statutes and that the indebtedness secured hereby constitutes a "business loan" within the purview of said section.

## 25. TAXES ON MORTGAGE OR NOTE.

In the event of the passage of any law which deducts from the value of real property, for purposes of taxation, any lien thereon and which in turn, imposes a tax whether directly or indirectly, on this Mortgage or on the Note, and if Mortgagor and Co-Borrower are prohibited by law from paying the whole of such tax in addition to every other payment required hereunder, or if Mortgagor and Co-Borrower, although permitted to pay such tax, fail to do so in a timely fashion, then, in such event, at the option of the Mortgagee, and upon not less than ninety (90) days' prior written notice from Mortgagee to Mortgagor and Co-Borrower, the entire unpaid principal balance due on the Note and all accrued and unpaid interest thereon, and any other sums secured hereby, shall become immediately due and payable and thereafter, and each of said amounts shall bear interest at the Default Interest Rate.

## 26. SUBORDINATION.

At the option of Mortgagee, this Mortgage shall become subject and subordinate (except with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Mortgaged Premises upon the execution by Mortgagee of a unilateral declaration of subordination and the recording thereof in the Office of the Recorder of Deeds of COOK County, Illinois.

## 27. FUTURE ADVANCES.

It is further covenanted and agreed by the parties hereto that this Mortgage also secures the payment of and includes all future advances as shall be made by Mortgagee or its successors or assigns, to and for the benefit of Mortgagor and Co-Borrower, to the same extent as if such future advances were made on the date of the execution of this Mortgage ("Future Advances"). The total amount of indebtedness that may be secured by this Mortgage may decrease or increase from time to time and shall include any and all disbursements made by Mortgagee for the payment of taxes, levies or insurance on the Mortgaged Premises with interest on such disbursements at the Default Interest Rate and for reasonable attorney's fees and court costs incurred in the collection of any or all such sums. All future advances shall be wholly optional with Mortgagee and the same shall bear interest at the same rate as specified in the Note unless said interest rate shall be modified by subsequent agreement. The total amount of the indebtedness that may be secured by this Mortgage shall not exceed the amount of \$3,840,000.00, (150% of loan amount).

## 28. MODIFICATION.

No change, amendment, modification, cancellation or discharge hereof, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successor and assigns.



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## 29. NOTICES.

Any notices, demands or other communications given pursuant to the terms hereof shall be in writing and shall be delivered by personal service or sent by certified or registered mail, return receipt requested, postage prepaid or by facsimile transmission with confirmation of transmission, addressed to the party(ies) at the address(es) set forth below or at such other address within the United States as either party shall have theretofore designated in writing to the other. Any such notice, demand, or other communication shall be deemed received on the date specified on the receipt, if delivered by personal service, on the third business day after the date of mailing, if delivered by registered or certified mail or on the date of the confirmation of the facsimile transmission, if by facsimile transmission.

NOTICES TO:                   **MICHAEL J. MCKIERNAN**  
  **PATRICIA M. MCKIERNAN**  
  **5758 N. WINTHROP**  
  **CHICAGO, IL 60660**

## 30. FURTHER ASSURANCES.

Mortgagor and Co-Borrower, at their expense, will execute, acknowledge and deliver such instruments and take actions as Mortgagee from time to time may reasonably request for the further assurance to Mortgagee of the properties and rights now or hereafter, subjected to the lien hereof or assigned hereunder or intended so to be.

## 31. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

## 32. BINDING ON SUCCESSORS AND ASSIGNS.

Subject to the provisions hereof restricting or limiting Mortgagor's and Co-Borrower's rights of assignment and transfer, all of the terms, covenants, conditions and agreements herein set forth shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

## 33. APPLICABLE LAW.

This Mortgage shall be governed by the laws of the State of Illinois, which laws shall also govern and control the construction, enforceability, validity and interpretation of this Mortgage.

## 34. SEVERABILITY.

Every provision hereof is intended to be severable. If any provision of this Mortgage is determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the other provisions hereof, which shall remain binding and enforceable.

## 35. DEFEASANCE.

If Mortgagor and Co-Borrower shall pay the principal and interest due under the Note in accordance with the terms thereof, and if it shall pay all other sums payable under this Mortgage and the Security Agreement, then this Mortgage and the estate and rights hereby created shall cease, terminate and become

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void, and thereupon Mortgagee, upon the written request and at the expense of Mortgagor and Co-Borrower, shall execute and deliver to Mortgagor and Co-Borrower such instruments, as shall be required to evidence of record the satisfaction of this Mortgage and the lien thereof.

## 36. HAZARDOUS SUBSTANCES.

To the best of Mortgagor's and Co-Borrower's knowledge upon diligent investigation the Mortgaged Premises and the use and operation thereof are currently in compliance and will remain in compliance with all applicable environmental, health and safety laws, rules and regulations. There are, to the best of Mortgagor's and Co-Borrower's knowledge, upon diligent investigation, no environmental, health or safety hazards. To the best of Mortgagor's and Co-Borrower's knowledge upon diligent investigation the Mortgaged Premises have never been used for a sanitary land fill, dump or for the disposal, generation or storage of any Hazardous Substances deposited or located in, under or upon the Mortgaged Premises, or any parcels adjacent thereto, or on or affecting any part of the Mortgaged Premises or the business or operations conducted thereon, including, without limitation, with respect to the disposal of Hazardous Substances. To the best of Mortgagor's and Co-Borrower's knowledge upon diligent investigation, no underground storage tanks are or have been located on the Mortgaged Premises. To the best of Mortgagor's and Co-Borrower's knowledge upon diligent investigation: (a) no portion of the Mortgaged Premises is presently contaminated by any Hazardous Substances and (b) no storage, treatment or disposal of any Hazardous Substance has occurred on or in the Mortgaged Premises. Mortgagor and Co-Borrower have not received written notice of, and to the best of Mortgagor's and Co-Borrower's knowledge after diligent inquiry, there are no pending or threatened actions or proceedings (or notices of potential actions or proceedings) from any governmental agency or any other entity regarding the condition or use of the Mortgaged Premises or regarding any environmental, health or safety law. Neither the Mortgagor or Co-Borrower has received any notice of any Hazardous Substance in, under or upon the Mortgaged Premises or of any violation of any environmental protection laws or regulations with respect to the Mortgaged Premises or has any knowledge which would provide a basis for any such violation with respect to the Mortgaged Premises. Mortgagor and Co-Borrower will promptly notify Mortgagee of any notices and any pending or threatened action or proceeding in the future, and Mortgagor and Co-Borrower will promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of Mortgagee.

Mortgagor and Co-Borrower covenant and agree that, throughout the term of the Loan, no Hazardous Substances will be used by any person for any purpose upon the Mortgaged Premises or stored thereon in violation of applicable statute, rule or regulation. Mortgagor and Co-Borrower hereby indemnify and hold Mortgagee harmless of and from all loss, cost (including reasonable attorney's fees), liability and damage whatsoever incurred by Mortgagee by reason of any violation of any applicable statute or regulation for the protection of the environment which occurs subsequent to the date of this Mortgage upon the Mortgaged Premises, or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation. Mortgagor's and Co-Borrower's obligation to Mortgagee under the foregoing indemnity shall be without regard to fault on the part of Mortgagor or Co-Borrower with respect to the violation of law which results in liability to Mortgagee. The release of this Mortgage shall in no event terminate or otherwise affect the indemnity contained in this paragraph.

Hazardous Substances is defined herein as any toxic or hazardous wastes, pollutants, or substances, including, without limitation, asbestos, PCBs, petroleum products and by-products, substances defined as "hazardous substances" or "toxic substances" or similarly identified in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et. seq., Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1802, et. seq., The Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et. seq., The Toxic Substance Control Act of 1976, as amended, 15 U.S.C. Sec. 2601, et. seq., Clean Water Act, 42 U.S.C. Sec. 7401, et. seq., or in any other applicable federal, state or local Environmental Laws.

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**THIS MORTGAGE IS EXECUTED BY UPTOWN NATIONAL BANK OF CHICAGO**, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. No personal liability shall be asserted or enforceable against the Trustee in respect to this Mortgage, all such liability, if any, being expressly waived by each taker and holder of the Note secured hereby. Nothing herein contained shall modify or discharge the personal liability expressly assumed by any co-maker or guarantor or co-borrower of the obligations hereby secured.

Each original and successive holder of the Note accepts the same upon the express condition that no duty shall rest upon the Trustee to sequester the rents, issues and profits arising from the Mortgaged Premises, or the proceeds arising from the sale or other disposition thereof, but in case of default in the payment of this Note or under any of the terms and provisions of this Mortgage, the sole remedy of Mortgagee with respect to Mortgagor shall be by foreclosure of this Mortgage.

IN WITNESS WHEREOF, Mortgagor and Co-Borrower have executed this Mortgage, as of the day and year first above written.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, warranties and agreements herein contained, as of the day and year first above written, are nevertheless representations, covenants, undertakings, warranties and agreements of said Trustee, and each and every one of them, made and intended not as personal representations, covenants, undertakings, warranties and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that activity of the Trustee as Trustee, but solely in the exercise of the power conferred hereby, and the personal liability or personal responsibility is assumed by nor shall at any time be assumed by the Uptown National Bank of Chicago, account of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released. The Trustee makes no personal representations as to nor shall it be responsible for the existence, location or maintenance of the chattels herein described, if any.

**UPTOWN NATIONAL BANK OF CHICAGO**  
and not personally but solely as Trustee as aforesaid

BY: \_\_\_\_\_

ITS: *Christopher*

ATTEST: *Paul C. Stagg*

AND (CO-BORROWER)

*Michael J. McKiernan*  
MICHAEL J. MCKIERNAN

*Patricia M. McKiernan*  
PATRICIA MCKIERNAN

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STATE OF ILLINOIS)

[TRUSTEE]

)§.

COUNTY OF COOK)

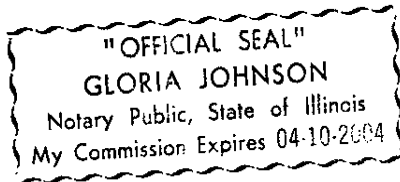
I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY** that:

JAY Steiner (name) Trust OFFICER (title)  
AND  
(name) (title)

of **UPTOWN NATIONAL BANK OF CHICAGO**, are personally known to me to be the same person whose names are subscribed to the foregoing instrument as such (title) and **Secretary** (title) respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said **UPTOWN NATIONAL BANK OF CHICAGO** as Trustee, for the uses and purposes therein set forth; and said

**Secretary** did also then and there acknowledge that he/she, as custodian of the corporate seal of **UPTOWN NATIONAL BANK OF CHICAGO**, did affix the said corporate seal of said national banking association OR CORPORATION to said instrument as his own free and voluntary act and the free and voluntary act of said national banking association OK CORPORATION, as Trustee, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND OFFICIAL SEAL, THIS 29<sup>th</sup> DAY  
OF October, 2001.



Gloria Johnson  
Notar / Public

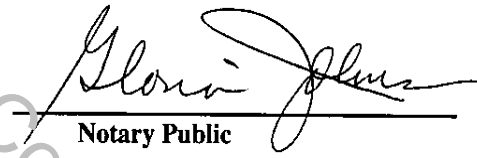
# UNOFFICIAL COPY

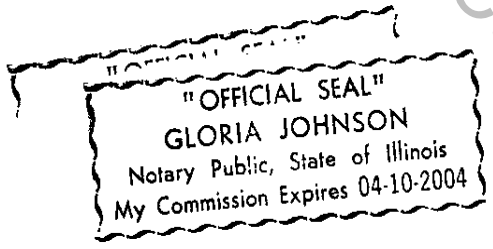
STATE OF ILLINOIS)  
 )§.  
COUNTY OF COOK)

[CO-BORROWER]

I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY** that: MICHAEL J. MCKIERNAN, PATRICIA J. MCKIERNAN, personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of MICHAEL J. MCKIERNAN, PATRICIA J. MCKIERNAN, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND OFFICIAL SEAL, THIS 29<sup>th</sup> DAY  
OF October, 2001.

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



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

LOT 21 AND 22 IN BLOCK 5 IN COCHRAN'S ADDITION TO EDGEWATER, A SUBDIVISION OF THE SOUTH 1,946 FEET OF THE WEST 1,320 FEET OF THE EAST FRACTIONAL ½ OF SECTION 5, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY COMMONLY KNOWN AS: 5747 N. WINTHROP, CHICAGO, IL 60660

PERMANENT INDEX NUMBER(S): 14-05-405-033-0000

### THIS DOCUMENT PREPARED BY AND AFTER RECORDING RETURN TO:

COMMUNITY INVESTMENT CORPORATION  
ATTN: CAROL BATELLI  
222 SOUTH RIVERSIDE PLAZA, SUITE 2200  
CHICAGO, ILLINOIS 60606 -- (312) 258-0070

--EXHIBIT A--

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**11037351**